

T.Murukappan vs T.Rajendran on 24 August, 2023

Crl.O.P(MD).No.239

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.2398 of 2020

and

Crl.M.P.(MD)Nos.1238 and 1239 of 2020

T.Murukappan

2.Star Agri Warehousing &

Collateral Management Ltd.,

Rep. by T.Murukappan (State Head),

(Incorrectly mentioned in the Private Complaint as M/s. State Head
State Agri Warehousing Collateral Management Ltd.)

2nd Floor B Wings littoral Chamber,

Near, Marol Metro Station,

Manohnaka,

Mumbai – 400069.

...Petitioners

Vs

T.Rajendran

Food Safety Officer,

Rajapalayam Municipality and Union,

Virudhunagar District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code
Criminal Procedure, praying this Court to call for the records pertaini
private complaint in S.T.C.No.4898 of 2019 pending before the learned
Judicial Magistrate No.I, Rajapalayam, Virudhunagar District filed unde
Sections 3(1)(zz)(ix) along with 51, 59(i) and 63 of Food Safety and
Standards Act, 2006 and quash the same as illegal.

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

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Crl.O.P(MD).No.

For Petitioners

: Mr.R.Anand, For Mr.J.Pandi D

For Respondent

: Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This petition is filed to quash private complaint in S.T.C.No.4898 of 2019, before the learned Judicial Magistrate No.I, Rajapalayam, Virudhunagar District.

2.According to the petitioners, the respondent filed a private complaint alleging that the petitioners stored unsafe and substandard goods as K.Rajendran Godown, 537 Sankarankovil Road, Muthugudi Village, Rajapalayam, Virthunagar District without getting license from the Food Safety Department. After getting opinion from the food analyst, the respondent forwarded the opinion to the Commissioner and after getting sanction from the Commissioner, the impugned complaint was filed by the respondent under Sections 52, 59(i) and 63 of Food Safety and Standards Act, 2006 (herein after referred as 'Act'). The entire allegations are false and the petitioners did not commit any offence as alleged by the respondent. In collateral management service, the second petitioner company operates as bank appointed custodians of stocks pledged by third party/borrowers kept in warehouses owned and operated by third party/borrowers. Stocks are released upon instruction or release order from the leading bank. The responsibility of <https://www.mhc.tn.gov.in/judis> stock upkeep, maintenance, insurance and fumigation rest with the borrower and the bank. As custodians, the company is responsible for providing timely information to the bank regarding the condition of the stocks.

3.In this case, the bank had approached the second petitioner company for availing financial facilities against the pledge of agricultural products in the five godowns at Rajapalayam, Virudhunagar District. A request was made by the bank officials to the second petitioner company for providing field warehouses facilities regarding the goods contained in the warehouses at Rajapalayam and the amounts has to be immediately disbursed against security of the said goods. It was intimated that the finance facilities has to be granted immediately to the said borrowers over the stock of pulses, which were placed in the said warehouses and upon believing the assurances regarding the stock as given by the bank officials, the custody of the said warehouses containing the stock was obtained by the second petitioner company under the directions of the said Bank by executing sub-lease with Siva, being the partner of Shree Sharavana Traders and three other borrowers. The petitioners given complaint before the Superintendent of Police but no action was taken.

4.Thereafter, the petitioners filed Crl.O.P.(MD)Nos.14413 and 14417 of 2017. Allowing the impleading petition, this Court transferred both the <https://www.mhc.tn.gov.in/judis> complaints to Economic Offences wing, CBI vide its order dated 15.11.2017. Thereafter, Economic Offences Wing, took up the investigation and warehouses were sealed and the custody was placed with the EOW-CBI. This was happened in December 2017. Since the goods were perishable in nature, the said stocks had to be auctioned and therefore, the said EOW-CBI on 27.12.2018 sent an e-mail to the respondent to find out the present nature of the stocks. The stocks were pledged to the said bank in the year 2016 for a period of 11 months and due to the foisting of the criminal cases in the year 2017 the stocks were placed in the custody of EOW.

5.The respondent took sample of mazoor dal weighing four kgs and the sample was couriered to food Analyst on 28.12.2019. The Food Analyst, Thanjavur report was made on 11.01.2019 wherein the goods were declared as unsafe and substandard foods. Thereafter, the District Food Safety

Officer, Virudhunagar has sent recommendation to the Commissioner, Food Safety and Standards to initiate prosecution against the petitioners through Whatsapp dated 26.02.2019. The said recommendation has not been made within fourteen days and it has been made with a delay of 25 days without following mandatory provision under Section 42(3) of the Act. Further under Section 42(2) of the Act, the Food Analyst has to send the analysis report mentioning the method of sampling and analysis within a period of fourteen days to the <https://www.mhc.tn.gov.in/judis> designated officer. The sample was sent on 28.12.2018 however the analysis report was received by the Food safety Officer only on 18.01.2019 with a delay of seven days. Therefore, it amounts to abuse of process of law, if the respondent prosecuted against the petitioner. Hence, the charge sheet in S.T.C.No.4898 of 2019 is liable to be quashed.

6.No counter has been filed on the side of the respondent.

7.The learned counsel appearing for the petitioners would contend that the mandatory provision under Section 42(3) of the Act has not been followed in this case. The allegations made in the complaint is that even they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. The Food Analyst, Thanjavur report was made on 11.01.2019 and the report was received by the respondent on 18.01.2019. Immediately after 14 days, the respondent has to sent recommendation for obtaining sanction but in this case, the request was sent on 26.02.2019. Therefore, there is a delay of 25 days. As per Section 42(3) of the Act, the Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the <https://www.mhc.tn.gov.in/judis> Commissioner of Food Safety for sanctioning prosecution. In this case, the above procedure has not been followed, thereby, the pending case proceedings before the trial Court are liable to be quashed.

8.To support his contention, he relied on the judgment of this Court in the cases of (I) M.Mahadevan v. The Food Safety Officer in Crl.O.P.No. 25484 of 2016 and (ii)A.R.Khader v. The Food Safety Officer in Crl.O.P.No. 27584 of 2016.

9.The learned Additional Public Prosecutor appearing for the respondent would contend that the respondent has filed complaint before the Judicial Magistrate Court by following all the procedures and thereby, the trial Court has taken cognizance and proceed the case further. The respondent took sample on 28.12.2019 and the same was sent to Laboratories on the same date itself i.e., on 28.12.2019. The Food Analyst, Thanjavur report was made reads on 11.01.2019. Thereafter, request for sanction was obtained on 26.02.2019 and then the trial Court has taken cognizance and the petitioner has to face the trial and the arguments of the petitioner can be put forth before the trial Court and the petition is liable to be dismissed.

10.This Court heard both sides and perused the materials available on <https://www.mhc.tn.gov.in/judis> records.

11.It is admitted that based on the complaint given by the second respondent, the learned Magistrate has taken cognizance in S.T.C.No.4898 of 2019. The main contention of the petitioner is that the mandatory provision under Section 42(3) of the Act has not been complied with and the Food Analyst, Thanjavur report was made on 11.01.2019 and the same was received on 18.01.2019. Immediately after 14 days, the respondent ought to have sent recommendation for obtaining sanction but in this case, the request was sent on 26.02.2019 i.e., after the lapse of mandatory period of 14 days. Therefore, mandatory procedures as mandatory by the Act have not been followed by the respondent.

12.The learned counsel appearing for the petitioners relied on the judgments of this Court in the cases of (I) M.Mahadevan v. The Food Safety Officer in Crl.O.P.No.25484 of 2016 and (ii)A.R.Khader v. The Food Safety Officer in Crl.O.P.No.27584 of 2016, wherein this Court held that :-

“6. Learned Senior Counsel also relied upon the judgment of this Court passed in Crl.O.P.No.7242 of 2011 dated 28.03.2017, wherein, in an identical circumstances, the learned Judge has held as follows :

5.In this regard, the learned counsel for the <https://www.mhc.tn.gov.in/judis> petitioners/accused also relied upon the decision of this Court reported in 2005-2-L.W. (Crl.) 598 [C.Suresh & Others Vs. The State, etc], and submitted that in an identical situation, on the ground of delay of 10 months in sending the notice under Section 13(2) of the Act along with the report, this Court quashed the complaint therein stating that by that time, the milk sample would have become decomposed. The relevant portion in the said judgment reads as follows :

"7.In the instant case, the sample of toned milk was taken on 22.07.2003 and despatched to the Government Analyst on 23.07.2003. Pursuant to an information that the toned milk food sample was broken in transit, the second portion of the sample was sent, and on analysis, a report was received on 07.08.2003. The same was received by the Local Health Authority on 28.08.2003. But, the written consent for launching the prosecution was received by the Local Health Authority on 23.01.2004, and the same was received by the Food Inspector on 30.01.2004. The complaint filed on 31.03.2004 was returned, and the same was re-submitted on 23.04.2004. The same was taken on file on 13.05.2004. It would be abundantly clear that the sample of toned milk was taken on 22.07.2003, the Food Inspector presented the complaint on 31.03.2004, and after it was taken on file on 13.05.2004, notice under Section 13(2) was issued to the petitioners on 18.05.2004. Thus, it would be quite evident that a notice along with the report of the analyst was sent on 18.5.2004, after an interval of nearly 10 months. By that time, the milk sample would have become decomposed. Thus, the right of the <https://www.mhc.tn.gov.in/judis> accused available under Section 13(2) has been frustrated, due to the inordinate delay and inaction on the part of the prosecution."

The dictum laid down in the above said decision would squarely apply to the facts of the present case also. In the case on hand also, there is an inordinate delay of 1 year 8 months in lodging the complaint. Further, as pointed by the learned counsel for the petitioner, even if the milk sample would have been sent for analysis, by that time, it would have become decomposed. The petitioners/accused have been deprived of their right to have the analysis report from the Central Food Laboratory as provided under Section 13(2) of the Prevention of Food Adulteration Act. Considering the facts and circumstances of the case, I am of the opinion that there is no useful purpose is going to be served if the trial is allowed to continue. It is a fit case to quash the complaint.

The above dictum squarely applicable to the facts of the case.”

13.Considering the aforesaid facts and circumstances of the case and in view of the above said judgments of this Court, the mandatory provision under Section 42(3) of the Act has not been followed and thereby, the continuation of the proceedings is abuse of process of law. Therefore, the charge sheet is liable to be quashed.

<https://www.mhc.tn.gov.in/judis> P. DHANABAL,J.

Mrn

14.In the result, the Criminal Original Petition is allowed and the charge sheet in S.T.C.No.4898 of 2019 is hereby quashed. Consequently, connected miscellaneous petitions are closed.

24.08.2023 NCC : Yes/No Internet : Yes/No Index : Yes/No Mrn To

- 1.The Judicial Magistrate No.I, Rajapalayam, Virudhunagar District
- 2.The Food Safety Officer, Rajapalayam Municipality and Union, Virudhunagar District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

24.08.2023 <https://www.mhc.tn.gov.in/judis>