

# B.Kalaiselvi vs Food Safety Officer on 12 March, 2024

**Author: Sathi Kumar Sukumara Kurup**

**Bench: Sathi Kumar Sukumara Kurup**

Crl.O.P. (MD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1986 of 2024

and

Crl.M.P.(MD) Nos.1488 and 1489 of 2024

1.B.Kalaiselvi

2.Ravikumar

3.S.Paranidaran

... Petitioners

vs

Food Safety Officer,  
Code No.309, Manachanallur Taluk,  
O/o. Tamil Nadu Food Safety and Drug  
Administrative Department,  
Race Course Road,  
Near Jammal Mohammed College,  
TVS Tolgate,  
Trichy 20.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.  
praying, to call for the entire record relating to the proceeding i  
8497 of 2023 on the file of the learned Judicial Magistrate No.III,  
and quash the same as illegal.

For Petitioners : Mr.J.Madhu

1/16

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

Crl.O.P.

For Respondent : Mr.T.Senthil Kumar  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the entire record relating to the proceeding in STC.No.8497 of 2023 on the file of the learned Judicial Magistrate No.III, Trichy and quash the same as illegal.

2.The learned Counsel for the Petitioners submits that the sample was drawn from the Petitioners' company on 11.09.2020. A report was obtained from the Food Analyst on 30.11.2020. As per the report of the Food Analyst, it is unsafe under Section 3(1)(zx) and 3(1)(zz)(iii) and (ix), Section 21(1) and 26(1)(2)(i)(ii) and (v) of Food Safety and Standard Act. The report was received on 10.12.2020. As per Section 42(2) of the Food Safety and Standards Act, drawing of sample and receiving of report has to be carried out within a period of 14 days.

3.Section 42(2) of the Food Safety and Standards Act, 2006 reads as under:-

“42.2.The Food Analyst after receiving the sample from the <https://www.mhc.tn.gov.in/judis> Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.”

4.Aggrieved by the cognizance of the offence taken by the learned Judicial Magistrate No.III, Trichy, the Petitioner had filed this Criminal Original Petition seeking to quash the proceedings in STC.No.8497 of 2023 on the file of the learned Judicial Magistrate No.III, Trichy. The cognizance taken by the learned Magistrate against the Petitioners is un-sustainable in law, facts and materials on record. Since the provisions stated in the complaint is non applicable to the sample taken, there is no violation of any regulation as stated in the complaint. As per Section 42(2) of the Food Safety and Standards Act, the report from the Food Analyst should be received within 14 days from the date of the sample received for analysis.

5.In the case on hand, the sample was taken on 11.09.2020 and the report of the Food Analyst was received on 30.11.2020. The Analyst report had simply stated that the sample was unsafe. It has not mentioned as to how and in what manner the sample was unsafe. Absolutely, there is no specific averment in the complaint that the customers being aggrieved on <https://www.mhc.tn.gov.in/judis> account of unsafe and in the absence of any such averments, it cannot be said that the samples are unsafe.

6.As per Section 42(3) of the Food Safety and Standards Act, the Designated Officer has to submit his/her recommendations to the Commissioner for sanction of prosecution within 14 days.

7.Section 42(3) of the Food Safety and Standards Act, reads as under:-

“4.3. The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.”

8. In this case, it was not complied with. The food sample was taken on 11.09.2020. The report of the Food Analyst was received on 10.12.2020. The sanction for prosecution was given on 11.01.2023. Thereafter, the prosecution was launched. Hence, there is a clear time barred under Section 77 of the Food Safety and Standards Act.

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

9. It is the further submission of the learned Counsel for the Petitioners that the Lab, in which the sample was analyzed, was not recognized as per Section 43(1) of the FSSAI Act. It has no recognitions for analyzing the packaged drinking water sample on the date the present sample was analyzed. Even for arguments sake, if the averment made in the complaint is taken at its face value, its entirety does not make out a prima facie case against the Petitioners. The section and the regulation stated in the complaint are not applicable to the food product taken as sample from the Petitioners' Company. There are absolutely no contravention of any regulations.

10. Under those circumstances, the Petitioners herein have no other efficacious alternative remedy than filing this Petition before this Court under Section 482 of the Code of Criminal Procedure seeking to quash the impugned proceedings in STC.No.8497 of 2023 on the file of the learned Judicial Magistrate No.III, Trichy.

11. The learned Counsel for the Petitioners invited the attention of this Court to the report of the Food Analyst dated 30.11.2020 in D.Dis.No. <https://www.mhc.tn.gov.in/judis> 3991/G2/2020.

“OPINION:

I am of the opinion that the sample of "PACKAGED DRINKING WATER" sent for analysis does not conform to standards prescribed for "Packaged Drinking Water" as specified under the Regulation 2.10.8 of Food Safety and Standards (Food Production Standards and Food Additives) Regulations 2011 as the microbiological parameters shows the presence of Aerobic Microbial count is more than the prescribed standard.

Hence the sample is found to be Sub-standard and Unsafe as per Section 3(1)(2x) and Section 3(1)(zz)(ili) & (xi), Section 21(1) and Section 26(1)(2)(i)(ii) & (v) of Food Safety and Standards Act 2006.”

12. He also invited the attention of this Court to the contents of the complaint as filed before the learned Judicial Magistrate No.III, Trichy and the same reads as under:-

“gpd;dh; czT khjpupapd; KbT Fwpj;J czT gFg;gha;thsupd; fbjk; gbt;-B cld; jahupg;G epWtdj;jpw;F 28.12.2022 md;W gbt; VA cld; cupikahsu; tpguk; Nfhupa fbjk; kw;wk; czT khjpupapd; ehd;fhk; ghfj;ij murhy; tiuaWf;fg;gl;(ACCREDITED LABORATORY) Ma;T \$lj;jpw;F mDg;g cupikAs;sij njuptpj;j fbjk; Mfpait gjpTj;jghy; %yk;

mDg;gg;gl;lJ. mjid ngw;Wf; nfhz;l tpw;gidahsu; kw;Wk; jahupg;ghsuplk; ,Ue;J Nky; KiwapL Fwpj;j vt;tpj KiwaPLk; ngwg;gltpy;iy. vdNt Misbranded,Substandard and unsafe vd rhd;W ngwg;gl;l czT khjpupahd milf;fg;gl;l FbePiu Nkw;fz;l gq;Fjhuv;fs; KtUk; mth;fsJ jahupg;G epWtdkhd M / S SAI RAM TRADERS.30, Mahalakshmi Nagar, Ullanthangudi, Mannachanallur, Trichy – 621005 vd;w Kftupapy; nray;gLk; epWtdj;jpd; Kyk;

<https://www.mhc.tn.gov.in/judis> jahupj;J> czT ghJfhg;G kw;Wk; juepu;za rl;lk; 2006 Sec. 3(1) 3(2)(zx) and Section 3(1)(zz) (iii)\&(xi) Section 21(1) and Section 26(1)(2)(i)(ii) & (v) of Food and Standards Act 2006[ kPwp czT tzpfu;fSf;fhd flikapypUe;J jtwp> czT ghJfhg;G kw;Wk; juepu;zar; rl;lk; 2006 gpupT 51> & 59(1) fPo; ,ioj;Js;s Fw;wk; Fw;wtpay;

jz;lidf;Fs;shdJ.”

13.Further, the learned Counsel for the Petitioners invited the attention of this Court to the Notification of Ministry of Health and Family Welfare (Food Safety and Standards Authority of India) dated 02.06.2021. In para No.3(b) of the said Notification, it has been stated as follows:-

S.No. Name Regn. Number and Address of the Scope of Accreditation Laboratory 1  
Food Analysis Laboratory, Guindy, Chemical Biological Reg. No. 71/S/FSSAI/2021,  
Office of the government Analyst, Chennai, Guindy. Tamil Nadu-600032

14.After amendment, in the very same Notification, it has been stated as under:-

“3.In C related to southern Region under Tamil Nadu in serial number 21, under scope of accreditation 'Biological' word shall be deleted.”

15.Under those circumstances, the learned Counsel for the Petitioners submits that the contents of the complaint itself cannot be considered to <https://www.mhc.tn.gov.in/judis> attract the provisions of the Food Safety and Standards Act as though the Petitioners violated the Food Safety Rules.

16.Further, the learned Counsel for the Petitioners relied on the ruling of the Bombay High Court in W.P.No.3413 of 2022 (M/S.Pernod Ricard India Private Limited, A company incorporated under the Companies Act, 1956 and another Vs. Food Safety and Standards Authority of India and others), wherein it has been held as under:-

“11. The next question that would arise is about the scope of accreditation. Section 2(1)(b) of the Regulations, 2018 defines ‘accreditation’ means third party attestation

of the competence of the food laboratory to carry out its function effectively. Section 2(1) (f) of the Regulations, 2018 defines ‘notified food laboratory’ means a food laboratory notified by Food Authority under sub-section 1 of section

43. Rule 9 of the Regulations, 2018 deals with obligations of food laboratories. Sub rule 1(a) of Rule 9 of the Regulations, 2018 provides that the laboratory should perform all tests in the approved premises as per the valid scope of recognition. The broad scope and food categories are mentioned in the validity order.

12 The scope of accreditation of Food and Drugs Administrations Mohite 9/11 101-105-28wp.docx Laboratory, Bandra (East), Mumbai 400 051 is for the Food and Agricultural Products such as (A) Refined Groundnut Oil, (B) Refined Sunflower Oil (C) Refined Soyabean Oil, (D) Refined Palmolein Oil, (E) Groundnut Oil, (F) Mustard Oil, (G) Coconut Oil, milk and dairy products, ghee, water and packaged drinking water.

13 On perusal of the scope of accreditation issued to the Food and Drug Administration Laboratory, it does not appear that the whisky is a part of the scope of accreditation.

14 As observed, the food laboratory shall have the obligation to perform all tests in the approved premises as per the valid scope of <https://www.mhc.tn.gov.in/judis> recognition. The tests ought to be carried within the valid scope of recognition. Whisky was outside the scope of recognition of the Food and Drugs Administration Laboratory that had tested the samples.

15 It would appear that the Executive Director of Food Safety and Standard Authority of India has issued letters on 15.03.2021 to all the Commissioners of Food Safety of all States to the effect that the samples are being sent to the laboratories not capable of testing the product / parameter and he advised that the scope of testing of the laboratory may be checked, before sending any sample for analysis for any purpose under the various provisions of this Act, so as to ensure that the analysis reports are legally and technically valid.

16 The Respondents could not demonstrate as to how the said laboratory was competent to test and analyze the alcohol beverage. It is further contended that even as per the Analyst Report, the finding in question conforms to the general requirements specified in Part 1 and the requirement specified in Table 1 of the Regulation, 2018. As per the Petitioner, the results are in the range as given in the Table 1 under Regulation 2.1.

17 The Respondents could not point out as to how the said laboratory was competent to test and analyze the samples of Whisky when the same was beyond the valid scope of recognition.”

17.The learned Counsel for the Petitioners further relied on the Food Safety and Standards Authority of India, in which it is stated as under:-

193 Food Reg.no. TC – N Contact As notified 15th Not Not - Cereals, Analysis 71/S/FSS 9327 Person B by State March applicable applicable Pulses and Laboratory, AI/2021 Radhika Government 2023 Cereal Guindy 9986419064 Pdocuts, Office of the Email. Edible oils Government Falgdynabi @ and fats, Analyst gmail.com Herbs, Spices Guindy, 625 and 020 Condiments, Milk, dairy produces, Tea, others <https://www.mhc.tn.gov.in/judis>

18.On that ground also, the report of the Food Analyst Laboratory is not maintainable. The delay in sending the samples, the delay in getting the report and the delay in getting the sanction from the Commissioner of Food Safety, as per FSSAI Act, the sanction to prosecute has to be obtained within 1 year. For the sample lifted in 2020, the sanction was granted in 2023. Therefore, it is beyond the period of limitation.

19.The learned Additional Public Prosecutor appearing for the Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that the Notification of the Act came into effect from 2006. In the circular No.83-Dir (Enf)/FSSAI/2011 dated 05.07.2011 of the Food Safety and Standards Authority of India, it has been held as under:-

“Section 43 of the FSS Act requires that all food testing under the Act will be done in NABL or any other FSSAI approved accredited lab. State Governments and UT Government have already been advised in this regard and the results of a 'gap analysis' commissioned by FSSAI in respect of the State Labs have been shared for appropriate action for the upgradation of the Labs to accredited standards. However, from the interaction with the State Governments it is clear that the process is likely to take some time and the labs will not be able to get accreditation before 5th August, 2011 when the FSS <https://www.mhc.tn.gov.in/judis> Act will become operational.

The matter has been examined and it is clarified that the existing Public Food Testing Laboratories which are testing food samples under PFA will continue to perform their function of food testing under Section 98 of FSS Act, 2006 till any notification is issued under Section 43 of FSS Act, 2006. The Central Food Laboratories at Kolkata, Pure and Mysore and FRSI Ghaziabad will function as the referral laboratories.”

20.Therefore, the submission of the learned Counsel for the Petitioners cannot be accepted, in the light of the clarification issued by the Director of Food Safety and Standards Authority of India. He also relied on the letter of the Food Analyst, Food Analysis Laboratory, Guindy, Chennai

-32, dated 18.09.2020.

21.He also relied on the order of the Hon'ble Supreme Court passed in suo motu Writ Petition (C) No.3 of 2020, wherein it is stated that the period of COVID-19 lock down ought to be condoned. If

that is applied, there is no delay in the sanction order granted by the Commissioner. The interest of the general public has to be considered.

22.It is the further submission of the learned Additional Public <https://www.mhc.tn.gov.in/judis> Prosecutor that the notification relied on by the learned Counsel for the Petitioner relates to the Gazette Notification of the year 2021, whereas as per the Commissioner proceedings, the laboratory, as per the earlier Act, alone shall be considered as per the Food Adulteration Act and not as per the Notification relied on by the learned Counsel for the Petitioners.

23.By way of rejoinder, the learned Counsel for the Petitioners to the submission of the learned Additional Public Prosecutor had stated that even if the old Act is considered, the laboratory at Guindy, Chennai is not competent to conduct laboratory test for biological division.

24.The point for consideration is whether the submission of the learned Counsel for the Petitioners is to be accepted and whether the complaint filed by the Food Safety Officer before the learned Judicial Magistrate No.III, Trichy is to be quashed.

25.The submission of the learned Counsel for the Petitioner is found justified in the light of the aforesaid Gazette Notifications. Further, the finding of the Bombay High Court (referred supra) is also found applicable <https://www.mhc.tn.gov.in/judis> to the facts of this case. Regarding the delay, even though it is covered under the period of limitation as stated in the ruling of this Court, it will not help the Food Safety Officer in maintaining the complaint. The complaint itself is contradictory. The name of the Company is not properly mentioned.

26.Also, the report itself is vague. It does not mention what provisions of the Food Safety and Standards Act had been violated. Even as per the Food Safety and Standard Act, the laboratory at Guindy is not competent to check the quality of the water. When the Commissioner of Food Safety are unable to point out what was violated and what was the defect in the sample lifted for analysis, it is found that without application of mind, the Food Analyst has given the certificate, as though the water lifted from the shop was found not as per the standards prescribed for water.

27.Further, as per the ruling cited by the learned Counsel for the Petitioners, the ruling of the Bombay High Court (referred supra) is very much applicable to the facts of this case. The ruling relied on by the learned Counsel for the Petitioners regarding sanction, the delay as was stated by the Commissioner of Food Safety is found unacceptable in this case. <https://www.mhc.tn.gov.in/judis>

28.The entire procedure of collecting the samples and sending it before the laboratory concerned is not as per Sections 42, 43 and 77 of the Act. Therefore, the filing of the complaint before the learned Judicial Magistrate No.III, Trichy, in which para 7 states that the name of the Company and it is treated as misbranded is found not applicable to the case of the Petitioner. Therefore, the Petitioner cannot be forced to face the rigours of trial. Under those circumstances, the entire procedures had been violated. The facts of the case, which attract the guidelines issued to the High Courts to exercise its extraordinary powers to avoid miscarriage of justice, are justified.

In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Internet:Yes./No

12.03.2024

Index:Yes/No

mm

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

To

1.Food Safety Officer,  
Code No.309, Manachanallur Taluk,  
O/o. Tamil Nadu Food Safety and Drug  
Administrative Department,  
Race Course Road,  
Near Jammal Mohammed College,  
TVS Tolgate,  
Trichy 20.

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

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

SATHI KUMAR SUKUMARA KURUP, J.

mm



12.03.2024

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