2026:MHC:4512

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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-11-2026

CORAM

THE HON'BLE MR. JUSTICE G.ARUL MURUGAN

CRL A No. 850 of 2022

CNR: {HCMA010888402021}

Case QR

The State Rep. by
The Food Safety Officer,
Code No.588,
Tiruppur Corporation,
O/o. The Designated Officer,
428/431, Collectorate Campus,
Tiruppur – 641 604.

..Appellant(s)

Vs

Chandrasekar

..Respondent(s)

PRAYER: Criminal Appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973, to allow the appeal and set aside the judgment of acquittal of the respondent/accused in CC.No.78 of 2018 dated 04.12.2019 passed by the Judicial Magistrate No.1, Tiruppur and acquittal the respondent/Accused for the charges framed against him.

For Appellant(s): Mr.N.Palanivel
Government Advocate
(Criminal Side)

For Respondent(s): Mr.K.Elango

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JUDGMENT

The criminal appeal has been filed challenging the judgment dated 04.12.2019 in CC.No.78 of 2018 on the file of the Judicial Magistrate No.1, Tiruppur, acquitting the respondent/accused.

2. The Food Safety Officer filed a complaint before the Trial Court against the respondent/accused for contravening Section 3(1)(zz)(v)(vii)(viii) and Section 26(1)(2)(i) and (v), punishable under Section 59(i) of the Food Safety and Standards Act, 2006 [hereinafter referred to as 'the Act']. According to the complaint, the complainant received a WhatsApp message on 01.09.2017 alleging that the respondent was selling tea made from adulterated tea powder at his shop.

3. Based on this complaint, the Food Safety Officer inspected the bakery of the respondent on 02.09.2017 at 01:30 PM, found that 50 Kg of tea powder was available in the bakery and bona fidely believing it to be unsafe, the Officer had drawn samples in the presence of PW2. The samples were sent for analysis and upon receiving a report stating that the tea powder was unsafe for

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consumption, the Food Safety Officer lodged the complaint.

4. The trial Court on taking cognizance of the complaint, issued summons and on appearance furnished copies under Section 207 of the Cr.P.C. When questioned, the respondent pleaded not guilty. The complainant in order to prove the charges, examined himself as PW1, the witness to samples drawn as PW2 and marked documents Ex.P1 to Ex.P18. On conclusion of the complainant's evidence, the respondent was questioned regarding the incriminating materials under Section 313 of the Cr.P.C, which he denied as false. No oral or documentary evidence has been let in on the side of the respondent.

5. The Trial Court, after hearing both sides, concluded that the charge against the respondent has not been proved beyond reasonable doubt by the complainant. It held that the samples were not properly drawn or transmitted as per the Rules and the sample was not tested by the Food Analyst within the mandatory timeframe prescribed under the Act. Furthermore, referring to the admission of PW1 that the business turn over of the respondent is not above the threshold limit of Rs.12 Lakhs to fall within the licensing provisions of the Act,

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the Trial Court acquitted the respondent. Assailing the decision of the Trial Court, the State has preferred the present criminal appeal.

6. The Government Advocate (Criminal Side) appearing on behalf of the appellant contended that the Food Safety Officer on receipt of the complaint had conducted the inspection, whereby he found 50 Kg of tea powder, which was believed to be adulterated, had drawn samples in the presence of PW2. Since the analysis report confirmed that the samples were unsafe for consumption, the respondent had clearly contravened the provisions of the Act, thereby the complainant had filed the complaint before the Court. He further submitted that mere delay in examining the sample by the Food Analyst cannot be the ground for acquittal, if the delay is satisfactorily explained, particularly when the sample is found to be unsafe. He further contended that PW1 and PW2 gave cogent evidence in respect of drawing and dispatch of the samples for analysis and when nothing was available on the record about the seal of the Jar containing the sample tampered with, there was no scope for the sample to lose its quality merely due to efflux of time.

7. Per contra, the learned counsel appearing for the respondent/accused

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submitted that since the samples were not drawn and sent for analysis in the manner contemplated under the Rules and further the samples were not tested in compliance to the provisions of the Act within the mandated timeline, the charge against the respondent is not substantiated. He further submitted that when no improvement notice as contemplated under Section 32 of the Act was issued and also the respondent was a petty food manufacturer with the business turnover well below the statutory threshold limit as admitted by PW1, the very complaint itself is not maintainable. The Trial Court rightly considering the same and analyzing the evidences, concluded that the charges were not substantiated and acquitted the respondent. He further submitted that unless the acquittal is found to be perverse merely because an alternate opinion is available, the same cannot be a ground to interfere in acquittal and seeks for dismissal of the appeal.

8. Heard the rival submissions and considered the materials available on the record.

9. The Food Safety Officer (PW1) on receipt of the complaint through WhatsApp on 01.09.2017 had conducted inspection in the bakery run by the

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respondent on 02.09.2017 at 01:30 PM. 50 Kg of tea powder was found in the bakery, which was stored to be used for preparation of tea, to be consumed by public. Since the Food Safety Officer believed the tea powder to be unsafe had drawn the samples of the tea powder in the presence of PW2 and sent it for analysis.

10. The Food Safety Officer is empowered under Section 38 of the Act to take sample and send them for analysis. The procedures for drawing samples and analysis are set out under Rule 2.4 of the Food Safety and Standards Rules, 2011 [hereinafter referred to as 'the Rules'], which reads as under:

*"**Rule 2.4: Sampling and Analysis:***

***2.4.1:** Procedure for taking sample and manner of sending it for analysis.—The Food Safety Officer while taking sample of food for analysis under Clause A of sub-section (1) of Section 38 and Section 47 except 47(5) of the Act, shall also follow the procedure specified hereunder:*

.....

***7.** Sample of article of Food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed to prevent leakage, evaporation or to avoid*

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entrance of moisture in case of dry substance and shall be carefully sealed:

Provided, if a sealed package marketed by the manufacturer/Food Business Operator is taken as sample, further sealing in separate containers will not be required.

8. *All bottles or jars or other containers containing the samples for analysis shall be properly labelled and the parcel shall be properly addressed. The label on any sample of food sent for analysis shall bear:*

I. Code number of the sample.

II. Name of the sender with his official designation.

III. Date and place of collection.

IV. Nature of articles being sent for analysis.

V. Nature and quantity of preservative, if any, added to the sample.

9. *The samples will be packed and sealed in the manner prescribed hereunder:*

(i) Sample shall be divided into four parts or take four already sealed packages and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken on the label mentioned in 2.4.1.8.

(ii) The stopper/cap shall first be securely fastened so as to prevent leakage of the contents in transit.

(iii) The bottle, jar or other container shall then be completely

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wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.

(iv) A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature of the Designated Officer or any officer authorized by Food Safety Commissioner and code number of the sample, shall be pasted on the wrapper. The signature or thumb impression of the person from whom the sample has been taken, shall be affixed in such a manner that the paper slip and the wrapper both carry a part of this signature or the thumb impression:

Provided that in case the person from whom the sample is taken refuses to affix his signature or thumb impression, the signature or thumb impression of one or more witnesses shall be taken in the same manner:

Provided further that in case the paper slip containing the signature of the Designated Officer is of such a size that it does not cover completely from the bottom to the top of the container, the Food Safety Officer shall affix additional sheet/s of paper to the slip containing the signature of the Designated Officer so as to cover the container completely and the Food Safety Officer shall affix his signature on each of the joints for the purpose of identification:

Provided also further that where the purchaser or an Authorized Officer draws the sample no such paper slip shall be required to be affixed.

(v) The paper cover shall be further secured by means of

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strong twine or thread both above and across the bottle, jar or other container and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be distinct and clear impression of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender. ……."

11. In view of the aforesaid Rules, the samples are to be drawn in clean dry bottles or jars, which shall be closed and sealed to prevent leakage, and must contain a label with all the particulars as stated above. However, the report of the Food Analyst in Form B dated 29.11.2017, which was not marked, but is available on record and was rightly taken note of by the Trial Court reveals that the sample packet did not contain any label, furnishing the required particulars. When the sample was not drawn and sent for analysis, containing the details as required in the aforesaid Rules, the samples drawn in contravention to the Rules and report obtained cannot be a basis to conclude that the respondent had committed any contravention of the provisions of the Act.

12. Furthermore, Section 42 of the Act deals with the mandatory

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procedure for launching a prosecution. Section 42(2) of the Act read as under:

> *"**Section 42. Procedure for launching prosecution**.*
>
> *(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."*

13. As per Section 42(2) of the Act, the Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report within 14 days to the designated officer. When the Act contemplates that the samples should be analysed within a period of 14 days, the report dated 29.11.2017 reveals that when the sample was received on 04.09.2017, the sample was analysed only on 26.10.2017 to 21.11.2017 which is beyond the mandatory period as fixed under the Act. Probably, due to which, the complainant has not chosen to mark the report of the Food Analyst, which is basis for launching the prosecution.

14. Section 31 of the Act deals with the licensing and regulation of the

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food businesses. Sub-Section (1) and (2) of Section 31 reads as follows:

> *"**Section 31. Licensing and registration of food business**.—(1) No person shall commence or carry on any food business except under a licence.*
>
> *(2) Nothing contained in sub-section (1) shall apply to a petty manufacturer who himself manufactures or sells any article of food or a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator; but they shall register themselves with such authority and in such manner as may be specified by regulations, without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers."*

15. Regulation 1.2.1.4 of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, [hereinafter referred to as 'the Regulation'] defines 'petty food manufacturer' as a food business with an annual turn over not exceeding Rs.12 Lakhs, which reads as follows:

> *"4. "Petty Food Manufacturer" means any food manufacturer, who—*
>
> *(a) manufactures or sells any article of food himself or a petty*

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retailer, hawker, itinerant vendor or temporary stall holder; or distributes foods including in any religious or social gathering except a caterer; or

(b) such other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and/or whose—

(i) production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day, or

(ii) procurement or handling and collection of milk is up to 500 litres of milk per day, or

(iii) slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less."

Though this specific regulation was later substituted with effect from 11.03.2026, removing the threshold limit of Rs.12 Lakhs, which reads as follows:

"4. "Petty Food Business Operator" means any food business operator, who manufactures or sells any article of food himself or a petty retailer, street food vendor, hawker, itinerant vendor or temporary stall holder or food truck or distributes foods including in any religious or social gathering, except a caterer or such other food business including small scale or cottage or such other industries relating to food business or tiny food business."

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The earlier regulation containing the threshold limit was in force on the alleged date of occurrence i.e., on 02.09.2017.

16. As per Section 31(2), Sub-Section (1) shall not apply to petty food manufacturer and the Regulation which defines the petty food manufacturer excludes the persons with business below threshold limit of Rs.12 Lakhs. In fact, PW1 had admitted that the respondent/accused was having a business turn over of only Rs.10 Lakhs and is a petty food manufacturer and does not have business beyond the threshold limit of Rs.12 Lakhs to seek for license under the Act.

17. The Trial Court from the admission of PW1 on finding the non-requirement on the part of the respondent to get license as he is a petty food manufacturer and also since the samples were not drawn in compliance with the provision of the Rules and the sample was not tested by the Food Analyst with the mandated timeline as stipulated under the provisions of the Act, rightly came to a conclusion that the appellant have not proved beyond reasonable doubt the charge against the respondent for having contravened the provisions

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of the Act.

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18. On reappraisal of the entire evidence, this Court finds that there is no infirmity or perversity in the findings arrived at by the Trial Court that would warrant interference.

19. Accordingly, the Criminal Appeal stands dismissed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1.The Judicial Magistrate No.1, Tiruppur.

2.The Public Prosecutor, High Court of Madras, Chennai.

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G.ARUL MURUGAN, J.

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