

M/S.Oceanic Tropical Frutis Private ... vs Tamilnadu Government Represented By on 18 November, 2021

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

Crl. O.P. N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.17750 of 2017

&

Crl.M.P.Nos.10854 and 10855 of 2017

M/s.Oceanic Tropical Frutis Private Limited
Nominee
A.Elangovan, Father name Amirthalingam
SY.No.808, 809/1, Pudukkuppam Village
Mandavai (PO), Marakkanam (Tk)
Villupuram District – 604 303

. Petitioner./Accu

Versus

Tamilnadu Government represented by
C.Gopinath
Food Safety Officer
Code No.411, Dharmapuri Town Area
Tamilnadu Food Safety and Drug Administrative Department
O/o Designated Officer Office
Tamilnadu Drug Depot Campus
Vennampatti Road
Dharmapuri District – 636 705

... Respondent

1/8

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

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P call for the records in S.T.C.No.185 of 2017 pending on the file of Magistrate – 1, Dharmapuri and quash the same as far as the petition concerned.

For Petitioner ... Mr.Rajesh Batra
for Mr.M.Kandasamy

For Respondent ... Mr.S.Vinoth Kumar
Government Advocate (Crl.s

ORDER

This petition has been filed to quash a private complaint pending in S.T.C.No.185 of 2017 on the file of the Judicial Magistrate Court No.I, Dharmapuri under Sections 56 and 59 of the Food Safety and Standards Act, 2006 [hereinafter 'said Act'].

2. It is the case of the prosecution that on 26.05.2016 on the telephonic information from a shopkeeper from Dharmapuri Bus Stand that a lizard was found inside a Slice bottle, the Food Safety Officer visited the shop and collected the samples at 01.15pm as per the procedure and sent the same for analysis to the lab and on receipt of the report from the lab, it was found that the sample collected from the shop by the Food Safety Officer <https://www.mhc.tn.gov.in/judis> contained fungus. Therefore, the aforesaid private complaint was filed as against the accused. The present application has been filed by the manufacturer, who has been arrayed as A4, to quash the private complaint.

3. The main contention of the learned counsel for the petitioner is that the prosecution cannot be maintained in this case as the Food Safety Officer has not taken the sample as per law. Instead of four samples to be collected, it appears that he has collected only one sample and the report of the lab also clearly indicates that the bottle has not been properly sealed and closed and it was open at the time of receiving bottle in the lab. It is his further contention that Section 47 of the said Act mandates collection of four samples and an opportunity also to be given to the manufacturers for filing an appeal and also test the other samples from the laboratory, which has been totally violated in this case and no opportunity has been given. Therefore, the right of the appeal provided in the Act itself is taken away. There is a clear violation of not only Section 47, but also Sections 42 and 43 and Rules 2.4.5 and 2.4.6 of Food Safety and Standard Rules and hence, he prays for quashing of the complaint.

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

4. The learned Government Advocate (Crl.side) appearing for the respondent submitted that the samples were lifted on the complaint from the Shop owner that one lizard is found inside the bottle and therefore, the samples were collected from the shop and sent to the laboratory. It is his further submission that mere violation of procedure cannot be gone at this stage and it has to be decided

only in the trial and hence, he prays for dismissal of the application.

5. I perused the entire material placed before this Court.

6. According to the Food Safety Officer, the sample is said to have been collected on 26.05.2016 from the Vaigai Coffee Bar at Sub-urban Bus Stand. The complaint indicates that he has collected sample, namely cool drinks meant for sale from the shop owner. It is relevant to note that the private complaint itself indicates that he collected only one sample. There is no indication that he has collected four samples as required under law, namely, under Section 47 of the said Act. Section 47 of the Act makes it clear that except in special cases as may be provided under Rules made <https://www.mhc.tn.gov.in/judis> under this Act, the Food Safety Officer has to divide the samples into four parts and mark and seal or fasten each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken and after taking such samples as per clause

(c) send one of the parts for analysis to the Food Analyst under intimation to the designated officer and remaining two parts to be sent to the designated officer for keeping in safe custody and sent the remaining part for analysis to the accredited laboratory under intimation to the designated officer. The above Section makes it very clear that the purpose of taking various samples is to give an opportunity to the manufacturer or food business operator to have the samples analysed from the accredited laboratory. Further, proviso to Section 46 of the said Act makes it clear that if the sample is not intact and is broken, the Food Analyst shall inform the Officer of the same within a period of 7 days from the date of receipt of such sample and requests for sending the second part of the sample. In this case, the report of the Analyst indicates that the bottle received in the lab has been broken and the bottle was in leaking condition. Despite the above, there was no attempt made as per law to get the other samples, if any <https://www.mhc.tn.gov.in/judis> preserved by the Food Safety Officer and sub-section (4) of Section 46 also provides for an appeal right to the affected party against the report of the Food Analyst. On filing such appeal, he has a right to refer the matter to the Referral Food Laboratory as notified by the Food Authority for opinion, but the entire complaint is bereft of any details about the compliance of these provisions. When the sample, as required under law, has not been taken, the right of appeal has also been denied and the petitioner's right of opportunity to have further test by accredited laboratory also lost. Further, the samples sent to the Analyst also not packed properly and was leaking, any report based on one such sample has no relevance at all. Therefore, continuation of prosecution in the considered view of this Court is nothing but a futile exercise and abuse of process of law. When the opportunity was given to the aggrieved person to file an appeal and the statutory right provided to the affected parties was taken away and the samples have been drawn contrary to the Statute which impinge the right of fair trial, the prosecution cannot be sustained in the eye of law.

<https://www.mhc.tn.gov.in/judis> Accordingly, the private complaint in S.T.C.No.185 of 2017 pending on the file of Judicial Magistrate I, Dharmapuri is quashed. Consequently, the connected miscellaneous petitions are closed.

17.11.2021 gpa To

1. The State represented by P.Rajasekar, Food Safety Officer, Krishangiri Municipality (i/c), Krishnagiri District – 635 001.
2. The Public Prosecutor Madras High Court Chennai - 104 <https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J gpa Crl. O.P. No.17750 of 2017 & Crl.M.P.Nos.10854 and 10855 of 2017 18.11.2021 <https://www.mhc.tn.gov.in/judis>