

Unknown vs / on 30 October, 2023

Author: G.Jayachandran

Bench: G.Jayachandran

Crl.O.P.No.2463

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.10.2023

Pronounced on :30.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.24634 of 2022

1.M/s Blue Planets Foods Pvt.Ltd. (Salt Restaurant)
2nd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

2.Navin Lionnel Peter (Director), M/41y
M/s Blue Planets Foods Pvt.Ltd.(Salt Restaurant)
2nd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

3.Balasubramanian Goudhaman(Director),M/45y
M/s Blue Planets Foods Pvt.Ltd.(Salt Restaurant)
2nd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

4.Dominic Antony Michel (Director)M/68y
M/s Blue Planets Foods Pvt.Ltd.(Salt Restaurant)
2nd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

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Crl.O.

5.Balaji Balachander(Director)M/45y
M/s Blue Planets Foods Pvt.Ltd.(Salt Restaurant)
2nd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

6.Rajendran Sudagar (Director),M/48 y
M/s Blue Planets Foods Pvt.Ltd.(Salt Restaurant)
2nd Floor,
The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

7.Mustaq Alam, M, 44 y
S/o Hadas
M/s Blue Planets Foods Pvt.Ltd.(Salt Restaurant)
2nd Floor, The Forum Vijaya Mall,
No.183, NSK Salai, Vadapalani,
Chennai 600 026.

..Petitioners/1 to 7 accused

/versus/

1.State
Rep.by the Food Safety Officer,
Code No.545, Vadapalani Area,
Tamil Nadu Food Safety & Drug
Administration Department (Food Wing),
O/o Designated Officer, Chennai District,
No.33, West Jones Road, West Saidapet,
Chennai 600 015.

.. Respondent/Complain

Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in C.C.No.2976 of 2020 pending on the file of the X Metropolitan Magistrate, Saidapet, Chennai and quash the same as against petitioner/accused 1-7.

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Cr1.0

For Petitioners :Mr.B.Kumar, Senior Counsel
M/s Kritika Kamal, P.

For Respondent :Mr.S.Udaya Kumar
Government Advocate (Cr1.S

ORDER

The petitioners herein are accused 1 to 7 in C.C.No.2976 of 2020 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai. The complaint is filed by a public servant namely, the Food Safety Officer, Chennai District under Section 59 (1) of the Food Safety and Standards Act, 2006.

2. The substance of the complaint is as under:-

The complainant/Food Safety Officer (in short "FSO"), on 31.01.2019, after obtaining permission from the Designated Officer went to M/s The Forum Vijaya Mall at Vadapalani, Chennai at about 12.30 hrs. In the said Mall, at the second floor, he found M/s Salt Restaurant functioning under the banner of M/s Blue Planets Foods Pvt Ltd. The FSO enquired about the safety and standard of the food served in the restaurant with Mushtaque Alam, the seventh petitioner herein, who was the Manager of the restaurant. In the store, he found 5 Kgs of 'FRYMS'. The seventh petitioner told the FSO that it was purchased from the <https://www.mhc.tn.gov.in/judis> local market and kept for the customers for whom on their order he will fry it and serve. After explaining to the 7th petitioner, the provisions of Food Safety and Standards Act, 2006 and the right under the Food Safety and Standards Act, 2006, to opt for the samples to be sent to National Lab (NABL). The FSO informed to the 7th petitioner that he is going to draw sample and sent it for lab test. The FSO draw 2 kgs of FRYMS paying Rs.100/- for the cost of the FRYMS. They were divided into 4 portions and labelled as I , II , III and IV.

The mahazar for drawing samples prepared in the presence of witnesses. The seventh petitioner acknowledged by signing in it.

3. On the same day, one of the sample packet marked as ' I ' was sent to the Food Analysis Lab at Thanjavur. The remaining 3 samples labelled as II, III and IV were handed over the Commissioner, Food Safety, Chennai. On receipt of the sample for test, the Food Analyst at Food Analysis Laboratory, Thanjavur, wrote a letter dated 04/02/2019 to the Commissioner that it is not possible to complete the analysis within the period prescribed under Section 46 (3) (ii) and FSS Rules 2.4.2 (6) due to administrative reasons and also the 14th day falls for many of the samples due to report. Thereafter, from the Lab the Commissioner of Food Safety got the report dated 23/11/2019 stating that the <https://www.mhc.tn.gov.in/judis> sample drawn and sent for test is unsafe for consumption, since it contains added colour Sunset Yellow, Ponceau 4 R, Tartrazine and Brilliant Blue which shall be absent with respect to 6.7 of food category System in Appendix A of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

4. The petitioners were informed about the analysis report dated 23/11/2019 and given opportunity to prefer appeal within 30 days and seek for test by referral lab. The petitioners did not avail the option. Hence, the FSO through his letter dated 09/12/2019 sought sanction to prosecute. The Commissioner of Food Safety after considering the materials placed, accorded sanction to prosecute vide his proceedings dated 16/06/2020.

5. Learned Senior Counsel appearing for the petitioners submitted that, under the Scheme of the Act, the FSO has to draw 4 samples of 500 grams each from the suspected food item. Should sent one sample to the notified lab forthwith following the procedure laid in Rule (2). On receipt of the sample the Food Analyst who receives the sample for test should complete the test and report within 14 days from the date of receipt of the sample. If the Food <https://www.mhc.tn.gov.in/judis> Analyst unable to complete the analysis within the time prescribed, then he should address the Commissioner of Food Safety and seek for time extension specifying the expected date for completing the lab test. In case adverse report is received about the food product, then the designated Officer on receipt of the lab report, inform to the persons suspected their right to seek for forwarding the second sample for analysis by the referral Food Analysis Lab notified under the Act. The complaint can be taken cognizance by the Court if it is filed within one year from the date of drawing sample. The proviso enables the Commissioner of food safety to extend the time for filing complaint up to three years for the reasons stated.

6. The Learned Senior counsel for the petitioners contended that the complaint is barred by limitation on all aspects. The time line for forwarding the lab report not adhered by the complainant. The delay in analyst report has deprived the opportunity for the accused to send the second sample to referral lab since, the food samples would have decomposed by the time the communication dated 02/12/2019 sent to the accused. The reason for delay in granting permission to file complaint after one year from the date of drawing sample not specifically mentioned. Stating administrative reason for the delay <https://www.mhc.tn.gov.in/judis> is not sufficient to take the complaint on file after the lapse of time limit prescribed under the statute. The trial Court without proper application of mind has taken cognizance of the complaint on 22/12/2020, which 10 months after expiry of one year period. Further petitioners 2 to 6 are not in day to day management of the Company. However, they are also arrayed as accused as Directors of the offending company.

7. The respondent/complainant filed a detailed counter and contended through the Government Advocate (Criminal Side) that, the FSO in exercise of his power under Section 38 of the Act and following the procedure laid under Section 47 and Rule 2.4, drawn samples and forwarded it for analysis. Sample drawn during the inspection held on 31/01/2019 was sent for analysis to the Lab at Thanjavur on the same day. They were preserved properly as per the procedure laid in the Rule and there is no scope for any decomposition. The Food Analyst in his letter dated 04/02/2019 expressed his difficulty in complying the time line for sending the report and sought for extension of time. This request is in accordance to the proviso to Sub-Section (3) of Section 46 of the Act. Soon after the receipt of the report dated 23/11/2019, the Business operators were informed about the outcome of the <https://www.mhc.tn.gov.in/judis> result and their right to appeal within 30 days was also intimated. The food operators/accused persons, who had the right to seek for second opinion from any other referral lab did not avail the option either immediately on seizure of sample or after the report from the Food Analysis Lab, Thanjavur. The food substance was found to be unsafe due to addition of colouring agents which is not permitted. The petitioners cannot take advantage of their own fault in not exercising their option to send for analysis by any other lab, inspite of intimation.

8. Regarding the allegation of delay, the Learned Government Advocate(Crl.Side) for the respondent submitted that, the delay in getting the lab report is for the reason mentioned in the letter of the Lab

Analyst dated 04/02/2019. The Lab Report dated 23/11/2019 received by the Designated Officer on 28/11/2019. The outcome of the lab report was intimated to the Food Business Operators/accused/petitioners herein by the Designated Officer vide his letter dated 02/12/2019. The accused/petitioners were given 30 days time to prefer appeal. The recommendation of the Designated Officer to prosecute was made on 09/12/2019 within 14 days from the date of receipt of the Lab report. On 16/06/2020 the Commissioner of Food Safety accorded sanction to <https://www.mhc.tn.gov.in/judis> prosecution after applying his mind. After getting the sanction to prosecute from the Commissioner of Food Safety, the complaint was presented before the Magistrate. The complaint was taken cognizance by the XVII Metropolitan Magistrate Court on 31/12/2020. The time line prescribed under the Act not breached. The delay in completing the analysis is explained by the Food Analyst. The time taken to accord sanction is saved by Explanation to Sub- Section(3) of Section 470 of Cr.P.C. Further, the moratorium for saving limitation due to Covid pandemic situation as per Suo Motto Writ order passed by the Hon'ble Supreme Court, w.e.f 15/03/2020 applies to this case. Therefore the complaint taken cognizance within 3 years from the date of seizure of sample is well within limitation.

9. To demonstrate that the complaint is not barred by limitation ,the respondent/ complainant had given the following tabular column.

Sl.No.	Date	Description of Event
1.	31.01.2019	Date of sampling
2.	23.11.2019	Date of Report
3.	28.11.2019	Date of Receipt of report by DO
4.	09.12.2019	Date of recommendation by Design Officer
5.	16.06.2020	Date of Sanction by Commissioner Food Safety
6.	31.12.2020	Date of Cognizance by Court

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

A.Total No.of days from date of sampling to recommendation
 B.Total No.of days from recommendation to sanction
 C.Total No.of days after sanction/Date of Cognizance
 D.Total No.of days altogether
 Now as per Section 470(3) subtracting B from D

10. Heard the counsels. Records perused.

11. In this case, the seizure was on 31/01/2019. The sample was sent to the Food Analyst on the same day. The Food Analyst promptly wrote to the Commissioner of Food Safety on 04/02/2019

that he cannot complete the test within 14 days. He may require about 350 days. The communication from the Food Analyst to the Commissioner of Food Safety reveals that due to administrative reasons, the food analyst could not complete the test within 14 days from the receipt of the sample (04/02/2019).

12. Section 46 of Food Safety and Standards Act, 2006 explains the function of the Food Analyst as below:-

46. Functions of Food Analyst.-

(1) On receipt of a package containing a sample for analysis from a Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the <https://www.mhc.tn.gov.in/judis> conditions of the seal thereon: Provided that in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send requisition to him for sending second part of the sample.

(2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.

(3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send:-

(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 to the Designated Officer: Provided that in case the sample can not be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis. (4) 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.

13. The Food Analyst as required under Section 46(3) (ii), in his letter dated 04/02/2019 had clearly stated that the sample received on 04/02/2019, the <https://www.mhc.tn.gov.in/judis> 14th day to send report fall on 14/02/2019. But delay of 350 days is expected due to administrative reasons and also 14th day falls on the same day for many of the samples. This letter of Food Analyst addressed to the Designated Officer and copy marked to the Commissioner of Food Safety speaks for itself.

14. The chemical analyst had signed his report on 23/11/2019. Thereafter, the sanction for prosecuting the petitioners was recommended by the Designated Officer to the Commissioner of Food Safety on 09/12/2019. The Designated Officer also vide his communication dated 02/12/2019 informed the Food Business Operators/the persons accused about their right to appeal and seek for test by referral lab within 30 days from the date of receipt of the report. They have not availed the option. Though the claim that the sample would have decomposed, it is their presumption and not a fact tested.

15. Under Section 77 of the Food Safety and Standards Act, 2006, the time limit for prosecution is prescribed as below:

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

16. The Section along with proviso read in conjunction, prescribes one year as limitation from the date of commission of an offence. That may extend upto 3 years, if the Commissioner of Food Safety for reasons recorded in writing approves prosecution. The records in the instant case reveals, the Commissioner had accorded sanction on 16/06/2020. In his approval for prosecution, he had recorded the reasons to condone delay as under:

“Due to administrative reason the delay caused by the Food Safety Officer and Designated Officer in Launching Prosecution against accused reasonable. So, in the interest of Justice and Public Health, I the Commissioner of Food Safety approve prosecution under Section 77 of the Food Safety Standard Act 2006 which may be condoned.”

17. The complaint along with the sanction order filed in the Court was <https://www.mhc.tn.gov.in/judis> taken cognizance on 31/12/2020. It is to be noted that from 15/03/2020 till the end of February 2021, there was moratorium for reckoning limitation. This period was saved as per the Supreme Court direction in *Suo Motto Writ Petition (Civil)No.3/2020*. Therefore, once the time taken for analysis beyond 14 days being explained by the Food Analyst and accepted by the Designated Officer as well as the Court for extending the limitation to take cognizance the reason to quash the criminal complaint not sustainable. Likewise, the time taken to accord sanction though stated as administrative reason, it is to be read along with the moratorium for reckoning limitation and has to be necessarily taken into consideration. Thus, the proviso to Section 77 of the Act, makes the complaint though taken cognizance after one year from the date of commission of offence sustainable.

18. Learned Senior Counsel for the petitioners relying upon the decision of the Hon'ble Supreme Court in Sarah Mathew –vs- Institute of Cardio Vascular Diseases by Its Director Dr.K.M.Churian and others reported in [2014 (2) SCC 62], submitted that, in case of special statutes, the date of taking cognizance is relevant and not the date of filing the complaint.
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19. The decision in Sarah Mathew cited supra arose on the reference to the Larger Bench in view of conflicting view expressed in Krishna Pillai-vs- T.A.Rajendran reported in [1990 Supp SCC 121] and in Bharat Damodar Kale –vs- State of AP reported in [2003 (8) SCC 559].

20. In Krishna Pillai-vs- T.A.Rajendran reported in [1990 Supp SCC 121], the Hon'ble Supreme Court, while dealing with a case related to Child Marriage Restraint Act, 1929 held that Section 9 of the Act prescribing limitation of one year for taking cognizance to be strictly interpreted. In this judgement, the Hon'ble Supreme Court focusing on the term “taking cognizance” held that the Court cannot take cognizance of offence under the Child Marriage Restraint Act, 1929 beyond one year from the date of offence alleged to have been committed.

21. Contrarily, in Bharat Damodar Kale –vs- State of AP reported in [2003 (8) SCC 559], it was held that for the purpose of computing the period of limitation, the relevant date is the date of filing of the complaint or initiating the criminal proceedings and not the date of taking cognizance by the Magistrate or issuance of a process by the Court.

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

22. When both the judgments were placed before the Division Bench in Sarah Mathew case, they doubted which of these two judgments lays down the correct law. Hence, the matter was referred to the Larger Bench. The Larger Bench framed the following question for consideration:-

(a) Whether for the purposes of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

(b) Which of the two cases i.e Krishna Pillai cited supra or Bharat Kale cited supra lays down the correct law ?

23. In answer to the questions, the Constitutional Bench consisting of 5 Learned Judges held :-

50.Having considered the questions which arise in this reference in the light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have <https://www.mhc.tn.gov.in/judis> to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation

under Section 468 CrPC, primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act.

It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 CrPC in that judgment. It does not refer to Sections 4 and 5 CrPC which carve out exceptions for the special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay '1984' case [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984 SCC (Cri) 277], in our opinion, was not apt. In Antulay '1984' case [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984 SCC (Cri) 277] this Court was dealing inter alia with the contention that a private complaint is not maintainable in the Court of the Special Judge set up under Section 6 of the Criminal Law (Amendment) Act, 1952 ("the 1952 Act"). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 CrPC. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, <https://www.mhc.tn.gov.in/judis> 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 CrPC or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in Antulay '1984' case [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984 SCC (Cri) 277] : since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 CrPC at all, in our opinion, the said judgment could not have been usefully referred to in Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] while construing provisions of Chapter XXXVI CrPC. For all these reasons, we are unable to endorse the view taken in Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121: 1990 SCC (Cri) 646].

24. The learned Senior Counsel for the petitioners submitted that Section 77 of the Food Safety and Standard Act, 2006 put an embargo to the Court from taking cognizance beyond one year from the date of commission of an offence. Being special statute and the Act specifically state that cognizance cannot be taken beyond one year from the date of occurrence, the same has to be interpreted strictly. Filing or initiating the prosecution will not save the <https://www.mhc.tn.gov.in/judis> limitation. Further, the scope and ambit of the proviso which permits the Commissioner of Food Safety to approve prosecution up to 3 years, enlarged beyond the main section itself. When the main Section does not enable the Court to condone delay beyond one year from the date of commission of offence, through proviso the Commissioner of Food Safety cannot condone the delay by according approval for prosecution.

25. The Act is meant for regulating the manufacture, storage, distribution, sale and import of food articles to ensure availability of safe and wholesome food for human consumption. The allegation against the petitioners is that they were in storage of unsafe food meant for human consumption. The petitioners claim that the commission of offence is on 31/01/2019. Under Section 77 of the Act the cognizance by the Magistrate ought to have taken on or before the expiry of one year i.e 30/01/2020, whereas the cognizance taken only on 31/12/2020. Hence, the complaint is barred by limitation. According to the petitioners, the proviso to Section 77 of the Act cannot be resorted by the complainant, since the scope and ambit of the proviso enlarge the period beyond the time prescribed in the main section.

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26. The said argument has no force. The reading of Section 77 clearly states that notwithstanding anything in this Act, no Court shall take cognizance after expiry of one year from the date of commission of the offence. The proviso speaks about the approval of the Commissioner of Food Safety to prosecute beyond one year upto 3 years. The non-abstante clause is with reference to the Food Safety Act and not to the Code of Criminal Procedure Code which under Chapter XXXVI deals with limitation for taking cognizance of certain cases, exclusion of time in certain cases and extension of period of limitation in certain cases.

27. Unlike Section 77 which have a proviso, in Section 9 of the Child Marriage Restraint Act, which was under consideration by the Hon'ble Supreme Court in Krishna Pillai case, there is no proviso in the Act itself for enlarging the period of limitation besides the Code also provide for enlargement of limitation in certain cases. That apart, the order passed by the Hon'ble Supreme Court in the Suo Motu writ which saves the limitation taken into consideration, this Court holds that the time taken for the Lab to complete the analysis is a good reason for the Commissioner to exercise the power under proviso to Section 77 of the Act. The complainant, who is empowered to enforce food safety, as per law cannot be held responsible for the delay in analysis of the food product. The expected time to complete the analysis stated as 350 days. This is due to the failure of the State to provide enough man and material. If for this reason criminal prosecution cannot be quashed. More so, the law provides for the food business operators opportunity to avail the right of seeking second test from different lab. Having not availed the option, the petitioners cannot allege prejudice due to delay.

28. A close scrutiny of Section 77 makes clear that the extension of time is the discretion vest with the Commissioner of Food Safety who is appointed by the State Government and responsible for the efficient implementation of the Act. Under Section 30 (2)(e), he has to accord sanction for prosecution for offences punishable with imprisonment under the Act. He is vested with the power to extend the time for launching prosecution upto 3 years for reasons recorded. That apart, under Section 42 (3), the Designated Officer, after scrutiny of the report of the food analyst shall decide as to whether the contravention is punishable with imprisonment or fine only. In case, the contravention is punishable with imprisonment, he shall send his recommendations within 14 days to the Commissioner of Food Safety for <https://www.mhc.tn.gov.in/judis> sanctioning prosecution. Section 43(4) mandates the Commissioner of Food Safety to decide whether the matter to be

referred to the Court within the time prescribed by the Central Government based on the gravity of the offence. Further, the proviso to Section 77 is not enlargement of main section, it is an enabling provision for prosecuting, if the Commissioner of Food Safety is satisfied with the material that it is fit case for condoning the delay in filing the complaint.

29. In this case, the report from the lab received by the Designated Officer on 28/11/2019, within 14 days, he had recommended for prosecution through his letter dated 09/12/2019. The sanction accorded on 16/06/2020. Under Section 470 Cr.P.C the time taken for according sanction has to be excluded. Also from 15th March 2020, the moratorium for limitation commenced, therefore, taking into consideration 09/12/2019, the date on which recommendation for prosecution sent by the Designated Officer to the Commissioner of Food Safety, before expiry of one year period, the required procedure to launch the prosecution had been complied, the delay due to administrative reason at the commissioner officer and the Covid moratorium on limitation makes the complaint sustainable. In this context, it is also profitable <https://www.mhc.tn.gov.in/judis> and relevant to reiterate Sections 4 and 5 of the Code carves out exception to the provisions of Special Act and therefore, Section 470 of the Code apply to Food Safety and Standards Act, 2006.

30. Lastly, the Learned Counsel also raised the point of malicious prosecution against the Directors who are arrayed as accused 2 to 6. According to the learned counsel, they were not in-charge of the day to day management of the affairs of the company or responsible to, the company for the conduct of the business of the company. The complaint does not whisper about their involvement in the conduct of the business of the company

31. Section 66 of the Food Safety and Standard Act, 2006 deals with offences by companies. For understanding the provision and the vicarious liability fasten on the directors/persons in charge of the affairs of the company, the section is extracted below:-

66. Offences by companies.-

(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the <https://www.mhc.tn.gov.in/judis> offence and shall be liable to be proceeded against and punished accordingly: Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-

charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

32. This Section speaks about two categories of persons who are connected with the offending company. The first category is dealt under Sub <https://www.mhc.tn.gov.in/judis> Section (1) of Section 66. Beside the company, the persons in charge and responsible to the company for its conduct of business are also deemed to be guilty. Their position in the company and responsibility for the conduct of the business is sufficient to attract the deeming provision. Those who are deemed to be guilty can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. The second category are the persons who are by their conduct and role in the food business whether in the capacity as Director, Manager, Secretary or other officers if proved the offence committed with their consent or connivance or is attributable to any neglect shall also be guilty and liable to be prosecuted and punished.

33. The petitioners 2 to 6 herein are Directors of M/s Blue Planets (P) Ltd. As Directors they are in charge of the company and responsible to the company for the conduct of the business of the company they are deemed to be guilty of the offence under Sub Section (1) of Section 66. The exemption to this general rule is mentioned in the second proviso to Sub Section (1) of Section

66. This proviso speaks about persons otherwise in charge of the company in normal course, but able to prove that without their knowledge the offence was <https://www.mhc.tn.gov.in/judis> committed or in spite of their diligence to prevent the commission of offence, it has happened. To presume this fact there must be strong material which will survive the scrutiny of judicial test. The case of the petitioners 2 to 6 is not so. Even in the quash petition they have not stated how they are not in charge or not responsible for the company for the conduct of business.

34. The sub Section (2) of the Act speaks about, persons against whom it is proved that the offence have been committed with their consent or connivance or is attributable to any neglect. They shall also be guilty and liable to be prosecuted and punished. In this case, the petitioners 2 to 6 fall under Section 66(1) of the Act and the seventh petitioner fall under Section 66(2) of the Act.

35. As a result, this Court holds that this is not a fit case to quash the criminal complaint on the ground of limitation or for other reasons stated in the petition. Accordingly, this Criminal Original Petition is dismissed.

30.10.2023 Index:yes <https://www.mhc.tn.gov.in/judis> Speaking order/non speaking order ari To:

1.The XVII Metropolitan Magistrate, Saidapet, Chennai.

2.The Food Safety Officer, Code No.545, Vadapalani Area, Tamil Nadu Food Safety & Drug Administration Department (Food Wing), O/o Designated Officer, Chennai District, No.33, West Jones Road, West Saidapet, Chennai 600 015.

3.The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> Dr.G.JAYACHANDRAN, J.

ari delivery order made in 30.10.2023 <https://www.mhc.tn.gov.in/judis>