

# Balamurguan vs The Food Safety Officer on 17 April, 2023

Crl.O.P.No.3226

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.32268 of 2019  
and  
Crl.M.P.Nos.17709 & 17718 of 2019

1.Balamurguan

2.Ravi

3.Radha Regent Hotels Private Limited,  
No.171, Jawaharlal Nehru Salai,  
(Inner Ring Road),  
Arumbakkam, Chennai – 600 106.

...Petitioners / 1st, 2nd & 3rd

-Vs-

The Food Safety Officer,  
Code No.538,  
Anna Nagar Extension,  
Chennai District,  
Tamil Nadu Food Safety and Standards Department,  
No.33, West Jones Road,  
Saidapet, Chennai – 600 015.

... Res

Prayer: Criminal Original petition filed under Section 482 of Code  
Criminal Procedure, to call for the records relating to the proceed  
C.C.No.8429 of 2017 on the file of the Vth Metropolitan Magistrate  
Court, Egmore and to quash the same.

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

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Crl.O.P.N

For Petitioners : Mr.Vijayan Subramania

For Respondent : Mr.A.Damodaran,

## ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.8429 of 2017 on the file of the V Metropolitan Magistrate Court, Egmore, filed for the alleged offence under Sections 58 and 59(i) of the Food Safety and Standards Act, 2006.

2.It is alleged in the complaint that on 27.06.2016 the respondent had drawn the sample of “Saisha Masala & Spices chilli powder” from the petitioners restaurant by name 'Radha Regent Hotel'. The sample for analysis was sent by the respondent on 28.06.2016; that the Food Analyst sent a report on 15.07.2016 stating that the sample was 'unsafe'. Thereafter, the Designated Officer had recommended for prosecution. Hence, the impugned complaint.

<https://www.mhc.tn.gov.in/judis> 3(a).The learned counsel for the petitioners submitted that the respondent has violated the mandatory provision under Section 42(2) of the Food Safety and Standards Act, 2006, (the Act). As per the section, the Food Analyst has to send his report within a period of 14 days from the date on which he had received the sample for analysis. If the Food Analyst is unable to give his report within a period of 14 days, he shall inform the Designated Officer giving reasons for the delay and the approximate time taken for giving the report as per Section 46(3) of the Act.

3(b).In the instant case, the Food Analyst has not given the reasons for the delay within a period of 14 days from the date of receipt of a sample. Hence, it is in violation of Section 42(2) of the Act r/w Section 46(3) of the Act. The learned counsel would further submit that without giving them 30 days time to make an appeal, the Designated Officer had recommended for sanction of prosecution on 08.11.2019. Hence, he prayed for quashing the proceeding in C.C.No.8429 of 2017. <https://www.mhc.tn.gov.in/judis>

4.The learned Additional Public Prosecutor would submit that the Food Analyst sent his report on 15.07.2016 and along with his report, he had given reasons for the delay in sending the report and hence it is sufficient compliance of the provision 46(3) of the Act. The learned Additional Public Prosecutor would further submit that the petitioners had not preferred any appeal against the report of the Food Analyst and hence, the submission that the Designated Officer ought to have waited for 30 days to recommend prosecution cannot be sustained.

5.This Court on a perusal of the impugned complaint finds that the sample was received for analysis by the Food Analyst on 28.06.2016. Admittedly, he had sent his report only on 15.07.2016. The Food Analyst has given the reasons for the delay along with his report. He ought to have given the reasons for the delay within 14 days from the date of receiving the sample. This court in similar facts and circumstances, in CrI.O.P.No.20491 of 2020 etc., held that, if there is a delay in sending the analysis report, the Food Analyst must inform the Designated Officer the reason for the delay and specify the time for analysis within the period of 14 days. He cannot send the information <https://www.mhc.tn.gov.in/judis> with the reasons for the delay along with the delayed report. The relevant observations of this Court in the said order, are extracted hereunder for better

understanding:-

“5. This Court finds that admittedly the sample was drawn from the premises of the Company on 07.12.2017. The sample was sent to the Food Analyst on 11.12.2017. The Food Analyst had given his report only on 03.01.2018, which is beyond the period of 14 days prescribed under Section 42 (2) of the Act. The Food Analyst has not informed the Designated Officer the reasons for the delay and specified the time to be taken for analysis within 14 days on the receipt of the sample. The Food Analyst's information and explanation for the delay was given only on 03.01.2018, when the report was sent to the Designated Officer. This is in clear violation of mandatory provisions of the Act.”

6.The above observation squarely applies to the facts and circumstances of the case, and the respondent has not complied with mandatory provisions of Sections 42(2) and 46(3) of the Act. Further, it is seen that there is a delay of 125 days by the Designated Officer sending recommendation to the Commissioner of Food Safety for the purpose prosecution. This is in violation of 42(3) of the Act. Hence, the impugned complaint is liable to be quashed. <https://www.mhc.tn.gov.in/judis>

7.In the result, the impugned complaint in C.C.No.8429 of 2017 on the file of the V Metropolitan Magistrate Court, Egmore, is quashed insofar as the petitioners are concerned. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

17.04.2023 smv Index : Yes/No Speaking : Yes / No Neutral Citation : Yes / No To,

1.The Public Prosecutor, High Court of Madras.

2.The Food Safety Officer, Code No.538, Anna Nagar Extension, Chennai District, Tamil Nadu Food Safety and Standards Department, No.33, West Jones Road, Saidapet, Chennai – 600 015.

3.The Vth Metropolitan Magistrate, Egmore. <https://www.mhc.tn.gov.in/judis> SUNDER MOHAN,J.

smv 17.04.2023 <https://www.mhc.tn.gov.in/judis>