

V.S.Govindarajan vs State Represented By on 12 September, 2022

Author: G.Jayachandran

Bench: G.Jayachandran

Crl.O.P.No.97
and Crl.M.P.No.50

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2022

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.9762 of 2019
and
Crl.M.P.No.5087 of 2019

1.V.S.Govindarajan

2.Adani Wilmar Limited,
Corporate Office: Fortune House
Near Navrangpura Railway Crossing,
Navrangpura,
Ahmedabad-380 009.

.. Petition

Vs.

State Represented by
R.Kannan
Food Safety Officer,
Area Code No.531, Chennai District
O/o.The Designated Officer,
Tamil Nadu Food Safety and Drug Department,
No.33, West Jones Road, Saidapet,
Chennai-600 015.

.. Responde

PRAYER : Criminal Original Petition has been filed under section 48
of Criminal Procedure Code to call for the records in connection with
C.C.No.176 of 2019, pending on file of the learned VIII Metropolitan
Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.R.Palaniandavan

For Respondent : Mr.N.S.Suganthan
Government Advocate (CrI.Side

ORDER

This Criminal Original Petition is filed to quash the complaint against the petitioners under Sections 52(1) and 53 of the Food Safety and Standards Act, 2006.

2. According to the complainant, the edible vegetable oil marketed by the petitioner's company under the brand name "Fortune Vivo Diabetes Care-Blended Edible Vegetable Oil" is mis-branded and misleading, hence liable to the prosecution under Sections 52(1) and 53 of the Food Safety and Standards Act, 2006.

3. The cause of action for the complaint arose when the sample was drawn from the retailer/distributor on 22.08.2017. The sample was forwarded to the laboratory for analysis and report received on 23.10.2017. The Food Inspector has sought for sanction to prosecute <https://www.mhc.tn.gov.in/judis> the accused person vide his letter dated 12.01.2018. Stating that the Commissioner of Food Safety and Drug Administration has accorded sanction to prosecute on 24.10.2018, the complaint dated 12.02.2019 filed and taken cognizance on 04.02.2019 in C.C.No.176 of 2019 by the VIII Metropolitan Magistrate, George Town, Chennai. Thereafter the summons to the accused person for their appearance was caused on 21.03.2019.

4. In the petition to quash the complaint, it is specifically stated that the complaint is barred by limitation. The Magistrate ought not to have taken cognizance since the commission of the offence is 22.08.2017, whereas, the complaint has been filed on 02.02.2019 beyond the period of one year prescribed as limitation under Section 77 of the Act.

5. The learned counsel for the petitioners relied upon Section 77 of Food Safety and Standards Act, 2006, which reads as below:

<https://www.mhc.tn.gov.in/judis> "77.Time limit for prosecution:-

Notwithstanding anything contained in this Act, no Court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of upto three years."

6. As far as the offences under Sections 52(1) and 53 of the Food Safety and Standards Act, 2006 are concerned, the penalty as fine is prescribed for misbranded food and misleading advertisement. As far as Section 52(1) is concerned, the penalty for misbranded food shall be upto Rs.3,00,000/-. The penalty for misleading advertisement under Section 53 shall be upto Rs.10,00,000/-. As far as Code of Criminal Procedure under Section 468 is concerned, it prescribes limitation for taking cognizance and in case of punishment of fine alone, the period of limitation is six months. The Food Safety Act which is a special Act, impose bar for taking cognizance of offence except sanction of <https://www.mhc.tn.gov.in/judis> prosecution by the Commissioner of Food Safety. The limitation to take cognizance is one year from the date of commission of offence. In an exceptional case, the Commissioner of Food Safety may, reasons to be recorded in writing, approve prosecution with an extended period of upto three years. Therefore, it over rides the general law of procedure under Cr.P.C., regarding the limitation to take cognizance in the case of fine. Under the special Act, Section 77 of the Food Safety and Standards Act, the period of limitation is one year from the commission of the offence and the Commissioner can extend the period upto three years, provided there is a reason and same recorded.

7. The perusal of the sanction order dated 24.10.2018, this Court finds no reason to extend the period of limitation has been stated, except the usual expressions “After carefully scrutinizing the case and verifying the records, on application of my mind, I the Commissioner of Food Safety is hereby satisfied and accord sanction to launch prosecution”. There is no other reason found in the sanction order which would lead to inference that the Commissioner satisfied to extend the <https://www.mhc.tn.gov.in/judis> period beyond one year. The reading of the complaint also, there is no indication that the Commissioner of Food Safety satisfied to launch prosecution within one year period prescribed under Section 77 of the Act.

8. In the said circumstances, the Magistrate, who have caused summons to the accused, taking cognizance had not considered the limitation prescribed under the Act. Therefore, the prosecution launched being beyond the limitation and no reason stated in the sanction order or in the complaint for extending the period of limitation, the complaint is liable to be quashed.

9. In the result, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

12.09.2022 Internet : Yes/No Index: Yes/No rpl <https://www.mhc.tn.gov.in/judis> To

1.R.Kannan Food Safety Officer, Area Code No.531, Chennai District O/o.The Designated Officer, Tamil Nadu Food Safety and Drug Department, No.33, West Jones Road, Saidapet, Chennai-600 015.

2.The Public Prosecutor, High Court of Madras, Chennai-104.

<https://www.mhc.tn.gov.in/judis> Dr.G.JAYACHANDRAN, J.

rpl and 12.09.2022 <https://www.mhc.tn.gov.in/judis>