

Sudhakaran vs The State Of Kerala on 22 November, 2024

Author: P.V. Kunhikrishnan

Bench: P.V.Kunhikrishnan

2024:KER:88181

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 22ND DAY OF NOVEMBER 2024 / 1ST AGRAHAYANA, 1946

CRL.MC NO. 8576 OF 2019

AGAINST THE ORDER DATED IN CC NO.360 OF 2019 OF

JUDICIAL MAGISTRATE OF FIRST CLASS -I, MAVELIKKARA

PETITIONER/ACCUSED:

SUDHAKARAN,
AGED 68 YEARS
GENERAL MERCHANT AND COMMISSION AGENT,
PUTHIYAKAVU, MAVELIKARA, RESIDING AT ANITHALAYAM,
NANGIARKULANGARA P.O.KARTHIKAPPALLY, ALAPPUZHA
PIN -690 513.

BY ADVS.
R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

RESPONDENTS/STATE AND COMPLAINANT:

- 1 THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682 031.
- 2 THE FOOD SAFETY OFFICER,
MAVELIKARA , OFFICE OF THE FOOD SAFETY OFFICER,
MINI CIVIL STATION, MAVELIKARA-690 101.

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OTHER PRESENT:

SRI.GRASHIOUS KURIAKOSE ADGP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22.11.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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P.V. KUNHIKRISHNAN, J.

Crl.M.C.No.8576 of 2019

Dated this the 22nd day of November, 2024

ORDER

This Crl.M.C is filed to quash the proceedings in CC No.360/2019 on the files of Judicial First Class Court, Mavelikkara. The above case is filed by the 2nd respondent against the petitioner alleging offences under Section 59(1) read with Section 3(1)(zz)(v) & (vii); contravention under Section 26(1) & (2)(i); Section 38(1)a(i) of Food Safety and Standards Act, 2006 and Regulation 2.8.4.1 & Appendix A, Table 11.1.6 of Food Category System of Food Safety and Standards (Food Products Standards and Food additives) Regulation, 2011.

2. Petitioner is a wholesale grocery merchant and commission agent. It is the case of the petitioner that he had taken a consignment of 2024:KER:88181 CRL.MC NO.8576 OF 2019 jaggery. A news paper publication came, as evident by Annexure-1 to the effect that there is unsafe jaggery prevalent in the market in the state, brought from Tamil Nadu which contains chemicals like Tartrazine, Rodmeen-B, Brilliant Blue, which are injurious for human consumption is the submission. In pursuance to this news, the petitioner did not vend any consignment of jaggery supplied from Tamil Nadu and further informed the supplier one T.R Traders to the effect that they shall immediately take back consignment supplied to the petitioner and they have also informed the Designated Officer. Annexure-2 is the letter from the T.R Traders to the Assistant Commissioner of Food Safety, Alappuzha. It is submitted that the 3rd respondent in the meanwhile, conducted an inspection in the petitioner's shop and cut open the bag to collect samples of jaggery which was sent to the Food Analyst. The 2nd respondent issued notice to the 2024:KER:88181 CRL.MC NO.8576 OF 2019 petitioner as evident by Annexure-3 interdicting him from selling this item of food. Petitioner was also furnished with Annexure-4 food analyst report to the effect that the item of food is classified as

unsafe. It is further submitted by the petitioner that, aggrieved by Annexure-4, the petitioner filed an appeal before the 2nd respondent as evident by Annexure-5. The grievance of the petitioner is that without waiting for the result in Annexure-5 appeal, the prosecution is initiated as evident by Annexure-6. Hence this Crl.M.C

3. Heard counsel for the petitioner and Additional Director General of Prosecution.

4. The short point raised by the petitioner is that, when Annexure-5 is pending, the respondents erred in proceeding with the prosecution. But, the Additional Director General of Prosecution takes me through Annexure-5 and submitted that it is not an appeal.

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5. This Court perused Annexure-5. Annexure-5 is not an appeal as provided in Section 46 of the Food Safety and Standards Act, 2006 Act (FSS Act). If that is the case, the pendency of Annexure-5 is not a reason for initiating prosecution. The only reason to challenge Annexure-6 prosecution is the pendency of the appeal. I am convinced that Annexure-5 is not an appeal challenging the contents in Annexure-4 report. Therefore, there is no merit in this case. The other contentions raised by the petitioner are left open. The petitioner is free to raise all those contentions before the trial court at the appropriate stage.

With the above observation, this Crl.M.C is dismissed.

Sd/-

P.V.KUNHIKRISHNAN JUDGE SSG 2024:KER:88181 CRL.MC NO.8576 OF 2019 PETITIONER'S ANNEXURES ANNEXURE 1 TRUE COPY OF THE NEWS ITEM APPEARED IN THE MATHRUBHOOMI DAILY DATED 29.11.2018 ANNEXURE 2 TRUE COPY OF THE LETTER DATED 17.1.2019 FROM THE DEALER ANNEXURE 3 TRUE COPY OF THE LETTER DATED 31.12.2018 FROM THE DESIGNATED OFFICER (2ND RESPONDENT) ALAPPUZHA ANNEXURE 4 TRUE COPY OF THE LETTER DATED 31.12.2018 FROM THE DESIGNATED OFFICER (2ND RESPONDENT) ALAPPUZHA ALONG WITH CHEMICAL ANALYSTS REPORT ANNEXURE 5 TRUE COPY OF THE APPEAL DATED 14.1.2019 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ALONG WITH ACKNOWLEDGMENT ANNEXURE 6 TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT MAVELIKARA