

K.Nadarajan vs The Food Safety Officer on 2 December, 2022

Author: Sathi Kumar Sukumara Kurup

Bench: Sathi Kumar Sukumara Kurup

CrI.O.P.(MD) No.146

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.10.2022

PRONOUNCED ON : 02.12.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P(MD)No.14638 of 2022

and

CrI.M.P(MD)Nos.9501 and 9503 of 2022

1.K.Nadarajan

2.Rani Oil Mill,
represented by its Proprietor,
K.Nadarajan, Madurai District.

...Petitioners

- vs -

The Food Safety Officer,
Code No.109&120,
Chellampatti & Vadipatti Taluk,
The Designated Officer's Office,
Multipurpose Health Supervisors (F) Training School,
Viswanathapuram, Maduari - 625 104. ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.
praying to call for the records and quash the proceedings in S.T.C.
11 of 2022 in so far as the Petitioners on the file of the Judicial
Magistrate, Vadipatti.

For Petitioners	: Mr.M.Rajaraman
For Respondent	: Mr.R.Meenakshisundaram Additional Public Prosecutor

1/12

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

Crl.O.P. (MD)

ORDER

This Criminal Original Petition has been filed to quash the case in S.T.C.No.11 of 2022 on the file of the Judicial Magistrate, Vadipatti.

2.Heard the learned Counsel for the Petitioners and the learned Additional Public Prosecutor appearing for the Respondent.

3.It is the contention of the learned Counsel for the Petitioners that the Designated Officer of the Respondent along with Food Safety Officer had inspected the second Respondent Oil Mill with an intention to take food samples. The Respondent had enquired about the Rice Bran Oil to the first accused. The first accused/the first Petitioner had stated that he is the owner and the Respondent had taken four samples weighing 500 ml containing 2 liters from the said Mill and sealed the Mill without following the procedures, as contemplated under the provisions of the Food Safety and Standards Act, 2006.

4.The Designated Officer had sent the samples to the Food Analyst on 26.08.2020. The Food Analyst had sent a report on 01.10.2020 stating that the sample was misleading, misbranded, sub <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.14638 of 2022 standard and unsafe. The Designated Officer has also sent a report of the Food Analyst along with notice, dated 14.10.2020, to the Petitioners. The Complainant had sought permission to file a case against the accused to the Designated Officer and the same was granted by the Commissioner of Food Safety and hence, he had filed the complaint before the learned Judicial Magistrate, Vadipatti, Mdaurai, under Sections 51, 52(1), 53(1)(a), 58 and 59(1) of Food Safety and Standards Act, 2006.

5.It is the submission of the learned Counsel for the Petitioners that no offences are prima facie made out against the Petitioners. The learned Judicial Magistrate had failed in not following the mandatory procedure under Section 202 of Cr.P.C.. The learned Judicial Magistrate ought to have followed the mandatory requirement of Section 202 of Cr.P.C. before issuing summons to a person, who is residing beyond the jurisdiction of the Court. When the first Petitioner is carrying out business outside the jurisdiction of the learned Judicial Magistrate, Vadipatti, the learned Judge had not followed the mandatory requirement of the Act in drawing samples and had violated the provisions of Section 2.4.1.(5) of the Act. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.14638 of 2022

6.It is the further submission of the learned Counsel for the Petitioners that as per Section 42 of the Food Safety and Standards Act, 2006, the Food Analyst ought to have analysed the samples and sent

the analysis report within 14 days to the Designated Officer. In the present case, the sample had been taken on 25.08.2020. The Food Safety Officer had sent the sample to the Food Analyst on 26.08.2020. The Food Analyst had given the report only on 01.10.2020, which is contrary to the procedure contemplated Section 42 of the Act. As per Section 46 of the Food Safety and Standards Act, 2006, if the sample cannot be analysed within 14 days, the Food Analyst shall inform with Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time taken for analysis.

7.The learned Judicial Magistrate failed to consider the provisions of Section 42 of the Food Safety and Standards Act, 2006 and had not followed the due procedure before launching the prosecution against the accused. It is the submission of the learned Counsel for the Petitioners that the Designated Officer have to decide, as to whether a contravention is punishable with imprisonment or fine and send his recommendations to the Commissioner of Food Safety for sanctioning to prosecution. The Respondent in the present case <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.14638 of 2022 had himself applied to the Commissioner of Food Safety for sanction to prosecute the accused without there being an independent application of mind by the Designated Officer.

8.Further, the learned Counsel for the Petitioners submitted that Section 46(4) of the Food Safety and Standards Act, contemplates an appeal against the report of the Food Analyst. It is the submission of the learned Counsel for the Petitioners that the said appeal is a right given to the Food Business Operator under the Food Safety and Standards Act, 2006 and any proceedings before the jurisdictional Magistrate can be initiated only after the said right of appeal is exhausted by the Food Business Operator.

9.Further, the learned Counsel for the Petitioners submitted that the report of the Food Analyst had been sent to the Petitioners on 14.10.2020 and the Petitioners herein have preferred appeal against the said report on 05.11.2020 with a reply to send the sample to referral laboratory and the same was received by the Designated Officer on 07.11.2020. Suppressing the same, the present proceeding had been initiated before the learned Judicial Magistrate, Vadipatti. He further submitted that a report of the referral laboratory alone is <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.14638 of 2022 final.

10.Further it is the submission of the learned Counsel for the Petitioners that as per Rule 3.1.1., the Designated Officer, on receipt of the report of the Food Analyst, shall decide on recommending for the prosecution only after the right of appeal had been exhausted or dismissed, as the case may be. In the present case, the proceedings had been initiated without deciding the appeal filed by the Petitioners and the statutory right of the Petitioners is denied. The same is vitiated and against the right of the Petitioners and the act of the Respondent is against Section 46(4) of the Food Safety and Standards Act, 2006. There is no prima facie case to show that the Petitioners have committed any offence under the Food Safety and Standards Act. The continuance of proceedings against the Petitioners is a gross abuse of the process of the Court. The prosecution of the said case leads to grave injustice. The learned Judicial Magistrate failed to consider that there is no prima facie case pending against the Petitioners.

11.The learned Additional Public Prosecutor filed a counter on behalf of the Respondent. The learned Additional Public Prosecutor <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.14638 of 2022 submitted that the seized samples were sent to the Food Analyst for analysis at Kings Institute Campus, Guindy, Chennai. After analysis, it was stated that the oil is a misleading, misbranded, sub standard and unsafe and prohibition and restrictions on sale. Further, it is stated that the Rice Bran Oil does not conform to standards prescribed for Rice Bran Oil. The sample is found to be mix tore or Rice Bran Oil and gingerly oil. But, the sample of oil sent for analysis is offered or promoted for sale as Rice Bran Oil, which is misleading.

12.As per Regulation 2.2.15(1)(a) of Food Safety and Standards (Prohibition and Restriction on Sales) Regulation 2011, under special provisions relation to sale of vegetable oil and fat “no person shall sell or expose for sale or distribute or offer for sale to any person for the purpose of sale of any edible oil”, which does not conform to standards of quality, as provided in Food Safety and Standards Act, 2006. The report of the Food Analyst sent to the Petitioners and an opportunity was given to the Petitioners for re-analysis in referral laboratory. The Petitioners/accused have not given any reply for re- analysis. The Food Safety Officer received a sanction from the Director of Food Safety and Drug Administration Department, Chennai, vide letter, dated 11.06.2021. The Food Safety Officer filed <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.14638 of 2022 the complaint against the accused before the learned Judicial Magistrate, Vadipatti, Madurai, which was taken on file in S.T.C.No. 11 of 2022. Summons were issued to the Accused. The accused appeared before the learned Judicial Magistrate, Vadipatti and copies furnished and substance of accusation questioned. The Petitioners/Accused pleaded not guilty and it is posted for trial. LW-1 Food Safety Officer was examined as PW-1.

13.It is further stated that the averments made in the Petition are found false. The Respondent/Food Safety Officer has followed the procedure under the Food Safety and Standards Act, 2006 and Regulations 2011. The learned Judicial Magistrate followed the mandatory provisions of Section 202 of Cr.P.C. The Complainant/Food Safety Officer lifted sample from the premises of the Petitioners situated at Ramanayakkanpatti, Vaddipatti Taluk, Madurai. For administrative reasons, the sample was not analysed within a period of 14 day. The Food Analyst had stated reasons for the delay of sample before expiry of the food sample analysed by the Government Analyst. The Commissioner of Food Safety and Drugs Administration, Chennai, was granted permission to file a complaint against the accused before the learned Judicial Magistrate, Vadipatti. The <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD) No.14638 of 2022 Petitioner/accused preferred an appeal to the Designated Officer, Madurai, which was dismissed with proper reasons. The sample of Rice Bran Oil was sent to the Petitioners/accused along with opportunity of referral laboratory for re-analysis. But the Petitioners have not given any reply. Therefore, the learned Additional Public Prosecutor seeks to dismiss this Petition.

14.The learned Counsel for the Petitioners relied on the order of the learned Single Judge of this Court in M/s.Sri Rathinam Agency and another -vs- The Food Safety Officer, in CrI.O.P.(MD)No. 12251 of 2022, dated 27.07.2022, wherein, this Court has held as follows:

"6.On perusal of the records, it is seen that the appeal memorandum has been filed by the petitioners on 06.11.2020. The petitioners also filed an acknowledgement dated 07.11.2020. On perusal of the acknowledgement, it is seen that the Designated Officer received an appeal memorandum on 07.11.2020. Admittedly, the Food Analyst report and notice has been sent to the petitioners on 28.09.2020. As per Rule 2.4.6(1) and Section 46(4) of the Food Safety and Standards Act, the appeal has to be filed before within 30 days. Now, in the present case, on receiving notice dated 14.10.2020, the appeal has been filed before the Designated Officer on 06.11.2020, which was acknowledged by the petitioner on 07.11.2020. But the Designated Officer had not decided the appeal within the time limit. Therefore, it is clear violation of the provision. The prosecution is unsustainable. Hence, the Criminal Proceedings in S.T.C.No.9 of 2022, on the file of the Judicial Magistrate, Vadipatti, is liable to be quashed."

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.14638 of 2022

15.The learned Counsel for the Petitioner also relied on the following orders of the learned Single Judge of this Court:

(1)M/s.P.K.Oil Store and another -vs- The Food Safety Officer, in Crl.O.P.(MD)No.13123 of 2022, dated 27.07.2022; and (2)M/s.Subha Traders and another -vs- The Food Safety Officer, in Crl.O.P.(MD)No.12253 of 2022, dated 27.07.2022.

16.The Designated Officer sent letter on 14.10.2020. The appeal filed on 15.11.2020. The appeal decided by the Designated Officer on 07.11.2022. Without deciding the appeal, as contemplated under Section 46(4) of the Food Safety and Standards Act, the present complaint was filed. The report of the referral laboratory is final. Depriving the right of the Petitioner to send the sample to the referral laboratory, prosecution cannot be launched. Here, in this case, prosecution launched before ever proceeding with appeal. Acknowledgment Card is filed as proof of filing of appeal. Suppressing the filing of appeal, prosecution launched, thereby, preventing the right of the Petitioners to send the sample for referral laboratory. Due to the action of this Respondent, the Petitioners have suffered, as they lost the valuable right of defence. In such <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.14638 of 2022 circumstances, the filing of the criminal complaint by the Respondent is found to be unacceptable and against the principles of fairness. Therefore, the case in S.T.C.No.11 of 2022 pending on the file of the Judicial Magistrate, Vadipatti, is to be quashed.

In the result, this Criminal Original Petition is allowed and the Criminal Complaint in S.T.C.No.11 of 2022 pending on the file of the Judicial Magistrate, Vadipatti, is quashed. Consequently, connected Miscellaneous Petitions are closed.

02.12.2022 Index:Yes/No cmr To The Food Safety Officer, Code No.109&120, Chellampatti & Vadipatti Taluk, The Designated Officer's Office, Multipurpose Health Supervisors (F) Training

School, Viswanathapuram, Maduari - 625 104.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD) No.14638 of 2022 SATHI KUMAR SUKUMARA KURUP, J.

cmr Order made in 02.12.2022 <https://www.mhc.tn.gov.in/judis>