

M/S.S.S.Essence Private Limited vs State Of Tamil Nadu on 18 August, 2023

Author: N.Anand Venkatesh

Bench: N.Anand Venkatesh

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.Nos.16293, 16072, 16196, 6454 & 6457 of 2023
and CrI.M.P.Nos.4055, 4056, 4058, 4060, 10336,
10338, 10095, 10098, 10213 & 10214 of 2023

M/s.S.S.Essence Private Limited
Rep. by its Director,
Surendran Nellikunnathu Padmanabhan
No.112 A, Bommasandra Industrial Area,
Hosur Taluk,
Bengalure – 560 099

in

Vs.

State of Tamil nadu
Rep. by K.Chandran
Food Safety Officer,
Code No.559, Coimbatore Corporate
Tamil Nadu Food Safety-cum-Drug Administration Department,
O/o. Appointing Authority
Coimbatore District
219, Race Course,
Coimbatore – 641 018.

..Respo

in all CrI.O.P.No.16293 of

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<https://www.mhc.tn.gov.in/judis>
State of Tamil nadu
Rep. by A.Boobalan
Food Safety Officer,
Code No.568, Erode Town-II,

Tamil Nadu Food Safety-cum-Drug Administration Department,
15/21, SKC Road
Erode-1

..Respondent
in all Crl.O.P.Nos.19196 & 16072 of 2023

State of Tamil nadu
Food Safety Officer,
Code No.24-018-580,
Tamil Nadu Food Safety-cum-Drug Department,
Sooramangalam Zone,
Salem Town,
Salem – 636 001.

..Respondent
in all Crl.O.P.Nos.6457 & 6454 of 2023

PRAYER in Crl.O.P.No.16293 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned STC No.1494 of 2019 on the file of the Judicial Magistrate No.II, Coimbatore and quash the same insofar as it relates to the petitioner concerned.

PRAYER in Crl.O.P.No.16196 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned CC No.327 of 2019 on the file of the Chief Judicial Magistrate Court, Erode and quash the same insofar as it relates to the petitioner concerned.

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

PRAYER in Crl.O.P.No.16072 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned CC No.30 of 2018 on the file of the Judicial Magistrate Court No.II, Erode and quash the same insofar as it relates to the petitioner is concerned.

PRAYER in Crl.O.P.Nos.6454 & 6457 of 2023: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the impugned STC No.382 of 2018 & STC No.3621 of 2019 on the file of the Judicial Magistrate Court No.III, Salem and quash the same insofar as it relates to the petitioner is concerned.

For All Crl.O.Ps

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.O.Ps)

ORDER

These criminal original petitions have been filed to quash the proceedings in STC No.1494 of 2019, C.C. No.327 of 2019, C.C. No.30 of 2018, STC No.382 of 2018 and STC No.3621 of 2019, pending before the Court below.

2.The respondent has filed complaint against two accused persons for offence under Sections 58, 59(1) and 63 of the Food Safety and Standards Act, <https://www.mhc.tn.gov.in/judis> 2006. The case of the respondent is that they conducted an inspection in the shop belonging to A1 and they seized certain tobacco products which is a banned substance in the State of Tamil Nadu. Whatever was seized was sent for analysis and the Analysis Report shows that the substance contains nicotine which is injurious to health and which is also prohibited by the State of Tamil Nadu. In view of the same, the complaint came to be filed before the Court below. The petitioner has been arrayed as A2 in all the complaints. Except in the complaint in STC No.3621 of 2019 where the petitioner has been arrayed as A1 and the seller of the product has been arrayed as A2. The petitioner has been added mainly on the ground that he is the manufacturer of the banned substance. Aggrieved by the same, all these criminal original petitions have been filed before this Court.

3.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side).

4.It is brought to the notice of this Court that the seller of the banned substance had pleaded guilty in all the cases and he has been convicted and sentenced.

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5.On going through the materials, it is seen that the substance that was seized by the respondent contained nicotine and the same is apparent from the report of the Food Analyst. Therefore, the only issue that has to be considered is as to whether there is any materials to connect the petitioner with the sale of banned substance in Tamil Nadu or in otherwords, whether the petitioner is directly involved in the sale of the banned substance manufactured by them, in Tamil Nadu.

6.It is seen from records that the respondent was not able to get any information from the seller of the banned substance as to where he procured the same. There was also no dispute with regard to the fact that the petitioner is based at Bengaluru and in Bengaluru, there is no ban of the tobacco substance. Hence, the manufacture of the tobacco substance by the petitioner at Bengaluru is not illegal. As to how those banned substances came into the possession of the seller in Tamil Nadu, is a vital fact which has to be established before the Court. Without such connecting materials, the petitioner cannot be straight away made as an accused, just because the name of the petitioner is found to be the manufacturer. At <https://www.mhc.tn.gov.in/judis> the risk of repetition, it must be kept in mind that the manufacturing of the tobacco substance by the petitioner is not a banned product in Bengaluru.

7.This Court had an occasion to deal with a very similar issue in Crl.O.P.No.19829 of 2017 and an order was passed on 19.01.2022. The relevant portions in the order are extracted hereunder:

6. 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 petitioner itself indicates that some tobacco products were seized from A1, who is no way connected with the present petitioner. 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. Therefore, the question remains whether the prosecution is maintainable if any such product is found in Tamil Nadu without establishing any nexus between the manufacture 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 manufacturer <https://www.mhc.tn.gov.in/judis> 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 other States, the manufacturer 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 Puducherry and Puducherry liquor is totally prohibited in Tamil Nadu. If any such prohibited liquor is found in possession of somebody, this Court cannot presume that the manufacturer has committed any offence.

The same analogy will be followed here.

7. 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 under 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 a food product. This also cannot be ignored. Hence, this Court is of the view that continuation of prosecution against the present petitioner is a mere waste of time and futile exercise.

8. It is clear from the above order that unless the respondent is able to show that the petitioner is directly involved in the sale of the banned substance in Tamil Nadu <https://www.mhc.tn.gov.in/judis>, the petitioner cannot be proceeded against just because he happens to be the manufacturer in a different State, where the product is not banned. I'm in a complete agreement with the above order passed and the reasonings given therein.

9. Even when the Show Cause Notice was issued to the petitioner, reply was given by the petitioner and they have taken a very specific stand that they have not sold any banned substance in the State of Tamil Nadu. When such a specific stand is taken, it has to be dealt with in the complaint and the complaint must say as to why the stand taken by the petitioner is unsustainable with supporting materials. The same has not been done and the petitioner has been mechanically added as an accused in this case.

10. In the considered view of this Court, the continuation of the criminal proceedings against the petitioner will amount to an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

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

11. In view of the above, the proceedings in STC No.1494 of 2019, C.C. No.327 of 2019, C.C. No.30 of 2018, STC No.382 of 2018 and STC No.3621 of 2019 pending on the file of the Chief Judicial Magistrate Court, Erode, the Judicial Magistrate Court No.II, Coimbatore, the Judicial Magistrate Court No.II, Erode and the Judicial Magistrate Court No.III, Salem, are hereby quashed.

12. Accordingly, these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

18.08.2023 Index : Yes/No Internet : Yes/No Speaking/Non-Speaking Order ssr To

1. The Chief Judicial Magistrate Court, Erode.

2. The Judicial Magistrate Court No.II, Coimbatore.

3. The Judicial Magistrate Court No.II, Erode.

4. The Judicial Magistrate Court No.III, Salem. <https://www.mhc.tn.gov.in/judis> N.ANAND VENKATESH, J ssr

5. The Food Safety Officer, State of Tamil nadu Code No.559, Coimbatore Corporate Tamil Nadu Food Safety-cum-Drug Administration Department, O/o. Appointing Authority Coimbatore District 219, Race Course, Coimbatore – 641 018.

6. The Food Safety Officer, State of Tamil nadu Code No.568, Erode Town-II, Tamil Nadu Food Safety-cum-Drug Administration Department, 15/21, SKC Road, Erode-1

7. The Food Safety Officer, State of Tamil nadu Code No.24-018-580, Tamil Nadu Food Safety-cum-Drug Department, Sooramangalam Zone, Salem Town, Salem – 636 001.

8. The Public Prosecutor, High Court, Madras.

Crl.O.P.Nos.16293, 6454, 6457, 16072 & 16196 of 2023 and Crl.M.P.Nos.4055, 4056, 4058, 4060, 10336, 10338, 10095, 10098, 10213 & 10214 of 2023 18.08.2023 <https://www.mhc.tn.gov.in/judis>