

# K.P.M.Abdul Kareem vs The Food Safety Officer on 10 August, 2022

**Author: G.Ilangovan**

**Bench: G.Ilangovan**

Crl.O.P. (MD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2022  
CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.16001 of 2019  
and  
Crl.M.P.(MD) Nos.9498 and 9499 of 2019

K.P.M.Abdul Kareem

... Petitioner

Vs.

The Food Safety Officer,  
Registration No.200,  
Thirupuvanam,  
Manamadurai Taluk,  
Sivagangai District.

...Respondent

PRAYER:Criminal Original Petition is filed under Section 482 Cr.P.C, to call for the entire records pertaining to the case in CC No.16001 of 2019 on the file of the learned Judicial Magistrate, Manamadurai Sivagangai District and quash the same.

For Petitioner : Mr.R.Anand

For Respondent : Mr.B.Nambi Selvam  
Additional Public Prosecutor

<https://www.mhc.tn.gov.in/judis>  
1/11

Crl.O.

ORDER

This Criminal Original Petition is filed to call for the entire records pertaining to the case in CC.No.152 of 2019 on the file of the learned Judicial Magistrate, Manamadurai, Sivagangai District and quash the same.

2.The case of the prosecution in brief is as follows:-

The complainant lodged a complaint stating that on 27.08.2018 at about 12.00 noon, he visited the shop, which belongs to the 1 st accused and lifted the sample, which was stored in the brand name of Kuruvi Tobacco. The sample was lifted by following the procedures and that also sent to the Food Analyst through the Designated Officer. A report was received on 19.09.2018, wherein it was found that it is unsafe and prohibited food article.

3.Seeking quashment of the same, the 2nd accused, who is the owner of the aforesaid shop, filed this petition on the ground that the commodity that was subjected to the analysis is a Chewing Tobacco. So, it does not come under the definition of food as per the provisions of the Food Safety and Standards Act, 2006; It is also not endanger to the human life; Apart from that, there is statutory violation. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.16001 of 2019

4.Heard the learned counsel on either side.

5.It is not in dispute that the sample was lifted from the 1st accused shop, called Balagurusamy Stores by the Food Safety Officer on 27.08.2018. It is also not in dispute that the brand name is called as Kuruvi Tobacco, which is manufactured by this petitioner.

6.Now, the first ground that has been raised by this petitioner is that Chewing Tobacco does not come under the definition of Food as per Section 3(j) and 3(k) of the Food Safety and Standards Act, 2006. In a batch of CrI.OP(MD)No.1546 to 1548 of 2019, dated 27/07/2022, it has been observed as follows:-

“ 16.While disposing of the case in Krishnakumar Thupaty Vs. The Inspector of Police, Tilagar Thidal Police Station, Madurai City, (CrI.OP(MD)No.12686 of 2018, dated 21/06/2022), this court has made the following observation which is relevant for our discussion. For better undertaking of the issue, let may extract the relevant portion as under:-

“6.For the purpose of better understanding the issue, let us start the discussion on the basis of the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.16001 of 2019 judgment rendered by the High Court of Telangana in the case of Kamadhenu Traders Vs. State of Telangana and others [2022(1)ALT 112]. The ill effects of tobacco and tobacco products were felt from time immemorial and various legislations were enacted to control the manufacturing, storing of the tobacco and tobacco products.

Originally, during the era of Godawat Pan Masala Products I.P Vs. Union of India and others (Appeal civil) 4674 of 2004, regarding the definition of food under the provisions of Prevention of Food Adulteration Act, 1954 was under consideration.

7.The Hon'ble Supreme Court, on the basis of the definition under the provision of the Prohibition of Food Adulteration Act, found that the tobacco and tobacco products did not fit into the definition. But later, new Act has been brought in 2006 namely the Food Safety and Standard Act, 2006, wherein entirely new dimensions have been given to the definition of food and now, whether the tobacco and tobacco products will fit into the definition is under consideration by the Hon'ble Supreme Court, which is admitted by both sides during the course of arguments.

<https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.16001 of 2019

8.The learned counsel appearing for the petitioner would submit if the court directs, he can wait till the disposal of the matter by the Hon'ble Supreme Court. A similar contention has been raised before the Telungana High Court over the issue. But however, the matter is of the year 2018 and the offence is of the year 2017. Five years lapsed and there is no point in keeping the matter pending, when the process of committal is underway. This court directed the parties to get along with hearing. On that ground, it was heard.”

17.So the above discussion made in the above said case makes the issue more clear. So with these we will now proceed to discuss with regard to the harmful effect of the tobacco products, which are causing to the human life. For that purpose also we can extract the further observation of his court in the above said case viz., CrI.OP(MD)No.12686 of 2018, dated 21/06/2022. The observation runs like this:-

“11.Before we go into the main issue, the back ground must also be taken into account again. The reason being that the Hon'ble Supreme Court in the case of Ankur Gutka Vs. Indian Asthma Care Society (SLP No. 16308 of 2007, dated 07/12/2010) has directed the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.16001 of 2019 Government of India to make a study with regard to the harmful effect or human life by the use of the Gutka, tobacco, panmasala and similar articles. In pursuance of the above said direction, a detailed study was undertaken and a report was also filed before the Hon'ble Supreme Court.

12.On going through the report, the Hon'ble Supreme Court, by order, dated 03/04/2013 in the above said recommendation, directed the Health Department of the States and Union Territories, to file affidavits with regard to the compliance of the ban imposed on manufacturing and sale of gutka and panmasala with tobacco and/or nicotine. In pursuance of the above said direction, several State Governments issued notifications, orders under the provisions of the Food Safety and Standard Act, 2006. The notification, that was issued by the Government of Telungana in compliance of the above said order was under challenge in Kamathenu Traders case. Here, in Tamil Nadu, in No.VI(1)155(a)/2017, a similar notification was issued on 23/05/2017,

banning and prohibiting the manufacture, storage, transport, distribution or sale of Gutkha, Panmasala, Chewing Tobacco, containing tobacco or nicotine as ingredients <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.16001 of 2019 for a period of one year with effect from 23rd May 2017.

This is the continuation of the ban order. It is seen that on the date of the inspection and seizure and registration of the case, the ban was in force.”

7.From this, it is seen that, insofar as the commodity is concerned, the Chewing Tobacco will come under the definition of food as defined by the aforesaid Act. So, this ground is not available to the petitioner now.

8.The second ground that has been raised by this petitioner is that the sample was lifted on 27.08.2018 and that was sent to the laboratory for analysis on the same day itself. A report was received on 19.09.2018, which according to him, is a clear violation of Section 46 of the Act. Now, the question, which arises for consideration, is whether any explanation has been offered by the respondent for the delay.

9.The report is dated 19.09.2018, wherein it has been stated that it was received on 31.08.2018 and the sample was analyzed from 03.09.2018 to 11.09.2018. It was also found that it is unsafe and prohibited food item. But nowhere it has been stated to the effect that the delay occurred and with regard to the same either at the time of argument or after that, no explanation has been offered by the prosecution. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.16001 of 2019

10.Copy of the records has also been called for from the concerned trial Court, wherein we find that no explanation has been offered. As per Section 46 of the Act, the delay ought to have been explained. The order of the Commissioner of Food Safety, dated 22.01.2019 does not indicate about the condonation of the delay in sending the report as per Section 46(3) of the Act, because he is the competent person to condone the aforesaid delay. Let us extract Section 46 of the Food Safety and Standards Act, 2006, for better understanding:-

“46. Functions of Food Analyst.-

(1) On receipt of a package containing a sample for analysis from a Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the conditions of the seal thereon: Provided that in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send requisition to him for sending second part of the sample.

(2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this

Act.

(3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send:-

<https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.16001 of 2019

(i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and

(ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with a copy to the Designated Officer:

Provided that in case the sample can not be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.

(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion.”

11.In the absence of any such explanation, the prosecution is bad in law and on that score, it is liable to be quashed.

12.Another ground that has been made is that the complaint was presented only on 31.07.2019, but the sample was lifted on 27.08.2018. After a lapse of 1 year, the complaint was filed. It was scrutinized from 09.08.2019, which is well within the period of limitation. So, this ground <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.16001 of 2019 is not available to the petitioner. However, considering the fact that there is violation of statutory provisions, this Court is inclined to allow this petition for the aforesaid reason.

13.Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No  
Internet : Yes/No  
mm/er

10.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned. To The Food Safety Officer, Registration No.200, Thirupuvanam, Manamadurai Taluk, Sivagangai District.

G.ILANGO VAN. J.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.16001 of 2019 mm/er Order made in Crl.O.P.(MD)No.16001 of 2019 10.08.2022 <https://www.mhc.tn.gov.in/judis>