

Sushil Kanugolu vs The Food Safety Officer on 19 March, 2024

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Bench: T.V.Thamilselvi

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 16356 of 2022
Crl.MP. Nos. 9464 & 9465 of 2022

1.Sushil Kanugolu
2.M/s. Fipola Retail India Ltd,
Represented by its Director Sushil Kanugolu
having branch at No. 15, 1st Avenue, Shastri Street,
Adyar, Chennai - 600 020.

...PETITI

Vs.

1 The Food Safety Officer, Adyar Area,
Area code No. 550

...RESPOND

PRAYER : This petition has been filed under Section 482 of Cr.P.C,
for the records relating to the complaint in C.C No. 297 of 2022 on
of the learned IX Metropolitan magistrate, Saidapet, Chennai and qu
same.

For Petitioners : Mr.N.V.Prakash
For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. sid

ORDER

<https://www.mhc.tn.gov.in/judis> The petitioner herein filed this petition to call for the records
relating to the complaint in C.C No. 297 of 2022 on the file of the learned IX Metropolitan
magistrate, Saidapet, Chennai and quash the same.

2.The brief facts of the case is that the respondent/complainant inspected the branch of the 2nd Petitioner company at No. No. 15. 1st Avenue, Shastri Nagar, Adyar, Chennai 600020 ?? 09.10.2020 and met the branch in Charge M. Rathish s/o Pandurangan. Thereafter on suspicion of sub-standard quality of the packaged food item marketed as "CHATELIERS WAVE CHICKEN CRACKERS JUST LIKE A PAPAD (manufactured by one M/s Chateliers, represented by its proprietor Franklin Joseph Chatelier) on basis of the package label, he took 5 100 gm packet samples of the same for analysis (3 100 gm packet and 2 100 gm packet) and paid the marked price of Rs. 400/ and followed due procedure as per Act for inquiry against the same. Subsequently, the above food samples were sent for analysis and received on 4.1.2021 by the Food Analysis Laboratory and report no. 1354/2020-21 dated 31.12.2021 was received which alleged that the samples contained banned artificial food colouring "TARTRAZINE" and that the item was sub-standard and unsafe, and also mis-branded as per Regulation 2,4,4 (18) of the Food Safety And Standards (Packaging And Labelling) Regulations, 2011. Further on verification of the FSSAI application/license <https://www.mhc.tn.gov.in/judis> of the 2nd Petitioner company, it is alleged that since the 2nd Petitioner company had not properly complied Form 9 as per the Rule 2.5.1 of the Food Safety and Standards Rules, 2011, and that the person nominated by the company, one John Paul had also passed away, hence the directors of the company were charged as accused. The complaint was taken cognizance by the Learned IX Metropolitan Magistrate, Saidapet, Chennai, under Section 51, 52(1) and 59(i) of the Food Safety and Standards Act, 2006, and numbered as C.C. No. 297 of 2022. Now, the petitioner approached this Court to quash the said proceedings.

3. According to the petitioner, the petitioner - company was merely offering retail shelf space to the above sealed and packaged food item by a third party manufacturer and not in any way involved with the manufacturer or quality control of the product, and hence cannot be held responsible under the Act. Further, the present complaint was filed beyond the limitation period prescribed under Section 77 of the Food Safety and Standards Act, 2006, wherein any prosecution has to be preferred within one year from the date of commission of offence, whereas the present complaint is belatedly filed only on 08.02.2022 for the offence occurred on 09.10.2020 and hence the period of limitation has expired on 09.10.2021. Further, the petitioner is not a manufacturer of the said package but the petitioner has been falsely <https://www.mhc.tn.gov.in/judis> implicated in this case. Further, under Section 27(3) of the Food Safety and Standards Act 2006 the liabilities of the seller are clearly laid out and the seller cannot be held liable for packaged manufacturer - sealed food which is found sub-standard or containing non-permitted artificial coloring. Further, the relied the judgment of this Court in *CrI.O.P. (MD). No. 5276 of 2015*:

5.It is not in dispute that the first petitioner is the salesman and the second petitioner is the shop owner, while the third petitioner is the wholesaler. These three petitioners can be fastened with penal liability only if it can be shown that the food article in question was received by them with the knowledge of their being unsafe. The food articles of masala powder are being sold only in sealed packets. There is nothing on record to show that petitioners 1 to 3 herein had purchased the same with the knowledge of their being unsafe. Therefore, petitioners 1 to 3 are entitled to the benefit set out in Section 27(2)(f) and Section 27 (3)(e) of the said Act. But then, the manufacturer cannot claim the same benefit. The manufacturer will be liable if he

does not meet the requirements of the Act and rules and regulations framed therein

4. The learned counsel for the respondent submits that the the misbranded, sub standard and unsafe food "CHATELIERS WAVE CHICKEN CRACKERS JUST LIKE A PAPAD" clearly indicates that food exclusively made for the petitioner company and also the list of ingredients <https://www.mhc.tn.gov.in/judis> had been a non permitted Food Colouring IH 6597 and the same was confirmed by the Food analyst in his report No. 1354/2020-21 dated 31.12.2020. Further, the manufacturing company cannot use the name of the retail company on the front label of the food products without the permission of the retail company. From the above said reasons it appears that the retail company M/s. Fipoal Retail Ltd is knowingly complicit in manufacturing and retail the selling of unsafe food. Hence, he prays to dismiss this petition and also relied judgment of this court in the case of Crl.O.P No. 3506 of 2021.

5. On perusal of the analyst report, it clearly mentioned that the sample obtained from the petitioner-company is misbranded , sub standard and unsafe. Further, the petitioner received the products from the manufacturer and they are selling in retail. Section 26 clearly says about the responsibilities of the Food Business Operator. Section 26 is read as follows:

26. Responsibilities of the food business operator.-

(1)Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2)No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

(i)which is unsafe;

<https://www.mhc.tn.gov.in/judis> or(ii)which is misbranded or sub-standard or contains extraneous matter; or(iii)for which a licence is required, except in accordance with the conditions of the licence;

or(iv)which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or(v)in contravention of any other provision of this Act or of any rule or regulation made thereunder.

6. Therefore, as per the Act, the petitioner comes under the definition of operator and the petitioner also having equal responsibility. Hence, this Court is not inclined to allow this petition. However, the appearance of the petitioner is ordered to dispensed with.

7. In the result, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petitions are closed.

19.03.2024 pbl To The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> T.V.THAMILSELVI, J.

pbl Crl.MP. Nos. 9464 & 9465 of 2022 <https://www.mhc.tn.gov.in/judis> 19.03.2024
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