

A.Rajappa vs The Food Safety Officer on 31 August, 2021

Author: J.Nisha Banu

Bench: J.Nisha Banu

Crl.O.P(MD)No

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD).No.8306 of 2018

and

Crl.M.P(MD)No.3729 of 2018

1.A.Rajappa
2.S.Arumghaperumal
3.A.Subramanian

... Petitioners/Accused No

-VS-

The Food Safety Officer,
Nagercoil Block-II

... Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to quash the proceedings in S.T.C.No.135 of 2017 on the file of the Judicial Magistrate No.II, Nagercoil.

For Petitioners : Mr.R.Parthiban
For Respondent : Mr.S.Antony Sahaya Prabahar
Government Advocate (Crl.Side)
ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.135 of 2017 on the file of the Judicial Magistrate No.II, Nagercoil.

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2.The learned counsel for the petitioners would state that the petitioners are running grocery business in the name and style of M/s.Subramanian at Nagercoil. On 22.10.2016, the respondent had taken samples of Poppy (khas-khas), in a polythene bag, from the petitioners' shop and had sent

the same to the Food Analyst on the same day. As per rule 2.4.1.7 of the Food Safety and Standards Rules, 2011, sample of article of food for the purpose of analysis, shall be taken in a clean dry bottle or jar or in other suitable container which shall be closed to prevent leakage, evaporation or to avoid entrance of moisture in case of dry substance and shall be carefully sealed. According to the learned counsel, the said rule had not been followed while taking sample from the petitioners' shop.

3.He would further state that a report was received from the Food Analyst, stating that the sample conforms to the standards for the tests carried out and specified for "poppy" under regulation 2.9.16(1) of Food Safety and Standards (FPS & FA) Regulation 2011. Thereafter, the respondent had sent the sample which was in the custody of the Designated Officer, to the referral lab and the referral laboratory tested <https://www.mhc.tn.gov.in/judis/> the product from 03.03.2017 to 04.04.2017 after six months from taking the sample and has given a report stating that the sample is "unsafe" as defined under Section 3(1)(zz)(ix) & (xi) of the Food Safety and Standards Act, 2006, as it does not conform to the standards laid down for poppy(khas-khas) under the provisions of the Food Safety and Standards (Food products standards and Food Additives) Regulations, 2011 and it is further stated that the sample was infested with live and dead insects and having musty odour. Based on the report of the referral laboratory, criminal proceedings have been initiated against the petitioners in STC.No.135 of 2017 before the Judicial Magistrate No.II, Nagercoil, under the provisions of the Food Safety and Standards Act, 2006. Hence, this criminal original petition.

4.The learned counsel for the petitioners would contend that while taking or referring the sample to the laboratory, the respondent had not stated that the sample was infested with insects and it was also not stated in the report of the Food Analyst. He would further state that as per rule 2.4.6.2 of the Food Safety and Standards Rules, 2011, the designated officer shall forward one part of the sample, under appropriate condition, <https://www.mhc.tn.gov.in/judis/> as specified for the product including transport, to retain the integrity of the sample. According to the learned counsel, the respondent had allowed the sample to deteriorate and sent the same to laboratory. Thus, he would state that there is non observance of the mandatory provisions in taking samples and he would also state that if the statute prescribes a thing to be done in a particular manner, it should be done in that way and not in any other manner. In support of his contentions, the learned counsel for the petitioners would rely on the judgment in CrI.A.No.178 of 2013 dated 07.01.2015 and would pray for quashing of the criminal proceedings.

5.The learned Government Advocate(Criminal Side) appearing for the respondent would state that only after strictly following the mandatory provisions, criminal proceedings have been initiated against the petitioners under the provisions of the Food Safety and Standards Act, 2006 and therefore, the interference of this Court is not necessary.

6.Heard the learned counsel for the petitioners as well as the learned Government Advocate(Criminal Side) appearing for the respondent.

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7.Perusal of record shows that after the sample was taken from the petitioners' shop on 22.10.2016, it was sent to the Food Analyst on the same day and the report of the Food Analyst dated 08.11.2016 was received by the respondent on 10.11.2016, stating that the sample conforms to the standards for the tests carried out and specified for "poppy" under regulation 2.9.16(1) of Food Safety and Standards (FPS & FA) Regulations, 2011. Thereafter, the respondent had sent the sample to the referral lab which tested the sample from 03.03.2017 to 04.04.2017 and has given a report stating that the sample is unsafe and infested with live and dead insects and having musty odour. As per rule 2.4.6.2 of the Food Safety and Standards Rules, 2011, the designated officer shall forward one part of the sample under appropriate condition as specified for the product including transport, to retain the integrity of the sample. As rightly contended by the learned counsel for the petitioners, the said rule is violated and in this case, the respondent had sent the sample to the referral lab and while taking the sample and while referring the sample to referral laboratory, the respondent had not stated that the sample was infested with insects.

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8.In the judgment relied on by the learned counsel for the petitioners, in Madras Fertilizers Ltd., vs. The State of Tamil Nadu(Criminal Appeal No.178 of 2013, dated 07.01.2015), it has been held as follows:-

"8.6.Similar question arose for consideration in Kadarkarai & others v. State by Agricultural Officer, Fertilizer Inspector, Office of the Assistant Director of Agriculture, Sattur, Kamarajar District reported in 2000 (1) MWN (Cr.) 199 and in paragraph 14, it was noted that P.W.1 did not use any instruments for taking the samples and it is a material defect. In paragraph 18, it is held that non-observance of mandatory provisions in taking the samples by the complainant and the suspicion with regard to taking samples from the nature of the bag and the corrections carried out in Exs.P.2 and D.1, all these things throw considerable doubt with regard to the genuineness of the complainant's case and citing the said reasons, the conviction and sentence passed in the said case were set aside and the appeals were allowed.

12.It is well settled position of law that if the statute prescribed a thing to be done in a particular manner, it should be done in that way and not in any other manner."
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9.In my considered opinion, the procedure contemplated for taking sample and the mandate of sending the sample in the very same condition, is to be strictly followed and any deviation from the same, would cause great hardship to the petitioners. Since there is a deviation from the procedure contemplated under the Food Safety and Standards Act, 2006, the criminal proceedings initiated against the petitioners are liable to be quashed.

10.Accordingly, the Criminal Original Petition is allowed and the charge sheet filed in S.T.C.No.135 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, is hereby quashed. Consequently, the connected Criminal Miscellaneous Petition is closed.

31.08.2021

Index : Yes / No
Internet : Yes / No
bala/pm

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J.NISHA BANU,

Note :

In view of the present lock down owing to

COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Judicial Magistrate No.II, Nagercoil.
- 2.The Sub Inspector of Police, Vellichanthai Police Station, Kanyakumari District.
- 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN DATED : 31.08.2021 <https://www.mhc.tn.gov.in/judis/>