

M.Venkatesan vs S.Amjath Ibrahim Khan on 5 August, 2022

Author: G.Ilangoan

Bench: G.Ilangoan

CrI.O.P. (MD)No.350

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOAN

CrI.OP(MD)No.3502 of 2019
and
CrI.MP(MD)No.1996 of 2019

M.Venkatesan
S/o.Muthukrishnan,
Proprietor,
Chakra Food Products,
No.6/145, Kanagavel Nagar,
Aathikulam, K.Pudur,
Madurai-625 007.

Petitioner/A2

Vs.

1.S.Amjath Ibrahim Khan,
Food Safety Officer,
Code No.433,
O/o.Designated Officer,
Tamilnadu Food Safety and Drugs Administration,
Vishvanathapuram,
Madurai-625 014. : 1st Respondent/Complainant

2.D.Murugan
S/o.Duraisamy,
Seller,
Meenakshi Stores,
Daily Market,
Melur-625 106,
Madurai District.

: 2nd Respondent/A1

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

Crl.O.P

Prayer: Criminal Original Petition is
Section 482 Cr.P.C., to call for the records in connection
with the impugned complaint in CC No.55 of 2017 pending on
the file of the Judicial Magistrate, Mel
District and quash the same in so far as the petitioner is
concerned.

For Petitioner : Mr.Sarvagan Prabhu

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecu

For 2nd Respondent : Mr.M.Sridharan

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.55 of 2017 on the file of the Judicial Magistrate, Melur, Madurai District.

2.The case of the prosecution is that on 09/05/2017 at about 11.30 am, the first respondent made an inspection to the shop owned by the first accused and lifted the sample called 'NAVEN CHICKEN 65 POWER' for analysis. After completing the formalities of sampling, the sample was sent to the food analyst. A report was received, on 31/05/2007 stating that it is unsafe and that was intimated to the petitioner for giving opportunity of appeal to the Central Lab and at the request made by the petitioner, the sample <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.3502 of 2019.

was sent to the central lab, on 04/10/2017. The report was received, on 26/10/2017 and that report disclosed that it was unsafe. So after completing procedural formalities, the complaint was filed stating that the accused persons have been violated the regulations and provisions of the Food Safety and Standard Act, 2006.

3.Seeking quashment of the same, this petition has been filed on the ground that proper procedure was not followed while lifting sample. The report of the food analyst is different from the referred lab report.

4.Heard both sides.

4.It is not in dispute that sample was lifted from the shop, which is owned by A1 namely Murugesan and this petitioner is stated to be the manufacturer of the food products, which is called as 'Chakra Food Products'. It is not in dispute that the above said food product was manufactured and marketed by the petitioner. It is also not in dispute that the sample was lifted from the shop of the

first accused, on 09/05/2017.

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5.Now the learned counsel appearing for the petitioner would submit that while lifting the sample, proper procedure was not followed. They have mentioned the grounds on which violation occurred. Whether proper procedure has been followed, while lifting the sample cannot be considered by this court, sitting in the jurisdiction under section 482 Cr.P.C. It is completely a matter for evidence.

6.Reading of the complaint shows that the complaint prima facie shows that proper procedure was undertaken while lifting the sample. So this ground is not available to the petitioner now.

7.Whether any delay in sending the report, as mentioned under section 46(3) of the Food Safety and Standard Act, is the question. The Government Analyst, by a letter dated 31/05/2017 has stated that because of the administrative reasons, analysis could not be completed within the stipulated time. The report, is dated 31/05/2017. The sample was received, on 11/05/2017. The 14th day falls on 27/01/2017 and there is a delay of six days. This has been explained in the above said letter, which was also enclosed along with the complaint filed before the trial court.

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8.Whether the reason stated in the letter is acceptable or not can be a matter for consideration by the trial court. So this ground is also not available to the petitioner.

9.The next ground is that quite contrary to the report submitted by the food analyst, the Director of Central Food Lab sent a report stating that sample is unsafe and misbranded also. Details have been broadly stated in the report. The contention of the petitioner is that there is difference between two reports is not at all correct on record.

10.So for the reasons stated above, I find no merit in the petition and accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed.

05.08.2022 Internet:Yes/No Index:Yes/No er <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.3502 of 2019.

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