

M/S.Murari Lal Harish Chandra Jaiswal ... vs Food Safety Officer on 8 July, 2022

Author: N. Sathish Kumar

Bench: N.Sathish Kumar

Crl.O.P.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.15607 of 2022
and Crl.M.P.No.8790 of 2022

1. M/s.Murari Lal Harish Chandra Jaiswal Pvt. Ltd.,
6043, Naya Bans,
Delhi 110 006.

2. M/s.Jaiswal Products,
Manufacturer of Hans Chhap Tobacco
G-82 Preet Vihar,
Delhi 11009

... Pet

Vs.

Food Safety Officer,
Code No.411
Food Safety and Drug Administration Department,
Dharmapuri Municipality & Block
Dharmapuri District 636 705.

... Res

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P to call for the records and quash the charge sheet in S.T.C.645 of pending on the file of the Judicial Magistrate - 1, Dharmapuri.

For Petitioners : Mr.D.Saikumaran

For Respondent : Mr.Leonard Arul Joseph Selvam
Govt.Advocate (Crl.side)

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Crl

ORDER

This petition has been filed to quash the charge sheet filed against the petitioner in S.T.C.No.645 of 2018 on the file of Judicial Magistrate- I, Dharmapuri for the offences under Sections 55, 58 and 59(1) of the Food Safety and Standards Act, 2006.

2. It is the case of the prosecution that on 30.07.2016 when the Commercial Tax Officials were checking vehicles at Karimangalam Bye- pass road, they intercepted a lorry bearing No.TN-25-AV-6044 and found Tobacco products, which has been banned by the Government of Tamil Nadu. The Commercial Tax Officials seized the vehicle along with the tobacco products and after 4 days of investigation, on 03.08.2016 they sent 70 sacks of tobacco products seized vide proceedings No.R.No.1840/2016/A2 dated 03.08.2016 to the District Designated Officer, Food Safety and Drug Administration Department, Dharmapuri. It is the further case of the prosecution that the Tobacco products were transported by the driver using bogus invoices from Bangalore to Madurai vide Lorry bearing No.TN-25-AV-6044 for sale of the products <https://www.mhc.tn.gov.in/judis> in Madurai. Thereafter, the Food Safety Officer, Food Safety and Drug Administration Department, Dharmapuri has sent the tobacco samples after following the due procedures to the Food Analyst, Food Analysis Department, Salem on 03.08.2016. On analysis it was found that the sample contains Nicotine, which is injurious to health resulting in the launching of the prosecution against the Lorry Driver, Lorry Owner and the petitioners herein, who are the manufacturers.

3. The learned counsel appearing for the petitioners vehemently contended that the prosecution launched as against the petitioners are 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 he is noway connected with the sale of the products in Tamil Nadu. It is his further contention that the petitioners herein never <https://www.mhc.tn.gov.in/judis> involved in such sale in Tamil Nadu and the Referral Food 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. The petitioners also contended that the prosecution case itself is that the tobacco products, where transported from Bangalore to Madurai with bogus invoices and when their tobacco products were allowed for sale in Bangalore, the prosecution cannot be launched against the petitioners, who are manufacturers. He further contended that the issue involved was already covered by the order passed by the High Court in Crl.OP.No.13674 of 2017 dated 03.12.2021.

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 themselves

<https://www.mhc.tn.gov.in/judis> 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. The charge against the petitioners itself indicates that some tobacco products were seized from A1, who is the driver of the lorry, himself informed that the product was transported by him from Bangalore to Madurai. 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 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 <https://www.mhc.tn.gov.in/judis> 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 manufactures and sale. As discussed above, on perusal of the final report this Court finds that it is not the case of the prosecution that the manufacturers themselves has supplied the products for sale in Tamil Nadu. Only some unknown persons said to have supplied it. Therefore, in the absence of any nexus between sale and supply by the manufacturer and when the manufacturing of the product is permitted in neighbouring States, the manufacturers cannot be prosecuted, as if he has 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 has committed any offence. The same analogy will be followed here.

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6. 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.

7. Accordingly, this Criminal Original Petition is allowed and the case in S.T.C.No.645 of 2018 pending on the file of Judicial Magistrate I, Dharmapuri is quashed. Consequently, the connected miscellaneous petitions are closed.

08.07.2022 Index : Yes/No Internet : Yes/No Speaking/Non speaking order dpq
<https://www.mhc.tn.gov.in/judis> To

1. The Food Safety Officer, Code No.411 Food Safety and Drug Administration Department, Dharmapuri Municipality & Block Dharmapuri District 636 705.

2. The Public Prosecutor, High Court of Madras.

Chennai – 600 104.

3. The Public Prosecutor High Court of Madras.

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