

Muhammed Sabir vs Food Safety Officer on 23 August, 2024

Author: P.V.Kunhikrishnan

Bench: P.V.Kunhikrishnan

CrL.M.C. Nos.6319 of 2017 & 2464 of 2018

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2024:KER:65531

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 23RD DAY OF AUGUST 2024 / 1ST BHADRA, 1946
CRL.MC NO. 6319 OF 2017

AGAINST THE ORDER/JUDGMENT DATED IN ST NO.1030
OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - II,
KOTHAMANGALAM

PETITIONER/2ND ACCUSED:

S.M.MUHAMMED
S/O.MOIDEEN, AGED 60 YEARS, RESIDING AT
SRAMBICKAL HOUSE,EASTERN VALLEY, MACHIPLAVU
P.O ADIMALI, IDUKKI DISTRICT,PIN - 685 561

BY ADVS.
SRI.SANTHOSH SUBRAMANIAN
SRI.SHERRY J. THOMAS
SRI.S.SREEKUMARNORTH PARAVUR
SRI.E.A.THANKAPPAN

RESPONDENTS/COMPLAINANT & STATE:

- 1 FOOD SAFETY OFFICER, KOTHAMANGALAM
CIRCLE,ERNAKULAM DISTRICT - 686 693
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT
OF KERALA, EERNAKULAM, PIN - 682 031

BY ADV.
SRI.GRASHIOUS KURIAKOSE, ADGP,
SRI.RENJITH.T.R, SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 23.08.2024, ALONG WITH CrL.MC.2464/2018,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
CrL.M.C. Nos.6319 of 2017 & 2464 of 2018

2024:KER:65531

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 23RD DAY OF AUGUST 2024 / 1ST BHADRA, 1946
CRL.MC NO. 2464 OF 2018
AGAINST THE ORDER/JUDGMENT DATED IN ST NO.1534
OF 2017 OF JUDL. MAGI. OF FIRST CLASS-III, KOTTAYAM
PETITIONER/2ND ACCUSED:

MUHAMMED SABIR
S/O.LATE P.C.MAMMOO HAJI,AGED 37
YEARS,C/O.P.C.MAMMOO & SONS,V/176,BAZAR
ROAD,MATTANCHERRY,KOCHI-682 002.

BY ADVS.
SRI.SANTHOSH SUBRAMANIAN
SRI.SHERRY J. THOMAS
SRI.S.SREEKUMARNORTH PARAVUR
SRI.E.A.THANKAPPAN

RESPONDENTS/COMPLAINANT & STATE:

- 1 FOOD SAFETY OFFICER, KOTTAYAM CIRCLE,1ST
FLOOR, S.K.M.BUILDING,PUTHUPALLY P.O.,
KOTTAYAM-686 011.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT
OF KERALA,ERNAKULAM,PIN-682 031.

BY ADV.
SRI.GRASHIOUS KURIAKOSE, ADGP,
SRI.RENJITH.T.R, SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 23.08.2024, ALONG WITH CrL.MC.6319/2017,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
CrL.M.C. Nos.6319 of 2017 & 2464 of 2018

2024:KER:65531

P.V.KUNHIKRISHNAN, J.

CrL.M.C. Nos.6319 of 2017 & 2464 of 2018

Dated this the 23rd day of August, 2024

ORDER

These two Criminal Miscellaneous cases are connected and therefore, I am disposing of these cases by a common order because same point is raised in these cases. I will narrate the facts in Crl.M.C.No. 6319/2017.

2. Petitioner is the 2nd accused in S.T.No.1030/2016 on the file of the Judicial First Class Magistrate Court - II, Kothamangalam. The above case is registered alleging offences punishable under the provisions of the Food Safety and Standards Act, 2006. On 18.02.2015 at about 3.45 p.m., the 1st respondent, Food Safety Officer of Kothamangalam Circle visited Crl.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 the warehouse of M/s. Eastern Chai (Pvt) Ltd. and in the store room of the company 1000 kg of tea dust was seen packed in 250 grams each sealed and labeled packets and from the said stock 8 packets of 250 grams each tea dust was taken as sample by the 1st respondent. From those 8 packets, two packets each, were tied together, and four sample units were prepared by the 1st respondent and from such sample units, one sample unit was sent for chemical analysis to the Regional Analytical Laboratory, Ernakulam and a report was received and based on the same, Annexure-I complaint was filed. Annexure-II is the food analyst report in Form B. As per Annexure-II, the tea dust contains iron filings which is quantified at 592.25 mg/Kg and as per the report, iron filing shall be absent. Being aggrieved by the opinion expressed by the food analyst in Annexure-II report, another part Crl.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 of the sample was sent on the request of the petitioner to the Referral Laboratory, Kolkotta and a report in Form A was received as evident by Annexure-III. In column No.8 of Annexure-III report, it is stated that iron filings detected at 1378.39 mg/Kg. As per the report, iron filings shall be absent. Hence it is alleged that the accused committed the offence.

3. Crl.M.C. No.2464/2018 is filed to quash the proceedings in S.T. No. 1534/2017 on the file of the Judicial First Class Magistrate Court - III, Kottayam. In this case also, the prosecution is as per the provisions of the Food Safety and Standards Act, 2006. It is stated that the tea dust seized as per Annexure-II was sent for analysis, and the analyst reported that there is iron filing. Hence it is alleged that the accused committed the offence. According to the petitioners, even if the entire allegations are accepted, no offence Crl.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 is made out. Hence these Criminal Miscellaneous Cases are filed.

4. Heard the learned counsel appearing for the petitioners and the learned Additional Director General of Prosecution.

5. The short point raised by the petitioners is that, in the light of the order dated 17.08.2023 in Crl.M.C. No.7955/2017, the prosecution against the petitioners is to be quashed. I think there is force in the above contention. The sample of tea dust in S.T.No. 1534/2017 on the file of the Judicial First Class Magistrate Court - III, Kottayam was taken on 04.02.2016 and the sample of tea dust in S.T. No.1030/2016 on the file of the Judicial First Class Magistrate Court - II, Kothamangalam was

taken on 18.02.2015. It will be beneficial to extract the order dated 17.08.2023 in Crl.M.C. No.7955/2017:

"The petitioner herein is the 2nd accused in Crl.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 S.T.No. 831 of 2016 on the file of the Judicial First Class Magistrate-I, Idukki. In the aforesaid case, he is facing prosecution for having committed offences punishable under Section 3.1 (zz) (iii) & (xi), 26 2(i), 27(i) and 59(i) of FSS Act, 2006 r/w. Regulation No. 2.10.1:(1) of Food Safety and Standards (Food Products Standard and Food Additives) Regulations 2011.

2. The prosecution alleges that on 12.02.2016, at approximately 3.30 PM, an inspection was conducted at Door No.III/165-A shop namely Sneha Agencies of Idukki-Kanjikuzhy Grama Panchayath, and 2 kg of tea were seized for analysis by the food analyst. The samples were analyzed by the Food Analyst of the Regional Analytical Laboratory, Kakkanad. As per the report, the sample contains extraneous matter (iron filings) to the extent of not less than 191.35 mg per kg, which is in excess of the safe limit, and hence the food was categorised as unsafe.

3. The learned counsel appearing for the petitioner submitted that the Food Safety and Standards Authority of India, through its Director (RCD) had issued Annexure-IV order dated 02.11.2017, whereby directions were issued to the States not to launch prosecution for non-conformance of the limit of iron filings for cases where samples were picked up/tested prior to 19.05.2016. Directions were Crl.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 also issued to withdraw all such prosecutions launched prior to 19.05.2016, either under the Food Safety and Standards Act, 2006 or under the PFA Act, 1954. The learned counsel submits that in identical circumstances, this Court had quashed the proceedings against the accused by order dated 05.02.2018 in Crl.

M.C.No.3248 of 2017.

4. The learned Public Prosecutor has opposed the submissions. He points out that even as of date, the upper limit of iron filings permitted in tea has not been finalized by the Food Safety Authority.

5. I have considered the submissions advanced. The order dated 02.11.2017 is seen issued by the Director. Paragraph No. 5 of the order reads as under:-

"The matter has been examined in FSSAI. It is felt that till a reliable method of assessment/testing of iron filings in Tea is finalised. It would not be appropriate to launch prosecution non- conformance nor is it proper to pursue or continue with the prosecutions launched under PFA Act/FSS Act prior to issue of FSSAI's Order dated 19.05.2016. Commissioners of Food Safety, All states/UTs are, therefore, directed not to launch prosecutions for non-conformance of limit of iron filings for cases where samples were picked up/tested prior to 19.05.2016. They are also advised to

withdraw all such prosecutions CrI.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 launched prior to 19.05.2016 either under FSS Act, 2006 or PFA Act, 1954."

6. In the instant case, the sample was taken on 07.12.2015 and therefore, the petitioner is entitled to the benefits of the above order.

This petition will stand allowed. All further proceedings against the petitioner in S.T. No. 831/2016 Of Judicial Magistrate Of First Class -I, Idukki, are quashed."

6. From the above, it is clear that no prosecution can be initiated for cases where the samples were picked up/tested prior to 19.05.2016. Admittedly, in these cases, the samples were picked up/tested prior to 19.05.2016. If that be the case, the prosecution is unsustainable.

Therefore, these Criminal Miscellaneous Cases are allowed in the following manner:

1. In CrI.M.C. No.2464/2018, all further proceedings against the petitioner in S.T. No.1534/2017 on the file of the Judicial First CrI.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 Class Magistrate Court - III, Kottayam are quashed.

2. In CrI.M.C. No.6319/2017, all further proceedings against the petitioner in S.T. No.1030/2016 on the file of the Judicial First Class Magistrate Court - II, Kothamangalam are quashed.

Sd/-

P.V.KUNHIKRISHNAN JUDGE DM CrI.M.C. Nos.6319 of 2017 & 2464 of 2018 2024:KER:65531 PETITIONER ANNEXURES ANNEXURE I CERTIFIED COPY OF THE COMPLAINT IN S.T.NO.1534/2017 OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT NO.III, KOTTAYAM.

ANNEXURE II CERTIFIED COPY OF THE MAHAZAR PREPARED BY THE 1ST RESPONDENT.

ANNEXURE III

CERTIFIED COPY OF THE FOOD ANALYST
REPORT NO.148/2015-16 DATED
23.2.2016 OF FOOD ANALYST
LABORATORY, ERNAKULAM.

ANNEXURE IV

TRUE COPY OF THE ORDER DATED

19.5.2016 ISSUED BY THE FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (ENFORCEMENT DIVISION).

ANNEXURE V

TRUE COPY OF THE JUDGMENT OF THIS
HON'BLE COURT IN W.P. (C)

NO.30531/2016.

ANNEXURE VI

TRUE COPY OF THE JUDGMENT OF THIS

HON'BLE COURT IN CRL.M.C.NO.18/2017. CrI.M.C. Nos.6319 of 2017 & 2464 of 2018
2024:KER:65531 PETITIONER ANNEXURES ANNEXURE 1 CERTIFIED COPY OF THE
COMPLAINT AND SPORT MAHAZAR PREPARED BY THE COMPLAINANT ANNEXURE II TRUE
COPY OF THE FOOD ANALYST REPROT IN FORM B DATED 7-3-2015 ANNEXURE II
CERTIFIED COPY OF THE REPORT IN FORM A DATED 27/7/2015, BY REFERRAL
LABORATORY,KOLKOTTA ANNEXURE IV TRUE COPY OF THE ORDER DATED 19/5/2016
ISSUED BY THE 2ND RESPONDENT FOOD SAFETY AND STANDARDS AUTHORITY OF
INDIA(ENFORCEMENT DIVISION) RESPONDENTS EXHIBITS: NIL //TRUE COPY// PA TO
JUDGE