

# L.Vivekanandan vs The State Represented By on 8 August, 2022

**Author: G.Ilangovan**

**Bench: G.Ilangovan**

CrI.O.P.(MD)Nos. 22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP(MD)Nos.22341 and 22342 of 2018  
and  
CrI.MP(MD)Nos.10463 to 10465 of 2018

(1)CrI.OP(MD)No.22341 of 2018:-

L.Vivekanandan  
M/s.Sudha Traders,  
No.20, Mudaliyar South Street,  
Kottar,  
Kanyakumari District.

: Petitioner/A1

Vs.

The State represented by  
Food Safety Officer,  
M.Kumarapandiyan,  
Nagercoil Unit-I,  
Nagercoil Municipality Office,  
Nagercoil,  
Kanyakumari District.

: Respondent/Complain

Prayer: Criminal Original Petition is  
Section 482 Cr.P.C., to call for the records in STC No.59  
of 2018 pending on the file of the Judicial Magistrate  
No.II, Nagercoil, Kanyakumari district and quash the same  
as against the petitioner.

(2)Crl.OP(MD)No.22342 of 2018:-

L.Vivekanandan  
M/s.Sudha Traders,  
No.20, Mudaliyar South Street,  
Kottar,  
Kanyakumari District.

: Petitioner/A1

Vs.

The State represented by  
Food Safety Officer,  
M.Kumarapandiyam,  
Nagercoil Unit-I,  
Nagercoil Municipality Office,  
Nagercoil,  
Kanyakumari District.

: Respondent/Complainant

Prayer: Criminal Original Petition is  
Section 482 Cr.P.C., to call for the records in STC No.60  
of 2018 pending on the file of the Judicial Magistrate  
No.II, Nagercoil, Kanyakumari district and quash the same  
as against the petitioner.

For Petitioner  
(in both cases)

: Mr.G.Karuppasamy  
for M/s.R.Jenifer Bibin

For Respondent  
(in both cases)

: Mr.P.Kottah Chamy  
Government Advocate (Crl. Sid

#### O R D E R

These criminal original petitions are filed seeking quashment of the case in STC Nos.59 and 60 of 2018 pending on the file of the Judicial Magistrate No.II, Nagercoil, Kanyakumari District.

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2.The case of the prosecution is that, on 26/10/2017 the respondent, who is the Food Safety Officer conducted surprise inspection in the shop called M/s.Sudha Traders. At that time, the accused person was found in possession of tobacco products called 'Ganesh 701 Tobacco worth about Rs. 75,740/- weighing about 142.824 kgs and samples were lifted as per the procedure and it was handed over to the Designated Officer. Sample was sent to the Food analyst, Thanjavur. Notice was sent to the manufacturer to give an information. M/s.Tej Ram Dharam Paul Pvt. Limited, Village Nathupur, Sonepat, Haryana sent a reply stating that they have not transported or distributed or

sold the above said Cool Lip Filter Tabbag within Tamil Nadu. In the meantime, the Food Analyst report was received, on 13/03/2018. As per the report, it was found that it is substandard and misbranded one. After completing the official formalities, final report has been filed. Now the case has been taken cognizance.

3. Seeking quashment of the same, A1 has filed this petition on the ground that there is a procedural violation of section 42(3) of the Food Safety and standard Act, 2006. The sample was lifted, on 26/10/2017. But the report was received only, on 13/03/2018 and thereafter, only the <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)Nos. 22341 and 22342 of 2018.

Designated Officer sent a recommendation to the Commissioner of Food Safety, Chennai.

4. So far as the Crl.OP(MD)No.22342 of 2018 is concerned, the petitioner is one and the same and it is in respect of inspection that was conducted, on 26/10/2017, which the product called 'Cool Lip Filter Tabbag' worth about Rs.25,500/- weighing about 14.994 kgs, which was seized on the very same ground of violation of section 42(3) of the Food Safety and Standards Act, 2006. Seeking quashment of the same this petition came to be filed.

5. Counter has been filed to the effect mainly attaching the ground with regard to whether the tobacco and tobacco products will come under the definition of 'Food' under the Food Safety and Standards Act, 2006. But so far as the violation of section 42(3), it has been stated that proper reason has been set out in the report. The report dated 13/03/2017 says that due to sudden influx of large number of samples coupled with the vacancies of Senior Analyst, Junior Analyst, Laboratory Technicians Grade I, Laboratory Technicians Grade-II and Laboratory Attendant, the above said delay occurred.

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6. Heard both sides.

7. With regard to the first point, whether the tobacco product will come under the definition of food has been elaborately discussed by this court in Crl.OP(MD)Nos.1546 to 1548 of 2019, dated 26/07/2022 (M/s.Tej Ram Dharam Paul Pvt. Limited represented by its Managing Partner, Neeraj Kumar Singla, Son of Dharman Paul, Nathapur Village, Sonapat District, Haryana-131 029 vs. The State Government through the Food Safety Officer, Nagercoil.

8. As noticed above, let us take the first issue, whether the tobacco products will come under the definition of Food Safety and Standards Act, 2006.

9. A long standing history with regard to the above said tobacco issue has been dealt by various courts under various circumstances and has come to different and varied conclusions. In some of the cases, it has been held that tobacco and tobacco products will not under the definition of Food Safety and Standard Act 2006. In some other cases, it has been held that it will come under the definition of Food Safety and Standard Act, 2006. Noting that there is difference of opinion between

various High Courts with <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)Nos. 22341 and 22342 of 2018.

regard to the above said issue, the matter has been referred to the Larger Bench of the Hon'ble Supreme Court and now the final opinion is awaited. So this is the background of issue.

10.The petitioners would rely upon judgments in favour of their cases to the effect that they will not come under the definition of the Food Safety and Standard Act 2006. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent would submit that even by this court the uniform stand has been taken to the effect that tobacco will come under the definition of the Food Safety and Standard Act 2006. They will rely upon the valid rulings.

11.Let us take the back ground facts of the tobacco products issue.

12.While disposing of the case in Krishnakumar Thupaty Vs. The Inspector of Police, Tilagar Thidal Police Station, Madurai City, (Crl.OP(MD)No.12686 of 2018, dated 21/06/2022), this court has made the following observation which is relevant for our discussion. For better understanding of the issue, let may extract the relevant portion as under:-

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“6.For the purpose of better understanding the issue, let us start the discussion on the basis of the judgment rendered by the High Court of Telangana in the case of Kamadhenu Traders Vs. State of Telangana and others [2022(1)ALT 112]. The ill effects of tobacco and tobacco products were felt from time immemorial and various legislations were enacted to control the manufacturing, storing of the tobacco and tobacco products. Originally, during the era of Godawat Pan Masala Products I.P Vs. Union of India and others (Appeal civil) 4674 of 2004, regarding the definition of food under the provisions of Prevention of Food Adulteration Act, 1954 was under consideration.

7.The Hon'ble Supreme Court, on the basis of the definition under the provision of the Prohibition of Food Adulteration Act, found that the tobacco and tobacco products did not fit into the definition.

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But later, new Act has been brought in 2006 namely the Food Safety and Standard Act, 2006, wherein entirely new dimensions have been given to the definition of food and now, whether the tobacco and tobacco products will fit into the definition is under consideration by the Hon'ble Supreme Court, which is admitted by both sides during the course of arguments.

8.The learned counsel appearing for the petitioner would submit if the court directs, he can wait till the disposal of the matter by the Hon'ble Supreme Court. A similar contention has been raised before the Telungana High Court over the issue. But however, the matter is of the year 2018 and the offence is of the year 2017. Five years lapsed and there is no point in keeping the matter pending, when the process of committal is underway. This court directed the parties to get along with hearing. On that ground, it was heard.” <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos. 22341 and 22342 of 2018.

12.So the above discussion made in the above said case makes the issue more clear. So with these we will now proceed to discuss with regard to the harmful effect of the tobacco products, which are causing to the human life. For that purpose also we can extract the further observation of his court in the above said case viz., CrI.OP(MD)No.12686 of 2018, dated 21/06/2022. The observation runs like this:-

“11.Before we go into the main issue, the back ground must also be taken into account again. The reason being that the Hon'ble Supreme Court in the case of Ankur Gutka Vs. Indian Asthma Care Society (SLP No.16308 of 2007, dated 07/12/2010) has directed the Government of India to make a study with regard to the harmful effect or human life by the use of the Gutka, tobacco, panmasala and similar articles. In pursuance of the above said direction, a detailed study was undertaken and a report was also filed before the Hon'ble Supreme Court. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos. 22341 and 22342 of 2018.

12.On going through the report, the Hon'ble Supreme Court, by order, dated 03/04/2013 in the above said recommendation, directed the Health Department of the States and Union Territories, to file affidavits with regard to the compliance of the ban imposed on manufacturing and sale of gutka and panmasala with tobacco and/or nicotine.

In pursuance of the above said direction, several State Governments issued notifications, orders under the provisions of the Food Safety and Standard Act, 2006. The notification, that was issued by the Government of Telungana in compliance of the above said order was under challenge in Kamathenu Traders case. Here, in Tamil Nadu, in No.VI(1)155(a)/2017, a similar notification was issued on 23/05/2017, banning and prohibiting the manufacture, storage, transport, distribution or sale of Gutkha, Panmasala, Chewing Tobacco, containing tobacco or nicotine as ingredients for a period of one year with <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos. 22341 and 22342 of 2018.

effect from 23rd May 2017. This is the continuation of the ban order. It is seen that on the date of the inspection and seizure and registration of the case, the ban was in force.”

13.So these observations are relevant for our discussion in this case also. In the background of the above stated, let us proceed further. As on date, as things today, the tobacco products will come under the definition of 'FOOD'.

14. Section 3(j) reads as under:-

"food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos. 22341 and 22342 of 2018.

processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances: Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

15. From the discussion made above, now raised the point to the effect that as per the report of food analyst. If the product is unsafe, which is punishable under section 58 and 59(i) of the Food Safety and Standard Act 2006. From the discussion made above, it is also further clear that the tobacco products was banned by the Government, which is also punishable under sections 26(2)(i), 26(2)(iv) and 26(2)(v) of the Food Safety and Standards Act, 2006. So the first point is decided against the petitioners. Apart from this issue, no other ground is raised by the petitioners. So all the cases must be proceeded in accordance with law to its logical conclusion.

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16. From the above said observation, it is clear that now as things today, tobacco products will come under the definition of 'food' as defined under section 2(j) of the Act. So this contention goes against the petitioners. So far as section 42(3) of the Act is concerned, as mentioned earlier, explanation has been offered by the respondent regarding the delay. Whether such an explanation can be accepted or not, is a matter for consideration by the trial court at the time evidence, since this is a factual aspect. Whether the above said reason is correct or not cannot be gone into by this court while exercising the jurisdiction under section 482 Cr.P.C. So this ground is also not available to the petitioners.

18. In view of the above facts, both criminal original petitions are dismissed. But however, considering the oldness of the matter there shall be a direction to the trial court to complete the trial process and dispose of the same, within a period of five months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

08.08.2022 Internet:Yes/No Index:Yes/No er <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos. 22341 and 22342 of 2018.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Judicial Magistrate No.II, Nagercoil, Kanyakumari District.

2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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