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O R D E R

This criminal original petition is filed seeking quashment of the case in STC No.192 on the file of the Judicial Magistrate No.II, Padmanabhapuram.

2.The case of the prosecution is that on 16/09/2017, the respondent conducted inspection upon the college canteen of the Maria College of Engineering & Technology, Attor. Samples were taken from the food pocket called 'Pepper', which was labelled as 'SRM Private Limited'. He paid the cost. The other members purchased the bill from A2 and samples were lifted as per the procedure and on 18/07/2017, the respondent issued a notice to the petitioner as well as A2 to produce the accounts, licence etc., In the meantime, sample that was sent to the Food analyst was issued with a report stating that it is unsafe and misbranded and the substance was analysis was sent on 01/04/2018. The second accused made a request, on 21/08/2018 to send a sample to the Central Laboratory. Again, it was analysed by the Central Laboratory and the report was sent stating that is unsafe. After getting due sanction order, the prosecution was launched, which was taken in STC No.192 of 2018 by the Judicial Magistrate, Padmanabhapuram.

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3.Seeking quashment of the same, this petition came to be filed by A1, who is the Chairman of Maria College of Engineering and Technology, Attor, Thiruvattor, on the ground that the college is running by a Trust and this petitioner has been arrayed in his personal capacity, which is not permissible under law. Since only canteen is available in the college, on payment of cash amount, it was purchased from the manufacturer. There is a violation of section 42(3) of the Act. The complaint ought to have filed only against the A2. It is also stated that on 23/10/2017 proper licence has been applied to the concerned authority. As per section 31(4) of the Food Safety and Standard Act 2006, if the licence is not granted within two months from the date of application, then it deems to have been granted.

4.Heard both sides.

5.It is not in dispute that the Trust is running a college by name Maria College of Engineering and Technology, Attor, Thiruvattar. A preliminary objection has been raised by the learned counsel appearing for the petitioner to the effect that the college is run by a Trust, which is a jurisdictional person. The petitioner <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.2633 of 2019.

ought not have been impleaded in the personal capacity. But whether, it is a Trust, which runs a college or not cannot be a matter for consideration or this petitioner was in administration of college, which runs a canteen cannot be a matter consideration by this court, while exercising the jurisdiction under section 482 Cr.P.C. It is a factual issue, which got to be properly proved during the course of trial.

6.Perusal of the explanation and the reply offered by the petitioner shows that it has been no-where stated to the effect that the college and the canteen is run by the above said Trust. So the preliminary objection cannot be taken into account at this stage and it is liable to be rejected.

7.The second point is that they have purchased packed commodities from A2 through proper vouchers and bills; they are not the manufacturers and only for the canteen purpose, it was purchased and as such, they cannot be proceeded. But it is also admitted by the petitioner himself to the effect that the respondent issued a notice dated 18/07/2018 to obtain proper licence. As per the provisions of the Food Safety and Standards Act, 2006 and that was also applied by [https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.2633 of 2019](https://www.mhc.tn.gov.in/judis Crl.O.P.(MD)No.2633 of 2019).

him, on 23/10/2017. When that is being the case of the petitioner, the argument that they are running only the canteen, need not take licence is out of place and cannot be accepted.

7.It is stated that on 23/10/2017, the licence was applied. But the inspection was undertaken, on 16/07/2017, which is much before the application and after notice. Two months time appears to have been given to the petitioner to obtain licence as per the provisions of the Food Safety and Standard Act, 2016. Why that was not properly complied by the petitioner is not explained by him. So the petitioner cannot take advantage of his own wrong. He would also rely upon section 31(4) of the Food Safety and Standard Act. But this provision will not help the petitioner. That will help a person, who has applied the licence. As mentioned earlier, after giving due warning notice to the petitioner to obtain proper licence only, after two months inspection was undertaken. As mentioned earlier, the lethargic attitude of the petitioner cannot be appreciated. So, this argument is also out of place and cannot be accepted. [https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.2633 of 2019](https://www.mhc.tn.gov.in/judis Crl.O.P.(MD)No.2633 of 2019).

8.The next argument is that there is a delay in analysing the sample by the food analyst. The explanation has been offered to the effect that due to sudden influx number of samples, coupled with the vacancies of the technicians and analyse could not be undertaken within the prescribed time. So proper explanation has been offered by the food analyst. Whether that can be accepted or not is a matter for consideration by the trial court. So this ground is also not available to the petitioner.

9.The next ground is that the prosecution has been launched after the expiry of one year from the date of lifting of sample. The sample was lifted, on 16/09/2017 and the prosecution was launched, on 20/07/2018. So the contention that it was launched after one year is not correct on record, even though the cognizance has been taken by the concerned court on 31/10/2018.

10.It is settled law that for the purpose of computing the period of limitation, only the date of presentation of the complaint or final report is the deciding factor and not the date of the taking cognizance by the trial court. This ground is also not available to the petitioner. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.2633 of 2019.

11.The last ground is that he is only a canteen runner. The samples were purchased from A2 and they cannot be proceeded. But the food licence is defined in section 3(w) of the Act includes canteen services also, even though the catering service by the petitioner institution would not have been undertaken for profit. There is no exclusion for such a canteen.

12.So as rightly contented by the respondent herein, for running a canteen also, proper licence as per the provisions of the Act, might have been obtained. So here the application has been made much after the inspection period and even the expiry period of two months from the date of the communication from the second respondent in this regard.

13.The main contention of the petitioner is that the commodities were obtained in a packed manner from A2 and as such, he cannot be held responsible for the misbranded and unsafe character of the food. For that purpose, he would rely upon the judgment of this court in the case of Sakthi Arrkay Traders & Caterers Private Limited, rep. By its Managing Director S.Krishnan, Chennai Vs. Food Safety Officer, Saidapet, Chennai. (2015)2 MLJ 177. In that case, <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.2633 of 2019.

the observation to the effect that since the salt was purchased in a pre-packed manner from a reputed company, the petitioner cannot be made responsible for lessor lesser iodine content.

14.The learned counsel appearing for the petitioner would draw the analogy to the present food articles. But the petitioner cannot be permitted to argue this point for the sample reason that it is not only found to be unsafe, but misbranded also. The mandatory requirement of mentioning net weight, date, makes products and date of expiry were not properly mentioned in the package. The petitioner ought to have purchased the food articles from the company, which complies the above said mandatory requirements. It is also seen that A2 also obtained licence much after the period of inspection. In the case cited by the petitioner, the articles were purchased from a reputed company, but here, A2 was not enjoying such a reputation even as per the label mentioned in the wrapper. So, I find no ground to entertain this petition. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.2633 of 2019.

15.In the result, this criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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G.ILANGO VAN,J., er 28/07/2022 <https://www.mhc.tn.gov.in/judis>