

S.Subramani vs The State Of Tamil Nadu Rep.By on 31 January, 2023

2023/MHC/386

Crl.OP.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.01.2023
Pronounced on 31.01.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.O.P.No.18797 of 2019
and
Crl.MP.No.9566 of 2019

1.S.Subramani
C/o M/s.Kamatchi Vilas Sivauri Tabacco Company

2.G.Arumugham
M/s.Kamatchi Vilas Sivauri Tabacco Company

3.M/s.Kamatchi Vilas Sivauri Tabacco Company
No.6, Kanikandeesawarar Koil Street,
Kanchipuram 631 501 ... Petitioners/Accused 1 to 3

Vs.

The State of Tamil Nadu rep.by
The Food Safety Officer,
Area Code No.421, Kanchipuram Municipality,
C/o.Tamil Nadu Food Safety and
Drug Administration Department,
No.42-A, Railway Road,
Kanchipuram 631 501,
Kanchipuram district. ...Respondent/Complainant

Prayer:- This Criminal Revision Petition filed under Section 482 of Cr.P.C. praying to call for records in C.C.No.48/2019 on the file of the Ju

1/12

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

Crl

Magistrate -I, Kanchipuram and quash the complaint.

For Petitioners : Mr.Y.Jyothish Chander
For Respondent : Mr.A.Gopinath,
Government Advocate (c

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.48/2019 on the file of the learned Judicial Magistrate I Kanchipuram.

2.The petitioners are the accused 1 to 3. The respondent/complainant who is the Food Safety Officer representing the State of Tamilnadu has given a private complaint on 02.07.2019 against the accused for the offence under Sections 58, 59 (i) and 63 of the Food Safety Standards (Prohibition and Restriction on sales) Regulation of 2011. The 3 rd petitioner is the proprietary concern engaged in manufacturing and trading of tobacco products under a valid license dated 07.07.2000 issued by the Cenral Excise Authority Kanchipuram Range in Sl.No.M/58-02-01:1170/4/2000 under 174 Central Excise Rules 1994. The GST registration Number of the 3rd petitioner is 33AECPA0546H1Z7.

<https://www.mhc.tn.gov.in/judis> 2.1.The second petitioner is the proprietor of the 3 rd petitioner concern and the first petitioner is a relative of the second petitioner. On 01.07.2017 the officers of the respondent's department came for inspection to the 3rd petitioner concern and took a raw cutting tobacco sample from the 3rd petitioner's godown and sent the sample to the Regional Food Analysis Laboratory for testing. As per the report of the food analyst dated 29.07.2017 the sample of raw cutting tobacco is said to have contained Nicotine which is unsafe under Sec.26(2)(i) & (iv) of Food Safety and Standards Act, 2006 and its sale is prohibited and restricted under 2.3.4 of Food Safety Standards (Prohibition and Restriction on Sales) Regulation 2011 issued by the Government Gazattee No.146 dated 23.05.2017. Subsequently a private complaint has been filed against the petitioners before the learned Judicial Magistrate – I, Kanchipuram for the offences under Sections 58, 59 (i) and 63 of the Food Safety Standards (Prohibition and Restriction on sales) Regulation of 2011.

3.Heard the submissions made by either side learned counsel and perused the materials available on record.

4.The learned counsel for the petitioners submitted that the above <https://www.mhc.tn.gov.in/judis> G.O.No.146 dated 23.05.2017 itself was stayed by the High Court by holding that tabacco product is not a food product; the petitioners have informed the same by making due representation, however the complaint has been filed without following due procedure; the complaint itself is a time barred one in view of Sec.77 of the Act.

4.1.As per Sec.77 of the Act, no Court shall take cognizance for the offence under the Act, after the expiry of 6 months period from the date of commission of the offence. However the time limit can be extended up to a period of three years if the approval is obtained from the Commissioner of Food

Safety. Since the offence is said to have been committed in the year 2017 and the private complaint has been filed in the year 2019, the complaint is barred by limitation; The trial Court without taking into consideration of the fact that complaint is barred by limitation, had taken the case on file; since tobacco is not a food product the regulation of the tobacco product can be done only under the Cigarettes and Tobacco Products Act, 2003 and not under the Food Safety and Standard Act-2006. The sample was taken on 01.07.2013. The notification that was issued under FSS Act, to include tobacco as a food product was set-aside. Hence, the respondent <https://www.mhc.tn.gov.in/judis> has no power to seize the tobacco product and initiate any prosecution under the Act; in view of the above stated reasons the complaint is liable to be set- aside.

4.2.In support of his above contention, the learned counsel for the petitioners cited the judgement of this Court held in the case of M/s.Brooks Hi- Tech Pvt. Ltd Vs. Union of India held in Crl.OP.No.21289of 2014 dated 13.10.2020 and the order of this Court in the case of M/S.E.S.Mydeen and Co Vs The Designated Officer (Thanjavur District) and another held in the case of WP.(MD)Nos.18115 of 2021(batch) dated 18.07.2022.

5.The learned Government Advocate (crl.side) appearing for the respondent submitted that the sample collected from the petitioner's concern is seen to be adulterated and it contained unsafe substances like Nicotine; the period during which the process of analysis was pending with the analyst should be excluded when counting the period of limitation; only on the date when the analyst sends his report it will come to the knowledge of the respondents whether the sample was adulterated; the period of limitation should be counted only from the date on which the report of the analyst is <https://www.mhc.tn.gov.in/judis> received and not from the date on which the sample was taken; hence the complaint itself is not barred by limitation.

5.1.In support of his above contention, the learned Government Advocate (crl.side) for the respondent relied the judgement of the Hon'ble Supreme Court held in the case of State of Rajasthan Vs. Sanjay Kumar & Ors dated 01.05.1998. The complaint is not barred by limitation and the petition is filed by the petitioner is liable to be dismissed.

6.In the case M/S.E.S.Mydeen and Co Vs The Designated Officer (Thanjavur District) and another dated 18.07.2022 in WP.(MD)Nos.18115 of 2021(batch),this Court has held that the tobacco product will not come under Sec.3(1)(j) of the Act. It is held that tobacco is a not food product and it would come under the Prohibition of Cigarette and Tobacco Act and that the Food Safety and Standards Act is not applicable to the case of the petitioners.

7. In this regard, it is worthwhile to rely on the judgement of this Court held in Crl.OP.(MD)No.5595 of 2015 [Manufacturer, M/s.Tekram Dharam Paul, Maurmandi, Bhatinda District, Punjab and another Vs. <https://www.mhc.tn.gov.in/judis> The Food Safety Inspector, Amabsamudram] dated 27.04.2015. In the sad judgement this Court has held as under:

“ 4.The only submission made by the learned counsel for the petitioners is that the sale of tobacco would not attract the provisions of the enactment. He further submits that as per Rule 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions

on Sales) Regulations Act, 2011, tobacco shall not be used as ingredients in any food products. As the tobacco does not come within the purview of the food product, the provisions will not apply. Moreover, when the allegation itself is that it has been sold in packet as tobacco.

7. Considering the very same issue with respect to the petitioners, the High Court of Kerala was pleased to hold while dealing with the very same provisions in the following manner:

“30. Having found that chewing tobacco is not a food product as defined under the FSS Act, I am of the view that the writ petitions are only to be allowed as follows:

i) That tobacco or tobacco products are not food as defined under Section 3(j) of the FSS Act and it is not a food product as specified in the Regulation 2.3.4 of the Regulations.

ii) Tobacco and tobacco products are to be manufactured and sold strictly in accordance with the provisions of the CTP Act and the Rules framed thereunder.

iii) The respondents have no right to take any action against tobacco or tobacco products by virtue of Government Order dated 22.05.2012 (Ext.P9 in W.P.C.No.13580 of <https://www.mhc.tn.gov.in/judis> 2012).”

8. Thus, it is clear that the petitioners who are manufacturing Gutkha and Pan Masala cannot be proceeded under the FSSAI. Tobacco is covered under the COTA (Cigarettes and other Tobacco Products Act, 2003)

9. In the light of the above, this Court is constrained to quash the proceedings. Accordingly, the proceedings initiated against the petitioners in C.C.No.9 of 2014 on the file of the Judicial Magistrate Court, Ambasamudram, is hereby quashed and the criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed. However, it is made clear that this order will not stand in the way of the appropriate authority to take action under COTA (Cigarettes and other Tobacco Products Act, 2003).”

8. In a later judgement of this Court held in WP.No.21 of 2017 dated 09.06.2017 [Jayavilas Tobacco Traders LLP Vs. The Designation officer] the above proposition has been followed.

9. In fact, the notification dated 23.05.2017 under which the complaint has been filed was also set aside by virtue of the order of this Court held in WP.No.10319/2017 dated 12.09.2017. So it has also been held that tobacco does not fall under the Food Safety and Standards Act, 2011 and that the tobacco products are governed only in accordance with the Prohibition of Cigarettes and other Tobacco Act 2003. Since the respondent <https://www.mhc.tn.gov.in/judis> has initiated prosecution under the Act which does not cover the impugned product, the very complaint itself is fundamentally illegal. In fact, the 3rd petitioner has sent his representation by stating about the

order of the High Court , where it is held that the respondent cannot take samples of tobacco products under Food Safety and Standards Act 2011.

10. Even as per the Food Safety and Standards Act 2006, the Court cannot take cognizance of any offence under the said Act after the expiry of one year. Sec.77 of that said Act contemplates the period of limitation as one year from the date of the commission of the offence. The extension of time can be obtained up to three years provided if the commissioner of food safety gives approval for prosecution beyond the period of one year. In the case in hand no such approval was obtained. Moreover on the date when the sample was taken i.e. 01.07.2017 itself the notification dated 23.05.2017 was quashed. So the respondent/complainant did not have any authority to take tobacco sample on 01.07.2017 under the Food Safety and Standards Act 2006. Hence the submission on the point of limitation is not relevant to the present case. Because the respondent investigation agency did not have authority to take samples of raw cutting tobacco. <https://www.mhc.tn.gov.in/judis>

11. Further it has been categorically held by the High Court that tobacco does not fall under the definition of food; but it is governed under the Cigarette and Tobacco Product-2003. Hence the authorities who have to deal with the impugned product have not involved in this case. Since the respondent has exceeded his jurisdiction and has taken sample in violation of the order of the High Court the entire proceedings gets vitiated and hence, the complainant is liable to be quashed.

In the result, this Criminal Original Petition is allowed. The proceedings in C.C.No.48/2019 on the file of the Judicial Magistrate -I, Kanchipuram is quashed against the petitioners. Consequently, connected miscellaneous petition is also closed.

31.01.2023 Index : Yes/No Internet : Yes/No Speaking/ Non Speaking.

Netural: Yes /No jrs <https://www.mhc.tn.gov.in/judis> To

1.The Inspector of Police, District Crime Branch, Kancheepuram Police Station, Kancheepuram.

2.The Public Prosecutor, High Court of Madras.

<https://www.mhc.tn.gov.in/judis> R.N.MANJULA, J.

jrs and 31.01.2023 <https://www.mhc.tn.gov.in/judis>