



W.P(MD)No.1038 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.1038 of 2018

and

W.M.P(MD)No.1077 of 2018

Maragatham

... Petitioner

Vs

1.The Food Safety Officer,
Ambasamudram,
Tirunelveli District.

2.The Designated Authority,
Tamil Nadu Food Safety and Drug
Administration Department,
Medical College Campus,
Tirunelveli,
Tirunelveli District.

3.The Adjudicating Authority /
District Revenue Officer,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the impugned order dated 23.11.2017 under reference Na.Ka.No.Na2/2735/2014 in Case No.02 of 2013 on the file of the third respondent and quash the same as illegal and devoid of merits forthwith.



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For Petitioner : Mr.S.Palani Velayutham

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed by the third respondent dated 23.11.2017 thereby imposing fine.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.On 27.08.2013, the first respondent inspected one Murugan Stores which is engaged in selling groceries and other food items. It belonged to one Murugesan. While inspection, enquired about the sale of Suriya Gingelly oil and found that it was distributed by one Arul Stores and it was manufactured by Packiyalakshmi traders. The samples of Gingelly pocket oil were taken for food analysis. After following the procedure as contemplated under the Food Safety and Standards Act, 2006 (in short hereinafter referred to as 'the Act, 2006'), the samples were sent for analysis. As per the report from the food analysis, the



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sample which was taken by the first respondent is misbranded under Sections 3(1)(zf)(A)(ii) of the Act, 2006. Therefore, the first respondent sought for sanction for prosecuting the seller, dealer and manufacturer of the said food item. Accordingly, the charge sheet was filed before the third respondent in which the petitioner is arraigned as the second accused being the distributor. As far as the petitioner is concerned, she was charged for the offences under Sections 51 and 52 r/w Sections 3(1)(zf)(A)(ii) and 3(1)(zx) of the Act, 2006 and also the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (in short hereinafter referred to as 'the Regulations, 2011'). After due enquiry, all three accused were found guilty and imposed a fine of Rs.50,000/- as against the petitioner.

4.The learned counsel appearing for the petitioner would submit that the first respondent failed to follow any of the procedure as contemplated under the Regulations, 2011 while initiating prosecution against the petitioner. Even according to the prosecution, the petitioner, who is being the distributor does not have any knowledge about the quality of food items as well as the packaging of food item. Whatever the food item supplied by the manufacturer, the petitioner who is being the distributor, distributes



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the food items to retail vendors. Therefore, the petitioner is nothing to do with the allegations as alleged by the first respondent.

5. On perusal of the records and counter-affidavit filed by the first respondent and on the submissions made by the learned Additional Government Pleader appearing for the respondents would reveal that admittedly the food product which was taken as a sample from the retail vendor shop was found as Misbranded. Further, the contents of the package confirmed the specifications prescribed for Palmolein oil and the label contains misleading statements in violation of Regulation 2.2.1(3) of the Regulation, 2011. It was also found as Substandard as contemplated under Section 3(1)(zx) of the Act, 2006. As per the analysis report, the acid level is more than the prescribed standard for Gingelly oil under Regulation 2.2.1(12) of the Food Safety and Standards (Food Product Standards and Food Activities) Regulation, 2011. Therefore, the sample was declared as 'Misbranded and Substandard'. After obtaining sanction for launching the adjudication from the designated officer of Tirunelveli District, filed a complaint as against three accused persons in which the petitioner is arraigned as the second accused. Though the petitioner was the distributor of the



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said product, the bounden duty of food distributors is to provide safe and wholesome food to a larger public. If any contravention of the Act, 2006, the violators would be prosecuted. The liability of distributors has been prescribed under Section 27 of the Act, 2006. It is relevant to extract the provision under Section 27 of the Food Safety and Standards Act, 2006 hereunder:

'27.Liability of the manufacturers, packers, wholesalers, distributors and sellers:

(1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is–

(a) Supplied after the date of its expiry; or

(b) Stored or supplied in violation of the safety instructions of the manufacturer; or

(c) Unsafe or misbranded; or

(d) Unidentifiable of manufacturer from whom the article of food have been received; or

(e) Stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or



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(f) received by him with knowledge of being unsafe.'

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6.Thus, it is clear that the distributors cannot escape from their liability by providing Misbranded and Substandard food to larger public and contravene the Act, 2006. It is also relevant to extract Section 26(2)(iv) of the Food Safety and Standards Act, 2006, hereunder:

'26. Responsibilities of the Food business operator-

...

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food –

....

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health'



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7.Since the food product which was seized from the retail shop was declared as Misbranded and Substandard and also prohibited from sales, it is a violation of the provision under Section 26(2)(iv) of the Act, 2006. Therefore, the petitioner was rightly prosecuted and imposed a fine. In view of the above, this Court finds no infirmity or illegality in the adjudication proceedings of the third respondent, dated 23.11.2017 and the Writ Petition lacks merits and the same is liable to be dismissed.

8.Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

19.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
ps



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G.K.ILANTHIRAIYAN, J.

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Order made in
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