

A.Kathiresan vs State Represented By Its on 10 January, 2023

2023/MHC/478

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.2257 of 2021

and

Crl.MP.Nos.1238 & 10235 of 2021

1.A.Kathiresan
2.K.Latha
3.M/s Siva Foods,
rep by A.Kathiresan.

.. Petitioners/A

Versus

State represented by its
Food Safety Officer,
Kattankulathur Block,
Code No 071
No.2A, Railway Road,
Kancheepuram 631 501

.. respondent /

Criminal Original Petition filed under Section 482 of
Criminal Procedure to call for the records in STC No.363 of 2020 on
of the Judicial Magistrate No.II, Chengalpattu and quash the same.

For Petitioners : Mr.R.Karthikeyan

For Respondent-1: Mr.A.Gopinath
Government Advocate (crl.

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<https://www.mhc.tn.gov.in/judis>

ORDER

This Criminal Original Petition has been preferred to quash the proceedings in STC No. 363 of 2020 pending on the file of the learned Judicial Magistrate No.II, Chengalpattu.

2. The petitioners are the accused 2 to 4 and the petitioners along with A1, were prosecuted for the alleged offences under Sec.59(1) and Sec.63 of the Food Safety and Standards Act-2006. The respondent has given a complaint by alleging that on 27.2.2019 at about 12.30pm., the respondent went on inspection to the shop owned by the first petitioner by name and style 'Kumaran Stores' and after informing him that he had taken samples of Flubbers Fruity Jelly Assorted Fruits Flavoured and the said food product has been manufactured by A4 / M/S.Siva Foods and in which the petitioners 1 and 2 /A2 and A3 are the directors. After observing the guidelines contemplated in the Special Act, a part of the sample was taken and the same was sent for chemical analysis. On receiving the report that the food is unsafe for consumption since it contains synthetic colour agent lite Tartrazine and Benzoic acid, the complaint has been given. <https://www.mhc.tn.gov.in/judis>

3.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4.The learned counsel for the petitioners submitted that despite the sample was taken on 27.01.2019 the report was obtained at a belated stage on 24.09.2019; although the petitioner raised his objection, without considering the request, the complaint has been filed in a prematured manner. Since the materials available on record shows that the mandatory procedure contemplated under the Act is not complied and much prejudice is caused to the petitioner on that ground alone the case should be quashed against the petitioners 2 to 4.

5.The learned Government Advocate (crl.side) for the first respondent submitted that the food analysis report has made it clear that the food is unsafe for consumption due to the presence of the excess colour agents. Further according to Sec.46(4) it is the discretion of the designated officer to refer the matter to food laboratory if he is satisfied. In fact the first accused had stated on receiving notice after the analysis report that he did not file any appeal immediately. The respondent has filed the complaint after complying the due procedure.

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6.The records would show that the respondent had taken the sample by suspecting that it is unsafe. Having taken the food sample, it was sent to the food analyst and the report has also been obtained. The contention of the learned counsel for the petitioners is that the best consumption validity period for the food is 12 months. But the sample was taken on 27.1.2019 and the analysis report was obtained on 21.12.2019, after a lapse of 410 days.

7.The learned Government Advocate (crl.side) for the respondent submitted that in case the food analyst is not able to complete the analysis within a period of 14 days, he should inform to the designated officer about the reasons for the delay. In this regard he referred to Section 46 (3) of the FSSAct 2006 reads as follows:-

“46. Functions of Food Analyst.

(1) ...

(2) ...

(3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send—

(i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and

(ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and analysis <https://www.mhc.tn.gov.in/judis> to the person who had purchased such article of food with a copy to the Designated Officer:

Provided that in case the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.”

8. It is seen that the analyst has given an intimation on 5.3.2019 about the delay caused in analysis. He has stated that the delay is due to the shortage of man power. But it is astonishing to note that the delay is stated as 410 days. The said 410 days is beyond the consumability of the food which was taken for analysis. It is noticeable that there can be some delay and for which the reasons stated should be reasonable and the delay should not defeat the very object of sending the sample. In the case in hand the analysis was done after an inordinate delay of 410 days.

9.In view of the said provision if the sample is analysed beyond the period provided, the results will also differ and the delayed analysis report, would defeat the very object of the legislation. Because the food standards cannot be measured at a stage after an inordinate delay, especially when there is a possibility of chemical reaction which is inevitable on such products.

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10. It is obvious that a food is prescribed for consumption best before a particular date, month or year. If the contents in the food product does not lost its value or does not get contaminated or does not affect the quality of the food, such time limits for consumptions provided on food products is unnecessary. Such expiry dates for the food product is provided, since the food product may get contaminated after the prescribed date.

11. Whatever may be the case, the delay in food analysis for more than a year from the date on which the food is manufactured would not certainly give the best result out of the food analysis. It is to be noted that the 4th petitioner had filed an appeal dated 31.10.2022 after receiving the report of the food analyst and requested it to be sent the sample to Central Food Laboratory. But the same was not considered and no order has been passed on the same. The appeal has to be made within 30 days from receipt of the copies of the report of the food analyst. On considering the same, the part of the sample which was already reserved for the said purpose was not utilized and sent to a referral laboratory for getting the report.

12. The learned Government Advocate (crl.side) submitted that it is <https://www.mhc.tn.gov.in/judis> not mandatory on the part of the designated officer to send a sample to a referral laboratory and he can exercise his discretion and reject the request. In this regard he referred Section 46 (4) of the Act, which reads as follows:-

46. Functions of Food Analyst.

1....

2....

3.....

(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion.”

13. However, no order was passed or there is no information furnished to the fourth petitioner as to why the designated officer had chosen not to send the sample to a referral laboratory for analysis.

14. Appeal is a statutory right given to the petitioner and however, it is discretion of the designated officer to entertain the same and it is obligatory on his part to record reasons as to why the appeal is not considered. The power of the discretion cannot be exercised arbitrarily at the whims of the designated officer, unless the reason for rejection is given, it cannot be known why the analysis report obtained from the regional laboratory should be considered as final and reliable. <https://www.mhc.tn.gov.in/judis>

15. The 4th petitioner had sent his request for appeal but also attached the required fee for sending the sample to the referral laboratory for further analysis. In fact it is correct on the part of the 4th petitioner to seek a right of appeal in view of the delayed report obtained from the regional laboratory. The sample was received by the regional laboratory for analysis on 28.02.2019 and the analysis was completed on 24.12.2019.

16. As stated already there was an inordinate delay of nearly 10 months between the date of sample taken and completion of the analysis. The mandates were not followed and the discretion has been

unreasonably exercised. Since there is inordinate delay in sending the food for analysis and getting the analysis report, I feel the prosecution cannot be continued on the basis of the report alone. It is a fit case where the delay had defeated the very object of the food analysis.

17. For the reasons stated above, I feel it is right to invoke the powers of the Court under sec.482 Cr.PC to quash the proceedings in S.T.C.No.363 of 2020 against the petitioners in order to serve the ends of the justice.

In the result, the Criminal Original Petition is Allowed the <https://www.mhc.tn.gov.in/judis> proceedings in STC No. 363 of 2020 pending on the file of the learned Judicial Magistrate No.II, Chengalpattu as against the petitioners/Accused 2 to 4 alone, are quashed. Consequently, connected miscellaneous petitions are closed.

10.01.2023 jrs Index: Yes/No Internet: Yes/No Speaking Order:Yes/No Neutral: Yes /No To:

1.The Food Safety Officer, Kattankulathur Block, Code No.071, No.2A, Railway Road, Kancheepuram 631 501.

2.The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> R.N.MANJULA, J., jrs and Crl.MP.Nos.1238 & 10235 of 2021
10.01.2023 <https://www.mhc.tn.gov.in/judis>