

V.Ragunathan vs State Represented By on 4 March, 2024

Author: N.Anand Venkatesh

Bench: N.Anand Venkatesh

CrI.O.P.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.4429 of 2024

And

CrI.M.P.Nos.3247 and 3248 of 2024

1.V.Ragunathan

2.Nestle India Limited
Represented by its
Authorised Signatory
Mr.Chandrasekher

... Petition

Vs.

State represented by
Mr.N.Raja
Food Safety Officer
Area Code No.547,
Chennai District.
Tamil Nadu Food Safety and Drug Department,
No.33, West Jones Road,
Saidapet,
Chennai – 600 015.

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking t
records in C.C.No.2664 of 2016, pending on the file of the learned
XXIII Metropolitan Magistrate, Saidapet and quash the complaint dat
13.06.2016 and consequently, the proceedings initiated in furtheran
thereto.

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For Petitioners : Mr.R.S.Diwaagar
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.2664 of 2016 on the file of the learned XXIII Metropolitan Magistrate, Saidapet.

2.Heard the learned counsel for the petitioners as well as the learned Additional Public Prosecutor.

3.On 17.06.2015, an inspection was made in M/s.Grace Super Market and the food product was purchased and a sample was sent for analysis. The Food Analyst declared that the sample was unsafe through report dated 30.06.2015. Thereafter a notice was issued to the petitioners seeking for information and a reply was received from the second petitioner. Even thereafter, there was exchange of communication and ultimately, sanction was given to prosecute the petitioners by the Commissioner of Food Safety through proceedings dated 04.05.2016. A complaint was thereafter filed on 15.06.2016 against the petitioners for the offence under Section 3(1)(zz)(iii) r/w Reg.2.1.9.(3) of FSS [FPS&FA] Reg.2011, Section 26 (1) (2)(i) of FSS Act, 2006 and Penalties Section 59 (1) of FSS Act, 2006. The same has been put to challenge in the present criminal original petition.

4.The main ground that was urged by the learned counsel for the petitioners is that the mandate under Section 42 (3) of the Food Safety and Standards Act, 2006 [hereinafter referred to as 'Act'] was not complied with. It was submitted that the Designated Officer must send his recommendation to the Commissioner of Food Safety for sanction of prosecution within fourteen days from the date of receipt of report from the Food Analyst. In the instant case, the report of the Food Analyst is on 30.06.2015 and whereas, the recommendation was sent only on 17.02.2016, which is beyond the period of fourteen days as stipulated under Section 42 (3) of the Act.

5.The above issue that has been raised by the learned counsel for the petitioners is squarely covered by the earlier order of this Court in a case in G.Vinod Kumar Vs. N.Senthil Kumar, Food Safety Officer reported in 2021 SCC OnLine Mad 6316. The relevant portions are extracted hereunder:

“8. Section 42(3) mandates that after receipt of the analysed report, Designated Officer has to send his recommendation within <https://www.mhc.tn.gov.in/judis> 14 days. However, the complaint itself indicate that no such procedure was followed and Section 47 (4) makes it mandatory that once an application is filed for second analysis, it is mandatory on the part of the Officers to provide the sample to get it analysed in another accredited lab which is a right provided by the Statute.

Admittedly, in this case such second sample has not been given to the complainant when he has the right to have a second sample analysed, which has been denied. It is the serious violation and therefore, this Court is of the view that when the provisions which are mandatory in nature to be complied before initiating any penal action, the same should be complied with rigor.

9. Before driving a person to face a criminal prosecution, the statute which mandates certain procedure, such procedures to be complied first which has not been done in this case. In this regard, this Court also in similar case in Crl.O.P. No. 774 of 2020 has quashed the prosecution for violation of mandatory provisions of law, which was reported in 2020 SCC OnLine Mad 12748 in the case of G. Irudhayanathan v. B. <https://www.mhc.tn.gov.in/judis> Ramakrishnan.”

6. In view of the above, it is clear that the non compliance of the mandate under Section 42 (3) of the Act vitiates the entire proceedings and this Court has taken a consistent view in this regard. As a result of the non compliance of the mandate, the petitioners have lost their right to have the second sample analysed before the appropriate Authority. Hence, the continuation of the proceedings against the petitioners will result in abuse of process of Court and it requires the interference of this Court in exercise of its jurisdiction under Section 482 Cr.P.C.

7. In the result, the proceedings in C.C.No.2664 of 2016 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, is hereby quashed and this criminal original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

04.03.2024 pri Index: Yes/ No Speaking Order: Yes/ No NCC: Yes/ No N.ANAND VENKATESH,J.

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

1. The XXIII Metropolitan Magistrate, Saidapet.

2. The Food Safety Officer Area Code No.547, Chennai District.

Tamil Nadu Food Safety and Drug Department, No.33, West Jones Road, Saidapet, Chennai – 600 015.

3. The Public Prosecutor, High Court of Madras, Chennai 600 104.

And Crl.M.P.Nos.3247 and 3248 of 2024 04.03.2024 <https://www.mhc.tn.gov.in/judis>