

K.Kathirvel vs State Represented By on 11 December, 2023

Author: G.Ilangovan

Bench: G.Ilangovan

CrI.O.P.(MD)No.18228 o

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 11/12/2023
Date of Pronounced : 05/03/2024

CORAM
The Hon'ble Mr.Justice G.ILANGOVAN

CrI.OP(MD)No.18228 of 2023
and
CrI.MP(MD)No.14400 of 2023

1.K.Kathirvel,
S/o.M.Krishnasamy,
KSE Limited, Dairy Division,
Thalayuthu-624 618.
Palani Taluk,
Dindigul District.

2.The Company-KSE Limited,
Dairy Division,
Thalayuthu-624 618,
Palani Taluk,
Dindigul District.

: Petitioners/Accused

Vs.

State represented by
The Food Safety Officer,
Tamil Nadu Food Safety and Drug
Administration Department,
FSO Code No.51, Thoppampatty Block,
Sivagiripatti Panchayat Building,
2nd East Cross Street,
Thirunagar,
Dindigul District-624 601.
(STC No.64 of 2023)

: Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed

under section 482 of the Criminal Procedure Code, to call for the records relating to the case in STC No.64 of 2023 filed under Section 59(1) "The Food Safety and Standards

<https://www.mhc.tn.gov.in/judis>
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Act, 2006" pending on the file of the Judicial Magistrate Court, Palani and quash the same, and pass such further or other orders.

For Petitioners : Mr.K.Vijayanand

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.64 of 2023 on the file of the Judicial Magistrate, Palani.

2.The facts in brief:-

The petitioners company called 'KSE Limited', Dairy Division engaged in manufacturer of creams situated at Thalayuthu Village, Palani Taluk, Dindigul District. On 17/08/2021 at about 01.00 pm, the complainant inspected the Firm, took out a sample by purchase of 2 kgs of TUTTY FRUITY (Loose Condition), which was used to prepare ice cream. Proper notice was issued to the accused. A request was made to the accused by informing him about their right to get the sample tested by The National Accreditation Board for Testing and Calibration Laboratory (in short 'NABL'). But the accused waived the choice. So the sample was taken as per the procedure, <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18228 of 2023 handed over to the Designated Officer. It was analyzed by the Government Analyst, Palayamkottai, by report, dated 23/02/2022, it was informed that it is unsafe. Copy of the report was given to the accused, on 07/03/2022. They were also informed about their right of appeal as provided under section 46(4) of the Food Safety and Standards Act, 2006. The Designated Officer, after going through the entire records, satisfied that it is a fit case for initiating criminal proceedings. So sanction was accorded, on 01/12/2022. The Commissioner of Food Safety also approved the prosecution under section 77 of the Food Safety and Standard Act, 2006. So, the complaint was filed by the respondent herein before the trial court namely the Judicial Magistrate, Palani. It was taken cognizance in STC No.64 of 2023.

3. Pending trial process, this petition is filed by the petitioners seeking quashment of the same on the following grounds:-

There is a violation of section 42(2) of the Food Safety and Standard Act, 2006 and within 14 days from the date of receipt of the sample, analysis ought to have been undertaken. Here there is a violation. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18228 of 2023

4. The next ground is that as per section 77 of the Food Safety and Standards Act, 2006, the time limit for launching the prosecution is one year from the date of the commission of the offence, but the complaint was filed much after that period. So the cognizance taken by the trial court itself is illegal.

5. Heard both sides.

6. Only technical point is involved in this matter. The other facts that the petitioners are running a Company called "KSE Limited", Dairy Division', which involved in dairy business, producing ice cream; The Tutty Fruity was purchased by the respondent herein for taking out analysis. There is no dispute by the petitioners herein.

7. With regard to sampling and process conducted by the respondent as per the procedures are all not denied and disputed by the petitioners. With regard to the sampling and sending of the same to the analyst, there is clear material. But the problem lies in time taken by the Food Analyst in making the report. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18228 of 2023

8. The learned counsel appearing for the petitioners would straightaway brought to the notice of this court, the provision 42(2) of the Food Safety and Standards Act, 2006, which reads as under:-

"42. Procedure for launching
prosecution.—
(1).....

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3).....

(4).....

(5).....

9. Per contra, the prosecution relied upon section 46(3) of the Food Safety and Standards Act, which reads as under:-

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;

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(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 to the person who had purchased such article of food with a copy of the Designated Officer.” (4).....

10.This make the position clear. It is not mandatory. Sample must be analyzed within 14 days from the date of lifting. If there is any delay, the reason must be assigned by the Food Analyst and the same must be informed to the Designated Officer.

11.Now we will see as to whether the above condition is complied here.

12.Entire records have been called for from the trial court for verification. By order, dated 27/08/2021, the Food Analyst attached to the Food Analysis Laboratory, Palayamkottai sent a letter to the Designated Officer, Food Safety and Drug Administration Department, <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18228 of 2023 Dindigul District stating that because of the administrative reasons, the analysis could not be completed within 14 days. The expected days is also mentioned as 250 days. So, it is seen that the above said condition is complied by the Food Analyst. On that account, the petitioners cannot maintain this petition.

13.Whether the reason mentioned by the Food Analyst is acceptable or not, cannot be a matter for consideration in this petition. It can be decided on its own merit during the course of trial. What was the administrative reasons can be a matter for consideration on the basis of the evidence.

14.The second point is that there is a delay in filing the complaint.

15.We will see whether any reason is mentioned in the complaint. Section 77 of Food Safety and Standards Act, 2006 reads as under:-

“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 <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18228 of 2023 within

an extended period of upto three years.”

16. So again, a condition is imposed upon the Commissioner of Food Safety to extend the time beyond one year, but even that extension cannot exceed three years. In the complaint, absolutely no reason is mentioned for the delay, it is contended.

17. Now we will see whether extension of time was given by the Commissioner of Food Safety. The reason assigned runs like this:-

“Due to shortage of man power in Food Analysis Laboratory, Palayamkottai there is delay in analysis. Due to this administrative reason and Covid-19 restrictions the delay caused by the Food Safety Officer and Designated Officer in launching prosecution within a period of One year from the date of Commission of an offence against accused is reasonable and delay is condoned. Hence, no prejudice is caused to accused. In the Interest of Justice and Public health, I, the Commissioner of Food Safety approve prosecution within an extended period of up to Three years under section 77 of Food Safety Standard Act, 2006.” <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18228 of 2023

18. The order of the Commissioner is dated 02/12/2022. Apart from that, it reads further:-

“Further Hon'ble Supreme Court also passed the order in Suo motu WP(C)No. 3/2020, dated on 03.01.2022 that, “The Period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general of special Law in respect of all judicial or quasi judicial proceedings.”

19. So the question, which arises for consideration is whether this is enough for compliance extending the period of limitation. The date of sample is 17/08/2021. The time is extended as mentioned above, by letter, dated 02/12/2022. The complaint was filed, on 19/01/2022. It is well within the time of three years. More-over, as per the above, whether the reasons assigned by the Commissioner of Food Safety and Drug Administration, Chennai is reasonable and acceptable, can also be a matter for consideration by the trial court on evidence. So the second ground is also not available to the petitioners.

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20. Except the above said two technical grounds, no other ground is canvassed by the petitioners. So, I find no reason to entertain this petition.

21. In the result, this criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

05/03/2024 Index:Yes/No Internet:Yes/No er To,

1.The Judicial Magistrate, Palani.

2.The Food Safety Officer, Tamil Nadu Food Safety and Drug Administration Department, FSO Code No.51, Thoppampatty Block, Sivagiripatti Panchayat Building, 2nd East Cross Street, Thirunagar, Dindigul District-624 601.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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