

H.P.Gupta vs S.Selvaraj on 18 April, 2023

CrI.O.P.No.20491, 20695

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P. Nos. 20491, 20695 & 20842 of 2020

and

CrI. O.P.No.133 of 2021

and

CrI.M.P. Nos. 8615, 8740 & 8930 of 2020

and

CrI.M.P.No.54 of 2021

Cr.O.P.No.20491 of 2020:

1.H.P.Gupta

2.Rajesh Gupta

3.Rakesh Gupta

4.Sunita Gupta

... Petit

Vs.

S.Selvaraj

... Respondent

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

CrI.O.P.No.20491, 20695

PRAAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the

proceedings initiated in S.T.C.No.475 of 2020 on the file of the le
Judicial Magistrate, Coonoor against the petitioners A3 to A6 are
concerned as an abuse of process of law.

Cr.O.P.No.20695 of 2020:

- 1.H.P.Gupta
- 2.Rajesh Gupta
- 3.Rakesh Gupta
- 4.Sunita Gupta

... Petiti

Vs.

S.Selvaraj

... Respondent

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

CrI.O.P.No.20491, 20695

PRAAYER: Criminal Original Petition filed under Section 482 of the
Criminal Procedure Code, to call for the records and quash the
proceedings initiated in S.T.C.No.476 of 2020 on the file of the le
Judicial Magistrate, Coonoor against the petitioners A3 to A6 are
concerned as an abuse of process of law.

Cr.O.P.No.20842 of 2020:

- 1.Achudha Nair
- 2.Pratap Nair

... Petiti

Vs.

S.Selvaraj

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceedings initiated in S.T.C.No.475 of 2020 on the file of the le Judicial Magistrate, Coonoor against the petitioners / A1 & A2 are concerned as an abuse of process of law.

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CrI.O.P.No.20491, 20

Cr.O.P.No.133 of 2021:

1.Achudha Nair

2.Pratap Nair

... Pet

Vs.

S.Selvaraj

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceedings initiated in S.T.C.No.476 of 2020 on the file of the le Judicial Magistrate, Coonoor against the petitioners / A1 & A2 are concerned as an abuse of process of law.

For Petitioners : Mr. K.V.Sridharan
(In all petitions)

For Respondent : Mr. A.Damodaran
(In all petitions) Additional Public Prosecuto

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

CrI.O.P.No.20491,

COMMON ORDER

The petitions are to quash the proceedings in S.T.C.Nos.475 and 476 of 2020 on the file of the learned Judicial Magistrate, Coonoor.

2. The crux of the allegations in both the complaints is that the sample of CTC Black Tea was drawn from the premises of the petitioners' Company on 07.12.2017 and sent for analysis on 11.12.2017. The Food Analyst had sent his report on 03.01.2018 stating that the CTC Black Tea was "unsafe".

3. The learned counsel for the petitioners submitted that the impugned complaints are liable to be quashed on the short ground that the respondent has not followed the provisions of Section 42 (2) read with Section 46 (3) of the Food Safety and Standards Act, 2006. The Food Analyst after receiving the sample sent his report beyond the period of 14 days. The information stating that there is a likelihood of <https://www.mhc.tn.gov.in/judis> CrI.O.P.No.20491, 20695 & 20842 of 2020 delay in analysing the sample to the Designated Officer was also not given within 14 days. It was given only on 03.01.2018, when the report was sent to the Designated Officer.

4. The learned Additional Public Prosecutor would submit that since the Food Analyst has given reasons for the delay along with the report on 03.01.2018, the impugned complaints are not liable to be quashed and prayed for the dismissal of the quash petitions.

5. This Court finds that admittedly the sample was drawn from the premises of the Company on 07.12.2017. The sample was sent to the Food Analyst on 11.12.2017. The Food Analyst had given his report only on 03.01.2018, which is beyond the period of 14 days prescribed under Section 42 (2) of the Act. The Food Analyst has not informed the Designated Officer the reasons for the delay and specified the time to be taken for analysis within 14 days on the receipt of the sample. The Food Analyst's information and explanation for the delay was given only on 03.01.2018, when the report was sent to the <https://www.mhc.tn.gov.in/judis> CrI.O.P.No.20491, 20695 & 20842 of 2020 Designated Officer. This is in clear violation of mandatory provisions of the Act.

6. In this regard, useful reference may be made to the order of this Court in CrI.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 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 <https://www.mhc.tn.gov.in/judis> Crl.O.P.No.20491, 20695 & 20842 of 2020 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.” The observation in the above Judgement would apply squarely to the facts of the present case.

7. Hence, the impugned complaints are liable to be quashed for violation of mandatory provisions. Accordingly, the petitions are allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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<https://www.mhc.tn.gov.in/judis>

Crl.O.P.No.20491, 20695 & 20842 of 2020 To The Judicial Magistrate, Coonoor.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.No.20491, 20695 & 20842 of 2020 SUNDER MOHAN. J, kan Crl.O.P.No. 20491, 20695 & 20842 of 2020 and 18.04.2023 <https://www.mhc.tn.gov.in/judis>