

Spencer Retail Ltd vs Food Safety Officer on 3 February, 2023

Crl.OP

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

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

Crl.OP.No.12790 of 2021

and

Crl.MP.No.7066 of 2021

Spencer Retail Ltd.,
56/163, Velachery Main Road,
Velachery, Chennai-600 042
represented by its Senior Manager & Authorised Signatory
P.Srinivasan

Vs.

Food Safety Officer,
Area Code, 548 (Divisions 170, 171, 172, 174)
Guindy Area, Tamil Nadu Food Safety &
Drug Administration Department
O/o Designated Officer, 35, West Jones Road,
Saidapet, Chennai 600 015.

Criminal Original Petition filed under Section 482 Cr.P.C pray
for the records pertaining to the proceedings in C.C.No.1499 of 2017 o
file of the Metropolitan Magistrate IX, Saidapet, Chennai and quash th

For Petitioner : Mr.K.V.R.Sridharan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

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

Crl.OP

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the proceedings in CC.No.1499 of 2017 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. The petitioner is the 4th accused. A private complaint has been filed against the petitioner and three others for the alleged violation committed under Food Safety and Standards Act, 2006 on the complaint of the respondent/ Food Safety Officer. He had gone to the shop of the petitioner on 15.07.2015 and after having introduced himself, he had purchased 1500 grams of Dhaniya in four packets. After completing the formalities, the food sample has been sent for analysis and from the report of the Food Analyst, it is seen that the Dhaniya purchased by the respondent is adulterated. The report of the Food Analyst was obtained on 31.07.2015 and the copy of the report was served upon the petitioner and others. After intimating the same to the petitioner, the respondent got the sanction from the Commissioner of Food Safety and filed the private complaint.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused the entire materials available on record. <https://www.mhc.tn.gov.in/judis>

4. The learned counsel for the petitioner submitted that for the violation, which has been stated in the complaint, the maximum punishment would be six months; the complaint has been filed after three years, which is barred by limitation as per Section 77 of The Food Safety and Standards Act; the Court had not take cognisance of any offence of the Act and the complaint was filed after the expiry of the period of one year from the date of the offence, even though the sample was taken on 15.07.2015 and Food Analyst report was signed on 31.07.2015 itself; therefore, there is an inordinate delay of nearly 2 years in preferring the complaint and hence, it is barred by limitation.

5. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that as per the proviso to Section 77, the Commissioner of Food Safety has to give appropriate approval for prosecution within the extended period of three years. After implementation of Food Safety and Standards Act, no Court was designated to take up the complaints under the said Act. Only in view of that lot of cases were pending and considering the same, the Commissioner of Food Safety has granted permission to file the complaint.

6. On perusal of the records, it is seen that the Food sample has been produced on 15.07.2015 and the Food Analyst had examined the sample <https://www.mhc.tn.gov.in/judis> between the period from 16.07.2015 to 24.07.2015. The report was signed by the Food Analyst on 31.07.2015 The copy of the Food Analyst report was served on the 3rd accused on behalf of the 4th accused.

7. The learned counsel for the petitioner submitted that he did not opt to exercise his right of appeal against the Food Analyst report. The only contention of the learned counsel for the petitioner is that the complaint ought to have been filed within one year from the date of taking the sample, but the complaint has been filed after a delay of two years. But it is seen from the records submitted before the Court that the sanction for the prosecution was granted, after a lapse of one year. The reason stated was because of the uncertainty existed about the Court where the complaint should be filed.

8. The records would show that the Commissioner of Food Safety has written a letter to the learned Chief Judicial Magistrate on 03.09.2015 by expressing the difficulty in filing the case and requested to nominate a respective area Metropolitan Magistrate Court or any one of Metropolitan Magistrate Courts to file the offence falling under the Food Safety Act. However, the records does not show when the Court has nominated as requested by the Commissioner of Food Safety. But these matters are question of facts and that can be well adverted by the trial Court at the time when the <https://www.mhc.tn.gov.in/judis> witnesses are examined and the documents are produced. At this stage, the records would show that the concerned authorities i.e., Commissioner of Food Safety has granted sanction for reasons recorded in his own order for filing the complaint beyond the period of one year. Hence, I find no reason to find fault with and taking cognisance of this case.

9. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

03.02.2023 Index: Yes/No Speaking / Non Speaking Order Neutral Citation : Yes/No. kmi To

1.The IX Metropolitan Magistrate, Saidapet, Chennai.

2. The Food Safety Officer, Area Code, 548 (Divisions 170, 171, 172, 174) Guindy Area, Tamil Nadu Food Safety & Drug Administration Department O/o Designated Officer, 35, West Jones Road, Saidapet, Chennai 600 015.

3. The Public Prosecutor, High Court of Madras, Chennai-104.

<https://www.mhc.tn.gov.in/judis> R.N.MANJULA, J kmi 03.02.2023
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