

R.Mohan vs The State Of Tamil Nadu on 11 July, 2022

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

Crl.O.P.No.6

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6202 of 2020
and Crl.M.P.No.3469 of 2020

R.Mohan

...Peti

-Vs-

The State of Tamil Nadu
Rep by Food Safety Officer,
Code No.554,
Coimbatore Corporation Zone,
Tamil Nadu Food Safety
and Drug Administration Department,
Race Course,
Coimbatore – 641 018.

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Prayer: Criminal Original Petition filed under Section 482 of Code
Criminal Procedure, to call for the records of complaint in S.T.C.N
of 2020 pending on the file of the Judicial Magistrate No.VI, Coimb
and quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.M.Manokaran
For Mr.N.Ponraj

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

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Crl.O.P.No.

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.230 of 2020 on the file of the Judicial Magistrate No.VI, Coimbatore, thereby taken cognizance for the offences punishable under Section 59(i) of the Food Safety and Standards Act, 2006 (herein after called as “the FSS Act”) as against the petitioner.

2. The respondent filed complaint under Section 190(1)(A) and 200 of Cr.P.C., for the offences under Section 59(i) of the Food Safety and Standard Act as against the petitioner and others. The crux of the complaint is that on 31.08.2019, the respondent inspected the petitioner hotel situated at 282/1A, Sree Dksha's Sanshray, Thoondamuthoor Main Road, Vadavalli, Coimbatore, and purchased 1 Kg of Chilly Chicken which was ready for consumption for the public. The respondent had sent those sample on the very same date i.e., on 31.08.2019, to the Food Analysis laboratory at Madurai.

3. The food analyst sent report dated 18.09.2019 and opined that the sample is unsafe under Section 3(1)(zz) of the FSS Act, since it <https://www.mhc.tn.gov.in/judis> contains added colouring matter sunset yellow, the addition of which is not permitted under the Food Safety and Standards Rules 2011. The first accused is the General Manager of the hotel and the second accused is the owner of the hotel, who are responsible for the production of unsafe food for public. On production of report from the food analysis, the respondent occurred sanction to initiate prosecution as against the accused persons. On receipt of the sanction, the complaint was filed on 08.01.2020, and the same has been taken cognizance in S.T.C.No.230 of 2020 on the file of the learned Judicial Magistrate No.VI, Coimbatore.

4. The learned counsel appearing for the petitioner submitted that the complaint itself vitiated on the ground that it is in violation of Section 42(2) of the FSS Act. According to said Section, the food analyst shall analyse and send the analysis report within a period of 14 days from the date of receipt of sample from the respondent. In the case on hand, the respondent sent the sample on 31.08.2019 whereas the food analysis report was given on 18.09.2019 which is much after 14 days. He further submitted that the samples containing added colouring matter sunset yellow is not all an offence under Section 3(1)(zz) of the FSS Act. As per <https://www.mhc.tn.gov.in/judis> the table 8 of Appendix A column, for processed meat and poultry products, the contain of sunset yellow FCF level is 100 mg/kg. Whereas in the case on hand sunset yellow colour content is only 26.66 mg/kg. Therefore no offence is made out as against the petitioner.

4.1. He further submitted that as far as the prepared food is concerned the minimum quantity of sample which has to be sent to food analyst is not less than 500 grams. Whereas in the case on hand, the respondent purchased 1 Kg of chilly chicken and divided into four samples and one sample was sent to food analyst for analyzing the same. Therefore, the respondent failed to follow the mandatory provisions and the entire proceeding is liable to be quashed. Hence, he prayed for quashment of the entire proceedings.

5. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that as far as the first ground is concerned, as per the provisions of 46 (3)(ii) of the FSS Act, the food analyst has to send request for extension of time. Accordingly, the food analyst had sent request dated

10.09.2019 to the designated officer and the <https://www.mhc.tn.gov.in/judis> Commissioner of Food Safety, thereby requested for extension of time of 600 days time and due to lack of manpower and sudden influx of large number of samples.

5.1. He further submitted that the sample which was sent for analysis is unsafe under Section 3(1)(zz) of the FSS Act, since it contains added colouring matter sunset yellow, which is not permitted under food category system 16.0 of Appendix 'A' of Food Products Standards and Food Additives Regulation, 2011 and it is punishable under Section 3(1)(zz) of the FSS Act. Therefore, the respondent rightly initiated the alleged complaint as against the petitioner and all the grounds raised by the petitioner are mixed question of facts and it cannot be considered in the quash petition.

6. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.

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7. The learned counsel appearing for the petitioner raised grounds on three folds to quash the entire proceedings.

(i) The first one is - the respondent filed complaint violating the provisions under Section 42(2) of the FSS Act, since the food analyst failed to send his report within a period of 14 days from the date of receipt of the sample.

(ii) The second one is - the colour material sunset yellow can be added 100 mg per one Kg for processing of meat and poultry products in whole pieces or cut and in heat-treated processed comminuted meat and poultry products it can be added 200 mg per one Kg. As per the food analysis report, the added coloring material viz., sunset yellow is 26.6 mg per Kg. Therefore the petitioner cannot be liable to punish for the offences under Section 59(i) of the FSS Act.

(iii) The last one is - the sample which was sent to the food analyst for analysis should be not less than 500 grams in respect of prepared food is concerned as per the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011. In the case on hand, only 250 grams of sample was sent to the food analyst.

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8. As far as the first ground is concerned, the Section 46(3)(ii) of the FSS Act provided that in case the sample cannot be analyzed within a period of 14 days of its receipt, the analyst shall inform the designated officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis. Accordingly, the food analyst has sent his communication dated 10.09.2019, thereby informed to the designated officer and Commissioner of Food Safety and sought for further time, due to lack of manpower and sudden influx of large number of samples.

9. As far as the second ground raised by the petitioner is concerned, as per the Food Safety and Standard Rules and Regulations, 2008, appendix A in 16.0 speaks about the prepared foods. The table No.8 in respect of the processed meat and poultry products in whole pieces or cuts, the maximum recommended level with regard to sunset yellow FCF is 100 mg/kg and in respect of heat-treated, processed comminuted meat and poultry products is 200 mg per kilogram. Whereas in the case on hand, as per the report of the food analyst, the added coloring matter sunset yellow is 26.66 mg/kg. Therefore, it cannot be <https://www.mhc.tn.gov.in/judis> said that the sample of prepared food is unsafe, since the sunset yellow added colouring matter maximum recommended level is 100 mg/kg.

10. Insofar as the prescribed quantity of samples to be supplied to the food analyst is 500 grams in respect of prepared food. Admittedly, in the case on hand, the respondent had purchased 1 kg of prepared food and divided into four samples each containing 250 grams and one of the sample was sent to the food analyst on 31.08.2019. Therefore, as per the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, in Chapter 2.3.1, the quantity of sample to be sent to the food analyst in respect of the prepared food is 500 grams. It is clearly violated by the respondent as such the entire complaint is nothing but clear abuse of process of law.

11. In view of the above discussions, the impugned complaint is nothing but clear abuse of process of law and this Court has no hesitation to quash the proceedings as against the petitioner herein. Accordingly the proceedings in S.T.C.No.230 of 2020 on the file of the Judicial Magistrate No.VI, Coimbatore, is hereby quashed. <https://www.mhc.tn.gov.in/judis>

12. In the result, the Criminal Original petition stands allowed. Consequently, connected miscellaneous petition is closed.

11.07.2022 Internet: Yes Index : Yes/No Speaking/Non Speaking order rts To

1. The Judicial Magistrate No.VI, Coimbatore.

2. The Food Safety Officer, State of Tamil Nadu Code No.554, Coimbatore Corporation Zone, Tamil Nadu Food Safety and Drug Administration Department, Race Course, Coimbatore – 641 018.

3. The Public Prosecutor, Madras High Court, Chennai.

<https://www.mhc.tn.gov.in/judis> G.K.ILANTHIRAIYAN. J, rts 11.07.2022
<https://www.mhc.tn.gov.in/judis>