

A.Selvam vs The Food Safety Officer on 24 April, 2024

Crl.O.P. (MD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2024

CORAM:

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P. (MD) No.18127 of 2022

and

Crl.MP(MD) Nos.12124 & 12126 of 2022

A.Selvam

... Petitioner / Accused No.1
Vs.

The Food Safety Officer,
Code No.109 & 120,
Chellampatti & Vadipatti Taluk,
Designated Officers Office,
Multipurpose Health Supervisors (F) Training School,
Viswanathapuram,
Madurai – 625 014.

... Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C for the records and quash the proceedings in S.T.C.No.9 of 2022 on of the learned Judicial Magistrate, Vadipatti, insofar as the petition concerned.

For Petitioner	: Mr.M.Rajaraman
For Respondent	: Mr.K.Sanjai Gandhi, Government Advocate (Crl.Side)

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

Crl.O.

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.9 of 2022 on the file of the learned Judicial Magistrate, Vadipatti.

2. The learned counsel for the petitioner submitted that the complainant Designated Officer along with the Food Safety Officers came to the shop of the petitioner, on 25.08.2020, at about 02.45 p.m., and took food samples in “Rathinam Brand Refined Palmolein Oil” and forwarded it to the Food Analyst. He further submitted that the first accused had stated that he is the retailer and the designated officer seems to have taken 4 samples 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 26.08.2020. The Food Analyst had sent a report on 28.09.2020 stating that the sample was substandard. The Designated Officer had sent the report of the Food Analyst along with his notice, dated 14.10.2020. The petitioner 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18127 of 2022 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 petitioner.

3. The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner 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. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18127 of 2022

5. On a perusal of the records, it reveals that the petitioner is the accused No.1 in S.T.C.No.9 of 2022, on the file of the learned Judicial Magistrate, Vadipatti. The petitioner is a retailer and running Oil Shop. The second accused is the edible oil packing agency and the third accused is the whole sale owner. On 25.08.2020, at about 02.45 p.m., food samples in “Rathinam Brand Refined Palmolein Oil” have been taken and forwarded it to the Food Analyst. The Food Analyst had sent a report on 28.09.2020 stating that the sample was substandard. Thereafter, the Designated Officer had sent the report of the Food Analyst along with his notice, dated 14.10.2020. After receiving the report, the petitioner filed an appeal before the Designated Officer under Rule 2.4.6(1) and Section 46(4) of the Food Safety and Standards Act.

6. On perusal of the records, it is seen that the appeal memorandum has been filed by the petitioner on 06.11.2020. The petitioner also filed an acknowledgement dated 07.11.2020. On perusal of the acknowledgement, it is seen that the Designated Officer received an appeal memorandum on 07.11.2020. Admittedly, the Food Analyst report and notice has been sent to the petitioner on 28.09.2020. As per Rule 2.4.6(1) and Section 46(4) of the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18127 of 2022 Food Safety and Standards Act, the appeal has to be filed before

within 30 days. Now, in the present case, on receiving notice dated 14.10.2020, the appeal has been filed before the Designated Officer on 06.11.2020, which was acknowledged by the petitioner on 07.11.2020. 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.9 of 2022, on the file of the learned Judicial Magistrate, Vadipatti, is liable to be quashed.

7. Accordingly, the Criminal Proceedings in S.T.C.No.9 of 2022, on the file of the learned Judicial Magistrate, Vadipatti, in respect of the petitioner / A1 alone is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

24.04.2024 NCC : Yes/No Internet:Yes Index:Yes/No dss <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18127 of 2022 A.A.NAKKIRAN, J., dss To

1.The Judicial Magistrate, Vadipatti.

2. Food Safety Officer, Code No.109 & 120, Chellampatti & Vadipatti Taluk, Designated Officers Office, Multipurpose Health Supervisors (F) Training School, Viswanathapuram, Madurai – 625 014.

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

Crl.O.P.(MD)No.18127 of 2022 and Crl.MP(MD)Nos.12124 & 12126 of 2022 24.04.2024 <https://www.mhc.tn.gov.in/judis>