

# Parvathi vs State By on 14 July, 2021

**Author: M.Dhandapani**

**Bench: M.Dhandapani**

CrI.0.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.1439 OF 2018

AND

CRL. M.P. NOS. 533 & 534 OF 2018

1. Parvathi, aged 57 years (A3)  
W/o. Nanjappan
2. M/s. Kauveri Aqua Product, (A4)  
Rep by its Proprietor, Tmt.Parvathi,  
S.No.60/2B, Vadakku Thottom  
Ponkoil Nagar, Tirupur – 641 605.

...Petitioners

Versus

1. State by  
The Food Safety Officer,  
Tirupur South, Tirupur.
2. The Commissioner  
Food & Safety Corporation, Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure, to call for records in S.T.C.No.584 of 2017 on of learned Judicial Magistrate No.II, Tiruppur and quash the Criminal proceeding pending against the petitioners.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.A.Gopinath, GA (CrI. Side)

1/16

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

This Criminal Original Petition has been filed to call for records in S.T.C.No.584 of 2017 on the file of learned Judicial Magistrate No.II, Tiruppur and quash the same.

2. The case of the petitioner is that the respondent filed a private complaint against the petitioner and three others for the alleged offences Under Sections 3(1)(zz) (xi), 26(2)(i) & 27 of the Food and Safety and Standards Act 2006 r/w Regulations 2.10.8 of Food Safety and Standards (FPS & FA) of Regulations 2011 and the said case was taken on file on 01.11.2017 in S.T.C.No.584 of 2017 on the file of the learned Judicial Magistrate No.II, Tiruppur and the case is posted for appearance of the accused on 18.01.2018.

3. The case of the prosecution is that on 13.08.2014 at about 1.00 p.m the respondent inspected the TASMAL Bar run by the 2nd accused and at that time, the respondent seized 4 samples of Packaged Drinking Water Sachets, manufactured by the 4th accused firm, M/s.Kauveri Aqua Product, run by the first petitioner/A-3 as Proprietrix. A-1 is an employee of A-2. It is alleged that on examination of the seized water sachet by the Food <https://www.mhc.tn.gov.in/judis/> Analyst, it was found that the water in the sachet was not safe for drinking as per the alleged Report dated 26.08.2014. On being informed about the result of the Food Analyst by the respondent herein through his letter dated 15.09.2014, the 1st petitioner made a request on 15.10.2014 to have it tested by Referral Laboratory. The Referral Laboratory, Kolkata in its alleged Report dated 05.02.2015 gave an opinion that the product was unsafe and sub-standard. Hence, prosecution was launched against the petitioner for the said offences. Challenging the same, the present petition has been filed.

4. The learned counsel appearing for the petitioners submitted that as per Section 77 of the Food Safety and Standards Act 2006, the trial Court shall take cognizance of the offence within one year from the date of the alleged date of occurrence. It is the further submission of the learned counsel that the complaint has been filed not only beyond the period of one year of the date of commission of the alleged offence, but also beyond the extended period of three years during which sanction of prosecution can be approved by the Commissioner of Food Safety. It is the further submission of the learned counsel for the petitioner though the Commissioner of Food Safety is said to have granted permission for prosecution within the <https://www.mhc.tn.gov.in/judis/> extended period of three years, however, the complaint has not been filed before the court below within the extended period of three years and it has been filed only on 1.11.17 and, therefore, the filing of the complaint and taking cognizance thereof is beyond the period of limitation and, accordingly, the cognizance taken is unsustainable. Accordingly, he prays for allowing the present petition.

5. Learned Government Advocate (Crl. Side) appearing for the respondent, referring to the counter affidavit submitted that on inspection of the TASMAL Bar by the respondent, food sample in the form of drinking water sachets was lifted by the respondent by following the due procedures contemplated under the Food Safety and Standards rule, 2011 and the same was sent for analysis, which revealed that the said packaged drinking water was unsafe for human consumption. After affording opportunity to the petitioner, who preferred statutory appeal under the relevant provisions of the Act, the food sample was forwarded for further analysis to the Referral Laboratory,

Kolkata and report was received on 2.2.15. Since the presence of contaminants was found to be more than the prescribed limits, criminal prosecution was launched against the petitioner as per established <https://www.mhc.tn.gov.in/judis/> procedures and on the filing of the complaint, the trial court took cognizance of the same on 1.11.2017. It is the further submission of the learned Government Advocate that necessary sanction was also obtained vide order dated 2.1.17 and the complaint was filed on 12.1.17, which is well within time and not barred by limitation. Accordingly, he prays for dismissal of the present petition.

6. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

7. It is the admitted case of the parties that the TASMAR bar of A-3 was inspected by the 1st respondent on 13.8.2014 and samples were collected and sent for analysis and on receipt of the report, which termed the sample as unsafe and sub-standard, after providing an opportunity to the petitioner, who preferred statutory appeal, the samples were forwarded to the Referral Laboratory, Kolkata, which also concurred with the view that the samples contained contaminants more than the prescribed limit and, therefore, unsafe for consumption as per the Act, Rules and Regulations. <https://www.mhc.tn.gov.in/judis/>

8. It is further not in dispute that the report of the Referral Laboratory, Kolkata was dated 02.02.2015. The sanction for prosecution was obtained from the Commissioner, Food Safety on 2.1.17. However, it is the case of the respondent that the complaint was filed on 12.01.2017, which is well within the period of limitation of three years. In such a backdrop, the main plank of the case of the respondent is that the complaint having been filed within the period of three years on 12.1.2017, the prosecution is maintainable.

9. The core contention of the petitioner is that the complaint was laid much beyond the period of three years prescribed u/s 77 of the Food Safety and Standards Act and, therefore, the same is barred by limitation.

10. To address this issue, it is apposite to refer to Section 77 of the Food Safety and Standards Act, 2006 and the same is quoted hereunder :-

“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 the period of one year from the date of <https://www.mhc.tn.gov.in/judis/> 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.”

11. From the above provision, it is implicitly clear that from the date of offence, cognizance should be taken by the court within a period of one year from the date of commission of the offence, which

may get prolonged upto a period of three years, on the Commissioner of Food Safety, approving prosecution, by recording reasons in writing. Therefore, after the period three years, no prosecution could be laid by the prosecution for any infraction of provision of law as codified in the Food Safety and Standards Act.

12. In the case on hand, the date of lifting of the samples is 13.8.14, which is the date of commission of the offence. Section 42 provides the procedure for launching of prosecution. Sub-section (1) thereof speaks about the responsibility of the Food Safety Officer in drawing samples and sending them to Food Analyst for analysis. Sub-section (2) speaks about the duty of the Food Analyst in receiving the samples, analysing the same <https://www.mhc.tn.gov.in/judis/> and reporting the outcome of the analysis within 14 days thereof to the Designated Officer. Sub-section (3) speaks about the duties and responsibilities of the Designated Officer with regard to taking action on the report given by the Food Analyst and whether to launch prosecution or not and if prosecution is contemplated to be launched, the Designated Officer is bound to make his recommendations to the Commissioner of Food Safety for sanctioning prosecution within 14 days therefrom. On and from the same, there comes into play the operation of the period of limitation of one year and extended period of three years.

13. In the present case, the sample was drawn on 13.8.14 and the report of the Food Analyst was given on 22.8.14, which is within the prescribed period of 14 days. Thereafter, the said report was communicated to the petitioner, vide communication dated 15.9.14, informing the petitioners about their right to have the food sample tested in the Referral Laboratory, Kolkata. Pursuant thereto, on the filing of the statutory appeal, the sample was forwarded for testing to the Referral Laboratory at Kolkata. The typed set of papers contain the report of the Referral Laboratory, Kolkata, dated 22.9.15, confirming the view expressed by the Food Analyst. <https://www.mhc.tn.gov.in/judis/> On 20.2.15, notice has been issued by the Designated Officer to the petitioners informing about the inclination of the 1st respondent to proceed against the petitioner under the relevant provisions of law for contravention of the Food Safety & Standards Act, the Rules and Regulations thereto.

14. In this regard, it is to be pointed out that once the Designated Officer contemplates prosecuting the petitioner, as per sub-section 3) of Section 42 of the Act, it is the duty of the Designated Officer to recommend to the Commissioner of Food Safety for sanction of prosecution. As already stated above, as per sub-section (3) of Section 42 of the Act, the Designated Officer is to submit his recommendations to the Commissioner of Food Safety for sanction of prosecution within 14 days from the date of receipt of the report of the Food Analyst. Though the said provision was not complied with, it is stand of the respondent that the petitioner had availed the opportunity of statutory appeal provided u/s 46 (4) of the Food Safety and Standards Act, which led to the sending of the sample to the Referral Laboratory, Kolkata and receipt of the report on 2.2.2015 and, thereafter, notice was issued by the Designated Officer to the petitioner on 20.2.15. <https://www.mhc.tn.gov.in/judis/>

15. It is evident from the materials available on record that though notice was issued to the petitioner on 20.2.15 calling upon him to explain as to why prosecution should not be initiated against him, neither the typed set of papers filed by the petitioner reveals about the reply given by

her nor there is any material in the counter of the respondent about the date on which the petitioner submitted his reply to the said notice. However, it is the stand of the respondent that vide order dated 2.1.17, the Commissioner of Food Safety had granted sanction for prosecution and according to the respondent the complaint was filed on 12.1.17, which is well within time.

16. Though the abovesaid facts have been placed in the counter by the respondent, between 20.2.15, the date of notice to the petitioner by the Designated Officer and the 2.1.17, the date of sanction for prosecution accorded by the Commissioner of Food Safety, no material is placed before this Court to show as to when the Designated Officer had passed orders on the explanation filed by the petitioner and when the Designated Officer had addressed the Commissioner of Food Safety for sanction of prosecution. The date on which sanction for prosecution was accorded alone is shown. <https://www.mhc.tn.gov.in/judis/>

17. Be that as it may. Even according to the respondent, the date of sanction for prosecution was accorded vide proceeding dated 2.1.17. The date of occurrence is 13.8.14 and complaint ought to be filed within the 12.8.17. According to the respondent, the complaint was filed on 12.1.17, which is evident from the counter. However, a perusal of the complaint filed before the court below shows that the complaint has been received by the court on 1.11.17. Though it is the stand of the respondent that the complaint was filed on 12.1.17, however, there is no material available on record to confirm the said stand that the complaint was filed on 12.1.17. The complaint, as per the seal of the court below, shows that the same was received on 1.11.17. That being the factual position, any complaint filed beyond 12.8.17, the same is barred by limitation and the present complaint having been filed on 1.11.17 is barred by limitation as it has been filed beyond the prescribed period of three years as mandated u/s 77 of the Food Safety and Standards Act. Therefore, this Court is of the considered opinion that the complaint has been filed well beyond the period of limitation and, therefore, this Court has no hesitation to quash the case.

18. For the reasons aforesaid, the proceedings in S.T.C.No.584 of <https://www.mhc.tn.gov.in/judis/> 2017 on the file of learned Judicial Magistrate No.II, Tiruppur is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

19. It is to be pointed out that time and again it has come to the notice of this Court that the Food Safety Authorities, without even the scant regard for the provisions of the Act and Rules, defer informing the concerned accused of their right to seek a second opinion and also for reasons best known, file complaint much beyond the prescribed statutory period as envisaged under the Act and the Rules. In the present case as well, the petitioner was not informed for seeking second opinion within the shelf life of the product, but only after much delay and further the complaint has been filed beyond the statutorily prescribed period. This act on the part of the Food Safety Officers, who have been employed, is only for the purpose of protecting the health and well being of the common man, by having an eye on the products that are being sold in the market and to see to it that the standard and quality of the products are maintained. But the officers, without realising and understanding the nuances of the provision or with a view to defeat the very provision, resort to means or do acts, which are <https://www.mhc.tn.gov.in/judis/> against the provisions, thereby, allowing the perpetrators of the crime to go scot-free. This is not an isolated case in which such an

infringement of the provision has come to the notice of this Court. This Court has come across umpteen number of cases of this nature in which the Food Safety Officers have relegated the provisions of the Act and the Rules to the back seat and acted in total derogation of the provisions, thereby, rendering the provisions to go in vain. Such practice perpetrated by the Food Safety Officers, for reasons best known, should be put in check by formulating some mechanism so that the erring persons, who provide unsafe and sub-standard products should be proceeded with diligently and not allowed to resort to get themselves extricated on the basis of technicalities, as pointed out above.

20. In the aforesaid scenario, this Court deems it fit and proper to implead the Commissioner , Food and Safety Corporation, as party/2nd respondent in this petition. Registry is directed to serve a copy of this order to the newly impleaded 2nd respondent, who shall file a status report as to the cases filed by the Food Safety Officers throughout the State and also provide a statement in which cases intimation was given belatedly to the <https://www.mhc.tn.gov.in/judis/> accused to seek for second opinion after the shelf life of the product or file complaint beyond the statutory period of three years. The said status report shall be filed by the 2nd respondent by the next date of hearing.

21. Registry is directed to send a copy of this order to the Commissioner, Food and Safety Corporation, Chennai, who shall file a status report, as aforesaid, before 5.8.2021.

22. Post the matter on 5.8.2021 for filing status report by the newly impleaded 2nd respondent.

Index : Yes / No  
Internet : Yes / No  
msrm/GLN  
Note to Office :  
Issue order copy  
on 22.07.2021

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

To

1. The Judicial Magistrate No.II  
Tiruppur.

2. The Food Safety Officer,  
Tirupur South,  
Tirupur.
3. The Public Prosecutor,  
High Court, Madras.
4. The Commissioner  
Food & Safety Corporation  
Chennai.

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

M.DHANDAPANI, J.

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