

R.Nagaraj vs The Designated Officer on 27 July, 2022

Author: V.Sivagnanam

Bench: V.Sivagnanam

Crl.O.P. (MD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12263 of 2022

and

Crl.M.P(MD) Nos.7753 & 7754 of 2022

1. R.Nagaraj

2. M/s. N.S.S.Oil Mills,
Narasangam Main Road,
Y.Othakadai,
Madurai – 625 107

... Petitioners/Accused

Vs

The Designated Officer,
Code No.012,
Tamil Nadu Food Safety and Administration Wing,
1st Floor,
Office of the Deputy Director of Health Services,
Multipurpose Health Supervisors,
Training School,
Viswanathapuram,
Madurai – 14.

.... Respondent /Compla

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.
praying to call for records to quash the proceedings in S.T.C.No.11
2021, on the file of the Judicial Magistrate, Melur.

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

Crl.O.P. (MD)

For Petitioners : Mr.M.Rajaraman

For Respondent : Mr.E.Antony Sahaya Praba
Additional Public Prosec

ORDER

This Criminal Original Petition has been filed to quash the proceeding in S.T.C.No.1105 of 2021, on the file of the Judicial Magistrate, Melur.

2.The learned counsel for the petitioners submitted that the complainant Designated Officer along with the Food Safety Officers came to the shop of the first accused viz., Nagaraj, who is the owner of N.S.S.Oil Mills, on 01.09.2020, at about 12.30 a.m., and took food samples in Gingelly Oil (Loose Condition) and forwarded it to the Food Analyst. He further submitted that the first accused had stated that he is the owner and the designated officer seems to have taken 4 packets weighing 500 ml containing 2 liters from the said shop and sealed the same by following the procedure as contemplated under the Food Safety and Standards Act, 2006, and had sent the same to the Food Analyst on 03.09.2020. The Food Analyst <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12263 of 2022 had sent a report on 21.10.2020 stating that the sample was Misleading, Misbranded, substandard. The Designated Officer had sent the report of the Food Analyst along with his notice, dated 28.10.2020. The petitioners filed an appeal before the Designated Officer under Section 46(4) of the Food Safety and Standards Act in Form VII. On receiving the appeal, the Designated Officer, if he so decides within thirty days from the receipt of such appeal after considering the material placed before him and after giving an opportunity to Food Business Operator to be heard, shall forward one part of the sample to the referral lab. Such appeal shall be in Form III which shall be filed within 30 days from the date of the receipt of the copy of the analysis report from the Designated Officer. Report of the referral laboratory shall be final in this regard. But, in this case, the Designated Officer had not disposed this appeal and also not forwarded the one part of the sample to the referral laboratory and thus, violated the Food Safety and Standards Act as per Rules 2.4.6. Hence, on this ground alone, this Criminal original Petition is filed to quash the proceedings as against the petitioners.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.12263 of 2022

3. The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioners ought to have filed an appeal to the Designated Officer in Form -VIII instead of Form – VII and hence, he objected to quash the proceedings.

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 the petitioners are the accused Nos.1 and 2 in S.T.C.No.1105 of 2021, on the file of the Judicial Magistrate, Melur. The first accused is one R.Nagaraj, who is the owner of the N.N.S.Oil Mill. The second accused is the N.N.S.Oil Mill. On 01.09.2020, at about 12.30 a.m., food samples in Gingelly Oil (Loose Condition) have been taken and forwarded it to the Food Analyst. The Food Analyst had sent a report on 21.10.2020 stating that the sample was substandard. Thereafter, the Designated Officer had sent the report of the Food Analyst along with his notice, dated 28.10.2020. After receiving the report, the petitioners filed an appeal before the Designated Officer under Rule 2.4.6(1) and Section 46(4) of the Food Safety and Standards Act. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.12263 of 2022

6. On perusal of the records, it is seen that the appeal memorandum has been filed by the petitioners on 23.11.2020. The petitioners also filed an acknowledgement dated 25.11.2020. On perusal of the acknowledgement, it is seen that the Designated Officer received an appeal memorandum on 23.11.2020. Admittedly, the Food Analyst report and notice has been sent to the petitioners on 28.10.2020. As per Rule 2.4.6(1) and Section 46(4) of the Food Safety and Standards Act, the appeal has to be filed before within 30 days. Now, in the present case, on receiving notice dated 28.10.2020, the appeal has been filed before the Designated Officer on 23.11.2020, which was acknowledged by the petitioner on 25.11.2020. But the Designated Officer had not decided the appeal within the time limit. Therefore, it is clear violation of the provision. The prosecution is unsustainable. Hence, the Criminal Proceedings in S.T.C.No.1105 of 2021, on the file of the Judicial Magistrate, Melur, is liable to be quashed. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.12263 of 2022

7. Accordingly, the Criminal Proceedings in S.T.C.No.1105 of 2021, on the file of the Judicial Magistrate, Melur, in respect of the petitioners/A1 & A2 alone is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Internet:Yes./No

Index:Yes/no

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To

1. The Judicial Magistrate,
Melur.

2. The Designated Officer,
Code No.012,

Tamil Nadu Food Safety and Administrative Wing, 1st Floor, Office of the Deputy Director of Health Services, Multipurpose Health Supervisors, Training School, Viswanathapuram, Madurai – 14.

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

<https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.12263 of 2022 V.SIVAGNANAM, J.

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