

Sugapriya Mineral Water Company vs Food Safety Officer on 28 July, 2022

Author: V.Sivagnanam

Bench: V.Sivagnanam

CrI.O.P.(MD) No.127

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.O.P.(MD) No.12769 of 2022

and

CrI.M.P(MD)Nos.8085 & 8086 of 2022

Sugapriya Mineral Water Company
Proprietor by
S.Ramarasu, Age 63,
S/o Sundarappa Nayakkar,
No.6/24C, Pillayarnatham,
Srivilliputhur – 626 125,
Virudhunagar District.

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Vs.

Food Safety Officer,
Srivilliputhur Municipality and Union,
Virudhunagar District.

... Responden

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records and quash STC No.732 of 2020 on the
of the learned Judicial Magistrate No.2, Srivilliputhur, Virudhunag

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CrI.O.P.(

For Petitioner : Mr.S.Venkatesh for
A.Sivaji

For Respondent : Mr.E.Antony Sahaya Prabaha
Addl. Public Prosecutor

ORDER

This criminal original petition is filed to quash the proceedings in STC No.732 of 2020 on the file of the learned Judicial Magistrate No.2, Srivilliputhur, Virudhunagar District.

2. It is stated by the petitioner that the petitioner is the proprietor of the Sugapriya Mineral Water Company. Based on the Whatsapp message sent by one Venkatasalam, son of Balasubramaniam, the respondent/Food Safety Officer made an inspection on 20.08.2019 and took samples and sent it for analysis. The Analyst sent a report stating that the said sample is substandard. Thereafter, the petitioner himself filed an application for sending the sample for Referral Lab. The Referral Lab after analyzing, sent a report as the sample was 'unsafe'. Hence, the Food Safety Officer filed a prosecution case against the petitioner.

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3.The learned counsel for the petitioner further submitted that the criminal prosecution initiated by the respondent is unsustainable on the ground that it is not prosecuted within a period of one year as contemplated under Section 77 of the Food Safety and Standards Act, 2006. He further submitted that the samples were collected on 20.08.2019 and the first report was received on 01.10.2019 and the second report was received on 09.12.2019. The Commissioner of Food Safety sanctioned for prosecution on 04.02.2020. Thereafter, within a period of one year, the prosecution has not been filed. Further, the Food Safety Officer gave requisition letter on 18.08.2020 to condone the delay on the ground of Covid-19, but the learned Judge has not jurisdiction to condone the delay of belated prosecution in view of Section 77 of the above said Act. There is no specific provision enabling the Judicial Magistrate to condone the period of belated prosecution. Hence, the learned counsel prays for setting aside the prosecution.

4. The learned Additional Public Prosecutor appearing for the respondent contended that the samples were taken on 20.08.2019 and on <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.12769 of 2022 the same day, the samples were sent to the Referral Lab. After receiving the report from the Referral Lab on 09.12.2019, the competent authority agreed for sanction of prosecution on 04.02.2020, but due to Covid-19 situation, the prosecution case was not filed directly and dropped the complaint in a drop box before the trial Court within the time, hence, there is no delay. He further submitted that during the period of Covid – 19, the Hon'ble Supreme Court condoned the delay of period for filing the prosecution. Hence, he prays for dismissal of this petition.

5. I have considered the rival submission of both the learned counsel appearing on side and perused the materials available on records.

6. A perusal of the records reveals that the petitioner is an accused in STC No.732 of 2020 on the file of the Judicial Magistrate No.2, Srivilliputhur. The petitioner is the proprietor of the mineral water company. Based on the whatsapp message sent by one Venkatasalam, son of Balasubramaniam, the Food Safety Officer went the house of the said Venkatasalam on 20.08.2019 and took samples of the water in the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.12769 of 2022 presence of the one Jaffer Ali and sent it for food analysis and received a report from the Referral Lab on 01.10.2019 as substandard. After receiving the notice, this petitioner filed an application on 02.11.2019 to send the sample to the Referral Lab. The Referral Lab sent the report on 09.12.2019 stating that the sample is 'unsafe'. Hence, the Food Safety Officer obtained sanction for prosecution from the Commissioner on 04.02.2020, but the complaint was filed only 10.09.2020.

7. On perusal of the records reveals that on 18.08.2020, the Food Safety Officer had filed the petition before the Judicial Magistrate No.2, Srivilliputhur to condone the delay. The learned Judicial Magistrate on 11.09.2020 passed an order to condone the delay of prosecution. Section 77 of the Food Safety and Standards Act, 2006, reads as follows:-

“Time limit for prosecutions: Notwithstanding anything contained in this Act, no Court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence.

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.12769 of 2022 prosecution within an extended period of upto three years.”

8. In view of the above, the Commissioner of Food Safety may empower to grant sanction of prosecution and can approve the prosecution within an extended period of upto three years. But the power of the Court for taking cognizance of an offence under this Act is limited upto the period of one year. There is no enabling provision to the Court for condoning the delay of any prosecution for taking cognizance of the offence under the Act after the period of one year from the date of commission of offence. In this case, the offence has been committed on 20.08.2019 and the prosecution has to be filed on or before 19.08.2020, but in this case, the complaint is filed on 10.09.2020 i.e., beyond the period of one year. Therefore, in view of Section 77 of the Act, the Court had no power for taking cognizance of the offence after expiry period of one year from the date of commission of offence. It is the case of barred by limitation and it is liable to be quashed.

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9. Accordingly, the proceedings in STC No.732 of 2020 pending on the file of the Judicial Magistrate No.2, Srivilliputhur, Virudhunagar District is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

28.07.2022 Internet:Yes Index:Yes/No Speaking/Non speaking order skn To

1.The Food Safety Officer, Srivilliputhur Municipality and Union, Virudhunagar District.

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

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12769 of 2022 V.SIVAGNANAM, J.

skn Crl.O.P.(MD) No.12769 of 2022 and Crl.M.P(MD)Nos.8085 & 8086 of 2022 28.07.2022

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