

## K.Preethi vs State on 23 March, 2023

CrI.O.P.(MD)No.1890

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

CrI.O.P.(MD)No.18906 of 2018  
and  
CrI.M.P.(MD)No.8433 of 2018

1. K.Preethi

2. K.Arunkumar

... Petitioners/A2&A

Versus

State  
through S.Mohan Raj  
Food Safety Officer,  
Remark No.449,  
Keelakarai Municipality,  
(Office of the Designated Officer,  
Tamilnadu Food Safety and  
Drug Administrative Department  
Food Safety wing)  
Ramanathapuram,  
Ramanathapuram District.

... Resp

Criminal Original Petition filed under Section 482 of  
seeking to call for the records relating to the proceedings in  
S.T.C.No.5 of 2018 on the file of the Judicial Magistrate No.I,

1/12

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

CrI.O.P.(MD)No.1

Ramanathapuram and quash the same as far  
petitioners/Accused Nos.2 and 3.

For Petitioners : Mr.G.Mariappan

For Respondent : Mr.M.Muthumanikkam,  
Counsel for Government of  
Tamil Nadu (Criminal Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.5 of 2018 on the file of the Judicial Magistrate No.I, Ramanathapuram insofar as the petitioners/Accused Nos.2 and 3 are concerned, wherein, they said to have committed offence under Sections 59(i) and 63 of the Food Safety and Standards Act 2006 (hereinafter called as “the Act”).

2. The petitioners are the accused Nos.2 and 3 in S.T.C.No.5 of 2018 on the file of the learned Judicial Magistrate No.I, Ramanathapuram.

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3. The respondent herein is the complainant in S.T.C.No.5 of 2018 on the file of the Judicial Magistrate No.I, Ramanathapuram, who is the Food Safety Officer in Food Safety and Drug Administrative Department (Food Safety Wing), Ramanathapuram (hereinafter called as “the Department Officer”). The respondent, on 29.09.2016, visited the first accused's shop situated at Bazaar Street, Kilakarai, Ramanathapuram District and lifted the sample of “Ponvandu Brand Malli (Coriander)” after following the procedure stated in the Act and sent the same to the competent food analyst. The food analyst submitted his report dated 14.10.2016 to the respondent on the same day with the following specific finding:

“I am of the opinion that the said sample is Unsafe under Section 3(1)(zz) of food safety and standards Act 2006, since it contains a class II preservative Sulphur-dioxide which is not permitted under regulation 3-1-4(3) of Food Safety and Standards (Food Products Standards & Food Additives) Regulation 2011.”

4. So, the complainant sent his report and finding to the Designated Officer for further course of action as per the Act on <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18906 of 2018 17.10.2016. Thereafter, the Designated Officer called objections from the manufactures, namely, the petitioners herein and shop owner, by issuing a show cause notice dated 20.10.2016.

5. Upon receipt of the show cause notice, the petitioners, holding different posts in the Manufacturing Unit, namely “Ponvandu Brand Malli (Coriander)”, sent their reply on 16.11.2016 and specifically denied the allegation that the seized articles from the third accused's shop was not manufactured by them and the said seized materials were not belonged to them and they never supplied the said brand items to the third accused and they requested to furnish the invoice of supply of seized materials from the third accused's shop.

6. The Designated Officer, without verifying the above aspects, made a request to the Commissioner to accord sanction on 07.06.2017. Thereafter, the Commissioner accorded sanction on 29.11.2017 and the respondent preferred the complaint before the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18906 of 2018 learned Judicial Magistrate No.I, Ramanathapuram on 26.12.2017 and the same was taken on file on 04.01.2018 in S.T.C. No.5 of 2018 for the offence under Sections 59(i) and 63 of the Food Safety and Standards Act 2006.

7. Mr.G.Mariappan, learned counsel for the petitioners, challenging the above proceedings, made the following submissions:

(i) The complainant did not produce any material to prove the fact that the petitioners supplied the seized articles to the third accused/shop owner.

(ii) The learned Judicial Magistrate has taken on file the belated complaint in contravention of Section 77 of the Act. The learned Judicial Magistrate has also failed to consider that there was no proper explanation for the delay in launching the prosecution.

8. Per contra, the learned Government Advocate(Criminal side) would submit that there are sufficient materials filed along <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18906 of 2018 with the complaint to prove the factum of supply of seized articles to the shop owner and the Commissioner, in his sanction report, specifically found that on account of the administrative reasons, the delay in preferring the complaint has occurred and hence, the complaint was filed within time. Hence, he prays for dismissal of this quash petition.

9. This Court has considered the rival submissions and perused the materials placed on record.

10. In order to consider the plea of limitation, it is necessary to extract Section 77 of the Act, which deals with time limit for launching the prosecution:

“77. Time limit for prosecutions – Notwithstanding anything contained in this Act, no Court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18906 of 2018 prosecution within an extended period of upto three years.”

11. The reasoning assigned by the Commissioner that due to the administrative reason, the Designated authority and Food Safety Officer are not preferred the complaint within one year from the date of the occurrence, is not accepted in view of the fact that the Designated Officer received the report on 20.10.2016 itself and the same was also communicated to the Commissioner. So the reasoning of the Commissioner is not bonafide and the same deserves to be rejected. So, the learned

Judicial Magistrate, without application of mind, taken cognizance after expiry of one year from the date of occurrence and hence, the proceedings is liable to be quashed. In this aspect, the learned counsel for the petitioners has rightly relied on the following proposition of law, reported in, 2021 (3) MWN (Cr.) 508 (Jayaseelan vs. State of Tamilnadu rep. By its Food Safety Officer A.Sivasankaran) “6. It is not in dispute that though the sample was lifted on 28.01.2015 and analysis report was received <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18906 of 2018 on 10.02.2015, the sanction was accorded by the Commissioner on 12.02.2016. Thereafter the prosecution was launched. Section 77 of the Act, which deals with time limit for launching the prosecution reads as follows:

“77. Time limit for prosecutions – Notwithstanding anything contained in this Act, no Court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence.

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of upto three years.” This clause provides that no Court shall take cognizance of an offence under the Act after the expiry of the period of one year from the date of commission of an offence unless the Commissioner of Food Safety may, the reasons to be recorded in writing approve prosecution within an extended period of upto three years

7. The non-obstante clause makes it clear that no Court shall take cognizance of the offence after expiry of <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18906 of 2018 one year from the date of commission of the offence. The proviso empowers the Commissioner of Food Safety to extend the period to accord sanction within an extended period of three years. It is not the case of the prosecution that the Commissioner of Food and Safety by reasons recorded in writing had accorded permission to launch the prosecution by extending the period by three years, whereas, on perusal of the records, it reveals that no sanction whatsoever has been accorded by the Commissioner within the period of one year. In fact, the Commissioner has accorded the sanction only on 12.03.2016 after the expiry of one year period that too without assigning any reason for extending the period of limitation. It is to be noted that the administrative delay has been cited as the reason for launching the prosecution. Though this Court vide order dated 17.11.2016 made in CrI.O.P.No.24678 of 2016 has held that administrative delay cannot be cited as a reason, the same reasons are being assigned for delay in launching the prosecution beyond a period of one year. As no reason has been assigned in writing, continuation of prosecution is nothing but a abuse of process of law.

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12. Further, upon perusal of the entire documents annexed with the complaint, this Court does not find any material to substantiate the case of the Department that the seized articles were supplied by the petitioners to the shop owner. It is the duty of the respondent to collect some materials, like,

voucher, bills, etc., to prove the fact that the seized articles were supplied by the petitioners to the shop owner. Moreover, in the Seizure Report also, there was total absence of statement of shop owner that he purchased the seizure articles from the first and second petitioners herein. In result, the learned Judicial Magistrate, without any material to prove the factum of supply of seized articles by the petitioners to the shop owner, has erroneously taken the cognizance against the petitioners on surmise and suspicion. So, in this aspect also, the contention of the learned counsel for the petitioners deserves to be accepted.

13. From the above reasoning, this Court finds that the petitioners have made out a case for quashing the proceedings and hence, this Court is inclined to quash the proceedings impugned in <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18906 of 2018 this petition.

14. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.5 of 2018, pending on the file of the Judicial Magistrate No.I, Ramanathapuram, as against the petitioners alone is quashed. Consequently, connected miscellaneous petition is closed.

23.03.2023 ogy NCC : Yes / No. Index : Yes / No. Internet : Yes / No. Note: Issue order copy on 04.05.2023 To

1. The Judicial Magistrate No.I, Ramanathapuram.

2. The Food Safety Officer, Remark No.449, Keelakarai Municipality, (Office of the Designated Officer, Tamilnadu Food Safety and Drug Administrative Department Food Safety wing) Ramanathapuram.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18906 of 2018 K.K. RAMAKRISHNAN, J.

ogy Crl.O.P.(MD)No.18906 of 2018 23.03.2023 <https://www.mhc.tn.gov.in/judis>