

(2008) 12 MAD CK 0309**Madras High Court****Case No:** Criminal O.P. No. 21011 of 2005 and Criminal M.P. No. 6127 of 2005

G. Sivakumar, R. Subramanian
and Subhiksha Super Market and
Pharmacy, owned by Subhiksha
Trading Services Pvt. Ltd., No.
146, RK. Mutt Road, Mandaveli
Chennai-600028

APPELLANT

Vs

Food Inspector, City Municipal
Corporation of Coimbatore

RESPONDENT**Date of Decision:** Dec. 19, 2008**Citation:** (2009) 1 LW(Cri) 344**Hon'ble Judges:** M. Sathyanarayanan, J**Bench:** Single Bench**Advocate:** Prakash Goklany, for the Appellant; J. Paul Noble Devakumar, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

M. Sathyanarayanan, J.

The Petitioners are accused 1, 2 and 4 and they seek to quash the prosecution launched against them by the Respondent herein u/s 7(i) and Section 16(1) (a) (i) r/w Section 2(la) (m) of the PFA Act 1954 in C.C. No. 597 of 2004, pending on the file of the court of Judicial Magistrate No. II, Coimbatore.

2. Heard Mr. Prakash Goklany, learned Counsel appearing for the Petitioners and Mr. J. Paul Noble Devakumar, learned Government Advocate (Crl.side).
3. The Food Inspector, made surprise inspection of the Supermarket and Pharmacy belonging to the third Petitioner and suspecting adulteration in the Topica Rice bag No. I056-net weight each 500 grams, seized it by following the procedural

formalities and sent food sample for laboratory examination.

4. The Public Analyst of the Coimbatore, City Municipal Corporation vide report dated 12.9.2001 gave an opinion that the sample is adulterated since, the sago contains optical whitener, an extraneous matter, the addition of which, is not permitted under Prevention of Food Adulteration Rules 1955 (amended as on date).

5. Thereafter, the prosecution was launched in C.C. No. 597/04 by the Respondent.

6. It is contended by the learned Counsel appearing for the Petitioner that the Respondent herein has failed to comply with the mandatory provisions of Rule 9-B of Prevention of Food Adulteration Rules which requires the local health authority to forward a copy of the analyst report within a period of ten days of the notice of the prosecution. In respect of the case on hand, the prosecution was launched on 8.3.2004 and form III is dated 21.9.2004 and the same is beyond six months after the institution of prosecution. On account of the said lapse, the Petitioners herein had lost their opportunity to have the samples tested and analyzed by the Central Food Laboratory.

7. It is further contended by the learned Counsel appearing for the Petitioners that the prosecution itself came to be launched after a period of nearly three years and therefore the entire proceedings are vitiated and hence, the complaint is liable to be quashed.

8. A perusal of the complaint and the provisions of Food Adulteration Act and the Rules framed would reveal that there are specific period prescribed for each stage. The reason behind is that the sample must be analyzed either by the Public Analyst sent by the local health authority or by the Central Food Laboratory at the instance of the accused should be done in a quickest possible time. The said right is valuable one and where there is a denial of the right on account of the deliberate conduct of the prosecution that is delay in launching the prosecution, as a result of which, there is possibility of the sample became highly decomposed and could not be analyzed. In such event, the concerned accused will be seriously prejudiced.

9. Admittedly, in this case, the delay between the launching of prosecution and forwarding of form III was beyond six months and is hit by Rule 9-B of the Prevention of Food Adulteration Rules. That apart, the report of the Public Analyst is dated 12.9.2001 and the prosecution came to be launched on 7.9.2004 when the complaint was preferred and it was taken on file on 16.9.2004. On 21.9.2004 the Petitioners/accused received notice and if they calculate the said period, the prosecution has been launched after a period of nearly 3 years.

10. In view of such a long delay in launching prosecution in the present case, the Petitioners/accused are put to serious prejudice as they lost their right of having the sample analyzed.

11. Under those circumstances, allowing the continuance of prosecution in C.C. No. 597 of 2004 would be tantamount to abuse of process of law and as such, the above proceedings are liable to be quashed.

12. In the result, the Criminal Original Petition is allowed and the proceedings in C.C. No. 597 of 2004 pending on the file of the Court of Judicial Magistrate No. II, Coimbatore are quashed. Consequently, connected Crl.M.P. No. 6127 of 2005 is closed.