

R.Paduvairajan vs The Food Safety Officer on 1 September, 2021

Author: J.Nisha Banu

Bench: J.Nisha Banu

Crl.O.P.(MD).No.1703

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD).Nos.17038 and 17039 of 2018
and
Crl.M.P.(MD).Nos.7531 to 7533 of 2018

1.R.Paduvairajan
2.K.Rajendran

... Petitioners/A1 & A2 in Crl.O.P.(MD).No.17038 of

S.Kathirvel ... Petitioner/A3 in Crl.O.P.(MD).No.17039 o

-VS-

The Food Safety Officer,
Alwarthirunagari Block (321),
Alwarthirunagari Panchayat Union Campus,
Thenthiruperai 628 623,
Thootukudi District.

... Respondent in both Crl.

PRAYER: Criminal Original Petitions are filed under Section 482 of Cr.P.C., to quash the proceedings in S.T.C.No.909 of 2018 on the fi Judicial Magistrate, Srivaikundam.

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

Crl.O.P.(MD)

For Petitioners : Mr.M.Rajaraman

For Respondent : Mr.S.Ravi

Standing counsel for the Stat

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.No.909 of 2018, on the file of the Judicial Magistrate Court, Srivaikundam.

2. The case of the prosecution is that on 20.09.2017, at about 11.30 a.m., the complainant/Food Safety Officer had gone to the shop of the petitioners 1 and 2/A1 and A2, with an intention to take food samples. At that time, A1 was selling food items to the general public. The complainant had enquired A1 about Iyarkai Gingelly Oil and he stated that he had 15 packets measuring 100 ml. each and after sale, there were 12 packets of Iyarkai Oil. According to the A1 and A2, they purchased the above oil packets from A3 who is the manufacturer. The complainant had taken samples of the said oil and sealed the same in accordance with the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD).No.17038 and 17039 of 2018 procedure as contemplated under the Food Safety and Standards Act, 2006, and sent the same to the Food Analyst on 21.09.2017. The Food Analyst has sent a report on 14.02.2018, stating that the sample was sub-standard. A3 preferred an appeal against the report of the Food Analyst and the sample was sent to Referral Laboratory. The Referral Laboratory had found that the sample was unsafe. Therefore, a case has been registered against A1 to A3 under Section 59(i) of the Food Safety and Standards Act. Hence, this petition.

3. The learned counsel for the petitioners would state that the respondent had not followed the mandatory requirements of the Act in drawing the samples and had violated the provisions of 2.4.1(5) of the Food Safety and Standards Rules, 2011. He would further state that the learned Magistrate has failed to consider that as per Section 42 of the Food Safety and Standards Act, 2006, the Food Analyst after receiving the sample from the Food Safety Officer, shall analyse the sample and send the analysis report, mentioning the method of sampling and analysis, within fourteen <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD).No.17038 and 17039 of 2018 days to Designated Officer with a copy to Commissioner of Food Safety. In the present case, the sample had been taken on 20.09.2017 and the same had been sent to the Food Analyst on 21.09.2017, but the Food Analyst had given his report only on 14.02.2018 which is contrary to Section 42 of the Act. As per Section 46(3)(ii) of the Act, in case, the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety, giving reasons and specifying the time to be taken for analysis. In this case, both the provisions Sections 42 and 46 have not been followed.

4. He would also state that the learned Magistrate failed to consider that as per the report of the Referral Food Laboratory, Mysore, dated 12.04.2018, the sample had been analysed during the period between 21.03.2018 and 09.04.2018, which is apparently after the expiry of the product. The manufacturing date in the label of the produce was August 2017 and the expiry date is six months from the date of manufacture. Accordingly, the product lost its validity in the month of January

2018, and <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD).No.17038 and 17039 of 2018 only thereafter, the product has been tested by the Referral Food Laboratory and found to be unsafe. Therefore, the criminal proceedings initiated against the petitioners herein, based on the report of the Referral Food Laboratory, which has admittedly tested the expired product, are liable to be set aside.

5. The learned Standing Counsel for the respondent would state that only after following the provisions of the Act, sample had been drawn and tested, as such, there is no violation of the provisions of the Act. Thus, the interference of this Court is not necessary.

6. Heard the learned counsel for the petitioners as well as the respondent.

7. As per Rule 2.4.1(5) of the Food Safety and Standards Rules, 2011, in case, where the sample is drawn from an open container, the person drawing the sample shall also draw a sample from a container in original condition of the same article bearing the same declaration, if such container <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD).No.17038 and 17039 of 2018 is available, and intimate the same to the Food Analyst. As per Section 42 of the Food Safety and Standards Act, 2006, the Food Analyst after receiving the sample from the Food Safety Officer, shall analyse the sample and send the analysis report, mentioning the method of sampling and analysis within fourteen days to the Designated Officer, with a copy to Commissioner of Food Safety. In the present case, the sample had been taken on 20.09.2017 and sent to the Food Analyst on 21.09.2017, and the Food Analyst has given his report only on 14.02.2018. Thus, there is a violation of Section 42 of the Act. Further, As per Section 46(3)(ii) of the Act, in case, the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety, giving reasons and specifying the time to be taken for analysis. In this case, that has not been followed.

8. Apart from the above violation of mandatory requirements of the Act, the learned Magistrate has also failed to consider the fact that the Referral Food Laboratory, Mysore, has tested the sample after its expiry <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD).No.17038 and 17039 of 2018 date and found to be unsafe and based on which, the case has been registered against the petitioners, which in my considered opinion, is a total non-application of mind. Therefore, I am inclined to quash the criminal proceedings initiated against the petitioners

9. Accordingly, these Criminal Original Petitions are allowed and the proceedings in S.T.C.No.909 of 2018, on the file of the Judicial Magistrate Court, Srivaikundam, are quashed. Consequently, connected Miscellaneous Petitions are closed.

01.09.2021

Index : Yes / No
Internet : Yes / No
Issue order copy on 29.11.2021.
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To

1. The Food Safety Officer,
Alwarthirunagari Block (321),
Alwarthirunagari Panchayat Union Campus,
Thenthiruperai 628 623,

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

Crl.O.P.(MD).No.17038

Thootukudi District.

- 2.The Judicial Magistrate,
Srivaikundam.

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

Crl.O.P.(MD).Nos.17038 and 17039 of 20

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