

Nibhana vs The Food Safety Officer on 13 October, 2022

Author: G.Jayachandran

Bench: G.Jayachandran

Crl.R.C.Nos

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.1272 to 1274 of 2017

and

Crl.M.P.Nos.12341, 12346 and 12347 of 2017

Crl.R.C.No.1272 of 2017

Nibhana

... Pe

Vs.

The Food Safety Officer,
Omalur Block,
Omalur Taluk,
Salem District.

... Re

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to permit the Nominee to represent his com instead of the petitioner herein by setting aside the order passed Crl.M.P.No.6312(A) of 2013 in S.T.C.No.972 of 2013 on the file of t learned District Munsif Cum Judicial Magistrate, Omalur, dated 20.0

For Petitioner : Mr. S.S. Swaminathan

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side

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

Crl.R.C.Nos.12

Crl.R.C.No.1273 of 2017

Nibhana

... Petition

Vs.

The Food Safety Officer,
Omalur Block,
Omalur Taluk,
Salem District.

... Respond

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to permit the Nominee to represent his commission instead of the petitioner herein by setting aside the order passed in Crl.M.P.No.3851 of 2016 in S.T.C.No.1320 of 2015 on the file of the learned District Munsif Cum Judicial Magistrate, Omalur, dated 20.0

For Petitioner : Mr. S.S. Swaminathan

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

Crl.R.C.No.1274 of 2017

Nibhana

... Petition

Vs.

The Food Safety Officer,
Omalur Block,
Omalur Taluk,
Salem District.

... Respond

2/11

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

Crl.R.C.No

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to permit the Nominee to represent his commission instead of the petitioner herein by setting aside the order passed in Crl.M.P.No.3838 of 2016 in S.T.C.No.1324 of 2015 on the file of the learned District Munsif Cum Judicial Magistrate, Omalur, dated 20.0

For Petitioner : Mr. S.S. Swaminathan

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Cases are filed to permit the Nominee to represent his company instead of the petitioner herein by setting aside the order passed by the Court below.

2. The matters arising from the prosecution launched under the Food Safety Act, 2006 r/w Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011, alleging that M/S.Mahaveer Foods and Beverages Company, selling unsafe and misbranded products. Three complaints have been lodged against the <https://www.mhc.tn.gov.in/judis> CrI.R.C.Nos.1272 to 1274 of 2017 vendor, licensee and manufacturer.

3. The manufacturer is entitled to appoint a nominee to represent the manufacturer under Section 66 of the Act, if such nominee is appointed, only he will be answerable in case of any prosecution against the company.

4. The petitioner who is the proprietor of M/S.Mahaveer Foods and Beverages contends that he is entitled to nominate a person to represent the firm and in fact, she has already nominated one Irudayanathan on 24.09.2012 and same was intimated to the licensing authority under Form IX of Food Safety Rules. In spite of that, the prosecution being launched against the proprietor instead of the nominee. When notice was issued by the complainant, calling upon the details about nomination, in response to the said query dated 27.09.2013, the petitioner forwarded a letter dated 03.10.2013 enclosing a Photocopy of the Form IX nomination, Irudayanathan to represent the partnership concerned. However, the prosecution being launched against the proprietor instead of nominee. <https://www.mhc.tn.gov.in/judis> CrI.R.C.Nos.1272 to 1274 of 2017

5. The illegality in prosecuting the manufacturer instead of the nominee was brought to the notice of the trial Court by way of Miscellaneous Petitions in M.P.No.CrI.M.P.No.6312(A) of 2013 in S.T.C.No.972 of 2013, CrI.M.P.No.3851 of 2016 in S.T.C.No.1320 of 2015 and CrI.M.P.No.3838 of 2016 in S.T.C.No.1324 of 2015. However, the trial Court erroneously suspected the genuineness of the nomination and held that in view of the Notary Public Seal dated 24.09.2012 found in Form IX, the letter of nomination is a fabricated document. The suspicion about the genuineness of the document has been recorded in view of the fact that the petitioner has not produced the nomination document at the time of inspection or along with his reply.

6. Learned counsel appearing for the petitioner / manufacturer submitted that the firm M/S. Mahaveer Foods and Beverages is in existence even prior to Food Safety and Standards Act, 2006 which came into force in full only in the year 2012. The petitioner has valid licence and being <https://www.mhc.tn.gov.in/judis> CrI.R.C.Nos.1272 to 1274 of 2017 carrying on business as per the old Act. After the repeal of the old Act, by Food Safety and Standards Act, 2006, the time for re-validating the existence licence being extended time to time and during the period of inspection in these cases, the time for seeking renewal of old licence was extended up to 4th February 2018.

7. While so, alleging samples were drawn from the first accused vendor premises and the same was sent to the laboratory and found to be unsafe and substandard. The Food Safety Officer, Omalur issued a notice dated 27.09.2013 calling upon to submit within 7 days the details about the firm including whether nomination to represent the firm has been submitted. In response to the said letter dated 27.09.2013, the details along with Form- 19 as enclosure, forwarded to the Food Safety Officer on 03.10.2013. In spite of the receipt of the said communication, informing about the nomination of Thiru.Irudayanathan to represent the firm, the prosecution has been launched and the Court below has erred in holding that this Form IX has surfaced belatedly only after launching criminal prosecution. <https://www.mhc.tn.gov.in/judis> Crl.R.C.Nos.1272 to 1274 of 2017

8. Learned Government Advocate (Crl.Side) representing the State was directed to produce the file to verify whether the nomination purported to have been sent on 24.09.2012, had reached the Licensing Authority at any point of time.

9. On perusing the record, the learned Government Advocate submits that no such nomination is available. In response to this, the learned counsel appearing for the petitioner states that if really, the Form IX dated 24.09.2012 not available on the record, then the Food Safety Officer who received the letter from the petitioner firm on 03.10.2013 indicating Form IX is enclosed along with the letter ought to have responded stating nomination is not available. Instead, having kept quite giving an impression that the intimation about the nomination has been well taken on record, suddenly and surprisingly prosecution launched against the manufacturer ignoring the nomination.

<https://www.mhc.tn.gov.in/judis> Crl.R.C.Nos.1272 to 1274 of 2017

10. Section 66 of the Act deals with offence by Company. The learned counsel would submit that though the petitioner is a proprietor of the manufacturing firm, as per the explanation to term, 'Company' as found in Section 66, the petitioner firm will fall within the definition of Company. Reading Rule 2.5.1 which enables nomination by the company in the prescribed performa, the petitioner is entitled to appoint a nominee and accordingly, appointed a nominee on 24.09.2012. Omission to take note of that by the Food Safety Officer, cannot fasten the liability on the manufacturer / the petitioner who has availed the option of appointing nominee.

11. Though, this Court has its own reservation regarding the interpretation of extending the benefit of appointing a nominee for proprietary concern which has no other branch or unit, as far as this case is concerned, since the complainant himself has called for details regarding nomination and it is contended that the complainant duly informed about the nomination on 24.09.2012 vide reply dated 03.10.2013 the sustainability of the order passed by the trial Court alone taken into consideration. <https://www.mhc.tn.gov.in/judis> Crl.R.C.Nos.1272 to 1274 of 2017

12. The trial Court has rejected the claim of the petitioner to substitute the nominee in her place based on the suspicion that the nomination letter is ante-dated. But from the communication between the petitioner and Food Safety Officer and the Licensing Authority indicates that the petitioner firm had even before 2012 under the old Act had nominated the person to represent the firm and continue to inform the authority about the nominee. Therefore, prima facie, there is no

element of suspicion about the submission of Form IX dated 24.09.2012, which latter intimated in the reply to show cause notice.

13. In any event, the said nomination has to be taken on record. Since the proprietor of the firm has come forward to appoint a nominee and from the records, it appears that the nomination was prior to the inspection for the purpose of prosecution.

<https://www.mhc.tn.gov.in/judis> Crl.R.C.Nos.1272 to 1274 of 2017

14. As a result, the Criminal Revision Cases are allowed. Order of the trial Court is set aside. The petition to substitute the nominee of the third accused-manufacturer firm, to contest the complaint is permitted. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this order.

13.10.2022 AT Index : Yes/No Speaking / Non-speaking <https://www.mhc.tn.gov.in/judis> Crl.R.C.Nos.1272 to 1274 of 2017 Dr.G.JAYACHANDRAN,J.

AT To

- 1.The District Munsif Cum Judicial Magistrate, Omalur.
- 2.The Food Safety Officer, Omalur Block, Omalur Taluk, Salem District.
- 3.The Public Prosecutor, High Court of Madras.

Crl.R.C.Nos.1272 to 1274 of 2017 and Crl.M.P.Nos.12341, 12346 and 12347 of 2017 13.10.2022 <https://www.mhc.tn.gov.in/judis>