

Ashish (Authorised Signatory) vs The State on 17 November, 2021

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

Crl. O.P.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 16913 of 2017
and
Crl.M.P.Nos.10397 & 10398 of 2017

Ashish (authorised signatory),
Urmin Products Private Limited

... Pet

Versus

1. The State,
represented by its Food Safety Officer,
Mr.K.Jebaraja Shobana Kumar,
Area Code No.531, Chennai District,
O/o. The Designated Officer,
Tamil Nadu Food Safety and Drug
Department, No.33, West Jones Road,
Saidapet, Chennai-600 015.

2. Thiru Sandip Kumar Pandey,
Sri Durga Agencies,
15, Narayana Mudali Street,
Chennai-600 001.

3. Thiru S.D.Shukla,
S/o. Kamki Shankar

... Respondent

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PRAAYER : Criminal Original Petition filed under Section 482 of Cr.P.
to call for the records in C.C.No.1501 of 2017 pending Hon'ble VIII
Metropolitan Magistrate, George Town, Chennai and quash the same
against the petitioner/1st accused.

For Petitioner : Mr.K.M.Aasin Shehza
for M/s.BFS Legal

For Respondents : Mr.S.Vinothkumar,
Govt. Advocate (Crl
for R1

No appearance for R2

ORDER

(This case has been heard through video conference) This Criminal Original Petition has been filed to quash the proceedings initiated in the private complaint filed under Sec.59(i) of the Food Safety and Standards Act, 2006.

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2. The case of prosecution is that on 05.07.2016, Food Safety Officer conducted a search in the premises of A2, wherein A3 was present and he was a vendor in the shop. The Food Safety Officer seized the chewing tobacco products of 900 grams and divided into four equal parts and sent it to food analysis laboratory and received the analyst report. After receipt of analyst report, the same was intimated to the parties and the report also indicated that the tobacco products contained nicotine to the extent of 0.72% which is injurious to health. Accordingly, the complaint was lodged. Hence, the present petition was filed by the petitioner/A1 to quash the same.

3. It is the contention of the learned counsel appearing for the petitioner that A1 is neither authorized signatory nor incharge of the company and he was only a legal head in the Urmin Products Private Limited. The only mistake committed by him was that he has signed as authorized signatory, when the notice was issued to the company. His contention is that in fact, the sanction was accorded only against the company. Whereas A1 was arrayed in individual capacity as an authorized signatory and he was not incharge of business of the company at any point <https://www.mhc.tn.gov.in/judis> of time. Further, the prosecution has not even verified, who was the authorized signatory as declared by the company in this case. Hence, his contention is that merely because notice was replied by the petitioner as authorized signatory, he cannot be prosecuted. Further, his contention is that the tobacco products were not meant for sale in the State

of Tamil Nadu, and it is meant for sale in other States. A2 and A3 are no way connected with A1 company. Merely because some products have been seized from them, A1 company, which was never involved in any such sale in the State of Tamil Nadu, they cannot be prosecuted. Whereas, the learned counsel appearing for the respondent State submitted that A2 and A3 already admitted their guilt and paid fine and present petitioner is A1. Hence, he opposed this petition.

4. It is to be noted that the sanction was accorded to launch prosecution against M/s. Urmin Products Private Limited, represented by its authorized signatory. The petitioner was prosecuted in individual capacity as signatory, and the company was never made as a party. The specific stand of the petitioner is that he is only a legal head and he has also placed several documents to show that he was appointed as a Legal Manager and graduated <https://www.mhc.tn.gov.in/judis> in Law and he has never involved in the business of the company. It is to be noted that any company to be prosecuted under Section 66 of Food Safety and Standards Act, 2006, a person, who at the time of the offence was incharge or responsible to the company for the conduct of business could be prosecuted. It is also relevant to note that Rule 2.5.1 makes it mandatory on the part of the company to inform licensing authority only in Form-IX, the particulars relating to the concerned head or the person incharge of such establishment, branch unit with due certification that the concerned person was nominated for the purpose of Section 66 of the Food Safety and Standards Act and Regulation made under Section 31 of the said Act. Rule 2.5.2 also requires the company to intimate the licensing authority whenever any change occurs in the nomination given in Rule 2.5.1 forthwith in Form- IX. Therefore, to prosecute any person as authorized agency, such prosecution is permissible only against the person actually nominated by the company. In this case, the prosecution has not even verified whether the company actually nominated the present petitioner to represent the company for the purpose of Section 66 of the said Act. No attempt whatsoever made by the prosecution agency, to find out any such nomination for the purpose of prosecution as mandated in Rule 2.5.1. Be that as it may be. It is the <https://www.mhc.tn.gov.in/judis> specific stand in the reply that the company never involved in sale of products in the State of Tamil Nadu. Therefore, unless any nexus between A1 and A2, the company is established, mechanically A1, who has never involved in the sale of products inside the State cannot be prosecuted merely on the basis of their packages in the products. Before launching the prosecution, it should be established that there is nexus exist between the manufacturer and seller, which has not been done in this case. At any event, the petitioner/A1 was implicated as individual capacity as an authorized agency without verifying the Form-IX as mandated under Rule 2.5.1. Therefore, this Court is of the view that when the person, who is actually not an incharge of the company and he has signed as a legal adviser and a manager of the company. Without showing that he was in actual control of the business at the time of the offence, he cannot be prosecuted. Therefore, the proceedings initiated in C.C.No. 1501 of 2017 on the file of VIII Metropolitan Magistrate, George Town, Chennai against A1 is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed. <https://www.mhc.tn.gov.in/judis> 17.11.2021 rpp To The Judicial Magistrate, Tambaram.

<https://www.mhc.tn.gov.in/judis> N. SATHISH KUMAR, J rpp/psa and CrI.M.P.Nos.10397 & 10398 of 2017 17.11.2021 <https://www.mhc.tn.gov.in/judis>