

# B.Srinivasan vs The State Rep.By; on 10 April, 2023

Crl.O.P.No.34396 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.34396 of 2019  
and  
Crl.M.P.Nos.19032 & 19033 of 2019

1.B.Srinivasan  
2.Murugan  
3.Uswath Khan  
4.Khader Meeran Navas Kani  
  
5.Pelita Nasi Kandar INTL (P) Ltd.  
No.16, 17 & 18, Appasamy Tower,  
Sri Thyagaraya Road, T.Nagar,  
Chennai - 600 017.

...Petitioners / Applicants

-Vs-

1.The State rep.by;  
Food Safety Officer,  
Area Code No.546,  
T.Nagar & Saidapet Division,  
Chennai District,  
Tamil Nadu Food Safety Department,  
No.33, West Jones Road,  
Saidapet, Chennai – 15.

.. Respondent / Complainant

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

1/7

Crl.O.P.

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the proceedings in Criminal Case No. C.C.No.3397 of 2019 on the file of the XVII Metropolitan Magistrate

Court, Saidapet, Chennai and to quash the same.

For Petitioner : Mr.Srinivas Krishnan

For Mr.R.Prabhakaran

For Respondent : Mr.A.Damodaran,  
Additional Public Pr

#### ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.3397 of 2019 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai, filed for the offence under Section 59(i) of the Food Safety and Standards Act, 2006, (the Act).

2.It is alleged in the complaint that the samples of Malaysian Fried Chicken was drawn from the premises of the petitioners on 01.02.2019. Thereafter, it was sent for analysis by the respondent to the Food Analyst on the same day. The report was sent by the Food Analyst on 05.04.2019 stating that the sample sent was found to be unsafe. Hence, the complaint.

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3.The learned counsel for the petitioners would submit that there is a violation of Section 42(2) of the Act. As per the said provision, the Food Analyst shall, after receiving the sample from the Food Safety Officer, analyze and send an analysis report, within a period of 14 days from the date of receipt of the sample, to the Designated Officer, with a copy to the Commissioner of Food Safety. In the instant case, the complaint states that the Food Analyst had given his report only on 05.04.2019, which is after two months from the date of receipt of the sample.

4.The learned Additional Public Prosecutor would submit that the respondent had complied with the time limit in terms of Section 46(3) of the Food Safety and Standards Act, 2006. As per Section 46(3) of the Act, if the Food Analyst is of the view that the sample cannot be analyzed within a period of 14 days from the date of receipt of the sample, he/she shall give reasons to the Designated Officer and the Commissioner of Food Safety, specifying the time for analyzing the sample. In the instant case, the Food Analyst had in fact sent a communication to the Designated Officer on 04.02.2019, that he would <https://www.mhc.tn.gov.in/judis> not be able to send the report within a period of 14 days, due to administrative reasons. The learned Additional Public Prosecutor submitted that as per the proviso, the Food Analyst informed the Designated Officer and therefore there is no violation of the procedure. Hence, he prayed for dismissal of the quash petition.

5.This Court finds that on a reading of the complaint that the sample was taken on 31.01.2019 and on the same day, the sample was sent to the Food Analyst for giving his report. The Food Analyst had given the report only on 05.04.2019 stating that the sample was “unsafe”. There is nothing in the impugned complaint stating that the Food Analyst had given a report to the Designated Officer informing the reason for delay and specifying the time to be taken for analysis. This Court is of the

view that the provisions, which prescribes the above procedure in the Act, are mandatory in nature and if the respondent claims that the analyst could not report within 14 days and he had informed the Designated Officer about the reasons for the delay under Section 46(3) of the Act, then there must be necessary averments and statement to that effect in the complaint. In the absence of the same, it cannot be taken that there is <https://www.mhc.tn.gov.in/judis> sufficient compliance of the procedure. In such view of the matter, this Court finds that the impugned complaint in C.C.No.3397 of 2019 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, deserves to be quashed for not following the mandatory provisions.

6.In the result, the impugned complaint in C.C.No.3397 of 2019 on the file of the Metropolitan Magistrate is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

10.04.2023 smv Index : Yes/No Speaking order: Yes/No Neutral citation : Yes/No  
<https://www.mhc.tn.gov.in/judis> To,

1.Food Safety Officer, Area Code No.546, T.Nagar & Saidapet Division, Chennai District, Tamil Nadu Food Safety Department, No.33, West Jones Road, Saidapet, Chennai – 15.

2.The XVII Metropolitan Magistrate, Saidpet, Chennai.

3.The Public Prosecutor, High Court of Madras.

<https://www.mhc.tn.gov.in/judis> SUNDER MOHAN,J.

smv and Crl.M.P.Nos.19032 & 19033 of 2019 10.04.2023 <https://www.mhc.tn.gov.in/judis>