

# Sayyed Mohammed Ashraf vs Commissioner Of Food Safety And Others on 5 November, 2021

**Author: P.V.Kunhikrishnan**

**Bench: P.V.Kunhikrishnan**

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
FRIDAY, THE 5TH DAY OF NOVEMBER 2021 / 14TH KARTHIKA, 1943  
W.P.(C) NO.19160 OF 2011

PETITIONERS:

- 1 SAYYED MOHAMMED ASHRAF,  
SON OF SAYYED IBRAHIM,  
MOHAMADIYA MANZIL, UPPALA P.O.,  
KASARGOD.
- 2 SAYYED MOHAMMED,  
SON OF SAYYED HUSSAIN,  
SAYYED COTTAGE,, R.S.ROAD,  
UPPALA P.O., KASARGOD.

BY ADV SRI.S.RAMESH BABU

RESPONDENTS:

- 1 COMMISSIONER OF FOOD SAFETY,  
THIRUVANANTHAPURAM-695 001.
- 2 DISTRICT FOOD INSPECTOR,  
KASARGOD-671 323.
- 3 FOOD INSPECTOR,  
KASARGOD CIRCLE, KASARGOD-671 323.

SMT.RASHMI.K.M, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
05.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:  
W.P.(C) NO.19160 OF 2011

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P.V.KUNHIKRISHNAN, J.

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W.P.(C) No.19160 of 2011  
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Dated this the 5th day of November, 2021

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JUDGMENT

The above writ petition is filed with the following prayers:

"A. To issue a writ of certiorari calling for the records leading to the issuance of Exts.P1 and P2 and quash the same.

B. To declare that the initiation of proceedings against the petitioners by the second respondent under the repealed provisions of the Prevention of Food Adulteration Act, 1954 Act is illegal.

C. To grant such other relief as this Honourable Court deems fit and proper in the facts and circumstances of the case."

2. The grievance of the petitioners is that the petitioners are going to face prosecution based on Exts.P1 and P2 notices issued to them as per the Prevention of Food Adulteration Act, 1954. According to the petitioners, since the provisions of Food Safety and Standards Act, 2006 have been duly notified, the Prevention of Food Adulteration Act, 1954 is no longer available. It is the case of the petitioners that the samples were taken W.P.(C) NO.19160 OF 2011 subsequent to 29.07.2010 and therefore, the prosecution as per the Prevention of Food Adulteration Act is not applicable.

3. Today when the matter came up for consideration, it is bring to the notice of this Court that as per the judgment dated 23.02.2015 in W.P.(C) No.7366 of 2011 and other connected cases, this Court observed that the prosecution in such cases will not stand under the Prevention of Food Adulteration Act. It will be better to extract the relevant portion of the judgment. Paragraph 3 of the above judgment is extracted hereunder:-

"3. By virtue of operation of Section 98 of the Act, it may be true that the standards prescribed under the Prevention of Food Adulteration Act, 1954 may be relevant if no such standards had been prescribed under the 2006 Act. But the fact remains that the procedure which is to be followed for search, seizure, analysis etc., has to be in accordance with the provisions of 2006 Act. There cannot be any dispute regarding the aforesaid position which is clear from Section 97 of the Act, which reads as follows:

"97. Repeal and savings:- (1) With effect from such date as the Central Government may appoint in this behalf, the enactment and Orders, specified in the Second Schedule shall stand repealed:

Provided that such repeal shall not affect:- W.P.(C) NO.19160 OF 2011

(i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act stand repealed and in such case, the provisions of Section 6 of the General Clauses Act 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders the licences issued under any such enactment or Orders, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry W.P.(C) NO.19160 OF 2011 for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act."

By virtue of Section 97, only those matters which are taken prior to the commencement of the Act is saved, if the search was conducted and the procedure had been initiated prior to 29.7.2010. That is not the situation here. Admittedly, the procedure followed was under the provisions of 1954 Act, which was already repealed by coming into force of 2006 Act.

Accordingly, the writ petitions are only to be allowed. The impugned notices are quashed. It is made clear that if the respondent authorities can initiate proceedings under the 2006 Act, it shall be open for them to do so in accordance with the procedure prescribed."

4. I think in the light of the above judgment, the petitioners in this case also has to succeed because the sampling in this case was on 07.01.2011. Therefore, this writ petition is to be allowed.

Hence, this writ petition is allowed and all further W.P.(C) NO.19160 OF 2011 proceedings consequent to Exts.P1 and P2 are quashed. But I make it clear that, if the respondent authorities can initiate proceedings under the 2006 Act, it shall be open for them to do the needful, in accordance to law.

Sd/-

P.V.KUNHIKRISHNAN JUDGE bpr W.P.(C) NO.19160 OF 2011 APPENDIX PETITIONERS' EXHIBITS EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 22.06.2011 ISSUED TO THE FIRST PETITIONER.

EXHIBIT P2 TRUE COPY OF THE NOTICE DATED 22.06.2011 ISSUED TO THE SECOND PETITIONER.

EXHIBIT P3 TRUE COPY OF THE NOTIFICATEION DATED 29.07.2010.

EXHIBIT P4 TRUE COPY OF THE JUDGMENT OF THE ALLAHABAD HIGH COURT IN WRIT PETITION NO.8254/2010.

EXHIBIT P5 TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT IN WRIT PETITION (CIVIL) NO.7366/2011.