

Subramanian vs State Of Tamil Nadu on 3 August, 2022

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

Crl.O.P.No.16418

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/8/2022

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P. No.16418 of 2022

and

Crl.M.P.No.8441 of 2022

1. Subramanian
2. Nithish Agencies
rep. By its Partner
Parvathi
3. Parvathi
4. Umadevi ... Petitioners

Vs

State of Tamil Nadu
rep. By Mr.P.Thangavel
The Food Safety Officer
Tirupur Corporation North
O/o Tamil Nadu Food Safety and
Drug Administration Department
428-431 Office of the District
Collectorate Campus
Tiruppur 641 604. ... Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to quash the criminal proceeding pending against them in S.T.C.No.3512 of 2021 on the file of the learned Judicial Magistrate No. Tirupur.

<https://www.mhc.tn.gov.in/judis>
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Crl.O.P.No.16

For Petitioners	...	Mr.M.Duraiswamy
For Respondent	...	Mr.E.Raj Thilak
		Additional Public Prosecu

ORDER

This Criminal Original Petition has been filed to quash S.T.C.No.3512 of 2021, pending on the file of learned Judicial Magistrate No.III, Tiruppur, for the offences punishable under Section 59 (i) of the Food Safety and Standards Act, 2006 r/w. Food Safety and Standards Rules, 2011.

2. The case of the petitioners is that the respondent filed a private complaint against the petitioners, for the alleged offences, under Sections 59

(i) of Food Safety and Standards Act, 2006 r/w. Food Safety and Standards Rules 2011 and the same was taken on file, in S.T.C.No.3512 of 2021, on the file of the learned Judicial Magistrate No.III, Tirupur. Learned Judicial Magistrate, issued summons for the appearance of the petitioners/accused, on 27/6/2022 and the first petitioner appeared before the trial Court and whereas, the third and fourth petitioners were not able to appear due to COVID infections. Hence, the case was posted for the appearance of all the _____ <https://www.mhc.tn.gov.in/judis> accused, on 15/7/2022.

3. The case of the prosecution is that on 16/9/2020, at about 10.00 a.m., the respondent inspected the premises of the second petitioner/firm, indulging in manufacturing of packaged drinking water, run by its partners namely, third and fourth petitioners and seized four sealed water cans labelled as 'Life Packaged Drinking Water'.

4. On examination of one of the seized water can by the Food Analyst, Coimbatore, it was found that the water in the can is not safe for drinking, as per the alleged Food Analyst Report, dated 30/12/2020 and the report was received by the Designated Officer, on 8/1/2021 and the same was communicated to the petitioners, on 13/1/2021 by the Designated Officer, through his letter, dated 12/1/2021. Since there was no use to get it tested after the expiry period of 30 days from the date of packing, the petitioner did not go for testing by the Referral Laboratory. However, the respondent had launched the prosecution against the petitioners without complying with mandatory provisions of Food Safety and Standards Act, 2006 and Rules 2011 and filed the private complaint against the petitioners, _____ <https://www.mhc.tn.gov.in/judis> on 1/12/2021.

5. Heard Mr.P.M.Duraiswamy, learned counsel for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor for the respondent.

6. The learned counsel appearing for the petitioners submitted that as per Section 77 of the Food Safety and Standards Act 2006, the trial Court shall take cognizance of the offence within one year from the date of the alleged date of occurrence. The sanctioning authority failed to see that the mandatory provisions under Sections 46 and 47 of the Act had not been followed. Therefore, the

private complaint is liable to be quashed.

7. Learned Additional Public Prosecutor appearing for the respondent, submitted that due to shortage of man power in Food Analysis Laboratory, Coimbatore, there was a delay in Analysis. Due to administrative reason and COVID 19 restriction, the delay caused by the Food Safety Officer and Designated Officer in launching prosecution against the accused is reasonable. He would further submit that mere violation of procedure cannot be gone into at this stage and it has to be decided only in the trial and _____ <https://www.mhc.tn.gov.in/judis> hence prays for dismissal of the Criminal Original Petition.

8. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. It is apposite to refer to Sections, 42 and 46 (4) of the Food Safety and Standards Act, 2006, and the same are quoted hereunder:-

“42. Procedure for launching prosecution.

(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to _____ <https://www.mhc.tn.gov.in/judis> Commissioner of Food Safety.

(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 shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,—

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding _____ <https://www.mhc.tn.gov.in/judis> three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.

and 46 (4) Functions of Food Analyst: 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.

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

10. Section 42 provides the procedure for launching of prosecution. Sub-section (1) thereof speaks about the responsibility of the Food Safety Officer in drawing samples and sending them to Food Analyst for analysis. Sub-section (2) speaks about the duty of the Food Analyst in receiving the samples, analysing the same and reporting the outcome of the analysis within 14 days thereof to the Designated Officer. Sub-section (3) speaks about the duties and responsibilities of the Designated Officer with regard to taking action on the report given by the Food Analyst and whether to launch prosecution or not and if prosecution is contemplated to be launched, the Designated Officer is bound to make his recommendations to the Commissioner of Food Safety for sanctioning prosecution within 14 days therefrom. On and from the same, there comes into play the operation of the period of limitation of one year and extended period of three years.

11. It is also relevant to extract Section 3 (j) of the said Act, which reads as follows:-

(j) "Food" means any substance, _____ <https://www.mhc.tn.gov.in/judis> whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances :

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, _____ <https://www.mhc.tn.gov.in/judis> nature, substance or quality;

12. The Court shall take cognisance of the offences under the Act, within one year from the date of the alleged commission of offence. As per the complaint, the alleged occurrence took place, on 16/9/2020 and the complaint was filed by the respondent before the Court only on 1/12/2021. The learned Magistrate ought to have seen that the complaint is barred by limitation and the same is

unsustainable in law.

13. The Commissioner of Food Safety had granted sanction for prosecution only on 2/11/2021, i.e., after the expiry of one year limitation period, provided for launching prosecution under Section 77 of the Act. Sanctioning authority had not followed the mandatory provisions available under Sections 46 and 47 of the Act. The report of the Food Analyst was communicated to the petitioners by the respondent only on 13/1/2021 and by that time, samples seized had become unfit for testing due to expiry of 30 days usage period from the date of packaging i.e., 15/9/2020.

14. From the above provisions, it is implicitly clear that the purpose _____ <https://www.mhc.tn.gov.in/judis> of taking various samples is to give an opportunity to the manufacturer or food business operator to have the samples analysed from the accredited laboratory. Considering the mandatory provisions having been violated, this Court is of the considered view that continuation of prosecution against the petitioners is nothing but a futile exercise and abuse of process of law.

15. Accordingly, this Criminal Original Petition is allowed and S.T.C.No.3512 of 2021, pending on the file of the learned Judicial Magistrate No.III, Tirupur is quashed. Consequently, the Criminal Miscellaneous Petition is closed.

3/8/2022 Index :Yes/No Internet:Yes/No mvs.

To

1. The Judicial Magistrate No.III, Tirupur.

2. The Food Safety Officer, State of Tamil Nadu Tirupur Corporation North, O/o Tamil Nadu Food Safety and Drug Administration Department, 428-431 Office of the District Collectorate Campus, Tiruppur 641 604.

3. The Public Prosecutor, High Court of Madras. _____ <https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J mvs.

3/8/2022 _____ <https://www.mhc.tn.gov.in/judis>