

V.Ramesh vs The State Represented By on 28 March, 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.4038 of 2021

And

CrI.M.P.No. 2484 of 2021

1. V.Ramesh
2. V.Manu Reddy
3. The Cascade Restaurant (Company)
(unit of Chaitanya Gourmet (P) Ltd.,
No.83, AD Block, Raj Towers, 5th Avenue
Anna Nagar West, Chennai – 600 040.
4. G.Rajasekar ... Petitioners/

Vs

The State represented by
Food Safety Officer, No.536
Anna Nagar Zone
Chennai District
The Tamil Nadu Food Safety Department
No.33, West Jones Road
Saidapet, Chennai – 600 015. ...Respondent/Compl

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.,
for the records relating to the C.C.No. 5356 of 2019 on the file of
learned Metropolitan Magistrate No.X, Egmore, quash the same.

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

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For Petitioners : Mr. P.R.Raman
Senior Counsel

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Petition is to quash the complaint in C.C.No. 5356 of 2019 for the offences under Section 59(1) of the Food Safety and Standards Act, 2006.

2. The learned Senior Counsel for the petitioner Mr.P.R.Raman submitted that the impugned complaint cannot be sustained in view of the violation of Section 42(2) of the Food Safety and Standards Act, 2006. Admittedly, the sample was received by the food analyst on 29.01.2019 and as per Section 42(2) of the Act, he ought to have analysed the sample and sent his report within 14 days to the designated officer. In the instant case, he had sent the sample only on 12.03.2019 which is beyond the period of 14 days. The learned Senior Counsel further submitted that under Section 46(3) if the food analyst is unable to send his report within 14 days, he shall inform the Designated Officer giving reasons for the delay and specifying the time taken for analysis. The food analyst had not complied with this provision also and had given his reasons for delay only on 12.03.2019 which is violative of Section 46(3) of the Act. <https://www.mhc.tn.gov.in/judis>

3. The learned Additional Public Prosecutor submitted that since the delay was explained by the food analyst on 12.03.2019, there is no violation of the provisions of the Act. The learned Additional Public Prosecutor further submitted that Section 46(3) of the Act does not specify that the reasons for the delay in giving the report should be made within 14 days from the date of receipt of the sample. He relied upon the Judgment of this Court in 2021 SCC OnLine Mad 11399 [M.Thangaraj Vs. State Rep. by the Food Safety Officer], wherein this Court found that whether there is a delay of two days in sending the recommendation by the Designated Officer under Section 42(3), the complaint cannot be quashed since no prejudice was shown by the accused therein.

4. This Court finds that the complaint states that the sample was received by the food analyst on 29.01.2019. He had sent report only on 12.03.2019. He had given reasons for the delay only on 12.03.2019 along with the report. The food analyst has not complied with Section 42(2) of the Act by not sending the report within 14 days. However, the Act provides under Section 46(3) that if the sample cannot be analysed within 14 days, the food analyst can inform the Designated Officer by giving reasons for the delay <https://www.mhc.tn.gov.in/judis> and specifying the time to be taken for analysis. Though Section 46(3) of the Act does not state that such an information should be given within 14 days, this Court is of the view that the analyst has to give reasons for the delay and specify the time to be taken for analysis within 14 days from the date of receipt of the sample, if he is unable to analyse and give report within 14 days.

5. In the instant case, the food analyst has not complied with the statutory provisions. In this regard, useful reference may be made to the order of this Court in Crl.O.P.(MD).No. 22641 of 2018, dated 05.01.2022 [Siva Foods Vs. The Food Safety Officer, Tirunelveli District] wherein paragraph No. 8 reads as under:-

“8. Now turning to the case on hand, admittedly the sample was taken on 03.06.2017 and the same was analysed by the Food Analyst on 12.09.2017, after the lapse of 9 days from the date of receipt of the sample. It is pertinent to mention that the report was dated 23.10.2017 and the same was received by the Designated Officer, Tirunelveli on 27.10.2017. As already pointed out, as per Section 42 of the Food Safety and Standards Act, 2006, the Food Analyst, after the receipt of the <https://www.mhc.tn.gov.in/judis> sample from the Food Safety Officer, shall analyse the sample and sent the analyst report within a period of 14 days to the Designated

Officer. But in the case on hand, as rightly pointed out by the learned counsel for the petitioner, though the sample was received on 05.06.2017, the Food Analyst report, signed on 23.10.2017, has been received by the Designated Officer on 27.10.2017, after a long delay.

Considering the above, this Court has no other option, but to say that they have violated the mandatory requirement contemplated under Section 42 of the said Act.”

6. The Judgment relied upon by the learned Additional Public Prosecutor in M.Thangaraj case cited supra pertains to a case where Section 42(3) has been violated. However in the instant case Section 42(2) has been violated and hence that Judgment is not applicable to the facts of the case.

7. This Court finds that in the instant case, the mandatory provisions has been violated and hence, the impugned complaint cannot be sustained. <https://www.mhc.tn.gov.in/judis>

8. In the result, this Criminal Original Petition is allowed and proceedings in C.C.No. 5356 of 2019 on the file of the learned Metropolitan Magistrate No.X, Egmore is quashed. Consequently, connected Miscellaneous Petition is closed.

28.03.2023 vsg Index: Yes/No Speaking Order / Non-Speaking Order Neutral Citation: Yes / No To

1. The Food Safety Officer, No.536 Anna Nagar Zone Chennai District The Tamil Nadu Food Safety Department No.33, West Jones Road Saidapet, Chennai – 600 015.

2. The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> SUNDER MOHAN. J, vsg And 28.03.2023
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