

A.T.Kannan vs The State Represented By on 17 November, 2021

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.7347 of 2017

&

Crl.M.P.No5313of 2017

A.T.Kannan

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Versus

The State represented by
P.Rajasekar,
Food Safety Officer,
Krishangiri Municipality (i/c),
Krishnagiri District – 635 001.

...

PRAAYER : Criminal Original Petition filed under Section 482 of Cr.P call for the records and quash the prosecution in S.T.C.No.1935 of an offence under Section 59 of the Food Safety and standards Act, 3

For Petitioner

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Mr.A.Ramesh
Senior Counsel
for Mr.Arun Kumar

For Respondent

...

Mr.S.Vinoth Kumar
Government Advocate (Crl.

1/10

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

Crl.

ORDER

This petition has been filed to quash the proceedings initiated under Sections 3(1)(zx) and 3(1)(zz)(v) of the Food Safety and Standards Act, 2006 [hereinafter 'said Act'] and Regulation 2.4.2.1 of Food Safety and Standards [Food Products Standards and Food Additives] and Regulations, 2011.

2. It is the case of the prosecution that on 12.11.2013, Food Safety Officer lifted samples of Maida from the petitioner's premises and thereafter, the samples were sent to analysis on 13.11.2013. The reports were received on 25.11.2013 and it indicated that the food lifted from the premises contained live weevils, dead worms and worm cocoons. Thereafter, on 05.12.2013, the reports appear to have been served on the petitioner. Immediately, a reply was sent by the petitioner stating that only the expired food items were seized and not the food items meant for sale. Thereafter, after completing the formalities, the Food Safety Officer has filed a complaint before the trial Court for the offences under Section 59 of the Food Safety and Standards Act, 2006. Though PW1 and PW3 were <https://www.mhc.tn.gov.in/judis> examined before the trial Court, this application has been filed to quash the proceedings.

3. Heard the learned Senior Counsel appearing on behalf of the counsel on record for the petitioner and the learned Government Advocate appearing on behalf of the respondent.

4. The learned Senior counsel appearing for the petitioner contended that though the trial has commenced, the very launching of the prosecution is barred under law and therefore, the petition under Section 482 Cr.P.C is maintainable. To buttress his submission, he has placed reliance on the judgments of the Apex Court in *Thesima Begam and Another Vs. The State of Tamil Nadu and Ors* arising out of SLP (Crl.) No.3542 of 2018 and another case in *Kamlesh Kumar Vs. State of Bihar and Another* reported in (2014) 2 SCC 424 and submitted that when the very filing of the complaint and launching of the prosecution itself is barred under law, the Court can very well quash the entire proceedings and the parties need not undergo the ordeal of the trial. The learned Senior counsel also submitted that though the Commissioner has accorded sanction to launch the prosecution on 18.06.2014, the complaint has been filed before the Judicial <https://www.mhc.tn.gov.in/judis> Magistrate only on 24.12.2014, which is *ex facie* barred under law. It is his further submission that it is not the case of the prosecution that the Commissioner has accorded sanction to launch the prosecution within the extended period of three years by giving reasons in writing and no such sanction whatsoever has been accorded in this case. He further submitted that proviso to Section 77 of said Act cannot be pressed into service in this case and the complaint itself is barred by limitation. The learned Senior counsel also contended that the company has not been made an accused as per Section 66 of the said Act. Similarly, there is violation of the mandatory provision contained in Section 42 of the said Act and that apart, learned Judicial Magistrate has also not applied his mind while taking cognizance. In routine manner, the complaint has been taken on file. Hence, learned Senior counsel seeks to quash the proceedings on these grounds.

5. The learned Government Advocate (Crl.Side) submits that the complaint has been filed on 24.12.2014 and the Commissioner has accorded sanction to launch the prosecution on 18.06.2014.

As the trial has already commenced, the petition under Section 482 Cr.P.C cannot be maintained at this stage.

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

6. This Court perused the materials available on record. As indicated above, lifting of the sample on 12.11.2013 is not disputed. The analysis report dated 25.11.2013 is the basis for launching the complaint. It is relevant to note that, whenever the sample is lifted for analysis, the procedure contemplated under Section 42 of the Act, which deals with time limit for sending the samples to the lab and also to send a recommendation to file prosecution. On a perusal of the materials available on record, it comes to light that no such procedure has been followed. Be that as it may, as contended by the learned Senior counsel, the company has not been made as an accused under Section 66 of said Act and only the partner has been made as an accused. It is also one of the flaw in launching the prosecution. It is also relevant to note that any prosecution under Food, Safety and Standards Act ought to be launched within a period of one year as per Section 77 of the said Act, though the proviso empowers the Commissioner to launch the prosecution within the extended period of three years, provided the Commissioner gives the reasons for the same in writing. The prosecution can be launched within the extended period of three years from the date of occurrence. In this case, it is pertinent to note that the <https://www.mhc.tn.gov.in/judis> Commissioner accorded sanction on 18.06.2014 to launch the prosecution within a period of one year. However, the complaint has been filed only on 23.12.2014, much beyond the period of one year and it has been taken on file by the learned Magistrate on 24.12.2014. It is relevant to note that it is not the case of the prosecution that the prosecution has been launched pursuant to the proviso to Section 77 of the said Act. Though the proviso empowers to extend the period of limitation on certain grounds, the Commissioner in this case has not exercised the power empowered therein, whereas the sanction was accorded to launch prosecution within one year. That is why no reason whatsoever has been given for extending the period of limitation. That being the case, the prosecution ought to have been launched only after the sanction of the Commissioner of the Food and Safety by recording his reasons in writing as per proviso to Section 77 of the Act, which has not been done. Therefore, when the Commissioner has not exercised his power and has not given any reason in writing to launch the prosecution beyond the period of one year, any complaint filed beyond the period of one year is barred under Law. Trial Court ought not to have taken cognizance of the complaint after the period of limitation. Further no <https://www.mhc.tn.gov.in/judis> application whatsoever has been taken under Section 469 for condoning the delay in filing the complaint. This Court is of the view that when the procedure contemplated for launching a prosecution has not been followed, the same cannot be ignored lightly.

7. Comply of mandatory provision prior to launching prosecution has to be followed strictly. Therefore, the prosecution cannot maintain the complaint beyond a period without following the strict procedure contemplated under law. In such view of the matter, this Court is of the view that the complaint is ex facie barred by limitation.

8. Yet another submission made by learned Government Advocate (Crl.side) that, as the trial has already commenced, the Court cannot exercise the power under Section 482 Cr.P.C, has no legs to stand and the issue is no longer res integra as the Apex Court in Kamlesh Kumar Vs. State of Bihar

and another reported in (2014) 2 SCC 424 held that when the complaint is barred under law even after the trial has commenced, the Court can exercise power under Section 482 Cr.P.C. It is also relevant to note that besides violation of Sections 42 and 47 of the Act, the very complaint is filed beyond the period of limitation. However, the learned <https://www.mhc.tn.gov.in/judis> Magistrate, without noticing the fact that complaint has been filed beyond the period of limitation, has mechanically taken the complaint on file and took cognizance. While taking cognizance of the complaint on file, the learned Judicial Magistrate has to look into the provisions of the law and find out whether the complaint is filed within a period of limitation as provided in the special Statute, but that has not been done. Further, on perusal of the very complaint and the seal it comes to light that learned Magistrate has just affixed the seal as TOF, denoting only 'Taken on File'. In a routine manner, the rubber stamp has been used mechanically to show that the complaint was taken on file. That itself indicate that Judicial Magistrate has not applied his mind while reading the complaint and provision of law and has not come to a definite conclusion as to whether the complaint is within the time or not. Such act of the learned Judicial Magistrates have been condemned by this Court in various judgments. Despite the same, judicial officers are using the rubber seal and taking cognizance of the complaint without even verifying the period of limitation or Statute. It is nothing but a clear abuse of process of law. Such an attitude should be hereafter stopped by the Judicial Magistrates. Though <https://www.mhc.tn.gov.in/judis> this Court has ample power to call for an explanation, this Court keeping in view of the long duration of the period between the taking of cognizance and now, is of the view that it will suffice to direct the Director, Tamil Nadu State Judicial Academy to sensitize the Judicial Magistrates in this regard during the regular training programme.

With the above observations, this petition is allowed and the case in S.T.C.No.1935 of 2014 is quashed.

17.11.2021 gpa To

1. The State represented by P.Rajasekar, Food Safety Officer, Krishangiri Municipality (i/c), Krishnagiri District – 635 001.
2. The Director Tamil Nadu State Judicial Academy Chennai
3. The Public Prosecutor Madras High Court Chennai - 104 <https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J gpa CrI. O.P. No.7347 of 2017 & CrI.M.P.No5313 of 2017 17.11.2021 <https://www.mhc.tn.gov.in/judis>