



Crl.O.P(MD).No.14295 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD).No.14295 of 2020 and
Crl.M.P(MD).No.6650 of 2020

Uma Maheswari

... Petitioner

Vs.

1.State rep. through the
Food Safety Officer,
Madurai Corporation,
Code No.572,
O/o. the Designated Officer,
Tamil Nadu Food Safety and Drug Administration,
Viswanathapuram,
Madurai – 625 014.

2.Kamaraja
3.Prabaharan

... Respondents

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records in connection with the impugned charge sheet in STC.No.3550 of 2020 on the file of the Judicial Magistrate Court No.I, Madurai, Madurai District and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S. Sarvagan Prabhu

For Respondent No.1 : Mr.R.M.Anbunithi

Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to call for the records in connection with the impugned charge sheet in STC.No.3550 of 2020 on the file of the Judicial Magistrate Court No.I, Madurai, Madurai District and quash the same insofar as the petitioner is concerned.

2. The case of the prosecution is that on 05.02.2020 at about 12.10 pm, the first respondent / complainant, being the Food Safety Officer went to the shop of accused for a surprise inspection and taken the samples of jaggery kept for sale. After collecting the samples, the sample was sent for Forensic Analysis and the report was also received indicating that the food is of sub-standard. Based on the complaint, case has been registered against the petitioner and other accused in STC.No. 3550 of 2020 on the file of the learned Judicial Magistrate No.I, Madurai for the offences under Sections 51 and 59(i) of the Food Safety and Standards Act,, 2006. Challenging the same, the petitioner herein has filed the present petition.

3. The learned counsel appearing for the petitioner submitted



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that the prosecution for penalty under Section 51 of the Act is not maintainable. He further submitted that as per Section 42(3) of the Act, only if the contravention is punishable with imprisonment, the Designated Officer can recommended for prosecution. Whereas Section 51 of the Act deals with penalty only. According to Rule 3(1)(5) of the Food Safety and Standard Rules, 2011, the Adjudicating officer shall have power to hold an inquiry for the purpose of adjudicating offences punishable under Section 51 of the Act. Whereas, the prosecution against the petitioner herein before this Court is not punishable with imprisonment but only with penalty. In support of his contention, the learned counsel appearing for the petitioner has relied on the Judgments of this Court reported in **2002(3) MWN (Cr.) 489** in the case of ***A.C.Shanmugam and another Vs. State rep. by its Food Safety Officer*** and **2022(1) MWN (Cr.) 632** in the case of ***S.Sakthivel and another Vs. State rep. by Food Safety Officer Tamil Nadu Food Safety and Drug Administration*** and prays for allowing this petition.

4. The learned Additional Public Prosecutor appearing for the first respondent would submit that the petitioner herein has been prosecuted under Section 59(i) of the Food Safety and Standards Act,



2006, which is punishable with imprisonment under law. Since the complaint has been filed for prosecution under Section 51 of the Act as against the petitioner, it is his contention that the first respondent may be directed to initiate appropriate proceedings to hold an inquiry for the purpose of adjudicating the offences punishable under Section 51 of the Act by the Adjudicating Officer.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal* reported in *1992 Cri.L.J. 527*, even if the allegations made in the complaint is taken at the face value and accepted in its entirety, for selling the sub-standard quality product, the petitioner cannot be prosecuted and at the most, penalty can be imposed in the adjudication process. Contrarily, there is a prima facie material to prosecute the petitioner under Section 59(i) of the Food Safety and Standards Act, 2006, this Court is of the view that to the extent of prosecuting the petitioner under Section 59(i) of the Food Safety and Standards Act, 2006 is valid. Whereas the prosecution under



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Section 51 of the Food Safety and Standards Act, 2006 is without competency. Hence, to that extent the proceeding in STC.No.3550 of 2020 on the file of the Judicial Magistrate Court No.I, Madurai, Madurai District is hereby quashed.

7. The trial Court is directed to proceed against the petitioner insofar as the offence under Section 59(i) of the Food Safety and Standards Act, 2006. The first respondent is at liberty to proceed against the petitioner before the Adjudicating Authority for violation under Section 51 of the Food Safety and Standards Act, 2006.

8. Accordingly, this Criminal Original Petition is party allowed. Consequently, the connected Miscellaneous Petition is closed.

11.06.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
trp



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To

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1. The Judicial Magistrate Court No.I, Madurai, Madurai District
2. The Food Safety Officer,
Madurai Corporation,
Code No.572,
O/o. the Designated Officer,
Tamil Nadu Food Safety and Drug Administration,
Viswanathapuram,
Madurai – 625 014.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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A.A.NAKKIRAN, J.

Trp

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