

# Bharathi vs The State Rep By Its on 3 April, 2023

Crl.O.P.No.2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM:

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.25769 of 2019 and  
Crl.M.P.Nos.13754 &13755 of 2019

1.Bharathi  
2.Ramapriya  
3.Venkateswari  
4.Lavanya  
5.Venkatesan  
6.Kumaraguru  
7.Gopala Vigneshwaran  
8.Vinod  
9.Rajeshwaren  
10.Hamritha Shankar  
11.Sree Akshayam(Company)  
12. Arunkumar

... Pet

Vs.

The state rep by its  
Food Safety Officer,  
Code No.536,  
Anna Nagar Area,  
Tamilnadu Food Safety Department,  
No.33, West Jones Road,  
Saidapet,  
Chennai District

... Respon

1/8

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

Crl.O.

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P call for the records in C.C.No.5361 of 2019 on the file of Vth Metropo Magistrate at Egmore and quash the same.

For Petitioners : Mr.R.Thirumoorthy

ORDER

This Criminal Original petition has been filed to quash the private complaint filed for the offence under Section 59(i) of Food Safety and Standard Act 2006 by the respondent herein.

2. It is alleged in the complaint that on 21.01.2019, the respondent had drawn a sample of a dish namely 'Panneer Butter Masala' from the petitioners hotel and it was sent for analysis to Food Analyst, Food Analysis Laboratory, Thanjavur on 21.01.2019. On 05.02.2019, the Food Analyst had sent a report stating that it was unsafe. Thereafter, aggrieved by the report given by the Food Analyst, the petitioner had made an appeal to the Designated Officer to send the 2nd part of the sample to the referral food laboratory and the referral food laboratory had sent a report on 13.03.2019. Thereafter, the Designated Officer had recommended for prosecution on 21.03.2019.

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

3. The learned counsel for the petitioner would submit that the impugned complaint has to be quashed for violation of the mandatory provisions under the Food Safety and Standards Act, 2006. He would further submit that the Food Analyst had sent his report beyond the period of 14 days from the date of drawing the sample. The sample was drawn on 21.01.2019, whereas the report was sent on 05.02.2019 which is beyond the period of 14 days. Secondly, the designated officer had violated the provisions under Section 42(3) of the Food Safety and Standards Act, 2006 by recommending the prosecution to the Commissioner of Food Safety after 14 days which is in violation of Section 42(3) of the Act.

4. The learned Additional Public Prosecutor would submit that Food Analyst had sent his report on the 15th day and that would not be in violation of the Act in view of the judgment of this Court reported in 2021 SCC OnLine Mad 11399 in the case of M.Thangaraj Vs State rep by the Food Safety Officer which is extracted hereunder:-

“8. Reading of the above provision shows that within 14 days from the date of receipt of the report, the authority has to sanction <https://www.mhc.tn.gov.in/judis> prosecution. The respondent submitted that the designated officer received the Analysis report on 06.05.2019. 11.05.2019 and 12.05.2019 are Saturday and Sunday. 18.05.2019 and 19.05.2019 are also Saturday and Sunday. So, succeeding working days started from 09.05.2019 and so 14 days will be completed only on 24.05.2019. The recommendation was sent on 22.05.2019. So, according to the respondent, there was no procedure or violation. But however it is seen that from 06.05.2019, 14 days expires on 21.05.2019.

There was a delay of four days and these four days are tried to be compensated by the respondent stating that there are four intervening holidays. Insofar as limitation is concerned, it can be calculated from the date of receipt of a report. Those intervening holidays cannot be added to the

limitation period. Even though, such a calculation on the part of the respondent is not admissible and acceptable, the petitioner must substantiate prejudice that has been caused to him because of the delay of four days in making recommendation. Absolutely all the records submitted by the trial Court shows that explanation offered by the respondent in the counter affidavit is factually wrong one. The designated officer, Food Safety, Sivagangai has addressed a letter in 499/A2/2019 dated 22.05.2019 to the Commissioner, Tamil Nadu Food Safety and Drug Administration Department seeking sanction for launching prosecution, wherein, it has been mentioned that from the date of receipt of Food Analysis Report within 14 days, recommendation has been sent. The report has been said to be <https://www.mhc.tn.gov.in/judis> received on 06.05.2019 as mentioned in the Counter affidavit. Copy of the same was supplied to the petitioner informing him about his right to appeal. But the petitioner appears to have not utilised the opportunity. So it appears that there is a delay of two days only. But how this two days delay prejudiced case of the petitioner is not explained by him. As mentioned above, he has not availed the opportunity of filing an appeal against the Food Analysis Report. The main purpose is that the right of the accused should not be defeated by late filing of prosecution. So when the right of the accused persons to comply for retesting should not be defeated. But here, there is no such prejudice, since within one year the complaint was filed”.

5. As regards Section 42(3) of the Food Safety and Standards Act, 2006, this Court finds that the Designated Officer had not violated the said provision. The Designated Officer had sent its recommendation after the report of the referral food laboratory. The submission of the petitioner is that the recommendation ought to have been sent within a period of 14 days from the date of the report of the Food Analyst cannot be countenanced. It is his own case that he asked for the sample to be sent to the referral food laboratory. The Designated officer cannot be expected to recommend the prosecution without waiting for the report of the referral food laboratory. The <https://www.mhc.tn.gov.in/judis> referral food laboratory had sent its report on 13.03.2019. Thereafter, the Designated Officer had sent its recommendation for prosecution on 21.03.2019.

6. In view of the above, this Court finds that the mandatory provision have not been violated. The other submission namely that the testing was not done in accordance with the Act and the impugned prosecution is unwarranted has to be agitated only before the Trial Court.

7. Considering the above facts, this Court is not inclined to entertain this quash petition. The petitioner is at liberty to raise all the points before the Trial Court. The Trial Court may consider the submissions of the petitioner without being influenced by any of the observations made in this order.

8. Accordingly, this Criminal Original Petition is dismissed.

Consequently connected miscellaneous petitions are closed.

03.04.2023 Index: Yes/No Speaking / Non Speaking Order nr <https://www.mhc.tn.gov.in/judis> To

1.Food Safety Officer, Code No.536, Anna Nagar Area, Tamilnadu Food Safety Department, No.33, West Jones Road, Saidapet, Chennai District

2.The public Prosecutor, High Court of Madras.

<https://www.mhc.tn.gov.in/judis> SUNDER MOHAN, J nr Crl.O.P.No.25769 of 2019 and Crl.M.P.Nos.13754 &13755 of 2019 03.04.2023 <https://www.mhc.tn.gov.in/judis>