

K.Kanniyappan vs The Food Safety Officer on 10 January, 2022

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

1 CRL.O.P.(MD)NO.2872 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.2872 of 2021 and
CRL.M.P.(MD)Nos.1532 & 1533 of 2021

1. K.Kanniyappan,
S/o.V.K.Kanniyappan,
Business Manager,
Chakra Drugs (P) Ltd.,
No.160, 161, Tamil Nadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18.
2. S.L.Sethu Madhava,
S/o.Lakshmanan,
Director,
Chakra Drugs (P) Ltd.,
No.160, 161, Tamil Nadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18.
3. S.Vasumathi,
S/o.S.L.Sethu Madhava,
Director, Chakra Drugs (P) Ltd.,
No.160, 161, Tamil Nadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18.
4. Chakra Drugs (P) Ltd.,
No.160, 161, Tamil Nadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18. ... Petitioners / Accused Nos.1 to 4

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CRL.O.P.(MD)NO.2872

Vs.

The Food Safety Officer,
Madurai Corporation, (Code No.579),
O/o.The Designated Officer,
Food Safety and Drug
Administration Department, (Food Wing),
Viswanathapuram,
Madurai – 625 014.

... Respondent / Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records and quash the proceedings in S.T.C.No.229 of 2020 on the file of the Judicial Magistrate Court, Vadipatti, Madurai.

For Petitioner : Mr.M.Rajaraman

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

ORDER

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

2. This criminal original petition has been filed to quash the impugned proceedings in S.T.C.No.229 of 2020 on the file of the Judicial Magistrate, Vadipatti.

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3. It is a private complaint filed by the respondent for the offences under Sections 51 and 59(i) of the Food Safety and Standards Act, 2006. The case of the prosecution is that on 19.06.2019 at about 10.00 a.m., he inspected the premises bearing Door Nos.160, 161, Tamil Nadu Food Articles Commercial Complex, Alanganallur Road, Chikkandar Savadi, Madurai – 18. Chakra Drugs (P) Ltd., was operating from the said premises. They were dealing in “Whole Turmeric Finger”. The sample was taken and it was also sent for analysis. The same was found to be substandard and unsafe. Hence, the impugned complaint was instituted.

4. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the premises in question was unlicensed. But then, the prosecution has not

<https://www.mhc.tn.gov.in/judis> been instituted for the offence under Section 63 of the Act. The complaint was only filed for the offences under Sections 51 and 59(i) of the Act.

6. It has been pointed out by the learned counsel appearing for the petitioners that the first petitioner Kanniyappan has been nominated as the officer responsible for the complaint with all the statutory requirements. The learned counsel also drew my attention to the decision of the Hon'ble Supreme Court reported in AIR 1992 SC 1168 (R. Banerjee And Ors. Vs. H.D. Dubey And Ors.). He also placed reliance of the decisions reported in 2011 (1) SCC 176 (Pepsico India Holdings Pvt. Ltd., V. Food Inspector and Ors.) and 2011 (4) Crimes 634 (Mad) (R.Dharmarajan and Ors. V. G.Jegatheesan) and an unreported Judgment dated 07.01.2015 in CrI.A.No.178 of 2003 (Madras Fertilizers Ltd., Vs. The State of Tamil Nadu). The ratio laid down in AIR 1992 SC 1168 is that when there has been a valid nominee appointed by the company, it is only the nominee who can be prosecuted. The question of prosecuting the directors will not arise at all.

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7. In the case on hand, the first petitioner Kanniyappan has been nominated under Form-IX and in terms of Rule 2.5.1 of the Food Safety and Standards Rules, 2011. Therefore, it is only the fourth accused company and the first accused Kanniyappan who will have to face the prosecution. There are no specific averments regarding petitioners 2 and 3. Applying the ratio laid down in the aforesaid decision, the impugned proceedings are quashed in so far as petitioners 2 and 3 are concerned. Petitioners 1 and 4 will have to necessarily establish their defence before the Court below in a regular trial. All the contentions and the defences of petitioners 1 and 4 are left open.

8. This criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Index	: Yes / No
Internet	: Yes/ No
PMU	

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.
<https://www.mhc.tn.gov.in/judis> G.R.SWAMINATHAN,J.

PMU To:

1. The Judicial Magistrate, Vadipatti, Madurai.

2. The Food Safety Officer, Madurai Corporation, (Code No.579), O/o.The Designated Officer, Food Safety and Drug Administration Department, (Food Wing), Viswanathapuram, Madurai – 625 014.

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

10.01.2022 <https://www.mhc.tn.gov.in/judis>