

M/S.Mhs Pharmaceuticals Private ... vs The State Of Tamilnadu on 15 September, 2022

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

Crl.O.P.No.3

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3806 of 2022

and

Crl.MP.Nos.1831 & 1832 of 2022

1.M/s.MHS Pharmaceuticals Private Limited,
GSR Estates, C-Block, 3rd Floor,
D.No.11-6-56, Balanagar,
Hyderabad 500 037
rep. by its Director C.Bhaskarreddy
2.C.Bhaskarreddy
3.P.Srinivas

... Petitioners/

Vs

The State of Tamilnadu,
Rep. by Food Safety Officer,
Code Number 445,
Thiruchengode,
O/o.Tamilnadu Food Safety and Drugs
and Administration Department,
Namakkal District

... Respon

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. t
the records of the case in STC.No.279 of 2020 on the file of the le

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

Judicial Magistrate-IV, Thiruchengode and to quash the proceedings as these petitioners are concerned.

For Petitioners : Mr.M.Mohammed Rafi

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This criminal original petition has been filed to quash the proceedings in STC.No.279 of 2020 on the file of the learned Judicial Magistrate-IV, Thiruchengode, thereby taken cognizance for the offences under Sections 59(i) and 51 of The Food Safety and Standards Act, 2006, as against the petitioners.

2. The case of the prosecution is that on 22.04.2019 at around 11 a.m., on a routine inspection conducted by the respondent in the retail outlet of M/s.MedPlus Pharmacy, Thiruchengode branch, on suspicion, the food produce named Eat Rite Palm Jaggery would be violating The Food Safety and Standards Act, 2006, it was decided by the respondent to take a food sample of the same and Form V A was prepared. The sample was sent for analysis to The Food Analyst, Food Analysis Laboratory, King Institute <https://www.mhc.tn.gov.in/judis> Campus, Guindy, Chennai. On 13.09.2019, a report was obtained with the opinion Unsafe and substandard. Hence, it is alleged that the accused had sold the food product which is unfit for consumption, thereby the violations as defined under Section 3(1)(zz)(v) & (Xi) and 23(1), 26(1)(2)(i)(ii)& (V) were committed and therefore, the accused were said to have committed offence punishable under Sections 59(i) and 51 of The Food Safety and Standards Act, 2006.

3. It is seen that in similar circumstances, this court allowed the criminal original petition in Crl.OP.No.774 of 2020 dated 06.08.2020 and quashed the criminal proceedings against the petitioner therein. The relevant portion of the said order is extracted hereunder:

6. The learned counsel for the petitioner raised two grounds that the complaint itself is directly barred by limitation under Section 77 of Food Safety and Standards Act. It is relevant to extract the provision under Section 77 of the said Act as follows:

77. Time limit for prosecutions;Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of <https://www.mhc.tn.gov.in/judis> the period of one year from the date of commission of an offence: Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.?

Accordingly, no court shall take cognizance of the offence under the Act after expiry of the period of one year from the date of commission of offence. The defacto complainant purchased the said

product from the first accused shop on 31.07.2014. Thereafter, the complaint was lodged only on 04.10.2016 after period of two years. Further, it is also seen that there is no explanation for the delay in lodgement of the complaint. Therefore, the complaint itself is barred by limitation as per provision under Section 77 of the said Act.

7. Another ground raised by the learned counsel for the petitioner is that under Section 42 of the said Act, the Food Safety Officer shall have to send his recommendation for prosecution within 14 days from the date of receipt of analysis report to the Commissioner. It is also relevant to extract the provision under Section 42 (3) of the said Act as follows:

The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the <https://www.mhc.tn.gov.in/judis> contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

As per the above provision, on receipt of the analysis report, Food Safety Officer shall have to send his report within period of 14 days to the Commissioner of Food Safety for sanctioning prosecution against the accused. In the case on hand, the Central Food Laboratory sent its report on 18.02.2015. On receipt of the report, the Designated Officer / respondent sent his recommendation for according sanction only on 18.08.2015. On receipt of the same, the Commissioner of Food Safety accorded first sanction on 14.03.2016 and subsequently accorded second sanction on 28.09.2016.

Therefore, the respondent failed to send his recommendation within period of 14 days from the date of receipt of food analysis report. Therefore, the respondent did not follow the mandatory provision as contemplated under Section 42(3) of the Food Safety and Standards Act.

8. Therefore, the present complaint cannot be sustained as against the petitioner and it is liable to be quashed. Under these circumstances, the petitioner need <https://www.mhc.tn.gov.in/judis> not go for ordeal of the trial since the entire complaint is nothing but clear abuse of process of law.

9. In view of the above discussion, this Criminal Original Petition is allowed and the proceedings in C.C.No.177 of 2016 on the file of the learned Judicial Magistrate-I, Kancheepuram is quashed as against the petitioner. Consequently, connected miscellaneous petitions are closed.

4. Therefore, this Court is inclined to quash the impugned proceedings also. Accordingly, this criminal original petition is allowed and the entire proceedings in STC.No.279 of 2020 on the file of the learned Judicial Magistrate-IV, Thiruchengode, thereby taken cognizance for the offences under Sections 59(i) and 51 of The Food Safety and Standards Act, 2006 is quashed as against the petitioners alone. Consequently, connected miscellaneous petitions are closed.

15.09.2022 Internet:Yes Index:Yes/No Speaking/Non speaking order lok
https://www.mhc.tn.gov.in/judis https://www.mhc.tn.gov.in/judis G.K.ILANTHIRAIYAN. J, lok
To

1.The learned Judicial Magistrate-IV, Thiruchengode

2.Food Safety Officer, The State of Tamilnadu, Code Number 445, Thiruchengode, O/o.Tamilnadu
Food Safety and Drugs and Administration Department, Namakkal District

3.The Public Prosecutor, High Court of Madras 15.09.2022 https://www.mhc.tn.gov.in/judis