



W.P (MD).No.2691 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.2691 of 2018

and

W.M.P(MD)No.2865 of 2018

1.T.Sundarammal  
2.T.Muthupandi  
3.B.Karthikeyan

... Petitioners

Vs.

1.The Food Safety Officer,  
Sivakasi Block,  
Virudhunagar District.  
  
2.The District Revenue Officer/  
Adjudicating Officer/Additional  
District Executive Magistrate,  
Virudhunagar District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the order passed by the second respondent in case No.05/2017-18 dated 20.01.2018 on the file of the learned District Revenue Officer/Adjudicating Officer/Additional District Executive Magistrate, quash the same.



W.P (MD).No.2691 of 2018

For Petitioners : Mr.C.Susi Kumar  
For Respondents : Mr.D.Gandhi Raj  
Special Government Pleader

### **ORDER**

This writ petition has been filed challenging the order passed by the second respondent, dated 20.01.2018 thereby imposed a fine for possessing the misbranded food product.

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

3. The third respondent is the owner of the Ayyanar Cottage Industries manufacturing in a Masala powder in the name and style of "Kushali Masala". The first petitioner is the mother of the second petitioner and the second petitioner is the sole proprietor of Velumaligai Store. While being so, the first respondent lodged a complaint, dated 26.12.2016 alleging that he conducted an inspection in the second petitioner shop and had taken samples of Kushali Masala packets. The samples were sent for food analysis and as per the food analyst report, the said food product was misbranded since batch



W.P (MD).No.2691 of 2018

identification and date of manufacture was not mentioned in the food products.

Therefore, the petitioners are liable to prosecute under Section 3(1)(zf) of Food Safety and Standard Act 2006 (herein after referred as FSS Act) and under Regulation 2.2.2(7)(8)(9) and 10 of Food Safety and Standard packing and Labels Regulations 2011. Therefore, a complaint was lodged under Section 52 of the Food Safety and Standards Act, 2006. On the summons on 06.12.2017, the petitioners had appeared before the first respondent and admitted their guilty. Therefore, the first respondent imposed a fine on the petitioner.

4. The learned counsel for the petitioner would submit that after receipt of the food analyst report, the first respondent ought to have send a communication seeking sanction for prosecution within a period of 14 days from the date of receipt of the order as per Section 42(3) of Act. However, the case on hand, the first respondent received the food analyst report from the lab on 06.01.2017. However, the first respondent sent a communication only on 02.05.2017 seeking permission to prosecute the petitioners. Therefore, it is a clear violation of provision of Section 42(3) of the Act. In support of his contention, the learned counsel for the petitioners relied upon the judgment of this Court in ***Crl.O.P.No.774 of 2020, dated 06.08.2020***. It is relevant to extract Section 42(3) of the said Act.



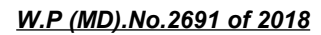
W.P (MD).No.2691 of 2018

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*"(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution."*

5. Under Section 42 of the said Act, the Food Safety Officer shall have to send his recommendation for prosecution within 14 days from the date of receipt of analysis report to the Commissioner of Food Safety for sanction the prosecution. In case of contravention is punishable with imprisonment or fine only, the first respondent need not send a communication for sanction within a period of 14 days. Therefore, it is applicable only its where the contravention is punishable with imprisonment.

6. In view of the above, the judgment referred to above case is not applicable to the facts of present case. That apart, though the petitioners filed a writ petition and it is pending without any interim order so far, they have not complied the order passed by the first respondent.



7. In view of the above, this Court finds no infirmity or illegality in

8. Accordingly, the writ petition stands dismissed. No costs.

**11.11.2024**

1.The Food Safety Officer,  
Sivakasi Block,  
Virudhunagar District.

2.The District Revenue Officer/  
Adjudicating Officer/Additional  
District Executive Magistrate,  
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**W.P (MD).No.2691 of 2018**

**G.K.ILANTHIRAIYAN, J.**

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**W.P (MD).No.2691 of 2018**

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