

M.Thangaraj vs State Rep By on 13 September, 2021

Author: G.Ilangovan

Bench: G.Ilangovan

Crl.O.P. (MD) No

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2021

PRONOUNCED ON : 13.09.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGOVAN

Crl.O.P.(MD) Nos.5722 & 5726 of 2021 and
Crl.MP(MD) Nos.3317 & 3321 of 2021

M.Thangaraj

Petitioner/Sole Accus
Crl.OPs.

Vs.

State Rep by
The Food Safety Officer,
Code No.198,
Kallal & Thiruppathur Block,
Sivagangai District.

...Respondent/Complain
in both Crl.OPs

Prayer in Crl.OP(MD) No.5722 of 2021 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for record of the District Munsif cum Judicial Magistrate, Thiruppathur, Sivagangai District and quash the same as

Prayer in Crl.OP(MD) No.5726 of 2021 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for record of the District Munsif cum Judicial Magistrate, Thiruppathur, Sivagangai District and quash the same as

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.R.M.Anbunithi

Additional Public Prosecutor
(In both Crl OPs)

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

COMMON ORDER

These Criminal Original Petitions have been filed to quash STC No.1176 of 2019 & 1177 of 2019, on the file of the District Munsif cum Judicial Magistrate, Thiruppathur, Sivagangai District.

2.The case of the prosecution in brief in Crl.OP(MD) No.5726 of 2021:-

The petitioner is a retail tea powder merchant and doing his business in the name and style of "R.K.K.S Tea Company". On 04.12.2018, at about 11.00am, the respondent officials inspected the petitioner's business premises. But the petitioner did not allow the respondent to go inside the building. With the help of the police officials, they inspected. During the course of investigation, they found 28 bundles of tea particles in the building without getting proper permission from the authorities. The petitioner repacked the tea powder in the name of Royal Chakra, Maha Star, R Roses and sold to consumers. The respondent purchased four packs of tea powder branded as Maha Star after paying Rs.600/-.During the enquiry, the petitioner alleged to have confessed that they purchased tea bundles from Coimbatore, Ooty and Coonoor. As per procedure further process was undertaken. Portion of tea particles were sent to Analysis and rest of the samples were sent to the officer. He enquired with the concerned estate owner. He stated that the <https://www.mhc.tn.gov.in/judis/> Crl.O.P.(MD)Nos.5722 & 5726 of 2021 petitioner did not purchase tea bundles from him. After obtaining opinion from the Analysis Lab, it was found that the particles kept by the petitioner was found unsafe and misbranded. For this allegation, private complaint was filed on 03.08.2019.

3.The case of the prosecution in brief in Crl.OP(MD) No.5722 of 2021:-

On the same day of inspection, tea powder packets branded as Royal Chakra was also seized. So the brand name used by the petitioner in Crl.OP(MD) No. 5726 of 2021 is Mahastar and in Crl OP(MD) No. 5722 of 2021 is Royal Chakra. But cause of action for both the occurrence was one and the same. Separate petitions have been filed seeking quashment of both the private complaints. This petition came to be filed on the main ground that the respondent did not follow proper procedure prescribed under Food Safety and Standards Act 2006. So, because of non complying of proper procedure, the entire case is vitiated.

4.Heard both sides.

5.Counter statement also been filed by the respondent,which is more elaborate in nature. But the issue involved in this case is very simple. <https://www.mhc.tn.gov.in/judis/> Crl.O.P.(MD)Nos.5722 & 5726 of 2021 Without going into the minutest details, we shall concentrate on the main issue. Originally, the matter was heard in April 2021. After hearing the argument, it was reserved for

orders. On perusal of the records, this Court was of the opinion that trial Court records must be called for. So, the trial Court records were called for and the learned Additional Public Prosecutor wanted to argue the matter afresh. So, the matter was reheard. The learned counsel for the petitioner wanted to peruse the trial Court records. He was permitted and after perusal of the records, he has also made his further arguments.

6.In both the petitions, the main ground that has been urged by the petitioner is that mandatory rule has not been followed. More specifically, with regard to Section 42(2) of the Food Safety and Standards Act 2006 r/w rule 2, 4, 2 and 15 of the Food Safety and Standards Rules, 2011. As per this rules and provision, the Analysis Report must be sent within 14 days from the date of receipt of the sample. If there is a delay, the same must be properly explained. But after going through the records, the learned counsel for the petitioner submitted that he is not pressing the first ground. When there is no violation of Section 42(2) of the Food Safety and Standards Act 2006, we need not concentrate on that point since it is not pressed during the arguments.

[https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)Nos.5722 & 5726 of 2021](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)Nos.5722 & 5726 of 2021)

7.But the second point, namely violation of Section 42(3) of Food Safety and Standards Act 2006 was argued by the learned counsel for the petitioner. He would submit that the designated officer must send recommendation within the prescribed period. If not, it will vitiate the entire proceedings. According to the learned counsel for the petitioner, in this case, the designated officer received the Analysis Report on 06.05.2019. The recommendation was sent to the Commissioner of Food Safety and sanctioning the prosecution on 22.05.2019. According to him, there is a delay of 7 days in sending the recommendation. The recommendation has been sent beyond the period of limitation. So, according to him this vitiate the entire proceedings. Now the question which arises for consideration is whether this vitiate the entire proceedings as contended by the learned counsel for the petitioner. In both the cases, the very same argument has been made with reference to the dates. Section 42(3) of the Food Safety and Standards Act 2006 reads as under:

"42(3).The Designated Officer after scrutiny of the report of Food Safety Officer shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution." [https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)Nos.5722 & 5726 of 2021](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)Nos.5722 & 5726 of 2021)

8.Reading of the above provision shows that within 14 days from the date of receipt of the report, the authority has to sanction prosecution. The respondent submitted that the designated officer received the Analysis report on 06.05.2019. 11.05.2019 and 12.05.2019 are Saturday and Sunday. 18.05.2019 and 19.05.2019 are also Saturday and Sunday. So, succeeding working days started from 09.05.2019 and so 14 days will be completed only on 24.05.2019. The recommendation was sent on 22.05.2019. So, according to the respondent, there was no procedure or violation. But however it is seen that from 06.05.2019, 14 days expires on 21.05.2019. There was a delay of four days and these four days are tried to be compensated by the respondent stating that there are four intervening

holidays. Insofar as limitation is concerned, it can be calculated from the date of receipt of a report. Those intervening holidays cannot be added to the limitation period. Even though, such a calculation on the part of the respondent is not admissible and acceptable, the petitioner must substantiate prejudice that has been caused to him because of the delay of four days in making recommendation. Absolutely all the records submitted by the trial Court shows that explanation offered by the respondent in the counter affidavit is factually wrong one. The designated officer, Food Safety, Sivagangai has addressed a letter in 499/A2/2019 dated 22.05.2019 to the Commissioner, Tamil Nadu Food Safety and Drug Administration Department seeking sanction for launching prosecution, [https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)Nos.5722 & 5726 of 2021](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)Nos.5722&5726of2021) wherein, it has been mentioned that from the date of receipt of Food Analysis Report within 14 days, recommendation has been sent. The report has been said to be received on 06.05.2019 as mentioned in the Counter affidavit. Copy of the same was supplied to the petitioner informing him about his right to appeal. But the petitioner appears to have not utilised the opportunity. So it appears that there is a delay of two days only. But how this two days delay prejudiced case of the petitioner is not explained by him. As mentioned above, he has not availed the opportunity of filing an appeal against the Food Analysis Report. The main purpose is that the right of the accused should not be defeated by late filing of prosecution. So when the right of the accused persons to comply for retesting should not be defeated. But here, there is no such prejudice, since within one year the complaint was filed.

9. So I am of the considered view that because of two days of delay, in the facts and circumstances of the case, the quashing of the proceedings may not be proper.

10. During the argument, another factor was brought to the notice of this Court which may not be relevant for consideration of this petition. But, however, it has been reported to the Court. On 03.02.2020, the respondent official lodged a complaint against this petitioner stating that on 03.02.2020, [https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)Nos.5722 & 5726 of 2021](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)Nos.5722&5726of2021) the officials came to the Court for attending the case. At that time, this petitioner alleged to have abused him in filthy language and tried to assault him also. When he was tried to photograph the incident, he went away. So based upon his complaint the case in Crime No.17 of 2020 for the offences punishable under Sections 294(b) IPC was registered on 03.02.2020. The petitioner appeared before the trial Court for two years and suddenly moved this Court by way of this petition. If he is really prejudiced by the delay of two days in sending the recommendation, he would have approached this Court at the earliest opportunity. Even though the contentions are not relevant, it has been placed on record, as it has been raised by the learned Additional Public Prosecutor.

11. For the reasons stated above, I find no merit in these petitions and these are liable to be dismissed and accordingly dismissed. The petitioner is directed to face the trial. Consequently, connected Miscellaneous Petitions are closed.

13.09.2021 Index : Yes/No Internet:Yes/No vrn [https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)Nos.5722 & 5726 of 2021](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)Nos.5722&5726of2021) 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. To

1.The Food Safety Officer, Code No.198, Kallal & Thiruppathur Block, Sivagangai District.

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

<https://www.mhc.tn.gov.in/judis/> Crl.O.P.(MD)Nos.5722 & 5726 of 2021 G.ILANGOVAN, J., vrn
Pre-delivery order made in Crl.O.P.(MD)Nos.5722 & 5726 of 2021 and Crl.MP(MD) Nos.3317 &
3321 of 2021 13.09.2021 <https://www.mhc.tn.gov.in/judis/>