

Mr. M. Murali vs Mrs. G.V. Kasthuri on 18 September, 2024

CRL O.P. No.24673 of 20

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2024

CORAM

The Hon`ble Mr.Justice P.DHANABAL

CRL OP.No.24673 of 2022

and

Crl. M.P. No.15536 of 2022

1. M/s. Green Gold Foods (P) Ltd.,
represented by its Managing Director Pradeep.

2. Pradheep S/o. Sadagopan
Green Gold Foods Private Limited.

3. Selvakumar S/o. Pasupathi
Green Gold Foods Private Limited.

4. Benny Joseph S/o. Joseph
Green Gold Foods Private Limited.

5. Madumitha S/o. Paramanandam
Green Gold Foods Private Limited.

VS

The State represented by its:-
Food Safety Officer,
Code No.545, Vadapalani Division,
Tamil Nadu Food Safety and Drug Administration,
O/o. The Designated Officer, Chennai District.
No.33, West Jones Road, Saidapet, Chennai-15. Respondent /
Defacto Complainant

1/14

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

CRL O.P. No.24

PRAYER: - The Criminal Original Petition is filed under Section 482

Criminal Procedure Code praying to call for the records in C.C. No.

of 2020 on the file of XVII Metropolitan Magistrate Court, Saidapet
Chennai and quash the same.

For Petitioners : Mr. M. Murali

For Respondent : Mrs. G.V. Kasthuri,
Additional Public Prosecutor

ORDER

This criminal Original petition has been filed by the petitioners to quash the proceedings in C.C. No.2975 of 2020 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai.

2. The short facts necessary to dispose of the petition are as follows:-

The respondent herein has filed a private complaint against the petitioners and another for the alleged offences under Section 59(i)m 561 and 63 of Food Safety and Standards Act, 2006 read with Food Safety and Standards (FPS & FA) of Regulations 2011 and the same was taken cognizance by the XVII Metropolitan Magistrate, Saidapet, Chennai in <https://www.mhc.tn.gov.in/judis> C.C. No.2975 of 2020. As per the complaint, on 26.02.2019, at about 10.30 a.m., the respondent inspected "Om Saravana Store" run by one Kalimuthu, 6th accused, and at that time, the respondent seized samples of Dalmia Vegetable Sauce, manufactured by the 1st petitioner company run by the petitioners 2 to 5. On examination of the seized sauce by the analyst, it was found that the vegetable sauce does not conform to standards as the acidity percentage is less than the prescribed standard and it contains added colouring matter. Hence he gave a report dated 21.05.2020 that the sample of vegetable sauce is substandard and unsafe as per Section 3(1)(zx) and Section 3(1)(zz)(v)(vii) & (xi) and Section 23(1)(2)(i)(ii) & (v) of the Food Safety and Standards Act, 2006.

Thereafter, after completing the formalities, the prosecution was launched against the petitioners for the said offence under Section 59(i), 561 and 63 of Food Safety and Standards Act, 2006. The above said order of cognizance take by the learned XVII Metropolitan Magistrate, Saidapet, Chennai has been challenged by the petitioners.

3. The learned counsel appearing for the Petitioners would submit <https://www.mhc.tn.gov.in/judis> that the 1st petitioner is the company manufacture exporter, supplier of chilly sauce, tomato sauce, soya cauce and the petitioners 2 to 5 are the Managing Directors of the company. The respondent launched prosecution against the petitioners and one Kalimuthu for offences under Sections 59(i), 51 and 63 of Food Safety and Standards Act, 2006. The prosecution launched by the respondent is in violation of the Food Safety and Standards Act, 2006 and Food Safety Standards Rules, 2011. The respondent failed to follow the procedures contemplated under Food Safety and Standard Act, 2006. The vegetable sauce sample was taken on 26.02.2019 and the same was sent for food analysis

on the same day, but the report was received only on 21.05.2020, which is after the limitation period contemplated under Section 42(2) of the Food Safety and Standard Act, 2006 and Rule 2.4.2(5) of the Food Safety Standard Rules, 2011. As per the procedure, the respondent has to send the food analysis report to the petitioner and from the date of receipt of the copy within 10 days, if desired, the petitioner get the sample of the article of food kept by the local (Health) Authority analysed by the Central Food Laboratory. The respondent did not serve food analysis report and there <https://www.mhc.tn.gov.in/judis> is no proof attached with the complaint and therefore, the petitioner has lost his right available under the Act. The vegetable sauce sample was taken on 26.02.2019 and the food was analysed on 17.12.2019 to 12.03.2020, due to the delay in analyzing the sample, the validity of the food was expired and food sample would have become decomposed. The respondent failed to serve notice in Form VA, therefore, there are procedural violations and thereby, the complaint as against the petitioners is abuse of process of law and the same is liable to be quashed.

3(i) In support of his contention, the learned counsel appearing for the petitioners has relied on the following judgments:-

(a) R. Paduvairajan and another vs. Food Safety Officer reported in 2021 SCC Online Mad 9289.

(b) State of Haryana vs. Unique Farmaid (P) Ltd., and others reported in (1999) 8 Supreme Court Cases 190.

(c) Medipol Pharmaceutical India Private Limited vs. Post Graduate Institute of Medical Education and Research and another <https://www.mhc.tn.gov.in/judis> reported in (2021) 11 Supreme Court Cases 339.

4. The learned Government Advocate appearing for the respondent would submit that the respondent officials inspected the shop of the 6th accused on 26.02.2019, that at that time, the sample was taken from the said shop namely "Om Saravana Store" and 1 kg of Dalmia vegetable sauce was stored for sale and the same was sent to lab for analysis. Thereafter, sought for particulars from the manufacturer through Form-VA and ordered to submit the report to the concerned authorities. On 26.02.2019, the sample was collected and deducted that some artificial colours were added in the said sample and it was substandard and he obtained report from the lab on 21.05.2020 and thereafter, the same was informed to the petitioners through letter dated 27.05.2020. The report dated 21.05.2020 reveals that the sample taken does not confirm to standards as the Acidity Percentage is less than the prescribed standard and it contains added colouring matter (Carmoisine - 112.93 mg / kg & Sunset Yellow - 20.35 mg / kg) which should be <https://www.mhc.tn.gov.in/judis> absent. Hence the sample is found to be subs and unsafe as per Section 3(1)(zx) and Section 3(1)(zz)(v)(vii) & (xi) and Section 23(1), Section 26(1)(2)(i)(ii) & (v) of Food Safety and Standards Act, 2006. Thereafter, on 01.06.2020, the said lab report in Form-B and letter for appeal, were sent to the peitioners through postal, but they have not preferred any appeal as against the lab report. Therefore, they filed a complaint before the learned XVII Metropolitan Magistrate, Saidapet, Chennai. Therefore, there were no any procedural violations and the petitioners are liable to face the

trial and the present petition is liable to be dismissed.

4(i) In support of his contention, the learned Additional Public Prosecutor has relied on the following judgments:-

(a) M/s. Blue Planets Foods Pvt. Ltd., (Salt Restaurant) and 6 others vs. State in Crl. O.P. No.24634 of 2022.

(b) Hyderabad Beverages Private Limited vs. State of A.P. reported in 2006 CRI LJ 3988.

5. Heard both sides' arguments and perused the materials available <https://www.mhc.tn.gov.in/judis> on record.

6. According to the petitioners, they have not received any lab report of chemical analysis. But as per the respondents, they served the lab report to the petitioners through postal. But no records are available to show that the lab report was sent to the petitioners.

7. According to the petitioners, there are violations of Section 42(2) of the contemplated Food Safety and Standard Act, 2006 and Rule 2.4.2(5) of the Food Safety Standard Rules, 2011. In this context, the learned counsel appearing for the petitioners has relied upon judgment in R. Paduvairajan and another vs. Food Safety Officer reported in 2021 SCC Online Mad 9289, wherein this Court, in Para No.7, held as follows:-

7. As per Rule 2.4.1(5) of the Food Safety and Standards Rules, 2011, in case, where the sample is drawn from an open container, the person drawing the sample shall also draw a sample from a container in original condition of the same article bearing the same declaration, if such container is available, and intimate the same to the Food Analyst. As per Section 42 of the Food Safety and Standards Act, 2006, the Food Analyst after receiving the sample from the Food Safety Officer, shall analyse the sample and send the analysis report, mentioning the method of sampling and analysis within fourteen days to the Designated Officer, with a copy to Commissioner of Food Safety. In the <https://www.mhc.tn.gov.in/judis> present case, the sample had been taken on 20.09.2017 and sent to the Food Analyst on 21.09.2017, and the Food Analyst has given his report only on 14.02.2018. Thus, there is a violation of Section 42 of the Act. Further, as per Section 46(3)(ii) of the Act, in case, the sample cannot 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. In this case, that has not been followed".

7(i) Further the Hon'ble Supreme Court in Medipol Pharmaceutical India Private Limited vs Post Graduate Institute of Medical Education and Research and another reported in (2021) 11 Supreme Court Cases 339, held in para 10 as follows:-

10. The position is no different under pari materia provisions of other Acts. Thus, in *MCD v. Ghisa Ram*, the testing of samples was dealt with by Section 13 of the Prevention of Food Adulteration Act, 1954. This Court held: (SCR pp. 118-20 : AIR pp.971-72, paras 4-5, 7).

"4. ...There can be no doubt that sub-section (2) of Section 13 of the Act confers a right on the accused vendor to have the sample given to him examined by the Director of the Central Food Laboratory and to obtain a certificate from him on the basis of the analysis of that sample. It is when the accused exercises this right that a certificate has to be given by the Director of the Central Food Laboratory and that certificate then supersedes the report given by the Public Analyst. If, in any case, the accused does not choose to exercise this right, the case against him can be decided on the basis of the report of the Public Analyst.....

5. In the present case, we find that the decomposition of the sample, which the respondent desired should be analysed by the Director of the Central Food Laboratory, took place because of the long delay that had occurred in sending the sample to the Director.....

7. It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the Vendor to have the <https://www.mhc.tn.gov.in/judis> sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that the right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein".

7(ii) Further the Hon'ble Supreme Court in *State of Haryana v. Unique Farmaid (P) Ltd., and others* reported in (1999) 8 Supreme Court Cases 190, in Para 12 held as follows:-

12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-

section (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the Court before

which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, the shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of <https://www.mhc.tn.gov.in/judis> the case, the accused have been deprived of that right, thus, prejudicing them in their defence".

7(iii) In this case on hand also, the sample was collected on 26.02.2019. The sample collected was analyzed during the period between 17.12.2019 and 12.03.2020, which is after the expiry of the product. The date of manufacturing is February 2019 and it was valid for 12 months. The vegetable sauce sample was taken on 26.02.2019 for analysis and the analysis report was received on 21.05.2020, which is after the limitation period. Therefore, the above said case laws are squarely applicable to the present facts of the case.

8. Even as per the prosecution, no report dated 21.05.2020 has been served to the petitioners and only they served the report to the 1st petitioner. The Commissioner of Food Safety, Chennai has issued proceedings to all the petitioners. Therefore, in this case, there are violations of mandatory procedures required under the Act. The learned Magistrate has also failed to consider the above aspects and has taken cognizance.

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

9. The learned Additional Public Prosecutor has relied on the judgments in (a) M/s. Blue Planets Foods Pvt. Ltd., (Salt Restaurant) and 6 others vs. State in Crl. O.P. No.24634 of 2022 and (b) Hyderabad Beverages Private Limited vs. State of A.P. reported in 2006 CRI LJ 3988.

On a careful perusal of the said judgments, they will not be applicable to the present facts of the case, because in this case mandatory procedures have not been followed and report of the laboratory has not been served to the petitioners and after expiry of the product, the report was sent.

10. In view of the above said discussions, this Court is of the opinion that these petitioners are entitled to the relief as sought for. Therefore, the pending proceedings as against the petitioners are liable to be quashed.

11. In the result, this Criminal Original petition is allowed. The <https://www.mhc.tn.gov.in/judis> proceedings in C.C. No.2975 of 2020 on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai are quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

18.09.2024 index: Yes/No Internet: Yes/No Speaking/Non Speaking order mjs P.DHANABAL,J mjs To

1. The XVII Metropolitan Magistrate Court, Saidapet, Chennai.

2. The Public Prosecutor, High Court, Madras.

3. The Food Safety Officer, Code No.545, Vadapalani Division, Tamil Nadu Food Safety and Drug Administration, O/o. The Designated Officer, Chennai District. No.33, West Jones Road, Saidapet, Chennai-15. <https://www.mhc.tn.gov.in/judis> 18.09.2024 <https://www.mhc.tn.gov.in/judis>