

# G.Vinod Kumar vs N.Senthil Kumar on 16 November, 2021

**Author: N. Sathish Kumar**

**Bench: N. Sathish Kumar**

CrI.O.P

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. Nos.14428 of 2017  
and CrI.M.P.Nos.9147 & 9148 of 2017

G.Vinod Kumar

...

Vs.

N.Senthil Kumar  
Food Safety Officer,  
Anakaputhur Municipality,  
Anakaputhur , Chennai.

...

PRAYER :Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with entire relating to the proceedings in STC No.55 of 2017, on the file of Judicial Magistrate, Tambaram and quash the same.

For Petitioner

: Mr.M.Mohamed Riyaz

For Respondent

: Mr.S.Vinoth Kumar

Government Advocate (CrI.S

ORDER

This Criminal Original Petition has been filed to call for the records in connection with entire case relating to the proceedings in STC No.55 of 2017, on the file of Judicial Magistrate, Tambaram and quash the same. <https://www.mhc.tn.gov.in/judis>

2. The final report has been filed by the Food Safety Officer for the offence under sections 58, 59(1) of the Food Safety and Standards Act, 2006.

3. The case of the prosecution is that on 14.07.2016, the Food Safety Officer has purchased 4.20 litres water cans from the petitioner/A-2 and thereafter, he sent the same to the Public Analysis, Food Analysis Laboratory, King Institute Campus, Guindy and found that it is not fit for use and contains additives.

4. The main contention of the learned counsel for the petitioner is that the proviso under Sections 42 and 47 of the Food Safety and Standards Act (in short “Act”), 2006 has not been complied with. When the provisions which are mandatory to be complied, particularly, in respect of the penal action has been violated which has to be interpreted strictly and prosecution cannot be permitted to continue when the violation glaring. The learned counsel for the petitioner mainly submitted that as per Section 42(3) of the Act, “The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his <https://www.mhc.tn.gov.in/judis> recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.”

5. From the above, it is made clear that the recommendation should be sent within a period of 14 days to the Commissioner of Food Safety, which is not done in this case. Similarly, it is the case that despite his request for second analysis, the sample has not been given to him. Therefore, it is clear violation of Section 47 (4) of the Act and when the violation is at large, the prosecution cannot be permitted.

6.Per contra, the learned counsel for the Government Advocate (Crl.Side) appearing for the respondent submitted that the violations alleged is only technical in nature and the same cannot be decided at this stage .

7. On perusal of the entire materials, there is no dispute that the samples of water were lifted on 14.07.2016. It is not in dispute that within 14 days, the sample was analysed. For proper appreciation, Section 42 of the Food Safety and Standards Act provides the procedure for launching prosecution, which reads as follows:

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42.Procedure for launching prosecution: - (1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

2. The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

3.The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.”

8. Section 42(3) mandates that after receipt of the analysed report, Designated Officer has to send his recommendation within 14 days. However, the complaint itself indicate that no such procedure was followed and Section <https://www.mhc.tn.gov.in/judis> 47 (4) makes it mandatory that once an application is filed for second analysis, it is mandatory on the part of the Officers to provide the sample to get it analysed in another accredited lab which is a right provided by the Statute. Admittedly, in this case such second sample has not been given to the complainant when he has the right to have a second sample analysed, which has been denied. It is the serious violation and therefore, this Court is of the view that when the provisions which are mandatory in nature to be complied before initiating any penal action, the same should be complied with rigor.

9. Before driving a person to face a criminal prosecution, the statute which mandates certain procedure, such procedures to be complied first which has not been done in this case. In this regard, this Court also in similar case in Crl.O.P.No.774 of 2020 has quashed the prosecution for violation of mandatory provisions of law, which was reported in 2020 SCC Online Mad 12748 in the case of G.Irudhayanathan vs. B.Ramakrishnan.

10. Having regard to the above, continuing the prosecution with all violation of the statutory and mandatory provisions of law is nothing but mere waste of time and abuse of process of law.

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

11. It is to be noted that such violation are in fact infringing the rights of the accused to have the second sample analysed as per the Statute. Therefore, the continuation of prosecution is an abuse of process of law.

12. In the facts and circumstances of the case, the proceedings in STC No.55 of 2017, on the file of Judicial Magistrate, Tambaram for the offences under Sections 58, 59(1) of the Food Safety and Standards Act, 2006 is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

16.11.2021 Index: Yes/No Internet: Yes/No msv <https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J.

msv and Crl.M.P.Nos.9147 & 9148 of 2017 <https://www.mhc.tn.gov.in/judis> 16.11.2021 <https://www.mhc.tn.gov.in/judis>