

# N.Venkatesan vs A.John Peter on 5 August, 2022

**Author: G.Ilangovan**

**Bench: G.Ilangovan**

CrI.O.P.(MD)No.159

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)No.15915 of 2019

and

CrI.MP(MD)No.9453 of 2019

N.Venkatesan,  
Proprietor,  
Chakra Food Products,  
No.6/145, Kanagavel Nagar,  
Aathikulam, K.Pudur,  
Madurai-625 007.

: Petitioner/A2

Vs.

1.A.John Peter,  
Food Safety Officer,  
Code No.451,  
O/o.Designated Officer,  
Tamilnadu Food Safety and Drugs Administration,  
Ramanathapuram,  
Hockey Ground Opposite Collectorate,  
Ramanathapuram-625 007. : R1/Complainant

2.F.Sabeer Ahamed  
S/o.S.M.Fazlullah,  
Seller,  
Indian Stores Maligai & Shop,  
48-D, Karikadai Lane,  
Daily Market,  
Ramanathapuram,  
Ramnad District. : R2/Accused No.1

1/9

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

Crl.O.P.(M

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with the impugned complaint in STC No.18 of 2017 on the file of the Judicial Magistrate No.1, Ramana Ramnad District and quash the same.

For Petitioners : Mr.Sarvagan Prabhu

For 1st Respondent : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor

For 2nd Respondent : Mr.M.Sridharan

#### O R D E R

This criminal original petition is filed seeking quashment of the case in STC No.18 of 2017 on the file of the Judicial Magistrate No.1, Ramanathapuram.

#### 2.The facts in brief:-

On 21/09/2016 at about 5.30 pm, the complainant namely the Food Safety Officer inspected the shop of A1 and lifted 'NAVEN CHICKEN 65 POWER' as sample for analysis. The analysis report was received on 04/10/2016 as unsafe. The report was also intimated to A1 and an opportunity was given to file an appeal and to send the sample to the Central Food Laboratory. But there was no action on the part of the accused. So on that basis, the complaint was filed on 04/10/2016 at <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.15915 of 2019.

It was filed stating that the accused persons committed the offences under sections 59(i) and 63 of the Food Safety and Standards Act, 2006 and it was taken cognizance in STC No.18 of 2017 by the trial court.

3.Seeking quashment of the same, this petition has been filed on the ground proper procedure was not followed by the 1st respondent, while lifting the sample; The sample was not analysed by the notified laboratory.

4.Now the counter has been filed by the 1st respondent stating that at the time of inspection, it was found that A1 did not obtain any food safety licence and after lifting the sample, notice was issued to the manufacturer to disclose the particulars of the manufacturer, supplier. Or distributor, as the

case may be. After receiving the report, opportunity was given to the 2nd accused for referring the sample to the Central Food Laboratory. But A2 did not utilise the opportunity even the Director, Referral Food Laboratory, Mysore sent a report stating that it is substandard one. The Food Analysis Laboratory, Palayamkottai, has also sent a report stating that it is unsafe.

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5.Heard both sides.

6.The contention that has been raised by the petitioner is that the products does not come under the provisions of sections 59(i) and 63 of the Food Safety and Standards Act, 2006.

7.As mentioned above, the ground on which, this petition came to filed is procedural violation in lifting the samples and there is a delay in referring the same to the Referral Laboratory, Madurai and subsequent report. So according to the learned counsel appearing for the petitioner, even though the original report has been received within 14 days from the date of lifting sample, it was referred to the referral lab, only on 07/10/2016. But the report has been received after a lapse of 45 days, which according to him is a violation.

8.But the learned Additional Public Prosecutor would submit that the sample was lifted on 22/09/2016 and the report was received within the stipulated time and another sample was sent to the referral lab within three days from the date of above said report. Even though the delay in receiving the referral lab report, that will not vitiate <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.15915 of 2019.

the proceedings. Except stating that a report from the referral lab has been received belatedly, no other ground worth considering is mentioned by the petitioner.

9.But perusal of the records shows that the petitioner himself has given a statement to the effect that he is not willing to send the sample for further analysis to the referral lab. So whether he has given such a statement or not is a matter for consideration by the trial court, during enquiry. It appears that the petitioner has given a statement to the effect that he purchased packed items from one Agent in Madurai. But they are not having any document to show about the purchase. No doubt in the wrapper, the manufacturer name is mentioned as ' Chakra Food Products, K.Pudur, Madurai and that manufacturer has also been impleaded as A2.

10.By relying upon the judgment of this court in the case of K.Murugesan Vs. Manogaran (Crl.OP(MD)No.4229 of 2015, dated 01/10/2019), it has been pointed out by the learned counsel appearing for the petitioner to the effect that he, being the purchaser of the products from the manufacturer, he cannot be fastened with any liability, when food product is found to be unsafe and substandard as the case may be.

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11.No doubt that whether this petitioner has purchased the same from the second respondent without the knowledge that it is unsafe, is a matter for consideration by the trial court. It is not even the case of the petitioner that he has purchased the same from the second respondent under due voucher and bill. He has simply stated that he purchased the same from an unknown Agent from Madurai. When that being the defence of the petitioner, whether that can be accepted or not is a matter for consideration by the trial court, since it is a disputed factual issue. So on this ground, the petitioner cannot get relief in this matter.

12.More over, section 46(3) says that the food analyst within 14 days from the date of receipt of the same must analysis the same and must send the report. Here, there is no violation of section 46(1) of the Act and an option has been given to the accused person to file appeal against the report of the food analyst before the designated officer. Here even though, the petitioner has stated that there is a delay of 45 days in receiving the report from the referral lab, Madurai, the records shows that otherwise, as mentioned earlier, no proof has been filed by the petitioner to show that he made a request to send the same <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15915 of 2019.

to the referral lab. In the absence of any such material, of course on record, this ground is also not available. If the petitioner is having any document to show the same, he can work out his remedy at the appropriate time before the trial court. So, none of the ground has been made in the petition are made out for quashing the proceedings.

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

05.08.2022 Internet:Yes/No Index:Yes/No er To,

1.The Judicial Magistrate No.1, Ramanathapuram.

2.The Food Safety Officer, Code No.451, O/o.Designated Officer, Tamilnadu Food Safety and Drugs Administration, Ramanathapuram, Hockey Ground Opposite Collectorate, Ramanathapuram-625 007.

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

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