

# The Food Safety Officer vs T P Kunhikannan on 20 November, 2024

Crl. Appeal No.1577 of 2024

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2024:KER:87170

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 20TH DAY OF NOVEMBER 2024 / 29TH KARTHIKA,

1946

CRL.A NO. 1577 OF 2024

AGAINST THE ORDER DATED 07/02/2022 IN ST.NO.1087/2019

OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, VATAKARA -

LEAVE TO APPEAL GRANTED AS PER ORDER DATED 03.06.2024 IN

CRL.L.P.NO.187/2022.

APPELLANT(S)/COMPLAINANT:

THE FOOD SAFETY OFFICER,  
VATAKARA CIRCLE REPRESENTED BY THE PUBLIC  
PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031

BY ADV SRI.VIPIN NARAYAN, SR.PUBLIC PROSECUTOR

RESPONDENT(S)/ACCUSED:

1 T P KUNHIKANNAN,  
S/O KANNAN, M/S GRAND MART SHOP, 7/654,655,  
VELLIKULANGARA, ORKKATTERI, VADAKARA - 673510  
RESIDING AT SHIJIL NIVAS, ONCHIYAM P O,  
VATAKARA, KOZHIKODE -  
( FOOD BUSINESS OPERATOR WHO SOLD UNSAFE FOOD TO  
THE FOOD SAFETY OFFICER WITHOUT LISCENCE ),  
PIN - 673308

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2024:KER:87170

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              W/O KUNHIKANNAN T P, M/S GRAND MART SHOP,  
              7/654,655, VELLIKULANGARA, ORKKATTERI,  
              VADAKARA 673510, RESIDING AT SHIJIL NIVAS,  
              ONCHIYAM P O, VATAKARA, KOZHIKODE -673308  
              ( RESPONSIBLE PERSON OF THE SHOP WHICH SOLD  
              UNSAFE FOOD TO THE FOOD SAFETY OFFICER WITHOUT  
              LISCENCE ), PIN - 673308

              THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON  
20.11.2024,            THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

              Crl. Appeal No.1577 of 2024

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2024:KER:87170

              C.S.SUDHA, J.

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              Crl. Appeal No.1577 of 2024  
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              Dated this the 20th day of November 2024

#### JUDGMENT

This is an appeal filed by the complainant in S.T.No.1087/2019 on the file of the Judicial First Class Magistrate Court -I, Vadakara, aggrieved by the order dated 07/02/2022 by which the complaint was dismissed and the accused persons were acquitted under Section 256(1) Cr.P.C.

2. According to the appellant, after the complaint was filed on 04/11/2019, the first posting date of the case was on 07/11/2019. On 25/01/2020, summons was issued to the accused. The accused persons did not turn up and hence on 04/04/2020, non-bailable warrant (NBW) was issued by the trial court, which was thereafter repeated several times. After the appearance of the 2024:KER:87170 accused persons, the case was posted to 17/01/2022, on which day there was no sitting and so the case was adjourned to 31/01/2022 for evidence. On the said day, the complainant as well as the accused were absent. The case was adjourned to 07/02/2022. On the said day, the accused was absent. The complainant was unable to appear before the court on the said day as he was suffering from post-covid health issues. The complainant's father is a cancer patient and hence he was busy with his father's treatment and hospitalisation. Moreover, there had been no sitting on 17/01/2022. The complainant was not informed that the case stood adjourned to 07/02/2022 for evidence. The third wave of Covid-19 was in its peak during the month of February 2022 and so even assuming that the complainant was present before the court on 07/02/2022, there was no

possibility of him being examined as the accused was absent on the said day also. In such circumstances, the presence of the complainant on 07/02/2022 was unnecessary. In such circumstances, the court was not 2024:KER:87170 justified in acquitting the accused persons under Section 256(1) Cr.P.C.

3. Though notice has been served on both the respondents, they have not chosen to appear before the court either in person or through counsel.

4. Heard the learned public prosecutor.

5. The complaint has been filed by the appellant, the Food Safety officer alleging the commission of the offences punishable under the various provisions of the Food Safety and Standards Act, 2006. The offences alleged cannot be taken lightly and hence the interest of justice requires the complainant to get an order on merits. However, it is seen that the complainant was also not vigilant in conducting the case. On the days on which he was absent, he ought to have informed the Assistant Public Prosecutor, who could have sought necessary adjournment from the trial court. In the interest of justice, the impugned order is set aside and the appeal allowed on condition that the 2024:KER:87170 complainant pays cost of 2,500/- to the District Legal Services Authority, Kozhikode within a period of one month from the date of receipt of a copy of the judgment. It is made clear that if the costs is not paid as directed, the appeal would stand dismissed. In the event of compliance, the complaint shall stand restored to file and the trial court shall proceed with the complaint as per law.

The appeal is disposed of as above.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

C.S.SUDHA JUDGE Jms