

M.Ramesh vs The State Represented By Its Food Safety ... on 9 January, 2023

Author: G.Chandrasekharan

Bench: G.Chandrasekharan

Crl.OP.No.31

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.31237 of 2022

and

Crl.M.P.Nos.19105 and 19108 of 2022

1.M.Ramesh

2.Company,

Represented by its Sales Manager (Nominated person),
Mr.Enoch Packiaraj Monickam ages 52 years,
M/s.Sri Raja Rajeshwari Hotel P.Ltd (Bennz Park),
No.62, Thirumalai Pillai Road, T.Nagar,
Chennai.

... Peti

Vs.

The State represented by its Food Safety Officer,
R.Selvam, Code No.544, Teynampet Area,
Office of Designated Officer,
Tamil Nadu Food Safety and Medicine Administration,
Chennai District, No.33, West Jones Road,
Saidapet, Chennai – 600 015.

... Resp

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.
call for the records in C.C.No.3087 of 2019 on the file of the XVII Me
Magistrate, Saidapet, Chennai – 15 and quash the same so far as petiti
and A4 are concerned.

1/10

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

Crl.OP.N

For Petitioner : Mr.B.Radhakrishnan

For Respondent : Mr.S.Santhosh

Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition is filed for quashing C.C.No.3087 of 2019 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai – 15.

2. The learned counsel for the petitioners submitted that a private complaint was filed against these petitioners and other accused under the Food Safety and Standard Act, 2006 (hereinafter referred to as 'the Act'). More particularly, the private complaint was filed against the petitioners under Section 51 of the said Act. Along with the petitioners, the Managing partners, the hotel and the supplier of food were also prosecuted. It is the submission of the learned counsel for the petitioners that when the petitioners were prosecuted for the offence under Section 51 of the Act, for selling a substantiated food, they can be imposed only a penalty. An adjudication proceedings has to be conducted under Chapter 3 of the Food Safety and Standard Rules, 2011 for the imposition of <https://www.mhc.tn.gov.in/judis> penalty. Instead of instigating an adjudication proceedings, a criminal prosecution was lodged against the petitioners, which is in violation of the provisions of the Act. He further submitted that the accused 2 and 3 have filed Crl.O.P.No.32296 of 2019 for quashing the proceedings against them. The same was allowed by this Court on 02.09.2022. Petitioners herein are also similarly placed like the accused 2 and 3 and thus they prayed for quashment of the proceedings in C.C.No.3087 of 2019, on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai – 15.

3. In response, the learned Government Advocate (Criminal side) filed a counter and submitted that the petitioners along with other accused have been charged for the offences under Section 51 and 63 of the Act. Petitioners' case cannot be considered in isolation, as the entire complaint has to be read and in that case, complaint against the petitioners is maintainable. When the offence or offences committed by several persons, they may be charged with and tried together by virtue of the provisions of Section 223 of CrPc. Similarly, if in one series of acts so connected together, as to form the same transaction, more <https://www.mhc.tn.gov.in/judis> offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence. The claim of the petitioner that they shall face the case before Adjudication Officer is against the procedure laid down by the Criminal Procedure Code. Thus, he prayed for dismissal of this petition.

4. Considered the rival submissions of the learned counsel for the parties and perused the records filed in support of this petition.

5. The reading of the complaint shows that on 18.03.2017 at about 11.45 am, the complainant had inspected M/s.Sri Raja Rajeswari Hotels Private Limited. The 1st petitioner, who is the 1st accused in this case, was the store incharge. The complainant took the sample of Om Sri Shanmuga Ghee from the said hotel, after following procedure. Thereafter, this sample was sent for analysis to the

Government authorised Food laboratory at Thanjavur. From the report received from the Food Analyst, it is reported that the food is of “Substandard quality” under Section 3(1) of the Act. Thereafter, a complaint was <https://www.mhc.tn.gov.in/judis> filed against the petitioners and other accused. As against the petitioners, the complaint was filed under Section 51 of the Act.

6. Section 3(zx) of the Act defines what is a “Sub-standard”. It reads as follows:-

“Section 3 (zx) "sub-standard" - an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe;”

7. Section 51 of the Act states the penalty for “Sub-standard”, which reads as follows:-

“51. Penalty for sub-standard food.-Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees; .” The reading of the Section 51 of the Act, shows that, if a person manufactures for sale or stores or sells or distributes or imports any article of <https://www.mhc.tn.gov.in/judis> food of human consumption which is sub-standard, he is liable only to a penalty under Chapter 3 of the Food Safety and Standard Rules, 2011.

8. Rule 3.1.1(5) of Food Safety and Standards Rules reads that “The Adjudicating Officer shall have the power to hold an inquiry for the purpose of adjudicating offences punishable under sections 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the Act.” A reading of these provisions makes it clear that only a penalty can be imposed for selling or storing a Sub-standard food and no criminal proceedings can be launched for imposing sentence.

9. Section 42 of the Act deals with the procedure for launching prosecution. Section 42(3) of the Act, reads as follows:-

“Section 42 (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 <https://www.mhc.tn.gov.in/judis> shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.”

10. It is further submitted by the learned counsel for the petitioners that the report in this case was received on 26.04.2017, but the prosecution was lodged only on 26.09.2017. The time line set under Section 42(3) of the Act was also not followed. In the case before hand, the contravention would invite only penalty, as per Section 51 of the Act.

11. Considering all these facts and circumstances, this being a Special Act and having special provisions for prosecution, we have to follow the Procedure contemplated under the Act for the

purpose of prosecution or adjudication proceedings. Therefore, the submissions of the learned Government Advocate (Criminal Side) that the procedure violates criminal procedure under Section 223 of Criminal Procedure Code cannot be accepted. In a case, where only a penalty can be imposed, launching of criminal prosecution is not permissible and legal under Food Safety and Standards Act, 2006. In such view of the matter, the <https://www.mhc.tn.gov.in/judis> proceedings against the petitioners in C.C.No.3087 of 2019 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai – 15 is liable to be quashed and accordingly quashed.

12. However, liberty is given to the respondent to initiate appropriate adjudication proceedings against the petitioners for imposing penalty as per Section 51 of the Act by following procedure established under law.

13. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

09.01.2023 Internet : Yes / No Index : Yes / No Speaking/Non speaking order gd
<https://www.mhc.tn.gov.in/judis> To

1.The XVII Metropolitan Magistrate, Saidapet, Chennai – 15.

2.The Food Safety Officer, R.Selvam, Code No.544, Teynampet Area, Office of Designated Officer, Tamil Nadu Food Safety and Medicine Administration, Chennai District, No.33, West Jones Road, Saidapet, Chennai – 600 015.

3.The Public Prosecutor, Madras High Court.

<https://www.mhc.tn.gov.in/judis> G.CHANDRASEKHARAN,J.

gd 09.01.2023 <https://www.mhc.tn.gov.in/judis>