

Bg Naidu Sweets Private Limited vs S.Karthic B.Sc on 21 June, 2024

CrI.O.P(MD) .No.6339 o

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

CrI.O.P(MD)No.6339 of 2021

and

CrI.MP(MD)Nos.3652 & 3653 of 2021

1.M.Saravanan
2.BG Naidu Sweets Private Limited,
No.29-K, Ilango Street,
Sangiliyandapuram,
Trichy-620 001.

3.Badrinath,
S/o.Bakthavatchalam (Director),
BG Naidu Sweets Private Limited,
No.29-K, Ilango Street,
Sangiliyandapuram,
Trichy-620 001,
F/o.C-208, Thiruvalluvar Street,
Anna Nagar, Thennur, Trichy-17.

4.Amarnath,
S/o.Bakthavatchalam (Director),
BG Naidu Sweets Private Limited,
No.29-K, Ilango Street,
Sangiliyandapuram,
Trichy-620 001,
R/o.2/1, 8th Main Road,
Second Cross, Srinivasa Nagar,
Trichy-620 017.

5.Balaji,
S/o.Bakthavatchalam (Director),

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

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CrI.O.P(M

BG Naidu Sweets Private Limited,

No.29-K, Ilango Street,
Sangiliyandapuram,
Trichy-620 001,

... Petitioners 1 to 5 / Accused Nos.

Vs.

S.Karthic B.Sc., PGDSI.,
Food Safety Officer (Addl.Charge)
Pudukottai Town & Circle, Code No.448,
Food Safety & Drug Administration Department,
6th Street, Santhanathapuram,
Pudukkottai District.

... Respondent / Defacto Complainant

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records relating to the impugned complaint of respondent in STC.No. of 2020 on the file of the learned Judicial Magistrate-I, Pudukkottai to quash the same.

For Petitioners	: Mr.H.Thayumanaswamy
For Respondent	: Mr.K.Sanjai Gandhi Government Advocate (C)

ORDER

This criminal original petition has been filed to quash the impugned charge sheet in STC.No.94 of 2020 on the file of the learned Judicial Magistrate-I, Pudukkottai.

2. The learned counsel for the petitioner submitted that the first petitioner is an employee under the second respondent. The second petitioner is the Sweet Stall namely, BG Naidu Sweets Private Limited. The petitioners 3 to 5 are the Directors of the BG Naidu Sweets Private Limited. On 15.10.2018, at about 01.15 p.m, on the complaint from the what-app No.9444042322 that in the second petitioner's sweet stall, sweets and snacks are prepared with the impermissible colours, the respondent went to the above said Sweet Stall at A.K.G.N.Complex, Opposite to the Bus Stand of Pudukkottai. At that time, the first petitioner was engaged in sales. The respondent purchased "2 kg of Bombay Halwa" and divided them into 4 parcel weighing about 500 kg 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 16.10.2018. The Food Analyst had sent a report on 09.11.2018 stating that the sample was 'unsafe'. The respondent had sent a copy of the Food Analyst report to the accused along with his notice, on 12.12.2018. However, there was no appeal on the side of the accused. Hence, the respondent filed a private complaint before the learned Judicial Magistrate-I, Pudukkottai, after obtaining sanction from the Commissioner, Food Safety and the same was taken on file in STC.No.94 of 2020 for the offences under Sections 3(1)(zz)(v)(viii), 26(1)(2) & (v) and Section 27(2)(C) of Food Safety & Standards Act, 2006 and Regulation 2.12.1 Table 6.5 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. Aggrieved by the same, present petition has been filed.

3. The learned counsel appearing for the petitioners submitted that the inspection was said to have been conducted on 15.10.2018. But, the impugned complaint was filed on 25.11.2019 i.e., after a lapse of one year and it is barred by Limitation under Section 77 of the Act. He further submitted that there is no locus standi to file a complaint by the respondent. Apart from that, no opportunity was given to the accused to file an appeal. Further, in the impugned complaint, it was stated that each parcel weighing about 500 grams and covered with brown colour paper. Per contra, in the Food Analyst report, it was stated that the quantity of the parcel was 540 grams and it was covered with white plastic container. There are several irregularities and illegalities in the documents filed along with the impugned complaint. Hence, the proceedings against the petitioners is liable to be quashed.

4. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that there is no bar by Limitation under Section 77 <https://www.mhc.tn.gov.in/judis> of the Act, as alleged by the learned counsel for the petitioners. As per Section 77 of the Food Safety and Standards Act, 2006, Time limit for prosecution – 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; Provided that the commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years. Hence, there is no bar. Insofar as the contention of the learned counsel for the petitioners that there is no locus standi is concerned, on receipt of complaint from the what-app No.9444042322 only, inspection was conducted. Hence, there is locus standi. Insofar as the another contention of the learned counsel for the petitioners that no opportunity was given to the accused to file an appeal is concerned, even an opportunity was given to them, they have not filed any appeal before the Designated Officer under Section 46(4) of the Food Safety and Standards Act in Form VII and hence, he objected to quash the proceedings.

5. At this juncture, the learned counsel appearing for the petitioners submitted that the sanctioning authority grant approval without <https://www.mhc.tn.gov.in/judis> explaining any proper reason for the delay and the administration reason for the delay in filing the impugned complaint, is not acceptable one. To support his contention, he relied upon the judgment of this Court in Crl.OP.Nos18881 & 18882 of 2016 dated 19.01.2022. The relevant portion of the above said order is as follows:-

“10. Nextly, it is not in dispute that the Food Analyst reports were received 21.10.2013 and the one year period prescribed under Section 77 of the Act to take cognizance of the offence was expired on 09.10.2014, whereas the complaints were filed on 25.01.2016 and 16.03.2016 respectively. Section 77 of The Food Safety and Standards Act, 2006 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.

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years".

Admittedly, the prosecution in the instant cases were not launched within a period of one year from the date of commission of offence. However, on a careful perusal of records, more particularly, the order of the sanctioning authority, it could be seen that sanction for prosecution was approved on 19.10.2015 and 21.01.2016 respectively and the sanctioning authority condoned the delay in launching the prosecution holding that the delay was caused due to administrative reasons. There is an embargo under Section 77 of the Act, for the court to take cognizance of an offence beyond the period of one year from the date of commission of offence. However, the sanctioning authority for the reasons to be recorded approve the prosecution within an extended period of upto three years. The said proviso has been enacted with the object that due to some unavoidable reasons, there might be some delay occurred in launching the prosecution and in such circumstances, for the reasons to be recorded in writing, the sanctioning authority may approve the prosecution. However, the sanctioning authority in the instant cases, grant approval without any reason whatsoever, even though the authority has stated that, due to administrative reason, without explaining the reason for the delay, the reason assigned by the sanctioning authority for condoning the delay in launching the prosecution, cannot be a valid and sound in law." <https://www.mhc.tn.gov.in/judis>

6. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondents and perused the materials available on records.

7. On a perusal of the records, it reveals that there are several infirmities and discrepancies in the document filed along with the impugned complaint. Apart from that, the judgment relied upon by the learned counsel for the petitioners is squarely applicable to this case on hand. Hence, this Court is inclined to allow this petition.

8. Accordingly, the Criminal Proceedings in STC.No.94 of 2020 on the file of the learned Judicial Magistrate-I, Pudukkottai, is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

21.06.2024 NCC : Yes / No Internet : Yes / No Index : Yes / No dss
<https://www.mhc.tn.gov.in/judis> To

1.The Judicial Magistrate-I, Pudukkottai.

2. S.Karthic B.Sc., PGDSI., Food Safety Officer (Addl.Charge) Pudukkottai Town & Circle, Code No.448, Food Safety & Drug Administration Department, 6th Street, Santhanathapuram, Pudukkottai District.

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

<https://www.mhc.tn.gov.in/judis> A.A.NAKKIRAN, J.

dss and Crl.MP(MD)Nos.3652 & 3653 of 2021 21.06.2024 <https://www.mhc.tn.gov.in/judis>