

K.Mohan Babu vs The Food Safety Officer on 27 June, 2022

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

Crl.OP.No.21165

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.06.2022

PRONOUNCED ON : 27.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.21165 of 2020

and

Crl.MP.Nos.9011 and 9012 of 2020

1. K.Mohan Babu
2. M.Anees Ahmed
3. M.Muneer Ahmed
4. E.Priya
5. Anooj S.Nair
6. M/s.Ambur Star Briyani,
No.5, GST Road, Thailavaram,
Potheri,
Maraimalai Nagar-603 203

... Petitioner

Vs.

The Food Safety Officer,
Code No.422,
Tamil Nadu Food Safety and Standards Department,
Maraimalai Nagar Municipality,
Kanchipuram District-631501.

... Respondent

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

Crl.OP.No.

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in S.T.C.No.289 of 2020 on the file of the II Metropolitan Magistrate.

Court, Chengalpattu, pending disposal and quash the same.

For Petitioners : Mr.P.S.Raman
Senior Counsel
for Mrs.Preetha Natarajan

For Respondents : Mr.A.Gopinanth
Government Advocate (Crl.Side)

ORDER

This petition has been filed a petition to call for the records pertaining to the STC.No.289 of 2020 on file of II Judicial Magistrate Court, Chengalpattu and quash the same.

2. The respondent has lodged a complaint that the respondent inspected the 6th petitioner's restaurant viz., Ambur Star Briyani. It is seen that auspicious additional colour may have been added in boneless chicken 65 kept in the restaurant. Therefore, the respondent has taken 300 grams of 4 pieces of boneless chicken 65 for inspection. The same was duly informed to the staff of the Sixth respondent that the samples will be sent for approval of Food Analysis Laboratory (NABL) for <https://www.mhc.tn.gov.in/judis> analysis. The samples were sent to Food Safety Analysis Laboratory at Salem on 20.03.2019. The same was received by the Food Analysis Laboratory, Salem on 24.09.2019. Thereafter, the food analyst had submitted its report on 11.11.2019 stating that the samples of boneless Chicken 65 are unsafe. On receipt of notice, the petitioners filed an appeal and the same was considered and rejected. Thereafter, on request by the respondent, the Commissioner of Food Safety Department recommended for initiation of proceedings as against the petitioners.

3. The learned senior counsel for the petitioners would submit that as per Section 42(2) of the Food Safety and Standards Act 2006, the food analyst is required to send report within a period of 14 days to the Designated Officer with the copy of samples to Commissioner of Food Safety, whereas in the case in hand, the Food Analyst had received samples of boneless chicken 65 on 24.09.2019 and the Analyst failed to give report within a period of 14 days. On receipt of the samples, the Food Analyst sent a report only on 11.11.2019. Therefore, there is no cause of action to lodge the complaint.

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

4. The learned Senior Counsel for the petitioners mentioned before this Court and sought for permission to raise additional grounds. Being satisfied with the reasons stated in his arguments, this Court permits him to raise additional grounds.

5. The learned Senior Counsel for the petitioners submitted that though the respondents sought for extension of time to send analysis report as contemplated under Section 46(3)(ii) the reasons stated by the respondent as untenable, the respondent stated the reasons that due to shortage of man power and also 14th day falls on the same day for many of the samples. He also produced the same requests in other cases in which also the same reasons are stated and therefore, the Food Analyst mechanically requested extension of time without applying his mind that too making stereo type requests. That apart, the expected delay mentioned as 740 days to analyse the same which were

taken at the time of extension. Though, the analyst had sent reports within a period of 52 days from the date of receipt of sample received namely 11.11.2019, the samples were taken from the sixth respondent/hotel on 23.09.2019. <https://www.mhc.tn.gov.in/judis> Therefore, the Section 42(3) mandates the Analysts shall send report within a period of 14 days, since the samples can be spoiled if it is kept for more than 14 days.

6. Learned senior counsel further submitted that the petitioners' appeal right was denied by the Designated Officer for the reason that already the petitioners supplied unsafe food and without following the procedures as contemplated under the Act they kept the food and as such their appeal right was denied. The reason for denial of appeal right is untenable. All the petitioners are entitled for appeal before the Referral Food Laboratory with regard to the analysis report. He further submitted that the samples were taken from the 6th petitioner's Restaurant weighing 300 gms x 4 pieces of boneless chicken 65. As per the Act, the samples of prepared food to be sent to the Food Analyst shall be 500 gms whereas the samples taken from the petitioners were only 300 gms. Therefore, the respondent without following the mandatory provisions as contemplated in the Act prosecuted the petitioners for the offence punishable under Section 59(1) of the Act.

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7. On perusal of the records reveals that the analyst report was not given within a period of 14 days from the date of receipt of the sample and it is a violation of Section 42(2) of Food Safety and Standards Act. However, there is a proviso under Section 46(3)(2) which clearly indicates that in case sample cannot be analysed within 14 days and on receipt the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying time to be taken for analysis. Accordingly, the food analyst vide order dated 25.09.2019 in its proceedings R.No.2111/A3/2019/dated 25.09.2019 has duly intimated to the Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, Kanchipuram District and the Commissioner of Food Safety Department, Chennai that the samples cannot be analysed within a period due to shortage of man power and also 14th day falls on the same day for many of the samples and further intimated the approximate time of 740 days to analyse subject samples.

8. Though the food analyst stated stereo type reason for extension of time to analyse sample as per proviso, the Food Analyst can be given <https://www.mhc.tn.gov.in/judis> further time to send his report. That apart on perusal of records reveals that after receipt of the samples, it was duly preserved by putting Formolin of 40 drops, so that it would be appropriately preserved for analysis. Form VA Memorandum of Food Analyst is also annexed, which also revealed the same. The samples were taken from the sixth petitioner herein weighing 300 grams x 4 pieces of boneless Chicken 65 for analysis. The Food Safety and Samples Regulation Act 2011 contemplates about the procedures of samples. The quantity of sample of food to be sent for food analyst for analysing shall be 500 gms in case of prepared food. In the case on hand, admittedly, the sample weighing 1200 grams were sent for analysis. Therefore, there is no contravention by the respondent by sending samples for analysis. In so far as appeal right is concerned, the learned Senior Counsel specifically contended that the right of appeal as contemplated under the Act was denied by Designated Officer. The Provision under Section 46 (4) reads as follows:

“ An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter for the referral food laboratory as notified by the Food Authority for opinion”.

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8. Accordingly, the designated Officer decided to refer the matter for the Referral Food Laboratory as notified by the Food Authority for opinion. In the case on hand, on receipt of the request dated 21.12.2019 from the petitioners, considering the nature of offence committed by the petitioners and the report submitted by the Food Analyst, decided that it is not a fit case for appeal. Therefore, the designated officer concerned rightly rejected the request of the petitioners' for sending samples to the Referral Food Laboratory for analysis.

9. It is seen from the records that the samples were taken on 23.09.2019 and the same were duly received in the Analysis Laboratory, Salem on 24.09.2019. However, the Food Analyst by the communication dated 25.09.2019 informed the Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, Kanchipuram District and The Commissioner of Tamil Nadu Food Safety and Drug Administration Department, Chennai that the samples which are received from the respondent cannot be analysed and report cannot be sent within a period of 14 days due to shortage of manpower and also 14 th day falls on the <https://www.mhc.tn.gov.in/judis> same day for many of the samples for analysis. Further stating that the accepted delay of 740 days as per Section 46(3)(ii) of the Food Safety and Standards Act 2006. It is also relevant to extract the provision of Section 46(3)(ii) are follows:

“ 46(3) (ii) where such sample is received under Section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with copy to the Designated Officer.” Provided that in case in hand the sample cannot be analysed within 14 days of its receipt, the Food Analyst shall inform to the Designated Officer and Commissioner of Food Safety giving reasons and specifying time to be taken for analysis.

10. So far as the delay in lodging the complaint as per Section 77 of the Food Safety and Standards Act 2006. The samples were taken by the respondent on 23.09.2019 on receipt of sanction from the Commissioner of Tamil Nadu Food Safety and Standards Department, Chennai lodging complaint as early as 18.09.2020 itself within a period of one year from taking samples. Therefore, the complaint filed is very <https://www.mhc.tn.gov.in/judis> much within a time of one year. Hence there is no ground to quash the proceedings in STC.No.289 of 2020 on the file of the II Judicial Magistrate Court, Chengalpattu. The respondent rightly prosecuted the petitioners for the offence punishable under Sections 59(1) of Food Safety and Standards Act. Therefore, this Court finds no merits to quash the present proceedings

and this petition is liable to be dismissed.

11. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., wherein it has been held as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial <https://www.mhc.tn.gov.in/judis> while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

12. Recently, the Hon'ble Supreme Court of India, while dealing with the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several <https://www.mhc.tn.gov.in/judis> disputed facts and allowed the petition.

Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

13. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a <https://www.mhc.tn.gov.in/judis> charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not;

and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. However, the Trial Court viz., II Metropolitan <https://www.mhc.tn.gov.in/judis> Magistrate's Court, Chengalpattu is directed to complete the trial in S.T.C.No.289 of 2020, within a period of six months from the date of receipt of a copy of this Order.

14. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

27.06.2022 Internet: Yes Index: Yes/No Speaking/Non-speaking order Vv To

1. The II Judicial Magistrate Court, Chengalpattu.

2.The Food Safety Officer, Code No.422, Tamil Nadu Food Safety and Standards Department, Maraimalai Nagar Municipality, Kanchipuram District-631501.

3. The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> G.K.ILANTHIRAIYAN, J., Vv Pre-Delivery Order made in Crl.O.P.No.21165 of 2020 and Crl.MP.Nos.9011 & 9012 of 2020 27.06.2022 <https://www.mhc.tn.gov.in/judis>