

# N.Soundarapandian vs Food Safety Officer on 14 March, 2023

CrI.O.P.N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM:

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CrI.O.P.No.23709 of 2019 and  
CrI.M.P.No.12477 of 2019

N.Soundarapandian

... Petition

Vs.

Food Safety Officer,  
Code No.549,  
Tamil Nadu Food Safety and Drug Administration Department,  
Chennai District  
No.33, West Jones Road,  
Saidapet, Chennai-600 015.

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.  
call for the records in C.C. No.133 of 2017, pending on the file of XVIII  
Metropolitan Magistrate, Saidapet, Chennai and Quash the same.

For Petitioner : Mr.L.Murali Krishnan

For Respondent : Mr.A.Damodaran  
Addl. Public Prosecutor

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

CrI.O.P

ORDER

This petition is filed to quash the complaint in C.C.No.133 of 2017 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai for the offences under Sections 3 (1)(zz)(iii), (v), (vii), Section 19, Section 26(1), (2)(i), Section 27, 27(1) of Food Safety and Standard Act, 2006 r/w. Reg.2.9.9.(1) r/w. Reg.3.1.2.(1), Reg.3.1.2.(3) of FSS (FPS & FA) Reg. 2011 and punishable under

Section 59(i) of Food Safety and Standards Act 2006 (FSSA 2006).

2. It is alleged in the complaint that sample of fennel was lifted from the premises of one Suresh, who is shown as first accused, and that he had purchased the same from the petitioner herein. It was found from the report of the Food Analyst that the fennel was “coated with harmful non-permitted Green colour Pigment” and was prescribed as “unsafe food”. Hence, the petitioner, along with the said Suresh and one S.Ramesh, who is the Managing Director of Meenakshi Hotels Pvt. Ltd., were prosecuted.

3. Learned counsel for the petitioner would submit that the present <https://www.mhc.tn.gov.in/judis> complaint cannot be sustained since the respondent has violated the mandatory provision under Section 42(3) of the FSSA 2006. According to him, as per Section 42(3) of the Act, the Food Safety Officer, on receipt of analysis report, has to send his recommendations for prosecution within 14 days from the date of receipt of analysis report. Learned counsel further submitted that the impugned complaint is also barred by limitation, since according to the respondent, the alleged offence taken place on 30.10.2015, whereas the learned Magistrate took cognizance only on 19.01.2017.

4. Per contra, learned Additional Public Prosecutor would submit that the sample was lifted on 30.10.2015 and the same was sent to the Food Analyst and that the sample was found to be unsafe since it was coated with artificial colour. Thereafter, the designated officer recommended for prosecution and hence, the mandatory provisions have been duly followed. The learned Additional Public Prosecutor further submitted that the complaint was filed on 14.10.2016, which was within a period of one year from the date of the alleged offence. He further submitted that all the points can be raised before the trial Court and accordingly, he prayed for dismissal of this quash petition.

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

5. Heard learned counsel on either side and perused the materials available on record.

6. The main question in this quash petition is whether the respondents have followed the mandatory provisions of Section 42(3) of the FSSA 2006. Section 42(3) of the FSSA reads as follows:

“42 (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.”

7. As per the above provision, after the receipt of the report from the Food Analyst, the designated officer has to send his recommendations for granting sanction within 14 days to the Commissioner of Food Safety for sanctioning prosecution. In the facts and circumstances of the case, admittedly, the report of the Food Safety Officer had been received by the <https://www.mhc.tn.gov.in/judis> Designated Officer on 19.11.2015 whereas the Designated Officer had sent his recommendations

only on 04.07.2016, after a delay of nearly eight months. This is a clear violation of the mandatory provision. In a similar case, this Court had quashed the complaint for failure to follow the mandatory provisions in the order passed in Crl.O.P.No.774 of 2020 dated 16.08.2020 in G.Irudhayanathan v. B.Ramakrishnan case. The relevant portion is extracted hereunder:

“As per the above provision, on receipt of the analysis report, Food Safety Officer shall have to send his report within period of 14 days to the Commissioner of Food Safety for sanctioning prosecution against the accused. In the case on hand, the Central Food Laboratory sent its report on 18.02.2015. On receipt of the report, the Designated Officer / respondent sent his recommendations for according sanction only on 18.08.2015. On receipt of the same, the Commissioner of Food Safety accorded first sanction on 14.03.2016 and subsequently accorded second sanction on 28.09.2016. Therefore, the respondent failed to send his recommendation within period of 14 days from the date of receipt of food analysis report. Therefore, the respondent did <https://www.mhc.tn.gov.in/judis> not follow the mandatory provision as contemplated under Section 42(3) of the Food Safety and Standards Act.” In this regard, learned counsel for the petitioner has also relied upon the orders passed by this Court in Crl.O.P.No.14675 of 2017 dated 15.11.2021 in Jayasakthi Edible Oils Pvt. Ltd. v. The State, Kallakurichi Municipality and Crl.O.P.no.968 of 2017 dated 25.10.2017 in A.Muthukumar v.

Mr.Chidambaram. In view of the settled position of law, the present complaint cannot be sustained and is liable to be quashed for violation of the mandatory provision of Section 42(3) of the FSSA 2006.

8. In view of the above, this Criminal Original Petition is allowed and the proceedings as against the petitioner is quashed. Consequently, connected miscellaneous petition is closed.

14.03.2023 Index: Yes/No Speaking / Non Speaking Order kal To <https://www.mhc.tn.gov.in/judis> The XVIII Metropolitan Magistrate, Saidapet, Chennai <https://www.mhc.tn.gov.in/judis> SUNDER MOHAN, J kal Crl.O.P.No.23709 of 2019 and 14.03.2023 <https://www.mhc.tn.gov.in/judis>