

Noufal N.K vs The Food Safety Officer on 17 April, 2023

Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266 &

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019
and

Crl.M.P.Nos.13940, 15763, 15764, 15766, 15767, 15773, 15777, 15785
15801, 17004 & 17006 of 2019

1.Noufal N.K ... Petitioner / A1 in Crl.O.P.No.26145
2.Muhammed K.P ... Petitioner / A4 in Crl.O.P.No.29254
3.Pocker P.K ... Petitioner / A3 in Crl.O.P.No.29256

4.Zaitoon Restaurant,
Represented by its Partner,
Mr.Noufal,
No.119, (Flat No.15) D – Block,
1st Main Road, Anna Nagar East,
Chennai – 600 102.

... Petitioner / A5 in Crl.O.P.No.29262 of

5.Mohammed Shahid ... Petitioner / A6 in Crl.O.P.No.29266

6.Fardan T.K ... Petitioner / A2 in Crl.O.P.No.31189

-Vs-

The Food Safety Officer,
Code No.536,
Anna Nagar Extension, Chennai District,
Tamil Nadu Food Safety and Standards Department,
No.33, West Jones Road,
Saidapet, Chennai – 600 015.

... Respondent / Complainant in all Crl.O.

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

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Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266

Common Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.2120 of 2019 on the file of the V Metropolitan Magistrate Court, Egmore and to quash the same.

For Petitioners : Mr.Vijayan Subramani
(in all CrI.O.Ps)
For Respondent : Mr.A.Damodaran,
Additional Public Pro
(in all CrI.O.Ps)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings in C.C.No.2120 of 2019 of 2014 on the file of the V Metropolitan Magistrate Court, Egmore, filed for the alleged offence under Section 59(i) of the Food Safety and Standards Act, 2006.

2.It is alleged in the complaint that on 25.07.2018 the respondent had drawn the sample of 'Green Chutney' from the restaurant by name 'Zaitoon Restaurant' in which the petitioners are partners. The sample for <https://www.mhc.tn.gov.in/judis> CrI.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019 analysis was sent by the respondent on 25.07.2018; that the Food Analyst sent a report on 25.09.2018 stating that the sample was 'unsafe'. Thereafter, the Designated Officer had recommended for prosecution. Hence, the impugned complaint.

3(a).The learned counsel for the petitioners submitted that the respondent has violated the mandatory provision under Section 42(2) of the Food Safety and Standards Act, 2006, (the Act). As per the section, the Food Analyst has to send his report within a period of 14 days from the date on which he had received the sample for analysis. If the Food Analyst is unable to give his report within a period of 14 days, he shall inform the Designated Officer giving reasons for the delay and the approximate time taken for giving the report as per Section 46(3) of the Act.

3(b).In the instant case, the Food Analyst has not given the reasons for the delay within a period of 14 days from the date of receipt of a sample. Hence, it is in violation of Section 42(2) of the Act r/w Section 46(3) of the Act. The learned counsel would further submit that the <https://www.mhc.tn.gov.in/judis> CrI.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019 respondent had sent a letter to the petitioners on 01.10.2018 stating that, if they wish to appeal against the report of the Food Analyst, they may send their appeal within 30 days from the date of receipt of the report. However, without giving them 30 days time to make an appeal, the Designated Officer had recommended for sanction of prosecution on 15.10.2018. Hence, he prayed for quashing the proceeding in C.C.No.2120 of 2019.

4.The learned Additional Public Prosecutor would submit that the Food Analyst sent his report on 25.09.2018 and along with his report, he had given reasons for the delay in sending the report and hence it is sufficient compliance of the provision 46(3) of the Act. The learned Additional Public Prosecutor would further submit that the petitioners had not preferred any appeal against the report of the Food Analyst and hence, the submission that the Designated Officer ought to have waited for 30 days to recommend prosecution cannot be sustained. <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019

5.This Court on a perusal of the impugned complaint finds that the sample was received for analysis by the Food Analyst on 26.07.2018. Admittedly, he had sent his report only on 25.09.2018. The Food Analyst has given the reasons for the delay along with his report. He ought to have given the reasons for the delay within 14 days from the date of receiving the sample. This court in similar facts and circumstances, in Crl.O.P.No.20491 of 2020 etc., held that, if there is a delay in sending the analysis report, the Food Analyst must inform the Designated Officer the reason for the delay and specify the time for analysis within the period of 14 days. He cannot send the information with the reasons for the delay along with the delayed report. The relevant observations of this Court in the said order, are extracted hereunder for better understanding:-

“5. This Court finds that admittedly the sample was drawn from the premises of the Company on 07.12.2017. The sample was sent to the Food Analyst on 11.12.2017. The Food Analyst had given his report only on 03.01.2018, which is beyond the period of 14 days prescribed under Section 42 (2) of the Act. The Food Analyst has not informed the Designated Officer the reasons for the delay and specified the time to be taken for analysis within 14 <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019 days on the receipt of the sample. The Food Analyst's information and explanation for the delay was given only on 03.01.2018, when the report was sent to the Designated Officer. This is in clear violation of mandatory provisions of the Act.”

6.The above observation squarely applies to the facts and circumstances of the case, and the respondent has not complied with mandatory provisions of Sections 42(2) and 46(3) of the Act. Hence, the impugned complaint is liable to be quashed.

7.In the result, the impugned complaint in C.C.No.2120 of 2019 on the file of the V Metropolitan Magistrate Court, Egmore, is quashed insofar as the petitioners are concerned. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

17.04.2023 smv Index : Yes/No Speaking : Yes / No Neutral Citation : Yes / No <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019 To,

1.The Public Prosecutor, High Court of Madras.

2.The Food Safety Officer, Code No.536, Anna Nagar Extension, Chennai District, Tamil Nadu Food Safety and Standards Department, No.33, West Jones Road, Saidapet, Chennai – 600 015.

3.The V Metropolitan Magistrate, Chennai – 600 015. <https://www.mhc.tn.gov.in/judis> Crl.O.P.Nos.26145, 29254, 29256, 29262, 29266 & 31189 of 2019 SUNDER MOHAN,J.

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