

P.Thirumoorthy vs The Food Safety Officer on 20 March, 2024

Author: T.V.Thamilselvi

Bench: T.V.Thamilselvi

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 5969 of 2022
& Crl.MP. Nos. 3318 & 3321 of 2022

P.Thirumoorthy

Vs.

The Food Safety Officer,
Coimbatore Corporation Section, Code No. 563.
219, Race Course Road,
Coimbatore - 641 018.

...Respondent

PRAYER : This petition has been filed under Section 482 of Cr.P.C ,

call for records and quash the proceedings in S.T.C.No.5175 of 2020

file of the Honble Judicial Magistrate Court No.V Coimbatore and grant

such other further relieves as this Honble High Court deems fit and

necessary in the nature and circumstances of the case and thus render

For Petitioner : Mr.M.Rajaraman

For Respondent : Mr.s.Vinoth Kumar

Government Advocate (C)

ORDER

The petitioner herein filed this petition to call for records and quash
<https://www.mhc.tn.gov.in/judis> the proceedings in S.T.C.No.5175 of 2020 on the file of the Honble
Judicial Magistrate Court No.V Coimbatore.

2. The case of the prosecution is that On 28.06.2019, the complainant gone to Mahavir Nuts & Spices at No. 32/32 Theosophical Society, Near Raja Veedi, Coimbatore with an intention to take food samples and at that time first accused was selling the food items in his shop to general public. The complainant had enquired about Boiled Papaya Cubes in Sugar to the first accused and the complainant had purchased 1kg packets (Nos. 60) from the first accused and had taken samples of the said product and sealed the same in accordance with the procedure as contemplated under the Food Safety and Standards Act 2006 and had sent the same to the Food analyst on 01.07.2019. The food analyst had tested the product from 01.07.2019 to 31.01.2020 and the food analyst had sent a report on 05.02.2020 stating that the sample had added color exceed the defined limit as unsafe. The report was sent to the second accused and the designated officer had sent a letter rejecting the appeal stating that the product had already lost its expiry. The complainant had sought for permission to file a case against the accused to the designated officer and the same was granted by the commissioner of Food Safety and hence he has filed the above complaint before the Judicial <https://www.mhc.tn.gov.in/judis> Magistrate No. V Coimbatore under the provisions of Section 59 (i) of Food Safety and Standards Act, 2006 and 190(1)(A) and 200 C.P.C. Hence, the petitioner filed this petition to quash the proceedings in S.T.C No. 5175 of 2020 pending on the file of the Judicial Magistrate No. V, Coimbatore.

3. The learned counsel for the petitioner submits that as per Section 42 of the Food Safety and Standards Act, 2006, Food analyst ought to have analysed the sample and send the analysis report within 14 days to the designated officer but in the present case sample had taken on 28.06.2019 and the Food analyst had analysed the sample from 01.07.2019 to 31.01.2020 and thereafter issued report on 31.01.2020 which is contrary to the above Section which had deprived the petitioner's valuable to appeal as contemplated under Section 46(4) of the Food Safety and Standards Act, 2006. Further, as per rule 3.1.1 of the Food Safety and Standards rules the prosecution shall be launched only after the procedure contemplated for filing appeal is over and hence the present complaint filed depriving the petitioner herein of their right of appeal is not maintainable in law.

4. Heard both sides.

5. The facts reveals that the complainant taken food sample on 28.06.2019 and the Food analyst had analyzed the sample from 01.07.2019 to 31.01.2020 and thereafter issued report on 31.01.2020 as unsafe and Sub- <https://www.mhc.tn.gov.in/judis> Standard. Against which, the petitioner preferred an appeal and the same was rejected by the appellate authority stating that the food item had already been expired. Therefore, the petitioner was not able send the food sample to referral laboratory owing to the delay on the part of the complainant/respondent. Admittedly, the sample analyst report was sent belatedly due to which the petitioner has lost his right of appeal. Hence, this Court is inclined to quash S.T.C.No.5175 of 2020 pending on the file of the Honble Judicial Magistrate Court No.V Coimbatore.

6. In the result, this petition is allowed. No Costs. Consequentially connected miscellaneous petitions are closed.

20.03.2024 pbl To The Public Prosecutor, High Court, Madras.

T.V.THAMILSELVI, J.

pbl <https://www.mhc.tn.gov.in/judis> & Crl.MP. Nos. 3318 & 3321 of 2022 20.03.2024
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