

# M.Gunasekara Pandian vs The Food Safety Officer on 27 July, 2022

**Author: V.Sivagnanam**

**Bench: V.Sivagnanam**

Crl.O.P.(MD) N

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12238 of 2022

and

Crl.M.P(MD) Nos.7741 & 7742 of 2022

M.Gunasekara Pandian

... Petitioner/Accused

Vs

The Food Safety Officer,  
Code No.109 & 120,  
Chellampatti & Vadipatti Taluk,  
Madurai.

.... Respondent /Compl

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.  
praying to call for records and to quash the proceedings in S.T.C.N  
2022 on the file of the Judicial Magistrate, Vadipatti in so far as  
petitioner.

For Petitioners : Mr.M.Rajaraman

For Respondent : Mr.E.Antony Sahaya Prabaha  
Additional Public Prosecut

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

## ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings in S.T.C.No.5 of 2022, on the file of the Judicial Magistrate, Vadipatti.

2. The learned counsel for the petitioner/A3 submitted that the petitioner/M.Gunasekara Pandian is the proprietor of the M/s.Gnanam Brother's. The second accused is the Company and they filed a nomination of persons in Form – 9 as contemplated Sections 2.4.1(5) of the Food Safety and Standards Rules, 2011. The license was applied with the nomination on 27.06.2019 and the license was granted on 04.07.2019. The sample was taken by the Food Safety officer on 25.08.2020 subsequent to the nomination filed by the proprietor. In view of the nomination, one L.Murugan was nominated for the purpose of responsible of the Food Safety. The Section 66 of the Food Safety and Standards Act, 2006, speaks about the responsible of any offence committed by the companies. As per Section 66 of the said Act, where a company has different establishments or branches or different units in any establishment or branch, the concerned <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12238 of 2022 Head or the person in-charge of such establishment, branch, unit, nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit. Therefore, the Food Safety Officer can prosecute against only nominated person and not other persons. Hence, the learned counsel prays for quashing the proceedings initiated against this petitioner.

3. The learned Additional Public Prosecutor appearing for the respondent submitted that one L.Murugan was nominated person in the second accused company.

4. I have considered the matter in the light of the submissions made by the learned counsel appearing on either side.

5. On a perusal of the records, it reveals that on 25.08.2020, at about 12.30 p.m, the Food Safety Officer inspected the second accused company viz., M/s.Gnanam Brothers and purchased 4 packets weighing each 500 ml “Kalaimaan Diamond RBD Palmolein Oil” by paying Rs.160/- and forwarded to the Food Analysts and obtained a report stating that the above <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12238 of 2022 products are misbranded, sub-standard, unsafe and prohibited and restricted on sales. After getting sanction from the concerned authority, they are prosecuting the petitioner and two other persons. Now, third accused is challenging the proceedings in S.T.C.No.5 of 2022 on the ground that the second accused/proprietor appointed one L.Murugan as nominated person for responsibility of food safety and he shall be liable for contravention. Section 66 of the Food Safety and Standards Act, 2006, reads as follows:

“Where an offence under this Act which has been committed by a company, every persons who at the time the offence was committed was in charge of, and was

responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit, nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit.....” <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12238 of 2022

6. Perusal of the above said provision clearly shows that if one unit nominated any person as responsible for Food Safety, he will be liable for contravention in respect of branch or unit. In this case, one L.Murugan was nominated as a responsible person for the Food Safety of the Unit.

Therefore, the Food Safety Officer can prosecute the nominated person if any contravention of the Act. This petitioner is being not a responsible person, for any contravention, he cannot be prosecuted. Therefore, continuation of the criminal proceedings against this petitioner would be an abuse of the process of the Court. Hence, the Criminal Proceedings in S.T.C.No.5 of 2022, on the file of the Judicial Magistrate, Vadipatti is liable to be quashed.

7. Accordingly, the Criminal Proceedings in S.T.C.No.5 of 2022, on the file of the Judicial Magistrate, Vadipatti is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

27.07.2022 Internet:Yes./No Index:Yes/no ebsi <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12238 of 2022 To

1. The Judicial Magistrate, Vadipatti.

2. The Food Safety Officer, Code No.109 & 120, Chellampatti & Vadipatti Taluk, Madurai.

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

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ebsi ORDER IN 27.07.2022.

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