

Pragati Enterprises vs The State Of Tamil Nadu on 13 April, 2023

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

Crl.O.P.N

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.04.2023

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23422 of 2016

1. Pragati Enterprises
represented by its Manager
R.Suresh Kumar Jain

2. R.Manoj Kumar Jain

...Petitioners

Vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai.
2. The Commissioner of Food Safety,
Office of the Commissioner of Food Safety,
5th Floor, DMS Building,
Teynampet, Chennai-6.
3. The Designated Officer,
District Food Safety Office,
Salem-636 001.
4. The Food Safety Officer,
Sooramangalam Zone-1,
Salem District 636001.
5. The Managing Director,

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

Crl.

Sagosome,
Jagirampalayam, Omalur Main Road,
Salem-636302.

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the complaint in STC No.200 of 2016 dated 13.11.2015 on the file of the Judicial Magistrate Court- III, Salem.

For Petitioners : Mr.C.Kanagaraj

For Respondents

R1 to R4 : Mr.S.Rajakumar

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the complaint in STC No.200 of 2016 dated 13.11.2015 on the file of the Judicial Magistrate Court- III, Salem.

2. The petitioners are arrayed as A1 and A2. The crux of the complaint is that on 18.06.2014, the fourth respondent conducted an inspection in the first accused godown and made a seizure by collecting 1 kg of Sago. After making 4 sample pockets as 250 grams each, it was sent to the respective authorities for analysis. The food analysis report was sent to the Designated Officer, Salem District for adjudication with the Food Analysis Report. On receipt of the report <https://www.mhc.tn.gov.in/judis> dated 02.07.2014, it was confirmed that the sago is “unsafe” and “substandard” and after following procedures as laid down under the Food Safety and Standards Act, 2006 (herein after called as “FSS Act”) a complaint came to be lodged.

3. The learned counsel for the petitioner submitted that Section 42 of the FSS Act deals with the procedure for launching prosecution wherein after food sampling sent to the Food Analyst, then to the District Designated Officer concern with a copy to Commissioner of Food Safety. As per Section 42(3) of the FSS Act, after scrutiny of the reports, he has to ascertain whether contravention is punishable with imprisonment or fine only. But in case of contravention punishment with imprisonment, he shall send his recommendation within 14 days to the Commissioner of Food Safety for sanctioning prosecution. As per Section 42(4), the Commissioner of Food Safety if he so deems fit, decide within the period prescribed by the Central Government. The analysis report dated 02.07.2014 was sent to the Designated Officer concerned and on 04.07.2014 sending the notice before the Adjudication Officer for the accused reply. Thereafter, only on 19.09.2014, in order to prosecute the petitioners, the third respondent sought permission with the Commissioner of Food Safety, Chennai, <https://www.mhc.tn.gov.in/judis> who in turn on 27.10.2015 had given consent for launching the criminal prosecution. There is a delay of 1 year and 34 days in according sanction to the Designated Officer, Salem by the Commissioner of Food Safety, Chennai, which has totally violated the mandatory procedure laid down in Section 42 of the FSS Act. That apart, Section 77 of FSS Act also clears stating that no Court shall take cognizance of an offence under this Act after the expiry period of one year from the date of commission of an offence. The present complaint was lodged only on 13.11.2015. Therefore, the complaint itself is barred by limitation. He also submitted that the petitioner has purchased the sago, on 13.06.2014 from the fifth respondent which belongs

to the Government. The fifth respondent, after testing the samples, sold the same through auction and there is a Lab test report by the same Food Analyst, Salem. On 02.07.2016, the petitioner made a request and got the test report from the fifth respondent in favour of the petitioner herein. The fourth respondent never enquired with the fifth respondent and not even made them as a party to the proceedings which is a vital point in the complaint.

4. Per contra, the learned Additional Public Prosecutor appearing for the <https://www.mhc.tn.gov.in/judis> respondents submitted that the proviso under Section 77 of the FSS Act provides that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years. By sanction order dated 27.10.2015, the Commissioner of Food Safety clearly stated that due to administrative reasons the prosecution is sanctioned belatedly which may be condoned. Insofar as the provisions under Section 46(4) of the FSS Act, 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. According to the said provisions the Designated Officer sent a letter dated 04.07.2014 to the accused asking for the appeal to referral laboratory to go with the second part of the sample within 30 days.

5. The third respondent, 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 14 days to the Commissioner of Food Safety for sanctioning prosecution. On 19.09.2014, the third respondent sent a recommendation to the Commissioner of Food Safety and Drug Administration <https://www.mhc.tn.gov.in/judis> Department for sanctioning prosecution. Therefore, all the procedures were duly followed and prosecution was launched as against the accused persons. That apart, the grounds raised by the petitioners can be considered only before the Trial Court during the Trial.

6. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondents.

7. Both the petitioners are arrayed as A1 and A2 in the complaint lodged by the fourth respondent for the offences under Sections 51, 59(1) of the FSS Act. The crux of the complaint is that on 18.06.2014, the fourth respondent conducted an inspection in the first accused godown and seized 1 kg of Sago. The samples were sent for analysis. The report says that the sago is “unsafe” and “substandard” and hence, after according sanction for prosecution, the fourth respondent launched prosecution. The ground raised by the petitioners is that the food analysis report was sent to the Designated Officer on 02.07.2014 and only on 19.09.2014, the third respondent sought permission with the Commissioner of Food Safety, Chennai to launch prosecution. The Commissioner of Food Safety, <https://www.mhc.tn.gov.in/judis> Chennai, who in turn on 27.10.2015 had accorded sanction to launch criminal prosecution as against the accused persons.

8. It is relevant to extract the provisions under Section 42(3) of the FSS Act as follows:-

“42. Procedure for launching prosecution :-

(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.” Thus, it is clear that the Designated Officer after scrutiny of the report of Food Analyst shall send his recommendations within 14 days to the Commissioner of Food Safety for sanctioning prosecution. In the case on hand, the report was received on 02.07.2014 and he sought for permission to launch prosecution only on 19.09.2014. It is a violation of the provisions under Section 42(3) of the FSS Act.

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

9. That apart, Section 77 of the FSS Act provides limitation for prosecution. It reads as follows:-

“77. Time limit for prosecutions.—Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.” Accordingly, within a period of one year from the date of commission of offence, the prosecution shall be launched as against the accused persons, provided the Commissioner of Food Safety may record any valid reasons in writing, approve prosecution within an extended period of three years.

10. A perusal of sanction order dated 27.10.2015, though reveal that due to administrative reasons, the prosecution is sanctioned belatedly, which may be condoned, there was no valid reason stated by the Commissioner of Food Safety and Drug Administration so as to condone the delay in according sanction. <https://www.mhc.tn.gov.in/judis>

11. It is clear that the prosecution should be launched only before the expiry of a period of one year from the date of commission of offence. In the case on hand, it was launched after a period of one year and 34 days. The Commissioner of Food Safety failed to state any valid reason for condoning the delay. In this regard, this Court already held in Crl.O.P.No.18875 of 2016 in the case of “M/s Thillaikkarasi Sago Factory, represented by its Proprietor D.Sridhar Vs. The State of Tamil Nadu, represented by its Secretary, Department of Health and Family Welfare, Secretariat, Chennai and others”, wherein it has held as follows:-

“16. In the opinion of this Court, the Commissioner of Food Safety has not approached the issue with the solemnity it requires and has in a cavalier manner, exercised the powers under the Proviso to Section 77 of the Act, by saying that the

delay was due to administrative reasons. When a person has to be prosecuted in a Court of law for a criminal offence, it is the duty of the State to follow the letter and spirit of the legislation. Of course, on this short ground alone, the entire prosecution cannot be quashed, for, that will lead to such offenders going scot-free for the lapse of administrative authorities. The Act is intended to secure safe food stuffs for the common man and the very purpose of this Act will be defeated if the prosecution is quashed on such ground.” <https://www.mhc.tn.gov.in/judis>

12. In view of the above, the complaint as against the petitioners cannot be sustained and it is liable to be set aside. Accordingly, the complaint in STC No.200 of 2016 dated 13.11.2015, on the file of the Judicial Magistrate Court-III, Salem, is hereby set aside and this Criminal Original Petition is allowed.

13.04.2023 mn Index:Yes/No Speaking Order: Yes/No <https://www.mhc.tn.gov.in/judis> To

1. The Judicial Magistrate Court-III, Salem.
2. The Secretary, Department of Health and Family Welfare, Secretariat, Chennai.
3. The Commissioner of Food Safety, Office of the Commissioner of Food Safety, 5th Floor, DMS Building, Teynampet, Chennai-6.
4. The Designated Officer, District Food Safety Office, Salem-636 001.
5. The Food Safety Officer, Sooramangalam Zone-1, Salem District 636001.
6. The Managing Director, Sagoserve, Jagirampalayam, Omalur Main Road, Salem-636302.
7. The Public Prosecutor, High Court of Madras.

<https://www.mhc.tn.gov.in/judis> G.K.ILANTHIRAIYAN.J., mn 13.04.2023
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