

Siva Associates vs The Food Safety Officer on 15 December, 2023

Author: G.Ilangovan

Bench: G.Ilangovan

CrI.O.P.(MD)No.4017 o

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 15/12/2023
Date of Pronounced : 05/03/2024

CORAM
The Hon'ble Mr.Justice G.ILANGOVAN

CrI.OP(MD)No.4017 of 2022
and
CrI.MP(MD)Nos.2911 and 2914 of 2022

1.Siva Associates,
Represented by its Proprietrix,
K.T.Latha

2.K.Kannan,
Nominee,
Siva Associates,
5A, Therku Theru,
Singarayar Colony,
Narimeadu,
Madurai.

3.Siva Foods,
Represented by its Manufacturer
A.Kathiresan

4.Siva Foods,
Represented by its Manufacturer
M.Karthick Babu : Petitioners/A2 to A5

Vs.

The Food Safety Officer,
The Food Safety and Drugs Administrative
Department,
No.415, Palani Town,

Andavan Poonga Road,
Palani,
Dindigul.

: Respondent/Complainant

<https://www.mhc.tn.gov.in/judis>
1/10

Crl.O.P.(

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the Private Complaint filed in STC No.1573 of 2021 pending on the Judicial Magistrate Court, Palani and quash the same as illegal so far as the petitioners are concerned.

For Petitioners : Mr.R.Gandhi
Senior Counsel
for Mr.J.Karthikeya

For Respondent : Mr.R.M.Anbunithi
Additional Public Pros

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.1573 of 2021 on the file of the Judicial Magistrate, Palani.

2.The facts in brief:-

The petitioners' company is called 'Siva Associates'. They are running another concern called 'MJA Agencies'. On 22/10/2018 at about 02.30 pm, the complainant inspected the Agencies. They purchased the food item brand called 'Flubbers Fruit Jelly' on suspicion. Sampling was undertaken as per the procedure and rules. Report was received from the Food Analyst by the Designated Officer, on 25/03/2019. The report is, dated 20/03/2019. The report reads that it is unsafe for human consumption, sample contained chemical called <https://www.mhc.tn.gov.in/judis> 'Tartrazine and Benzoid Acid'. They are not the permitted colouring agent. After receiving the notice, the third accused requested the Designated Officer for sending sample for second analysis. So, the second sample was sent to Referral laboratory at Mysore, on 14/05/2019. That report was received, on 08/09/2021. The copy was sent to the third accused. Even in that report, it was found that the sample is substandard, does not satisfy the requirement. Sanction for prosecution was sought, on 21/09/2021. The Commissioner of Food Safety accorded sanction, on 04/10/2021 to prosecute the case. The private complaint was filed, on 25/10/2021, taken cognizance

in STC No.1573 of 2021 by the trial court.

3. Seeking quashment of the same, this petition is filed on the ground that proper procedure was not adopted by the Food Safety Officer for launching the prosecution; There is violation of section 46(3) of the Food Safety and Standard Act, 2006 (hereinafter called as 'Act'); There is an inordinate delay in conducting the test; The second chance given to the accused is also not in conformity with the statutory provisions.

4. Another ground is violation of section 77 of the Act. Sampling was taken, on 22/10/2018. But the complaint <https://www.mhc.tn.gov.in/judis> was filed only on 25/10/2021 beyond the period of limitation of three years. Apart from that, it is also mentioned in the grounds that the report of the Analyst is not proper.

5. Heard both sides.

6. Leaving other points aside for few minutes, we will straightaway go to section 77 of the Act, which reads as under:-

“77. Time limit for prosecutions.- Notwithstanding anything contained in this Act, no Court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence.

Food	Provided Safety	that may,	the for	Commissioner reasons
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recorded in writing, approve prosecution within a extended period of upto three years.”

7. Reading of the above said provision makes it obligatory on the part of the Food Safety Officer to get the sanction order from the Commissioner of Food Safety for extending the limitation for filing the prosecution. <https://www.mhc.tn.gov.in/judis>

8. Now the sampling was taken, on 22/10/2018. The complaint was filed, on 25/10/2021. Apparently, it runs beyond three years from the date of sampling.

9. Now we will see as to whether any order is passed by the competent authority namely the Commissioner of Food Safety and Standard. The order is, dated 24/09/2021, which reads as under:-

“Due to administrative reason and due to Lockdown imposed by the government for Covid-19 the delay caused by the Food Safety Officials in Launching Prosecution against Accused is reasonable. So in the interest of Justice and public health. I, the Commissioner of Food Safety approve prosecution under section 77 of Food Safety Standard Act 2006, in which the delay may be condoned.”

10. Sanction was accorded to the Food Safety Officer to file a private complaint by condoning the delay. But no reason is assigned. It has been simply stated in the interest of justice, time is extended. Now the complaint is filed, on 07/10/2021. So it is seen that well within <https://www.mhc.tn.gov.in/judis> the time of three years, the private complaint is filed. But the petitioners stated in their grounds that the complaint was filed, on 25/10/2021. But the date seal of the trial court indicates that it is only 7 th October 2022. So the ground on which, this petition filed is not available.

11. But whether non-mentioning of proper reasoning is proper and whether on that account, the delay can be condoned by the Competent Authority is a matter for consideration by the trial court on the basis of the evidence. So the evidentiary value cannot be taken as a ground for quashing the proceedings. So, the first ground is not available to the petitioners.

12. Now back to the second ground of delay in making the Food Analysis, section 46(3) of the Act is relevant, which reads as under:-

“46. Functions of Food Analyst. – (1)...

(2)...

(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 <https://www.mhc.tn.gov.in/judis> 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 of the Designated Officer.” (4).....”

13. Now we will once again go into the reasons assigned by the Food Analyst. By letter, dated 31/10/2018 the Food Analyst, Palayamkottai has indicated that due to the administrative reasons within 14 days, analysis could not be completed. The expected delay is mentioned as 180 days. Again whether, it is sufficient and proper reason can be considered by the trial court on his evidence. So this ground is also not available to the petitioners.

14. Another ground that has been made by the petitioners is that the Food Analyst has wrongly concluded that it is unsafe for human consumption. But the petitioners already availed the right of appeal against the report and it was tested by the Central Laboratory, Mysore. That order was also communicated to the petitioners. Again, whether the analysis was proper or not again cannot be a matter for consideration by this court. It is purely a factual aspect, which must be <https://www.mhc.tn.gov.in/judis> decided on evidence. So this ground is also not available now to the petitioners.

15. Prima facie the analysis report as well as the report by the Central laboratory, Mysore does indicate that the alleged food item is unfit for human consumption, which does not satisfy the requirement of the standard prescribed. So the petitioners have to face the prosecution to its logical conclusion. On that ground, this petition is liable to be dismissed.

16. In the result, this criminal original petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

05/03/2024 Index:Yes/No Internet:Yes/No er <https://www.mhc.tn.gov.in/judis> To,

1. The Judicial Magistrate, Palani.

2. The Food Safety Officer, The Food Safety and Drugs Administrative Department, No.415, Palani Town, Andavan Poonga Road, Palani, Dindigul.

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

<https://www.mhc.tn.gov.in/judis> G.ILANGOVAN, J e r 05/03/2024
<https://www.mhc.tn.gov.in/judis>