

A.C.Shanmugam vs The State Rep. By Its on 2 September, 2022

Author: N.Sathish Kumar

Bench: N.Sathish Kumar

CrI.O.P

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.32296 of 2019
and CrI.M.P.Nos.17753 & 17754 of 2019

1. A.C.Shanmugam

2. Lalitha Lakshmi

.. Petitioners

Vs.

The State Rep. by its
Food Safety Officer,
Code No.544, Teynampet Area,
Office of the Designated Officer,
Chennai District,
No.33, West Jones Road,
Saidapet, Chennai - 600015.

.. Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of Code of Criminal Procedure seeking to call for the records relating to C.C.No.3087 of 2019 pending on the file of the learned Metropolitan Magistrate XVII Saidapet, Chennai and quash the same.

For Petitioners : Mr.V.Ramamurthy
for Mr.R.Karthikeyan

For Respondent : Mr.E.Raj Thilak
Additional Public Pro

<https://www.mhc.tn.gov.in/judis>
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CrI.O.P.N

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.3087 of 2019 pending on the file of the learned XVII Metropolitan Magistrate Saidapet, Chennai for the offences punishable under Section 51 of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act').

2. The petitioners, arrayed as A2 and A3 are the promoters of A4 company.

3. The crux of the allegation in the private complaint filed by the respondent is that on 18.03.2017, he collected samples in Shree Raja Rajeswari Hotel Private Limited (A4 company) where A1 is the manager and taken samples of ghee in a pet bottle. After collecting the samples, the sample was sent for forensic analysis and report was also received indicating that the food is of sub standard quality. Accordingly, A1 to A4 were prosecuted for the offence punishable under Section 51 of the Act and A5 was prosecuted for the offence punishable under Section 63 of the Act.
<https://www.mhc.tn.gov.in/judis>

4. The learned counsel appearing for the petitioners/A2 & A3 mainly contended that the prosecution for penalty under Section 51 of the Act is not maintainable. He also draw the attention of this Court to Section 42 of the Act. According to the learned counsel, as per Section 42 of the Act, only if the contravention is punishable with imprisonment the designated officer can recommend for prosecution. Whereas Section 51 of the Act deals with penalty only. According to Rule 3(1)(5) of the Food Safety and Standard Rules, 2011 (hereinafter referred to as 'the Rules') the Adjudicating Officer shall have power to hold an inquiry for the purpose of adjudicating offences punishable under Section 51 of the Act. Whereas, the prosecution against the petitioners herein before the Court is not punishable with imprisonment but only with penalty.

5. The learned Additional Public Prosecutor appearing for the respondent would submit that A5 has been prosecuted for offence under Section 63 of the Act, which is punishable with imprisonment under law. Since the complaint has been filed for prosecution under Section 51 of the Act as against the petitioners, it is his contention that the respondent may be directed to initiate appropriate proceedings to hold an inquiry for purpose of adjudicating the offences punishable under Section 51 of the Act by the <https://www.mhc.tn.gov.in/judis> Adjudicating Officer.

6. I have heard the learned counsel on either side and also perused the records.

7. As rightly pointed out by the learned counsel appearing for the petitioners, A1 to A4 have been prosecuted for the offence punishable under Section 51 of the Act. Section 51 of the Act reads as follows:

"Section 51. Penalty for sub-standard food.— Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees "

8. There is separate proceedings for conduct of enquiry by way of adjudicating proceedings to impose the penalty under Rule 3(1)(5) of the Rules. Rule 3(1)(5) of the Rules deals with adjudication

by Adjudication Officer for imposing penalty. Section 42 of the Act makes it clear that the Designated Officer after scrutiny of the report of Food Analyst shall decide <https://www.mhc.tn.gov.in/judis> 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.

9. Sub Section (3) of Section 42 makes it very clear that only when the contravention is punishable with imprisonment, recommendations can be made for prosecution, whereas, the very prosecution sought to be launched under Section 51 is to impose penalty, for imposing penalty only a separate procedure is provided under the Statute by way of Adjudication Proceedings. The Court cannot take cognizance for the offence under Section 51 of the Act to decide the penalty.

10. Such view of the matter, the proceedings against the petitioners / A2 & A3 for the offence punishable under Section 51 of the Act in C.C.No.3087 of 2019 pending on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai stands quashed as against the petitioners herein and liberty is granted to the respondent to initiate appropriate adjudication proceedings for imposing penalty as per Section 51 of the Act as against the petitioners. This petition is accordingly allowed and <https://www.mhc.tn.gov.in/judis> consequently, the connected miscellaneous petitions are closed.

02.09.2022 kk To

1. The XVII Metropolitan Magistrate, Saidapet, Chennai.
2. The Food Safety Officer, Code No.544, Teynampet Area, Office of the Designated Officer, Chennai District, No.33, West Jones Road, Saidapet, Chennai - 600015.
3. The Public Prosecutor, Madras High Court.

<https://www.mhc.tn.gov.in/judis> N.SATHISH KUMAR, J.

kk Crl.O.P.No.32296 of 2019 and Crl.M.P.Nos.17753 & 17754 of 2019 02.09.2022
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