

Suo Motu vs P K Suresh Kumar on 15 October, 2024

Author: Anil K. Narendran

Bench: Anil K.Narendran

Cont.Cas.(CrI.) No.3/2024

1/8

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
Tuesday, the 15th day of October 2024 / 23rd Aswina, 1946
CONTEMPT CASE (CRL.) NO. 3 OF 2024(S)

SUO MOTU

RESPONDENT:

P K SURESH KUMAR, S/O KUNJAN, PUTHENPURAYIL HOUSE,
THIRUVALOOR, T BHAGAM, ALANGAD VILLAGE,
ERNAKULAM DISTRICT, PIN - 683 511.

This Contempt of Court Case (criminal) having come up for orders on
15.10.2024, the court on the same day passed the following:

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P.T.O.
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ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ

.....
Cont. Case (CrI.)No.3 of 2024
.....

Dated this the 15th day of October, 2024

ORDER

Anil K. Narendran, J.

This Cont. Case (Crl.) is registered suo motu, based on the orders of the Honourable the Chief Justice, invoking the provisions under Section 15 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India, in respect of Annexures C to G Facebook posts posted by the respondent. Annexure C Facebook post dated 09.03.2024 is in relation to the proceedings in Cont. Case (Crl.)No.1 of 2024, in which the respondent herein was discharged by Annexure B judgment dated 26.02.2024, accepting the unconditional apology tendered by him. Annexure E Facebook post dated 11.03.2024 of the respondent is in respect of the judgment authored by one among us [Anil K. Narendran, J.] in W.P.(C)No.41743 of 2022 in relation to Aravana Prasadam in Sabarimala Devaswom. Annexure E Facebook post dated 12.03.2024, Annexure F Facebook post dated 15.03.2024 and Annexure G Facebook post dated 17.03.2024 of the respondent are against a learned Judge of this Court [Devan Ramachandran, J.].

2. The judgment in W.P.(C)No.41743 of 2022, referred to in Annexure E Facebook post dated 11.03.2024 of the respondent, which is authored by one among us [Anil K. Narendran, J.], is in respect of the proceedings of the Travancore Devaswom Board for local purchase of cardamom at Sabarimala Devaswom during Mandala-Makaravilakku festival season of 1198ME (2022-23).

3. By the order dated 11.01.2023 in W.P.(C)No.41743 of 2022, this Court restrained the Travancore Devaswom Board from selling Aravana Prasadam made using the cardamom supplied by the contractor to the pilgrims, since the sample of cardamom tested at the Government Analyst's Laboratory, Thiruvananthapuram contained insecticide residues exceeding the MRL (Maximum Residue Limit) as per Regulation 2.3.1 of Food Safety and Standards (Contaminants Toxins and Residues) Regulations, 2011 as per the certificate of examination dated 28.12.2022 of the Food Analyst, Government Analyst's Laboratory, Thiruvananthapuram, and unsafe as per Section 3(1)(zz)(iii)&(xii) of Food Safety and Standards Act, 2006; and another sample of cardamom tested at the accredited laboratory of the Food Safety and Standards Authority of India, i.e., the Quality Evaluation Laboratory of the Spices Board at Kochi, contained 14 pesticides exceeding the MRL as specified under Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011 and Quinalphos exceeding the MRL specially defined for cardamom, as per the report dated 11.01.2023 of the Executive Director, Food Safety and Standards Authority of India, extracting therewith the opinion by Advisor (QA). The cardamom sample was thus found unsafe as per Section 3(1)(zz)(xii) of the Food Safety and Standards Act, 2006.

4. In the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 - Travancore Devaswom Board v. Ayyappa Spices [2022:IO:KER:55713 : 2023 (4) KHC SN 9] - this Court held that in view of the provisions contained in Section 26 of the Food Safety and Standards Act, 2006 the Travancore Devaswom Board, which falls within the sweep of 'food business operator' as defined in clause (o) of Section 3(1) of the Act, in relation to the manufacture, processing, packing, etc., of Aravana, and also falls within the sweep of 'food business' as defined in clause (n) of Section 3(1) of the Act, has to ensure that Aravana satisfy the requirements of the Act and the Rules and Regulations made thereunder at all stages of production, processing, import, distribution and sale, etc. Therefore, once it is found that the sample of cardamom does not conform to Regulation 2.3.1. of the Food Safety Standards (Contaminants, Toxins and Residues) Regulation, 2011 and amendments thereon and as such it is unsafe for human consumption as per the provisions in

sub-clause (xii) of clause (zz) of Section 3(1) of the Act, the Board cannot store, sell or distribute Aravana made using that cardamom, since the said article of food falls within the sweep of 'unsafe food', as defined in the said sub-clause. Therefore, in the order dated 27.03.2023, this Court declined the request made by the Travancore Devaswom Board for sending the Aravana made using that cardamom for analysis, at any laboratory accredited by the Food Safety and Standards Authority of India.

5. In paragraph 20 of the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 - Travancore Devaswom Board v. Ayyappa Spices [2023 (4) KHC SN 9] - and also in the judgment dated 11.04.2023 in W.P.(C)No.41743 of 2022 - Ayyappa Spices v. Travancore Devaswom Board [2023:KER:24739 : 2023 KHC OnLine 9678] this Court noted the report dated 17.01.2023 of the Commissioner of Food Safety as to the testing facilities available at the laboratory at Pamba under the Food Safety Commissionerate, Kerala. In the order dated 19.01.2023, referred to in paragraph 21 of the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 and in paragraph 21 of the judgment dated 11.04.2023 in W.P.(C)No.41743 of 2022, this Court noticed that the facilities for testing cardamom and other items with reference to the requirements of the Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011, are not available at the Laboratory at Pamba, under the Food Safety Commissionerate, Kerala, where the testing parameters are with reference to the provisions under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

6. In the Special Leave Petitions filed by the Travancore Devaswom Board challenging the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 and the judgment dated 11.04.2023 in W.P.(C)No.41743 of 2022, the Apex Court passed an order dated 15.05.2023 staying the operation of the order dated 27.03.2023 and the judgment dated 11.04.2023. By that order, the Apex Court directed the Food Safety and Standards Authority of India to take random samples from the stock of Aravana Prasadam and get an analysis done with regard to the quality and whether the same is fit for human consumption. Pursuant to that order, the Food Safety and Standards Authority of India got the samples analysed and filed a report of its opinion on 12.06.2023, stating that the pesticides mentioned in the analytical report are below the limit of quantification and are satisfactory. Microbiological parameters conform to ready to eat grain products and are not substandard. Based on the above analytical report it was found fit for human consumption.

7. By the judgment dated 06.03.2024 in Civil Appeal Nos.3866 and 3867 of 2024, the Apex Court allowed the appeals and set aside the order dated 27.03.2023 and the judgment dated 11.04.2023, holding that the High Court should have dismissed the writ petition on the question of maintainability itself since the writ petition was filed on behalf of an interested person, who sought to convert a judicial review proceeding for personal gain. In the said judgment, the Apex Court noticed that the cardamom samples submitted by the bidders were tested in a nearby lab (at Pamba), which was also established by the Commissioner of Food Safety as per an order of the High Court. The Apex Court held that the decision of the Travancore Devaswom Board is legal, fair and transparent. In that view of the matter, issue No.2 relating to the applicability of the Food Safety and Standards Act, 2006 to the appellant Travancore Devaswom Board does not arise for consideration in this case.

8. Since this Cont. Case (Crl.) is registered suo motu by the Registry, based on the orders of the Honourable the Chief Justice, invoking the provisions under Section 15 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India, in respect of Annexures C to G Facebook posts posted by the respondent, which includes Annexure E Facebook post dated 11.03.2024 of the respondent in respect of the judgment authored by one among us [Anil K. Narendran, J.] in W.P.(C)No.41743 of 2022, we deem it appropriate to direct the Registry to place this matter for the orders of the Hon'ble the Chief Justice to list before another Bench.

List on 24.10.2024.

Sd/-

ANIL K. NARENDRAN, JUDGE Sd/-

P.G. AJITHKUMAR, JUDGE

Dxy

15-10-2024

/True Copy/

Assistant

Annexure B

APPENDIX OF CONT.CAS.(CRL.) 3/2024

COPY OF JUDGMENT DATED 26-2-2024 IN CONTEMPT CASE
(CRIMINAL) 1/2024.

Annexure C

FACE BOOK POST DATED 09/03/2024

Annexure D

FACE BOOK POST DATED 11/03/2024

Annexure E

FACE BOOK POST DATED 12/03/2024

Annexure F

FACE BOOK POST DATED 15/03/2024

Annexure G

FACE BOOK POST DATED 17/03/2024

15-10-2024

/True Copy/

Assistant Registrar