

Mondelez India Foods Pvt. Ltd vs A.Elangovan on 28 January, 2022

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

Crl.O.P.No.1
Crl.M.P.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.17767 of 2018 &
Crl.M.P.No.9213 of 2018

1. Mondelez India Foods Pvt. Ltd.
(Formerly Cadbury India Ltd.)
Unit No.2001, 20th Floor, Tower-III (Wing C),
India Bulls Finance Centre,
Parel, Mumbai – 400 013.
2. Arlette Noronha (Product Company Nominee)
Senior Manager (Quality)
Mondelez India Foods Pvt. Ltd.
(Formerly Cadbury India Ltd.)
Unit No.2001, 20th Floor, Tower-III (Wing C),
India Bulls Finance Centre,
Parel, Mumbai – 400 013.

... Petitioner

Vs

A.Elangovan,
Food Safety Officer, Code No.528,
Tondiarpet Area, Tamil Nadu Food Safety
& Drug Administration Department,
Office of Designated Officer,
Chennai District, No.33, West Jones Street,
Saidapet, Chennai – 600 015.

... Respondent

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

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. for the records in C.C.No.3867 of 2017 on the file of the XV Metropolitan Magistrate, Georgetown, Chennai and quash the same.

For Petitioners : Mr.N.R.Elango (Senior Counsel for Mr.P.Giridharan

For Respondent : Mr.R.Kishore Kumar, Government Advocate (Criminal

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3867 of 2017 on the file of the XV Metropolitan Magistrate, Georgetown, Chennai filed against the petitioners for the offence punishable under Section 59(1) of the Food Safety & Standards Act.

2. The crux of the complaint is that one R.Santosh Kumar has ordered Cadbury Temptation “Almond Treat” through Grofers Online Shopping. However, he received “Cadbury Temptation rum raisins – 72 gms” instead of Cadbury Temptation “Almond Treat”. When he opened the chocolate after keeping in the refrigerator for four days, he found worms in the chocolate. Page No:2/9 <https://www.mhc.tn.gov.in/judis> Crl.O.P.No.17767 of 2018 & Based on the above, a complaint was given by the father of the buyer, Ramesh Kumar. The Food Safety Officer took sample of the Cadbury Temptation rum raisins – 72 gms and after sealing it properly, it was sent for analysis report. The report was received on 06.09.2016 indicating that the chocolate contained dead worms which is unsafe food under Section 3(1)(zz)(ix) of the Food Safety & Standards Act. Thereafter, he obtained the stock list and the nominee details. The analysis report was sent to the Grofers Store on 15.09.2016 and the analysis report is also sent to them on 20.09.2016. On 10.05.2017, after collecting the manufacturer details, sanction was accorded on 18.08.2017. Thereafter, a complaint was filed for the offence under Section 59(1) of the Food Safety and Standards Act.

3. The learned Counsel for the petitioner submitted that the mandatory conditions provided under the Food Safety and Standards Act has not been followed while lifting the sample. As the alleged chocolate is weighing about 72 gms, there is no difficulty in making it into four samples as mandated under the Act which has not been done so. Further, the analysis report has not been sent to the manufacturer at any point of time. Therefore, valuable right guaranteed Page No:3/9 <https://www.mhc.tn.gov.in/judis> Crl.O.P.No.17767 of 2018 & under the statute has been violated. That apart, prosecution has been launched with an inordinate delay and no special circumstances existed to show that sanction to be accord beyond the period of limitation. Therefore, sought to quash the entire complaint.

4. The learned Government Advocate submits that in a special case, the sample would not be taken in four parts and that cannot be a reason to quash the proceedings.

5. I perused the entire materials.

6. As rightly pointed out by the learned counsel for the petitioner the sample was lifted on 24.08.2016 from one Ramesh and was sent to the Analyst only on 30.08.2016 with a delay of six days. The analysis report was received on 06.09.2016 indicating that dead worms are found in the chocolate and the chocolate is an unsafe food.

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7. It is relevant to note that Section 47 deals with the sampling and analysis. Whenever samples are to be taken, except under special cases, as may be provided by the Rules, the Food Safety Officer has to divide the sample into four parts and mark and seal or fasten up each part in such a manner as its nature permits and send one of the part for analysis, two parts have to be sent to the designatory officer to keep in safe custody and the other part to be sent to the laboratory, if so requested by the Food Business Operator. The above mandatory provisions makes it very clear that the samples have to be divided into four parts, except special cases as provided under any of the Rules. But no such special rule was brought to the notice of the Court to show that the chocolate item falls within the special cases. In the absence of any rules, the sample has to be divided into four parts and one part should be sent to the accredited laboratory, if so requested by the Food Business Operator, as per Section 2 of the Food Safety and Standards Act, Food Business Operator includes Manufacturer. Therefore, the right of opportunity is embedded in Section 47 of the Food Safety and Standards Act for a person to establish his case. Admittedly, in this case, the sample has not been divided into four parts and 72 gms of chocolate has been seized. In such a situation, it is not difficult Page No:5/9 <https://www.mhc.tn.gov.in/judis> Crl.O.P.No.17767 of 2018 & to make four parts which has not been done so for the reasons known to the Food Safety Officer.

8. It is also relevant to note that the report of the Analyst was received by the Food Safety Officer on 06.09.2016. After receipt of the report, the Designated Officer has to send his recommendation within fourteen days to the Commissioner of Food Safety for sanctioning prosecution as per Section 42(3). A perusal of the complaint, it is seen that having received the analysis report on 06.09.2016, the Food Analyst sought sanction only on 18.08.2017 which is against the very provisions of Section 42 of the Food Safety and Standards Act.

9. It is also relevant to note that having received the analysis report on 06.09.2016, such a report was never sent to the manufacturer at any point of time. Whereas Form VII [A] has been served only on the Grofers Super Store and not on the manufacturer. When the mandatory provisions are violated and those provisions were made for initiation of the prosecution, such penal provisions and mandatory provisions to be complied strictly which has not been done in this case.

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10. It is also to be noted that though the alleged occurrence has taken place on 24.08.2016, the offence has been noted on 06.09.2016 on receipt of the analyst report. The prosecution ought to have been initiated within one year as per Section 77 of the Food Safety and Standards Act. Though proviso enable the Commissioner of Food Safety to approve the prosecution within an extended period of three years, for such approval of prosecution within the extended period of about three years, appropriate reasons have to be recorded in writing by the sanctioning authority. The reasons assigned for such approval of the prosecution beyond the period of one year is that since the Food Safety Officer has taken steps to find out the manufacturer and due to this administrative reason, the sanction was accorded.

11. It is to be noted that on 09.09.2016 itself the nominee details were received from the Grofers. However, sanction was not sought within the time. Considering the above violation of mandatory provisions, as the very right of the manufacturer to have the sample tested by the accredited laboratory has been lost, the prosecution in such a situation cannot be maintained against the Page No:7/9 <https://www.mhc.tn.gov.in/judis> Crl.O.P.No.17767 of 2018 & petitioner who has been denied the statutory right. Hence, this Court is inclined to quash the proceedings against the petitioners.

12. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.3867 of 2017 on the file of the XV Metropolitan Magistrate, Georgetown, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

28.01.2022 vrc / kbs Index : Yes Internet : Yes Speaking Order To

1. The XV Metropolitan Magistrate, Georgetown, Chennai.

2. A.Elangovan, Food Safety Officer, Code No.528, Tondiarpet Area, Tamil Nadu Food Safety & Drug Administration Department, Office of Designated Officer, Chennai District, No.33, West Jones Street, Saidapet, Chennai – 600 015.

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