



CrI.O.P.No.7471 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CrI.O.P.No.7471 of 2024

and

CrI.M.P.Nos.5420 & 5421 of 2024

1.V.Raghunathan

2.Nestle India Limited,

Represented by its Authorised Signatory Mr.Chandrasekhar,

Unit II Patti, Kalyana,

Kiwana Road, Samalkha,

132101, Panipat, Haryana.

... Petitioners

Vs.

State represented by its

Food Safety Officer,

Area Code No.538, Chennai District,

O/o.The Designated Officer,

Tamil Nadu Food Safety and Drug Department,

No.33, West Jones Road,

Saidapet,

Chennai – 600 015.

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.No.1841 of 2019 pending on the file of the learned X Metropolitan Magistrate, Egmore, Chennai, and quash the complaint dated 13.12.2019 and consequently, the proceedings



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initiated in furtherance thereto.

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For Petitioners : Mr.R.S.Diwaagar
For Respondent : Mr.K.M.D.Muhilan,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the complaint in C.C.No.1841 of 2019 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai, for the offence under Section 59(i) of the Food Safety and Standards Act, 2006 (hereinafter referred to as “FSSA” for brevity).

2.It is the case of the respondent/Food Safety Officer that, on 22.08.2018, they received a WhatsApp complaint from one K.Yogesh Kumar stating that he purchased 2 Nos. of Nestle Nan Excella Pro Follow up formula Powder-2, 400 gms, in original sealed condition from Kasthuri Bai Medicals (A1) and after feeding the same, his baby developed vomiting and diarrhoea and that he has one packet Nestle Nan Excella Pro Follow up formula Powder-2 in original sealed condition bearing Batch No.7334661 T2/B. Based on such complaint, the respondent/Food Safety Officer, on



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inspection, suspected that the said product contravenes the FSSAI standards and therefore, purchased one product from the said Yogesh Kumar for a sum of Rs.692/- and lifted a sample in compliance of the provisions of the Food Safety and Standards Act, 2006. Since one part of the sample was available, the respondent packed the samples as per the norms given in the Act and Rules. The sample was sent for analysis on 23.08.2018 to the Food Analyst, Food Analysis Laboratory, Thanjavur, and the same was intimated to the Designated Officer, Chennai. After analysis, the said sample was declared by the Food Analyst as “Unsafe Food” vide detailed report dated 16.10.2018 and the same was received by the Designated Officer on 22.10.2018. Therefore, the complainant, after getting sanction from the Designated Officer, initiated prosecution as against the seller (A1), distributor (A2), marketing agent (A3) and manufacturer (A4), for the offence punishable under Section 59(i) of the Food Safety and Standards Act, 2006. The said complaint was taken cognizance by the learned V Metropolitan Magistrate, Egmore, Chennai, in C.C.No.1841 of 2019. Challenging the same, the present Criminal Original Petition has been filed by A3 (marketing agent) and A4 (manufacturer).

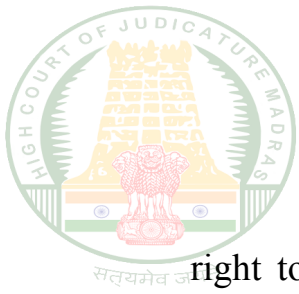


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3.It is also relevant to note that, originally, the complaint was quashed by this Court in the earlier round of litigation in Crl.O.P.No.18528 of 2023 by order dated 24.08.2023 on the ground that rubber stamp cognizance has been taken by the trial Court in a mechanical fashion. Thereafter, the complaint has been taken cognizance afresh and now, the present Criminal Original Petition has been filed for quashment on other grounds.

4.Learned counsel for the petitioner would submit that the Food Analyst has not provided the analysis report within 14 days from the date of receipt of sample from the Food Safety Officer as mandated under Section 42(2) of FSSA. Further, it is his contention that the Designated Officer has not sent his recommendation to the Commissioner of Food Safety for sanction of prosecution within 14 days from the date of receipt of the report from the Food Analyst, as mandated under Section 42(3) of FSSA. The learned counsel would further submit that the respondent has sent the whole sample to the Food Analyst without preserving parts of the same for confirmatory analysis, due to which, the accused have lost their valuable



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right to have the sample re-tested under Section 47(1)(c) of FSSA. The learned counsel would further submit that the sample has to be sent to a food laboratory established by the Food Authority and accredited by NABL, however, the Food Analysis Laboratory, Thanjavur, is not accredited by NABL, therefore, the same is in violation of Section 43(1) r/w. Section 3(p) of FSSA. Therefore, the learned counsel seeks for quashment of the complaint.

5. Whereas, the learned Additional Public Prosecutor would submit that the proviso to Section 46 of FSSA makes it clear that Section 42 of FSSA is not mandatory in nature and the Food Analyst has given reasons for the delay along with the report on 16.10.2018 and therefore, the complaint cannot be quashed merely on technical grounds. The learned Additional Public Prosecutor would further submit that the laboratory in which the sample was tested has been notified by the Food Safety and Standards Authority of India vide Gazette Notification dated 08.10.2021. Therefore, he would submit that the prosecution is not vitiated.

6. I have perused the entire materials available on record.



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7.For proper appreciation, Section 42 of the Food Safety and Standards Act, 2006, is extracted hereunder :

“42.Procedure for launching prosecution.–(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(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. ...”

8.Sub-Section (2) of Section 42 makes it clear that the Food Analyst,



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after receiving the sample from the Food Safety Officer, shall analyse the food and send the analysis report within 14 days to the Designated Officer.

However, in the present case, the sample was lifted and sent to the Food Analyst on 23.08.2018, however, the Food Analyst has given his report only on 16.10.2018, i.e., after a period of 14 days, which is in violation of Section 42(2) of the Act. It is relevant to note that the Food Analyst has not informed the Designated Officer the reasons for the delay and has not specified the time to be taken for analysis within 14 days from the date of receipt of sample. From the report of the Food Analyst, it is seen that the reason is stated to be administrative delay, however, such reason was also given only on 16.10.2018 when the report was sent to the Designated Officer.

9.Further, Sub-Section (3) of Section 42 of the FSSA makes it clear that the Designated Officer has to send his recommendation to the Commissioner of Food Safety for sanction of prosecution within 14 days from the date of receipt of the report from the Food Analyst. However, in the present case, despite receipt of the report from the Food Analyst on 22.10.2018, the Designated Officer has sent the sent his recommendation



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only on 08.11.2018, i.e., beyond 14 days, which is in violation of Section 42(3) of FSSA.

10.As per Section 47(1)(c) of FSSA, the Food Safety Officer has to divide the sample into four parts and send two parts to the Designated Officer for keeping them in his safe custody. However, except stating that the sample was lifted as per the provisions of the Act and Rules, the complaint is totally silent as to the division of the sample into four parts and sending two such parts to the Designated Officer. It is the contention of the petitioners that their valuable right to have the sample re-tested by another laboratory. Such a contention is not seriously disputed by the respondent. Be that as it may.

11.Section 46 of FSSA deals with functions of Food Analyst. Section 46(2) reads as follows :

“46.Functions of Food Analyst : ... (2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.”



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Section 43 of FSSA reads as follows :

“43. Recognition and accreditation of laboratories, research institutions and referral food laboratory.—(1) The Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysts under this Act.”

Section 3(1)(p) of FSSA defines “food laboratory” as follows :

“3. Definitions – (1) ... (p) “food laboratory” means any food laboratory or institute established by the Central or a State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency and recognised by the Food Authority under section 43;”

12. The Bombay High Court, in ***M/s. Nestle India Limited v. The Food Safety and Standards Authority of India and others*** reported in ***(2015) SCC Online Bom 4713*** has held that the analysis of the food product cannot be made in the non-accredited laboratories and the reports



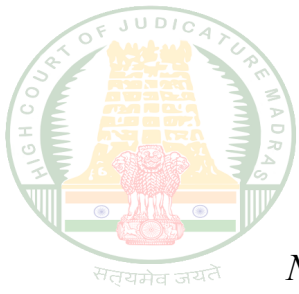
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submitted by those laboratories cannot be relied upon. In the said judgment, the Bombay High Court has held as follows :

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“95. Similarly, so far as the food which is manufactured in India is concerned though it is not mentioned that it has to be tested in a notified laboratory, in view of definition of section 3(p) and more particularly the mandate given in section 43(1), the Food Analyst has to analyse the food only in such laboratory which is defined under section 3(p) and WPL/1688/2015 recognized by the Food Authority under section 43(1) of the Act.

96. It is not in dispute that the Laboratories in which these food samples were tested were either not accredited by NABL or not recognized by the Food Authority under section 43(1) of the Act or even if they were accredited or notified, they were not accredited to make analysis in respect of lead in the samples. There is no material on record to show whether the procedure of testing samples mentioned under the Act and Rules and Regulations framed which is thereunder has been followed. There is a grave doubt about the samples being tested at Avon Food Lab (Pvt.) Ltd. and even if they are so tested, prima facie, it does appear that procedure of testing the samples has not been followed. The contention of Mr. Pracha, the learned Counsel for Respondent No.2 that in view of the



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Notification issued on 5/7/2011 even the State and Central Laboratories, though not notified, were entitled to test the samples, is incorrect.”

13.A conjoint reading of the provisions extracted *supra* along with the above judgment makes it clear that the sample of food has to be tested only in a food laboratory or institute established by the Central or State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency and recognised by the Food Authority under Section 43 of the Act. Admittedly, in the present case, the sample was tested in Food Analysis Laboratory, Thanjavur. Though it is the contention of the learned Additional Public Prosecutor that the said laboratory is notified by the Food Safety and Standards Authority of India, it is relevant to note that the notification was issued by the Central Government only on 08.10.2021. However, the sample was analysed in the year 2018. Therefore, as on the date of analysis of the food sample, the said laboratory was not a notified laboratory under Section 43(1) of the Act. Therefore, it is in violation of Section 43(1) of the Act.



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14. When the Statute prescribes certain mandatory provisions to be complied with before initiating any penal action, the same should be complied with rigor. Before driving a person to face a criminal prosecution, all the procedures as contemplated under the Statute have to be complied with first, which has not been done in this case. Therefore, continuation of the prosecution with all violations of statutory and mandatory provisions of law, is nothing but a futile exercise and an abuse of process of law. Such violations will, in fact, infringe the rights of the accused. Therefore, this Court is inclined to quash the criminal proceedings.

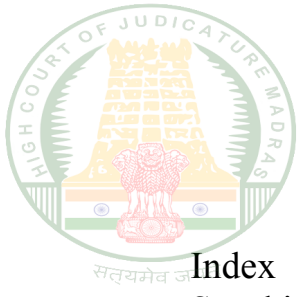
15. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.1841 of 2019 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai, are quashed. Consequently, connected miscellaneous petitions are closed.

12.09.2025

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Internet : Yes

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Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

- 1.The X Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Food Safety Officer,
Area Code No.538, Chennai District,
O/o.The Designated Officer,
Tamil Nadu Food Safety and Drug Department,
No.33, West Jones Road,
Saidapet,
Chennai – 600 015.
- 3.The Public Prosecutor,
High Court, Madras.



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N. SATHISH KUMAR, J.

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