

M/S.Murari Lal Harish Chandra Jaiswal ... vs The Food Safety Officer on 17 August, 2022

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

Crl.OP.N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P. No.18160 of 2022 & Crl.M.P.No.11969 of 2022

1. M/s.Murari Lal Harish Chandra Jaiswal Pvt Ltd.,
Plot No.202 Patparganj Industrial Area,
Delhi – 110 092.
Represented by its Authorized Signatory
Mr.K.Prabhakaran
2. M/s.Jaiswal Pvt. Ltd.,
Plot No.202 Patparganj Industrial Area,
Delhi – 110 092.
Represented by its Authorized Signatory
Mr.K.Prabhakaran

.... Petiti

Versus

The Food Safety Officer,
Kelamangalam, Krishnagiri District.

.... Respon

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. t
call for the records and quash the charge sheet in S.T.C.884 of 2021 pen
on the file of District Munsif cum Judicial Magistrate, Denkanikottai.

For petitioners ... Mr.D.Saikumaran

For Respondents ... Mr.E.Raj Thilak,
Additional Public Prosecutor

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Crl.OP

ORDER

This petition has been filed to quash the charge sheet filed against the petitioners in S.T.C.884 of 2021 on the file of District Munsif cum Judicial Magistrate, Denkanikottai for the offences under Sections 3[1] [zz] [iii] & [v], 26 [2] [i] [v] of the Food Safety and Standards Act, 2006 and Reg.2.12.1 of the Food Safety and Standards [Food Products Standards and Food Additives] Regulation 2011 and Regulation 2.3.4 of Food Safety and Standards [Prohibition and Restriction on Sales] Regulation 2011.

2. It is the case of the prosecution that on 19.02.2019 while the Food Safety Officer conducted inspection in Transport Vehicle No.TN-54-Q-9744 near petrol Bunk, DPI Road, Rayalkottai which belongs to the third and fourth accused and found that the tobacco product known as “Hans Chhap Tobacco” and seized the product and samples were sent for test analysis. The petitioners/first accused and seized the product. When enquired with the third and fourth accused, they informed the Food Safety Officer that the petitioners, who are A1 and A2, were manufacturers of the seized tobacco products. On analysis of the samples, it was found that the sample contains Nicotain to an extent of 1.5%, which is injurious to health resulting in the launching of the prosecution against the seller and the petitioners herein, <https://www.mhc.tn.gov.in/judis> who are the manufacturers.

3. The learned counsel appearing for the petitioners vehemently contended that the prosecution launched as against the petitioners is without any basis. In fact, Tobacco is not a food product and permission has been granted to sell such product in two States in India, namely Karnataka and Delhi and when writ petitions were filed before the Delhi Court, the Delhi High Court also directed the respondent not to take any coercive action against the petitioners and the petitioners are manufacturing the product only after obtaining permission in the above States and they are noway connected with the sale of the products in Tamil Nadu. It is his further contention that the petitioners herein never involved in such sale in Tamil Nadu and the referral lab report also clearly indicates that the Tobacco is not a food product and it falls only under the category of tobacco products. The learned counsel contended that without any materials to show that the manufacturers are involved in selling the products in Tamil Nadu, mechanically the prosecution has been launched against the petitioners. <https://www.mhc.tn.gov.in/judis>

4. The learned Government Advocate (Crl.side) submitted that the report of the Food Analyst clearly shows that the tobacco falls under the category of Panmasala and the sample contains Nicotin which is unsafe to use. It is his further contention that when the petitioners himself have admitted that they are the manufacturers, they are also liable to be prosecuted and opposed for quashing of the charge sheet.

5. Normally, this Court would be reluctant to interfere with the complaint, but at the same time when the materials relied upon by the prosecution, in the considered view of the Court, do not constitute any offence against the person and continuation of the prosecution is a sheer waste of time and futile exercise, this Court can very well exercise its power under Section 482 Cr.P.C.

6. The charge against the petitioners itself indicates that some tobacco products were seized from A3 and A4, who are noway connected with the present petitioners, A1 & A2, who are the manufacturers of the tobacco products. It is not the case of the prosecution that this product was supplied for sale in Tamil Nadu by the manufacturers. It is also brought to the notice of this Court that the sale and manufacture is not totally prohibited in some <https://www.mhc.tn.gov.in/judis> of the States, particularly in Karnataka and Delhi. The manufacture and sale of the tobacco product is not totally prohibited. Delhi High Court also directed the respondent not to take any coercive action against the petitioners based on the notification dated 25.03.2015 issued by the Department of Food Safety, GNCT of Delhi, vide order dated 22.04.2015 in W.P.(C) No.4020 of 2015. Therefore, the question remains whether the prosecution is maintainable if any such product is found in Tamil Nadu without establishing any nexus between the manufacture and sale.

7. As discussed above, on perusal of the final report this Court finds that it is not the case of the prosecution that the manufacturer themselves have supplied the products for sale in Tamil Nadu. Therefore, in the absence of any nexus between sale and supply by the manufacturers and when the manufacturing of the product is permitted in neighbouring States, the manufacturers cannot be prosecuted, as if they have committed the offence, without any material. For example, manufacture of IMFL (Indian Made Foreign Liquor) is permitted in Pudukkottai and Pudukkottai liquor is totally prohibited in Tamil Nadu. If any such prohibited liquor is found in possession of somebody, this Court cannot presume that the manufacturers have committed any offence. The same analogy will be followed here. <https://www.mhc.tn.gov.in/judis>

8. That apart, it is also relevant to note that report from the referral lab indicates that the products seized by the Food Safety Officer do not fall within the category of food product and referral lab report available on record clearly indicates that it was only a tobacco product and it is not food product. This also cannot be ignored. This Court is of the view that continuation of prosecution against the present petitioners is a mere waste of time and futile exercise.

9. Accordingly, this Criminal Original Petition is allowed and the case in S.T.C.884 of 2021 pending on the file of District Munsif cum Judicial Magistrate, Denkanikottai is quashed as against the petitioners. Consequently, connected miscellaneous petition is closed.

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1. The District Munsif cum Judicial Magistrate, Denkanikottai
2. The Food Safety Officer, Kelamangalam, Krishnagiri District.
3. The Public Prosecutor, High Court of Madras.

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