

P.Muruganantham vs State Of Tamil Nadu on 13 July, 2022

Author: G.Ilangovan

Bench: G.Ilangovan

Crl.O.P.(MD)No.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13/04/2022

Pronounced on : 13/07/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.11441 of 2019

and

Crl.MP(MD)No.7161 of 2019

1.P.Muruganantham
2.S.Usha Ramesh
3.S.Ramesh
4.M/s.Sujay Water,
No.11,Balram Road,
Adaiyar,
Chennai-20

Petitioners/A1 to A4

Vs.

State of Tamil Nadu,
Food Safety Officer,
Code No.451,
Tamil Nadu Food Safety and Drug
Administration Department,
Food Safety Wing,
Office of the Appointment Officer,
Ramanathapuram District,
Opposite to Hockey Stadkum,
Collectorate Complex,
Ramanathapuram.

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under
Section 482 Cr.P.C., to call for the records in STC No.496
of 2018 on the file of the Judicial Magistrate No.1,
Ramanathapuram and quash the same.

For petitioners

: Mr.N.Ananthapadmanabhan

For Respondent

: Mr.R.Meenakshisundaram
Additional Public Prosecutor

1/17

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

O R D E R

This criminal original petition is filed seeking quashment of the case in STC No.496 of 2018 on the file of the Judicial Magistrate No.1, Ramanathapuram.

2.The case of the prosecution is that on 14/11/2017 at about 12.00 noon, the complainant inspected the shop namely Sujay Aqua Packaged Drinking Water, which was running a retail shop in Ramanathapuram Nagar, R.R.Sethupathi Nagar, 19A/10A, Iathams Bungalow Road. On enquiry, A1 stated that he is the Assistant Manager and informed that no licence has been obtained as per the provisions of Food Safety and Standards Act, 2006. On inspection, he found 10 cans of packaged drinking water containing 20 liters of water. On enquiry, A1 informed him that the drinking water is manufactured in their company by name Sujay Waters, Perungulam. Sample was lifted and mahazar was also prepared and sealed. He purchased 4 liters of can water at Rs.600/- and obtained a receipt. He labeled and sealed the water can. The complainant was informed about his willingness to send the samples to Central Institute of Food Laboratory. But the accused expressed his unwillingness. Then, it was handed over to Authorised <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019 Officer. The samples were submitted to the Food Analyst, Madurai. They sent a notice of information with regard to sending of sample, on 14/11/2017 to the accused. Those notifications were received by A2, A3 and A4. Food Analyst sent a report stating that samples are unsafe and misbranded. The report is, dated 18/01/2018. He has also informed about the reason for the delay in analyzing the sample. The above said analysis report was also informed to the accused, on 31/01/2018. After receiving the above said report, A1 sent willingness letter stating that samples must be sent to the Central Laboratory, by letter, dated 07/02/2018. So, it was sent to Indian Institute of Crop Processing Technology, Thanjavur, which also reported that it is misbranded and unsafe one. So the first accused is liable to be punished under section 59(i) of the Food Safety and Standards Act, 2006; A2 to A4 are liable to be punished under section 59(1) r/w 63 of the Food Safety and Standards Act, 2006. The complaint was taken on file in STC No.496 of 2018 by the Judicial Magistrate No.1, Ramanathapuram and summons were issued to the accused.

3.Seeking quashment of the entire proceedings, this petition has been filed.

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4.Heard both sides.

5.An elaborate argument was advanced by the learned counsel appearing for the petitioners making out very many grounds starting from the history of the Food Safety and Standards Amendment Act, 2016 as well as the importance of making the analysis within 14 days from the date of lifting of the samples and the jurisdiction of the complaint. Apart from that, he has also set out very many violations of the provisions.

6.The first point that got to be considered by this court, whether the licence or permission is required for the sale outlet under the provisions of the Food Safety and Standards Act, 2016. The reason being is that, according to the petitioners, the manufacturing unit is situated in Perungulam and proper licence has been obtained for manufacturing the water in that area and no licence is required, either for storing or retail outlet. For that purpose, he would take this court by relying upon the Government Order. The licence was originally issued in 2015 and thereafter, it was periodically renewed upto 16/06/2020. He has also produced the licence. The date of occurrence is stated to be on 14/11/2017. The relevant <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019 licence is dated 31/05/2017, wherein we find that for manufacturing drinking water, the licence was provided, wherein we find that the address as NH-49, Perungulam, Nandapam Block, Ramanathapuram, Tamil Nadu, when the occurrence place is Ramanathapuram Nagar, Rr.Sethupathi Nagar, 19A/10A, Lethams Bungalow Road, So the district is one and same. But the manufacturing address is different from storing or retail outlet.

7.The learned Additional Public Prosecutor has produced the name of the Designated Officers and their Code Number under the provisions of the Food Safety and Standard Act to show that who is the concerned Designated Officer and the Code No.171 is allotted to him. Ramanathapuram District was subdivided into several blocks. From the document, it is seen that the Designated Officer for Ramanathapuram Town as well as the Rural is only one person. Now we can take that the authorised or the designated officer is the competent person and who made inspection and lodged a prosecution. On that ground, the prosecution does not fail. This ground is not available to the petitioners.

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8.A simple point raised by the petitioners is that for the stock point, licence need not be obtained. But I am unable to agree with this line of argument, when the licence was obtained for the purpose of manufacturing, it does not apply to the retail outlet or storing point. For retail outlet also, the petitioners ought to have obtained proper licence.

9.For more clarity, let us go the the definition portion under section 3(n) of the Act:-

(n) "food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;

(o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;

(zi) "premises" include any shop, stall, hotel, restaurant, airline services and <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.11441 of 2019 food canteens, place or vehicle or vessel where any article of food is sold or manufactured or stored for sale;

10. In this context, we will go to section 31 of the Act, which deals with the licensing process. Section 31 reads as follows:-

“31. Licensing and registration of food business.-

(1) No person shall commence or carry on any food business except under a licence.

(2) Nothing contained in sub-section (1) shall apply to a petty manufacturer who himself manufactures or sells any article of food on a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator; but they shall register themselves with such authority and in such manner as may be specified by regulations, without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers.

(3) Any person desirous to commence or carry on any food business shall make an application for grant of a licence to the <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.11441 of 2019 Designated Officer in such manner containing such particulars and fees as may be specified by regulations.

(4) The Designated Officer on receipt of an application under sub-section (3), may either grant the licence or after giving the applicant an opportunity of being heard and for reasons to be recorded in writing, refuse to grant a licence to any applicant, if he is satisfied that it is necessary so to do in the interest of public health and shall make available to the applicant a copy of the order: Provided that if a licence is not issued within two months from the date of making the application or his application is not rejected, the applicant may start his food business after expiry of the said period and in such a case, the Designated Officer shall not refuse to issue a licence but may, if he considers necessary, issue an improvement notice, under section 32 and follow procedures in that regard.

(5) Every licence shall be in such form and subject to such conditions as may be specified by regulations.

(6) A single licence may be issued by the Designated Officer for one or more articles of food and also for different <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019 establishments or premises in the same area.

(7) If the articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence shall be issued in respect of such premises not falling within the same area.

(8) An appeal against the order of rejection for the grant of licence shall lie to the Commissioner of Food Safety.

(9) A licence unless suspended or cancelled earlier shall be in force for such period as may be specified by regulations:

Provided that if an application for a renewal of licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

(10) The licence shall subsist for the benefit of the deceased's personal representative or any other member of his family, until the expiry of-

(a) the period of three months beginning with his death; or <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019

(b) such longer period as the Designated Officer may allow.

11.The learned counsel appearing for the petitioners would further rely upon section 31(6) of the Act. According to him, a symbol has been obtained for manufacturing unit, which made applicable to the outlet also. Both are situated in same area. This sort of hyper-technical cannot be accepted for the simple reason that the petitioners made renewal application for providing licence not for manufacturing unit, but also retail outlet. For that purpose only, I made a query to the learned counsel appearing for the petitioners to the effect that what was the licence for the building and what was issued to him. But, as mentioned earlier, the licence does not read that it has been issued for manufacturing unit at Perungulam address and retail outlet the above said RR.Sethupathi Nagar, Ramanathapuram, in the absence of any such specific licence for the retail outlet. When there is failure on the part of the petitioners to make such an application for manufacturing unit and retail outlet, he has to bear the penalty. The argument advanced on the side of the petitioners is not convincing and acceptable. So, I find that the petitioners ought to have obtained the licence, <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019 though signed for two premises. This ground is also not at all available to the petitioners.

12.The next argument is the power of the food inspector. He relied upon the notification of the Government in G.O.Ms. No.103 to show that one John Peter is the competent person, who is

appointed as Adjudicating Officer. But we are not dealing about the adjudicating process now.

13.The next argument is that for making analysis only 14 days is permitted. But here lifting of the sample is dated 14/12/1997 and the report of the Food Analyst was received, on 18/01/2018.

14.The delay has been explained in the report itself. The delay has been explained in a routine manner. The report shows that due to sudden influx of large number of samples coupled with vacancy of the post of Senior Analysts and and other Technicians, it could not be undertaken within the prescribed period. So there was a delay of 63 days in making analysis.

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15.Whether this is sufficient to satisfy the requirement, which arises for consideration.

16.This point has been raised and answered in more than one cases. Section 46(3) of the Act is extracted as under:-

(3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send:-

(i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and

(ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with a copy to the Designated Officer:

Provided that in case the sample can not be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.

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17.From this provision, it is seen that explanation must be offered by the Food Analyst with regard to the delay. Now he has given explanation for the delay. Whether the explanation is acceptable or not is a matter for consideration before the trial court. The explanation was received by the Designated Officer, on 18/01/2018. Intimation was sent to the accused persons, on 24/01/2018. There was no delay in sending the communication. Sanction was requested by a letter, dated 05/02/2018. Accordingly, sanction was accorded, on 27/08/2018. There is a delay of more than six months in giving sanction and prosecution was launched on 10/10/2018.

18.The learned counsel appearing for the petitioners would further submit that the Referral Laboratory namely, the Indian Institute of Food Processing Technology, Thanjavur is not a notified laboratory as per the provisions of section 59 of the Act. For the entire area, only one officer is

appointed. So, according to him, the referral laboratory is not competent. But whether that laboratory is a notified one or not, cannot be a matter for consideration in this petition. It is a matter for trial, since it is a disputed question of fact. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019

19.The report shows that the licence number in the package and logo are absent, net weight is mentioned as 20 litres and batch number, manufacturing date and best before date were absent. But it contained only manufacturer address. How the petitioners can be permitted to argue that this is not misbranded or does satisfy the requirement of the regulations is not understandable. The water is a commodity, which requires proper compliance of manufacturing directions and regulations. It is further reported that the limit of Lead, Arsenic, Mercury and Selenium were found exceeding the permissible limit. Further, the sample exceeded the prescribed limits of Aerobio microbial count. So, this comes under the category of unsafe food. Such a nature of crime cannot be permitted and quashed on technical grounds.

20.It has been pointed out by the Hon'ble Supreme Court in more than one occasions, that the safe food is a fundamental right to a citizen. That is why, repeated direction has been issued by the Hon'ble Supreme Court in the recent and past. The importance of safe food has been highlighted by the World Health Organisation in its publication titled "Safe Food for Better Health" and the World Health Organisation has recognized this as one of the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.11441 of 2019 basic human rights. The Government of India has also adopted the Food Safety Regulation. So, I am of the considered view that this is not a fittest case to exercise the power under section 482 of Cr.P.C. Such kind of offences require proper trial process.

21.So, I find no merit in this petition. This petition deserves to be dismissed and accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed.

13.07.2022 Internet:Yes/No Index:Yes/No er 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.

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1.The Judicial Magistrate No.1, Ramanathapuram.

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

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