

Nandakumar vs The Designated Officer on 30 July, 2024

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

W.P(MD)N

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17109 of 2024
and
W.M.P.(MD)No.14923 of 2024

Nandakumar

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Vs.

The Designated Officer,
Tamil Nadu Food Safety Department
Trichy.

... R

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the record to the impugned order dated 29.06.2024 in Aanai Yen-4379/FSD Try/2024 passed by the respondent is illegal and quash the same.

For Petitioner : Mr.R.Alagia Nambi

For Respondent : Mr.V.Vairam Santhosh
Additional Government Pleader

ORDER

Heard both sides.

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2. The petitioner is a physically challenged person (low vision). He has come under the adverse notice of the respondent for the second time. Already, a criminal case was registered against the

petitioner for selling the banned tobacco products. The petitioner pleaded guilty and paid a sum of Rs.5,000/- as fine. According to the respondent, when the petitioner's shop was inspected on 20.06.2024, he was found to possess banned tobacco products. In this regard, Crime No.181 of 2024 was registered by the Airport Police Station, Trichy for the offence under Section 328 of IPC. The petitioner was arrested and remanded to custody. While so on 29.06.2024, the petitioner's premises came to be sealed. The respondent also issued the proceedings calling upon the petitioner to pay a sum of Rs.50,000/-. More than a month has elapsed. I wanted to know under what provision of law, fine was levied.

3. The learned Additional Government Pleader drew my attention to Section 69 of the Food Safety and Standards Act, 2006. The provision reads as follows:-

69. Power to compound offences.—The Commissioner of Food Safety may, by order, empower the Designated Officer, to accept from petty manufacturers who himself manufacture and sell any article of food, retailers, hawkers, itinerant vendors, temporary stall holders against whom a reasonable belief exists that he has committed an offence or contravention against this Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed. (2) On the payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person. (3) The sum of money accepted or agreed to be accepted as composition under sub section (1), shall not be more than one lakh rupees and due regard shall be made to the guidelines specified in section 49: Provided that no offence, for which punishment of imprisonment has been prescribed under this Act, shall be compounded.

Based on the said provision, the Commissioner of Food Safety had issued the order dated 04.01.2024 revising the compounding penalty. It states that if the offence is committed for the second time, the compounding penalty will be Rs.50,000/-. Section 68 of the Act is clear to the effect that if imprisonment has been prescribed, then it cannot be compounded. In this case, the petitioner has been arrested for the offence under Section 328 of IPC. It provides for imprisonment. It cannot be compounded. What can be compounded is only an offence registered under FSSA. Since no case has been registered against the petitioner for having committed an offence under FSSA, the question of compounding does not arise at all. In any event, the petitioner cannot be compelled to compound the offence. It is open to the petitioner to pay a sum of Rs.50,000/- and avoid prosecution under the Act. In the alternative, he can face the prosecution. In this case, the petitioner is already facing prosecution and he was also arrested. Therefore, the petitioner will not stand to gain by remitting a sum of Rs.50,000/-. As regards the sealing of the premises, I had already held that failure to adhere to the procedure contemplated in Section 38(1)(c) of the Act or the proviso thereto can be the only reason for sealing the premises. In this case, the petitioner was very much present. He has extended his cooperation. He was arrested only on 29.06.2024. When the impugned order was passed for sealing the premises, the petitioner was in prison. It was done without notice to the petitioner. More than a month has elapsed.

4. Applying the principle of proportionality, I hold that the continued sealing of the petitioner's premises is clearly unreasonable. In this view of the matter, the respondent is directed to de-seal the premises forthwith and without any delay. The respondent is of-course at liberty to prosecute the petitioner. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

The Designated Officer,
Tamil Nadu Food Safety Department
Trichy.

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G.R.SWAMINATHAN, J.

rmi

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