

M/S.Jaiswal Products vs Food Safety Officer on 3 December, 2021

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

Crl.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.13674 of 2017 and
Crl. M.P.Nos.8803 and 8804 of 2017

M/s.Jaiswal Products
Rep. by its Authorized Signatory
Inbarasu, Aged 37 years
S/o.Elayaperumal
Manufacturer of Hans Chhap Tobacco
G-82, Preet Vihar
Delhi 110 092

....Petitioner

Versus

Food Safety Officer
Tirukoilur Zone
Panchayat Union Office Complex
Santhapettai
Tirukoilur
Villupuram District

....Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P
call for the records and quash the charge sheet in S.T.C.No.442 of
pending on the file of Judicial Magistrate I, Tirukoilur.

For Petitioner ... Mr.D.Saikumaran

For Respondents ... Mr.S.Vinoth Kumar
Government Advocate (Cr

ORDER

This petition has been filed to quash the charge sheet filed against the petitioner in S.T.C.No.442 of 2017 on the file of Judicial Magistrate I, Tirukoilur for the offences under Sections 58 and 59(1) of the Food Safety and Standards Act, 2006.

2. It is the case of the prosecution that on 21.07.2016 while the Food Safety Officer conducted inspection in the shops in Sannadhi Street, Thirukoilur, he found the tobacco product known as “Hans Chhap Tobacco” and seized the product and when enquired with the owner of the shop, who was arrayed as A1, he informed the Food Safety Officer that some unknown person delivered to him and he is selling it. The Food Safety Officer collected the sample and sent the same to the Laboratory for analysis. On analysis, it was found that the sample falls under the category of Panmasala and contains Nicotain to an extent of 1.7%, which is injuries to health resulting in the launching of the prosecution against the seller and the petitioner herein, who is the manufacturer.

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

3. The learned counsel appearing for the petitioner vehemently contended that the prosecution launched as against the petitioner is without any basis. In fact, Tobacco is not a food product and permission has been granted to sell such product in two States in India, namely Karnataka and Delhi and when writ petitions were filed before the Delhi Court, the Delhi High Court also directed the respondent not to take any coercive action against the petitioner and the petitioner is manufacturing the product only after obtaining permission in the above States and he is noway connected with the sale of the products in Tamil Nadu. It is his further contention that the petitioner herein never involved in such sale in Tamil Nadu and the referral lab report also clearly indicates that the Tobacco is not a food product and it falls only under the category of tobacco products. The learned counsel contended that without any materials to show that the manufacturer is involved in selling the products in Tamil Nadu, mechanically the prosecution has been launched against the petitioner. <https://www.mhc.tn.gov.in/judis>

4. The learned Government Advocate (Crl.side) submitted that the report of the Food Analyst clearly shows that the tobacco falls under the category of Panmasala and the sample contains Nicotin which is unsafe to use. It is his further contention that when the petitioner himself has admitted that he is the manufacturer, he is also liable to be prosecuted and opposed for quashing of the charge sheet.

5. Normally, this Court would be reluctant to interfere with the complaint, but at the same time when the materials relied upon by the prosecution, in the considered view of the Court, do not constitute any offence against the person and continuation of the prosecution is a sheer waste of time and futile exercise, this Court can very well exercise its power under Section 482 Cr.P.C. The

charge against the petitioner itself indicates that some tobacco products were seized from A1, who is noway connected with the present petitioner, A1, who is the owner of the shop, himself informed the Food Safety Officer that the product was supplied to him by some unknown person. It is not the case of the prosecution that this product was supplied for sale in Tamil Nadu by the manufacturers. It is also brought <https://www.mhc.tn.gov.in/judis> to the notice of this Court that the sale and manufacture is not totally prohibited in some of the States, particularly in Karnataka and Delhi. The manufacture and sale of the tobacco product is not totally prohibited. Delhi High Court also directed the respondent not to take any coercive action against the petitioner based on the notification dated 25.03.2015 issued by the Department of Food Safety, GNCT of Delhi, vide order dated 22.04.2015 in W.P.(C) No.4020 of 2015. Therefore, the question remains whether the prosecution is maintainable if any such product is found in Tamil Nadu without establishing any nexus between the manufacture and sale. As discussed above, on perusal of the final report this Court finds that it is not the case of the prosecution that the manufacturer themselves has supplied the products for sale in Tamil Nadu. Only some unknown persons said to have supplied it. Therefore, in the absence of any nexus between sale and supply by the manufacturer and when the manufacturing of the product is permitted in neighbouring States, the manufacturer cannot be prosecuted, as if he has committed the offence, without any material. For example, manufacture of IMFL (Indian Made Foreign Liquor) is permitted in Pudukkottai and Pudukkottai liquor is totally prohibited in Tamil Nadu. If any <https://www.mhc.tn.gov.in/judis> such prohibited liquor is found in possession of somebody, this Court cannot presume that the manufacturer has committed any offence. The same analogy will be followed here.

6. That apart, it is also relevant to note that report from the referral lab indicates that the products seized by the Food Safety Officer do not fall within the category of food product and referral lab report available on record clearly indicates that it was only a tobacco product and it is not food product. This also cannot be ignored. This Court is of the view that continuation of prosecution against the present petitioner is a mere waste of time and futile exercise.

Accordingly, this Criminal Original Petition is allowed and the case in S.T.C.No.442 of 2017 pending on the file of Judicial Magistrate I, Tirukoilur is quashed. Consequently, the connected miscellaneous petitions are closed.

03.12.2021 Internet: Yes/No Speaking order: Yes/No gpa/gba To <https://www.mhc.tn.gov.in/judis>

1. Judicial Magistrate I Tirukoilur

2. The Food Safety Officer Tirukoilur Zone Panchayat Union Office Complex Santhapettai, Tirukoilur Villupuram District

3. The Public Prosecutor Madras High Court Chennai.

<https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J gpa/gba Crl. O.P. No.13674 of 2017 and Crl. M.P.Nos.8803 and 8804 of 2017 03.12.2021 <https://www.mhc.tn.gov.in/judis>