

K.Kanniyappan vs <https://www.mhc.tn.gov.in/judis> on 12 January, 2022

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

1 CRL.O.P. (MD)NO.2873 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.2873 of 2021 and
CRL.M.P.(MD)Nos.1535 and 1536 of 2021

1. K.Kanniyappan,
S/o.V.K.Kanniyappan,
Business Manager,
Chakra Drugs (P) Ltd.,
No.160, 161, Tamilnadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18.
2. S.L.Sethu Madhava
S/o.Lakshmanan,
Director, Chakra Drugs (P) Ltd.,
No.160, 161, Tamilnadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18.
3. S.Vasumathi,
W/o.S.L.Sethu Madhava,
Director, Chakra Drugs (P) Ltd.,
No.160, 161, Tamilnadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18.
4. Chakra Drugs (P) Ltd.,
No.160, 161, Tamilnadu Food Articles
Commercial Complex,
Alanganallur Road, Chikkandar Savadi,
Madurai – 18. ... Petitioners / Accused Nos.1 to 4

Vs.

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

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CRL.O.P. (MD)NO.2873

The Food Safety Officer,
Madurai Corporation (Code No.579),
O/o.The Designated Officer,
Food Safety and Drug
Administration Department (Food Wing),
Viswanathapuram,
Madurai – 625 014.

... Respondent / Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records and to quash the proceedings in S.T.C.No.222 of 2020 on the file of the Judicial Magistrate Court, Vadipatti, Madurai.

For Petitioners : Mr.M.Rajaraman

For Respondent : Mr.E.Antony Sahaya Prabakar,
Additional Public Prosecutor.

ORDER

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

2. This criminal original petition has been filed to quash the proceedings in S.T.C.No.222 of 2020 on the file of the Judicial Magistrate Court, Vadipatti, Madurai. <https://www.mhc.tn.gov.in/judis>

3. The prosecution is for the offences under Sections 51, 59(i) and 63 of the Food Safety and Standards Act.

4. The learned counsel appearing for the petitioners pointed out that the sample taken by the respondent was only “Turmeric Dust Powder” and therefore it cannot be even construed as food. It is a waste product. I went through the contents of Form V A. It is mentioned in the said Form that the sample taken was Turmeric Dust Powder. Since it has not been defined as food, the petitioners cannot be prosecuted for the offence under Sections 51 and 59(i) of the Food Safety and Standards Act. However, the petitioners have not produced any copy of the license to show that the place from where the sample was taken is a licensed place. No such license has been enclosed. Therefore, the fact that the first petitioner Kanniyappan is the nominee responsible for compliances will not come to the rescue of the Directors. Only if there has been valid nomination in respect of the premises from where the sample was taken, then alone, the Directors can plead that they cannot be

prosecuted. In this case, the petitioners have <https://www.mhc.tn.gov.in/judis> not been able to show any license for the premises in question. Therefore, I decline to quash the impugned proceedings in so far as Section 63 of the Food Safety and Standards Act is concerned. The impugned proceedings are quashed in so far as Sections 51 and 59(i) of the Act.

5. I make it clear that the petitioners will have to face the prosecution for the offence under Section 63 of the Act.

6. The core argument of the petitioners' counsel appears to be that it is open to them to add Tartrazine in the food products in question. However, the learned Additional Public Prosecutor has been able to produce a copy of the amendment notification indicating that adding Tartrazine was not permitted with effect from 01.07.2017. In this case, the inspection had taken place on 06.08.2019. Therefore, the petitioners will be covered by the aforesaid amendment notification.

7. This criminal original petition is partly allowed. All the contentions and the defences of the petitioners are left open. <https://www.mhc.tn.gov.in/judis>

8. The personal appearance of the petitioners before the Court below is dispensed with. However, the petitioners have to appear before the Court below on the following three occasions:-

i) To answer the charges,

ii) at the time of examination under Section 313 of Cr.P.C.

and

iii) at the time of pronouncement of Judgment. The petitioners also will have to appear when their presence is insisted upon by the trial Court and on all other occasions, the petitioners can be represented by their counsel. If the petitioners' counsel also fails to appear, the benefit of this order will stand vacated automatically. Consequently, connected miscellaneous petitions are closed.

Index	: Yes / No
Internet	: Yes/ No
PMU	

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned. <https://www.mhc.tn.gov.in/judis> G.R.SWAMINATHAN,J.

PMU To:

1. The Judicial Magistrate Court, Vadipatti, Madurai.
2. The Food Safety Officer, Madurai Corporation (Code No.579), O/o.The Designated Officer, Food Safety and Drug Administration Department (Food Wing), Viswanathapuram, Madurai – 625 014.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

12.01.2022 <https://www.mhc.tn.gov.in/judis> <https://www.mhc.tn.gov.in/judis>