

# M.Kaja Mohindeen vs State Rep By on 9 February, 2022

**Author: A.D.Jagadish Chandira**

**Bench: A.D.Jagadish Chandira**

Crl.O.P.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.2761 of 2022

and

Crl.M.P.Nos.1282 & 1283 of 2022

M.Kaja Mohindeen

-Vs-

State Rep by  
N.Karmegam,  
The Food Safety Officer,  
Ambattur-II,  
Code No.524,  
Office of the Tamilnadu Food Safety  
and Medicine Administration Department,  
Asoori Street,  
Thiruvallur.

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records and to quash the proceedings as against the petitioner in C.C.No.131 of 2017 on the charge of the Judicial Magistrate, Ambattur, Chennai.

For Petitioner : Mr.R.Vijayaragavan

For Respondents : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

1/6

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Crl.O

ORDER

This Criminal Original Petition has been filed by the petitioner/A3 to quash the complaint in CC.No.131 of 2017 pending on the file of the Judicial Magistrate, Ambattur, Chennai.

2. It is the case of the complainant that one Manna Health Mix, Southern Health Foods Pvt Ltd., is the manufacturer of the alleged health drinks and samples were lifted and the same were sent for the analysis and report was received on 10.06.2014. As per the report, the sample were found to be sub-standard, unsafe and misbranded. Thereby, the respondent/complainant had filed the private complaint against the petitioner and other accused for the offence under Sections 3(1)(zx), 3(1)(zz)(v)(x) and 3(1)(zf)(a-i) of Food Safety and Standardization Act, 2006. The subsequent samples also reveal that the product was sub-standard and unsafe.

3. Heard Mr.R.Vijayaragavan, the learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent.

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4. Learned counsel for the petitioner submitted that admittedly, as per the complaint, the health mix which was subjected to test was produced by Southern Health Food Private Limited having office at AL-84, 1st Floor, 4th Street, II Main Road, Anna Nagar, Chennai - 40 and the petitioner is the nominee of the company and as per the Section 66 of FSS Act, a mandate is cast on the complainant to proceed against the company which has produced whereas in this case, the company was not impleaded. The private complaint which has been filed without impleading the company is bad in law, thereby he prayed for quashing the proceedings. Further, the learned counsel would submit that in respect of a co-accused in the very same case, this Court in Crl.OP.No.19747 of 2017 dated 26.11.2021 taking into consideration that the company was not impleaded as accused, has quashed the proceedings.

5. The learned Additional Public Prosecutor submitted that as per the Section 66 of the Act, when the offences are committed by the company, the company has to be added as an accused. However, he would fairly concede that the company has not been added as accused in this case.  
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6. Perusal of records including the complaint reveals that the health mix had been produced by M/s.Southern Health Food Private Limited. However, in the complaint, the company has not been added as an accused and there is no averments against the present petitioner that he is in-charge and responsible for the conduct of the business of the company. Accordingly, the entire prosecution launched against the petitioner cannot be sustained in the eye of law. Further, the continuation of the proceedings as against the petitioner is an abuse of process of law. Hence, the proceedings has to be necessarily quashed against the petitioner.

7. Accordingly, this Criminal Original Petition is allowed, the proceedings pending in C.C.No.131 of 2017 on the file of the learned Judicial Magistrate Ambattur, Chennai in respect of the petitioner is hereby quashed. Consequently, connected miscellaneous petitions are closed.

09.02.2022 Index : Yes/No Internet : Yes/No nr/tsh <https://www.mhc.tn.gov.in/judis> To

1.The Food Safety Officer, Ambattur-II, Code No.524, Office of the Tamilnadu Food Safety and Medicine Administration Department, Asoori Street, Thiruvallur.

2.The Public Prosecutor, High Court, Madras.

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