

Dharmarajan vs Food Safety Officer on 3 September, 2021

Author: Sathi Kumar Sukumara Kurup

Bench: Sathi Kumar Sukumara Kurup

CrI.R.C.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2021

Pronounced on : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.R.C.(MD)No.884 of 2017

1.Dharmarajan

2.Saravanan

... Petitioners

Vs.

Food Safety Officer,
Theni, Theni Town Area,
Theni District.

... Respondent

Prayer: Criminal Revision Case is filed under Section 401(5) of Cr.P.C. to call for the records pertaining to the order dated 08.09.2017 passed in Criminal Appeal No.42 of 2016 on the file of the Additional District Session Court, Theni at Periyakulam confirming the conviction order dated 08.03.2016 passed in S.T.C.No.1 of 2016 on the file of the Junior Magistrate Court, Theni, and to set aside the same.

For Petitioners : Mr.S.Deenadhayalan

For Respondent : Mr.T.Senthil Kumar
Government Advocate (CrI. Side)

ORDER

<https://www.mhc.tn.gov.in/judis/> This Criminal Revision Case is filed to set aside the order dated 08.09.2017 passed in Criminal Appeal No.42 of 2016 on the file of the learned Additional District

and Session Court, Theni at Periyakulam confirming the conviction order dated 08.03.2016 passed in S.T.C.No.1 of 2016 on the file of the learned Judicial Magistrate Court, Theni.\

2.The brief facts relevant for consideration of the case are as follows:-

2(i).On 07.10.2011 at Theni Anantham Super Store, Door No.714, Madurai Road, Theni – 625 531, the Food Safety Officer, Theni Town Area, Theni District had introduced himself to the first accused/Dharmarajan and the second accused/Saravanan, who are Owner and Manager of Anantham Super Store respectively, and lifted Coriander (Whole) under the Food Safety and Standards Act, 2006. He had informed the petitioners about the procedure regarding lifting of food samples for food analysis regarding food safety standards. The petitioners expressed their consent for the same. One Balasubramani was requested to stand as witness to the lifting of the samples from Anantham Super Store. The consent signature was obtained from the second <https://www.mhc.tn.gov.in/judis/> accused in Form V-A in the presence of witness/Balasubramani. The food samples of 500 Gms from four packets each were taken as samples and the value of which viz., Rs.304/- was paid by the Food Safety Officer. The four packets purchased from Anantham Super Store were divided into four separate samples. Each sample was taken in brown paper and was sealed as per the Food Safety and Standards Act, 2006. As per the Food Safety and Standards Act, 2006, a slip was pasted on each of the four samples with the signature of the second accused and on each of the sample, the Food Safety Officer had affixed his signature along with the Code No.022 in Serial No.34/2014-15. One sample packet which was lifted from Anantham Super Store was sent to the Food Analyst, Food Analysis Laboratory, Madurai - 20. The remaining three samples were retained in the office of the Food Safety Officer, Theni Town Area, Theni District.

2(ii).A report was obtained from the Food Analyst, Madurai under Form VII-A as per Rules 3.1.4(3) and 2.9.7(1) of Food Products Standards and Food Additives Regulation 2011 and under Section 3(1) (ZZ) of Food Safety and Standards Act, 2006 by the respondent. The Revision Petitioners were informed by the report of the Food Analyst, <https://www.mhc.tn.gov.in/judis/> Madurai that the samples lifted from Anantham Super Store was found to be unsafe for human consumption and the Food Safety Officer had also informed the right of the petitioners that if they are not satisfied with the report of the Food Analyst, Madurai that was served on them, they can produce the same and they can exercise their right to refer another sample, which is in the custody of the Food Safety Officer to NABL by giving it in writing to the Food Safety Officer within a period of 30 days from the date of receipt of the report of the Food Analyst, Madurai. The signature of the Revision Petitioners was obtained in the acknowledgment card as the report was served on them through RPAD.

In the said letter, the rights of the Revision Petitioners as per the Food Safety and Standards Act, 2006 was informed. The Revision Petitioners as the Owner and Manager of Anantham Super Store did not give it in writing regarding their rights to send another sample to NABL till 28.11.2014.

Therefore, the respondent decided to prosecute the Revision Petitioners under Section 59(i) of Food Safety and Standards Act, 2006. A letter was addressed to the Commissioner of Food Safety and Drug Administration, Chennai- 6, seeking sanction to prosecute the Revision Petitioners. The Commissioner of Food Safety and Drug Administration, Chennai- 6 in his letter in R.No.61/2015/S6/FSSA, dated 26.03.2015 had <https://www.mhc.tn.gov.in/judis/> given sanction to prosecute the Revision Petitioners. The said sanction letter was received by the respondent on 06.04.2015. Therefore, the Revision Petitioners were prosecuted under Section 3(1)(ZZ) of Food Safety and Standards Act, 2006 and Rule 3.1.4(3) of Food Products Standard and Food Additives Regulation, 2011 regarding the unsafe Coriander (Whole) that was kept for consumption of general public at Anantham Super Store, Madurai Road, Theni District by the Revision Petitioners, who are shown as first and second accused in this case. The respondent preferred a private complaint under Section 200 of Criminal Procedure Code against the Revision Petitioners before the learned Judicial Magistrate, Theni. The learned Judicial Magistrate, Theni, satisfied herself regarding the ingredients of the prima facie case made out against the Revision Petitioners and therefore, the private complaint was taken on file in S.T.C.No.1 of 2016 and took cognizance of the offence committed by the Revision Petitioners herein.

2(iii).On receipt of the summons from the learned Judicial Magistrate, Theni, the petitioners herein appeared before the Court and on appearance of the petitioners, the learned Judicial Magistrate, Theni had furnished the copy of the complaint under Section 207 of Criminal <https://www.mhc.tn.gov.in/judis/> Procedure Code and the charges were framed against the accused. The Revision Petitioners pleaded not guilty to the charges and claimed to be tried. Therefore, the learned Judicial Magistrate, Theni, had ordered for trial.

3.On the side of the prosecution, the Food Safety Officer examined himself as P.W.1 and the witness namely., Balasubramani was examined as P.W.2. and Exs.P1 to P15 were marked. On the side of the defence, no one was examined and no documentary evidence was marked.

4.After consideration of the evidence of P.W.1 and P.W.2 and Exs.P1 to P15, the Revision Petitioners were examined under Section 313 of Criminal Procedure Code regarding the incriminating evidence put against them. The Revision Petitioners denied the incriminating evidence put against them. After the completion of the prosecution evidence and after examination of the Revision Petitioners under Section 313 of Criminal Procedure Code, the petitioners did not examine any one as defence witness. The learned Judicial Magistrate, Theni, after consideration of the evidence, by judgment dated 08.03.2016 <https://www.mhc.tn.gov.in/judis/> had convicted the petitioners for the offence under Section 59(i) of Food Safety and Standards Act, 2006 and sentenced them to undergo simple imprisonment for a period of three months each and to pay a fine of Rs. 5,000/- each, in default to undergo simple imprisonment for a period of two weeks. Aggrieved by the conviction and sentence of imprisonment, the petitioners filed Crl.A.No.42 of 2016 on the file of the learned District and Sessions Court, Theni District at Periyakulam, which was made over to the file of the learned Additional District and Sessions Court, Theni District at Periyakulam. The learned Appellate Judge had confirmed the judgment of conviction and sentence passed by the learned Judicial Magistrate, Theni and dismissed the appeal. Aggrieved by the confirmation of the conviction and sentence imposed by the learned Judicial Magistrate, Theni, by the learned Additional District and Sessions

Judge, Theni District at Periyakulam, this Criminal Revision Case has been filed.

5.The grounds preferred by the Revision Petitioners in this Criminal Revision Case are as follows:-

“a) The order of the learned Judge is erroneous and liable to be set aside.

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

b) The learned Judge failed to see that the test of Coriander by the District Analyst Officer was not sent for appeal before the State Level Analyst Officer.

The same has affected the rights of the petitioners to prove themselves as innocents.

c) The learned Judge failed to see that the respondent failed to prove what types of items are sold by the petitioners and at the time of purchasing of Coriander the respondent failed to see that the petitioners kept the same for sale or not. The respondent with an intention kept in mind has taken the expiry dated Coriander pockets from the petitioners' shop.

d) The learned Judge failed to see that when the respondent purchased the Coriander from the petitioners' shop for which the respondent receive the bill in which the petitioners not put their sign.

e) The learned Judge failed to see that the respondent failed to distinguish between the sample analyst coriander and the other original coriander before registering the case against the petitioners.

f) The learned Judge failed to see and follow <https://www.mhc.tn.gov.in/judis/> the reported judgment in CDJ 2015 MHC 8277, Gurusamy and Another Vs. The Food Inspector, Sattur Municipality, Virudhunagar District. As per the judgment the delay in issuing notice under Section 13(2) of Prevention of Food and Adulteration Act. The same caused prejudice to the petitioner, as the petitioner lost his right. On the base of the same complaint has been quashed. Similarly here also the valuable rights of the petitioners has been quashed.

g) The petitioners reserve their rights to raise additional grounds in future if necessary arise.”

6.As per the arguments of Mr.S.Deenadhayalan, learned counsel for the Revision Petitioners, the expired Coriander (Whole) was lifted by the Food Safety Inspector. The only independent witness, who was examined, turned hostile. The address mentioned in the form for seizure is Door No.713, whereas, the Door Number of the shop belonging to the accused/petitioners is 714. Also the sample was not sent for testing immediately. It was sent after a gap of 7 days. Therefore, there are technical plea available to the Revision Petitioners. Further, it was submitted by the learned counsel for the Revision Petitioners that the erroneous appreciation of facts on law arrived by the learned Judicial <https://www.mhc.tn.gov.in/judis/> Magistrate, Theni has to be set aside and the Criminal Revision Case has to be allowed.

7.Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) appearing for the respondent had furnished written submissions. As per the written submissions, it is seen that the samples were lifted as per the Act and after purchase of the same by the Food Safety Officer on 07.10.2014, one sample packet was sent to the Food Analyst, Madurai and the remaining three samples were retained in the Office of the Food Safety Officer. The report was received on 21.10.2014 and the report was received by the petitioners on 23.10.2014. Notice was sent to the petitioners by the learned Judicial Magistrate, Theni, giving liberty to the petitioners to challenge the report dated 21.10.2014 within a period of thirty days. Since the petitioners did not challenge the same, the respondent sought permission from the Commissioner of Food Safety and Drug Administration, Chennai- 6 under Ex.P14 and the permission was granted vide Ex.P15 on 26.03.2015 and the same was received by the respondent on 06.04.2015. The learned Judicial Magistrate, Theni, after consideration of the evidence by judgment dated 08.03.2016 had convicted and sentenced the petitioners to undergo simple imprisonment <https://www.mhc.tn.gov.in/judis/> for a period of 3 months for the offence under Section 59 (i) of Food Safety and Adulteration Act, 2006 and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of 2 weeks. Challenging the same, the petitioners herein have preferred an appeal in Crl.A.No.42 of 2016, wherein, the conviction and sentence of the petitioners have also been confirmed by the learned Additional District and Sessions Judge, Theni, against which, the present revision case has been filed.

8.The learned Government Advocate (Crl. Side) further submitted that the standard procedure was followed by the respondent herein. After receipt of the report from the Food Analyst, Madurai, the petitioners were given liberty to send another sample to NABL within a period of 30 days from the date of receipt of report of the Food Analyst, Madurai. They did not avail the said liberty. Therefore, the respondent proceeded as per the Act, after obtaining report from the Commissioner of Food Safety and Drug Administration, Chennai- 6, the crux of the report reads as follows:-

(I) It contains a class II Preservative Sulphur-di-

Oxide which is not permitted under Regulation 3.1.4(3) of Food Safety and Standard (Food Products Standards & <https://www.mhc.tn.gov.in/judis/> Food Additives) Regulations, 2011.

9.Therefore, the prosecution had clearly proved before the Trial Court that the Revision Petitioners had sold substandard products for human consumption. The Coriander (whole) kept for human consumption was proved unsafe. The learned Government Advocate (Crl. Side) invited the attention of this Court to the judgment of the learned Judicial Magistrate, Theni, in Paragraph Nos.14 to 17. Wherein, the learned Judicial Magistrate, Theni had elaborately discussed the offence committed by the Revision Petitioners. The learned Additional District and Sessions Judge, Theni had also discussed regarding the analyst report and assessment of evidence by the learned Judicial Magistrate, Theni and rejected the contentions of the learned counsel for the Revision Petitioners that there is no ground to interfere with the findings of the learned Judicial Magistrate, Theni.

10.On a proper appreciation of the evidence and other materials before the learned Judicial Magistrate, Theni and the learned Additional District and Sessions Judge, Periyakulam had concurrently upheld the finding of guilt against the Revision Petitioners. Challenging

<https://www.mhc.tn.gov.in/judis/> the concurrent finding, this Criminal Revision Case has been filed.

11.The learned Government Advocate (Crl. Side) further submitted that unlike the Appellate Court, the Revisional Court has no discretion or power to interfere with the assessment of the evidence available before the learned Trial Judge. As Revision Court, the High Court cannot exercise the powers of the Appellate Court in interfering with the findings of fact or reassessing the evidence before the learned Trial Judge. The High Court can only interfere, if there is perverse finding. Without any material, if the learned Trial Judge had given a finding, which is considered perverse, only then, this Revisional Court can exercise its power. In this case, there is no perverse finding. Therefore, the arguments put forth by Mr.S.Deenadhayalan, learned counsel for the Revision Petitioners has to be rejected and the Criminal Revision Case has no merits and it is to be dismissed. The learned Government Advocate (Crl. Side) placed reliance on the decision of the Hon'ble Supreme Court in CRL.REV.P.No.659 of 2018 dated 25.06.2021 and also placed reliance on the decision of this Court in Crl.R.C.No.135 of 2017 dated 20.06.2017, wherein the Hon'ble Single Judge quoted the judgment of the Hon'ble Supreme Court in Mangaldas Raghaji Ruparel <https://www.mhc.tn.gov.in/judis/> and Another Vs. State of Maharashtra and Another reported in AIR 1966 SC 128 , wherein, the Hon'ble Supreme Court held as follows:-

“As regards the failure to examine the Public Analyst as a witness in the case of blame can be laid on the prosecution. The report of the Public Analyst was there and if either the Court of the appellant wanted him to be examined as a witness appropriate steps would have been taken. The prosecution cannot fail solely on the ground that the Public Analyst had not been called in the case.”

12.Heard Mr.S.Deenadhayalan, learned counsel appearing for the Revision Petitioners and Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) appearing for the respondent.

13.The point for consideration in this Criminal Revision Case is whether the judgment of the learned Trial Judge is to be set aside as perverse.

14.On a perusal of the judgment of the learned Judicial Magistrate, Theni and on consideration of the discussion of evidence and the defence taken by the accused in Paragraph Nos.14 to 17, it is found <https://www.mhc.tn.gov.in/judis/> that each and every defence of the accused had been dealt by the learned Trial Judge and rejected their defence. The accused was given the liberty to question the result of the Food Analyst, Madurai, by sending another sample to NABL within a period of thirty days from the date of report received by the accused. They had not done so. In the Criminal Revision Case, it had been stated that the sample was sent with delay. Therefore, the same was found unsafe. That is not the report of the Food Analyst, Madurai. The report of the Food Analyst, Madurai says that the sample contains a class II Preservative Sulphur-di-Oxide. Therefore, the claim that the sample was sent with delay of seven days and therefore, the Revision Petitioners are not criminally culpable cannot at all be accepted and nothing is found perverse on perusal of the Judgment of the learned Judicial Magistrate, Theni and learned Additional District and Sessions Judge, Periyakulam. Therefore, this Criminal Revision Case lacks merits. As rightly pointed out by

the learned Government Advocate (Crl. Side), the Revision Court cannot go into the assessment of evidence. Only if there is technicality of Law involved, it can consider the revision.

15. In the reported ruling of the Hon'ble Supreme Court in the case of State represented by the Drugs Inspector vs Manimaran, in <https://www.mhc.tn.gov.in/judis/> (2019) 13 SCC 670, held that the Revision Court cannot go into the concurrent findings:

“D.Criminal Procedure Code, 1973 – S.401 – Revisional jurisdiction – Scope – Revisional Jurisdiction of High Court different from appellate jurisdiction – High Court, in revisional jurisdiction cannot interfere with concurrent findings of facts unless perverse or arrived at ignoring material evidence.”

16. Therefore, in the light of the reported ruling of the Hon'ble Supreme Court in the case of Mangaldas Raghaji Ruparel and Another Vs. State of Maharashtra and Another reported in AIR 1966 SC 128 for the proposition that the report of Public Analyst is sufficient enough and it is not always necessary to summon him to depose in Court and in the light of the decision in State represented by the Drugs Inspector vs Manimaran, in (2019) 13 SCC 670, for the proposition that the Revision Court cannot go into the concurrent findings, the point for consideration is answered in favour of the Prosecution and against the Revision Petitioners/accused.

In the result, the Criminal Revision Case is dismissed. The judgment and the conviction recorded by the learned Additional District and Sessions Judge, Theni, Periyapalayam in C.A.No.42 of 2016 is <https://www.mhc.tn.gov.in/judis/> confirmed. The learned Judicial Magistrate, Theni, is directed to issue warrant to secure the appellants/accused to undergo remaining period of imprisonment. The period of detention already undergone, if any, by the appellants/accused is set off under Section 428 of Cr.P.C.

Index : Yes / No
Internet : Yes/ No
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned. To:

1. The Additional District and Session Court, Theni at Periyakulam .

2. The Judicial Magistrate, Theni.

<https://www.mhc.tn.gov.in/judis/> SATHI KUMAR SUKUMARA KURUP, J.

ias 03.09.2021 <https://www.mhc.tn.gov.in/judis/>