**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - I Mavelikara**
**Present : Japhinraj, J.B., Judicial First Class Magistrate, Mavelikara**
Dated this the 17th day of February 2026

## CMP 718/2025 IN CC 360/2019

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| Complainant | : | Food Safety Officer, Mavelikara.<br>(A.P.P., Mavelikara ) |
| Accused | : | K.Sudhakaran,<br>Anithalayam,<br>Nangiarkulangara P.O.,<br>(General Merchant and Commission Agent,<br>Puthiyakavu , Mavelikara)<br>(Adv. E Stephen) |
| Offence | : | Section 59(1) r/w 3(1)(zz)(v) and (vii) of the Food Safety and Standards Act, 2006 |
| Order | : | Dismissed |

**O R D E R**

This is a petition filed by the accused in CC No. 360/2019 to discharge him for the offence alleged against him.

2. Petition averments in brief is as follows: The petitioner is the accused in the above numbered case, where cognizance has been taken against him for the offences under Section 59(1) r/w 3(1)(zz)(v) and (vii) of the Food Safety and Standards Act, 2006, on the basis of a complaint filed by the respondent. The prosecution against the petitioner is groundless, as the complaint and documents are insufficient to substantiate any offence. The petition is ill-motivated, based on false and manipulated grounds, and filed to target the petitioner, who has been a reputable merchant and commission agent for over 45 years without prior allegations. The Food Safety Officer inspected the

petitioner's godown and collected 2 kg of ball jaggery from a sealed 50 kg packet for analysis, issuing Form VA notice to both the petitioner and T.R. Traders, the supplier under Invoice No. 382 dated 29.10.2018. The petitioner raises following grounds for a discharge:

1. The sample was taken from a sealed 50 kg bag of ball jaggery purchased from T.R. Traders (Invoice No. 382 dated 29.10.2018). Form VA notice and analyst's report were also issued to them, showing that liability, if any, lies with the manufacturer/distributor under Section 27(1), not the petitioner.
2. The petitioner only stored sealed packets received from the supplier; after sampling on 26.11.2018, the goods remained unsold and were returned intact to the supplier on 12.01.2019.
3. The petitioner promptly intimated the designated officer that he had not sold or stored the sampled article for sale. Hence, no offence under Sections 59(1) r/w 3(1)(zz)(v) & (vii) is made out against him.
4. The analyst's reasoning is unsustainable, as the alleged additives are not classified as unsafe under the Regulations. The report does not establish that the food was "unsafe" within the meaning of the Act.
5. Complaint documents are inconsistent and manipulated (e.g., contradictory report dates, false statements of storage for sale), evidencing mala fides.
6. Mandatory timelines under Sections 42(2)(3), 46(3) and Rules 2.4.2/2.4.3 were violated; sanction for prosecution was sought nearly three months late, causing serious prejudice.

3. **The respondent filed an objection contending as follows**: The respondent has detailed the procedure adopted by the Food safety officer and the objection to the grounds raised by the petitioner. They are as follows:

1. At the time of inspection, ball jaggery was stored in the storeroom in an unlabelled 50 kg polythene bag. Two kilograms of this jaggery were sold to the Food Safety Officer, who issued Invoice No. 1 dated 26.11.2018. Since the bag carried no label, the manufacturer or marketer of the product could not be identified, and therefore there is no evidence to include the manufacturer as a respondent. As per Section 26(1) and 26(2)(i) of the Food Safety and Standards Act, 2006, *"no food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food which is unsafe, and such act is punishable.".*
2. The Food Safety Officer collected 2 kg of ball jaggery from an opened 50 kg plastic bag that had no label, rather than from sealed bags. This clearly shows that the petitioner sold the food article from the unlabelled 50 kg opened bag on 26.11.2018 to the Food Safety Officer.
3. The respondent sold 2 kg of ball jaggery to the Food Safety Officer on 26.11.2018 and received a payment of Rs. 90/- (Rupees Ninety only) through a signed Invoice No. 1 dated 26.11.2018. As per Section 26(1) and 26(2)(i) of the Food Safety and Standards Act, 2006, *"no food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food which is unsafe, and such act is punishable."* Therefore, there is no ground to exclude the Food Business Operator from liability for the offence.
4. Section 3(1)(zz)(v) and (vii) of the Food Safety and Standards Act defines *unsafe food* as an article of food whose nature, substance, or

quality is so affected as to render it injurious to health, either by the addition of a substance not permitted, or by the presence of colouring matter or preservatives other than those specified. As per Regulation 2.8.4.1 of the Food Safety Standards (Food Products Standards and Food Additives) Regulations, 2011, and Table 11.16, Appendix A of the food category system for jaggery, the product must be free from substances unsafe to health, and food additives such as added colour are not permitted.

5. The sample was sent to the laboratory on 26.11.2018, analysed on 30.11.2018, and completed on 12.12.2018. It is clear that the food analyst examined the sample within 14 days of receipt and submitted the report to the designated officer within the prescribed time. The designated officer forwarded a copy of the analysis report (No. 195/2018-19 dated 17.12.2018) to the original respondents on 31.12.2018, also within the statutory period. Under Section 46(4) of the Act, an appeal against the analyst's report lies before the designated officer, who may refer the matter to the referral food laboratory. The respondents did not prefer such an appeal, and therefore the second part of the sample was not sent to the referral laboratory for analysis.
6. After scrutinizing the food analyst's report and other relevant documents, the designated officer requested sanction to prosecute the offenders as required under Section 42(3) of the Food Safety and Standards Act, 2006. The prosecution was launched on 25.05.2019, well within the statutory period of one year from the date of commission of the offence, as prescribed under Section 77 of the Act.

4. Heard Both Sides.

5. **The following points arise for consideration:** -

1. Is the petitioner entitled to discharge for the offence alleged against him?
2. What shall be the Order?

6. **Point No.1:** This petition has been filed by the accused under Section 245(2) of the Code of Criminal Procedure, seeking discharge. The offences alleged are triable as a summons case under Chapter XX of the Code. Unlike in warrant trials, there is no specific provision for discharging an accused in a case tried under Chapter XX of the Code of Criminal Procedure. In **Dr. Kamala Rajaram v. DySP** reported in **2005 KHC 951**, the hon'ble High Court of Kerala held that *it is not necessary or possible for this court in every case to consider all the allegations raised against the indictees and the materials collected against them to decide whether they deserve to stand trial. That question must initially be considered by the trial Magistrate who has the requisite materials before him before a charge is framed/discharged under S.239/240 Cr.P.C or while considering whether there is any sufficient material to read over the particulars of the offence to the indictee at the stage of S.251 Cr.P.C. If accusations and materials are not sufficient to attract culpability the indictee should not be compelled to unnecessarily stand the trauma of trial. In these circumstances, I am satisfied that this petition can be disposed of with specific directions to the learned Magistrate to consider the contention of the petitioner that there is no sufficient allegations or materials raised against her to justify her being compelled to face further proceedings*.

7. From the decision it is evident that an accused must not be compelled to stand trial for an offence when there is no prima facie material to read over

*particulars of offence to the accused*. In **Joseph P. V. v. State of Kerala and Another** reported in **2010 (4) KHC 697** the hon'ble High Court of Kerala held that

i) On appearance of the accused under S.251 of the Code, the Court shall state the particulars of the offence to the accused (and the records must clearly indicate what were such particulars read out to accused, though a formal charge need not be framed).

ii) The accused shall then, be asked whether he pleads guilty or has any defence to make. (Even if the Court does not ask the accused, whether he has any defence to make, the accused will be at liberty to make his defence at this stage).

8. These decisions make it clear that even in a case tried under Chapter XX of CrPC, the accused has an opportunity to state his defence before the particulars of the offence are read over. In the present case, though the petition is filed under Section 245(2) CrPC, the Court must ascertain whether the grounds stated constitute a valid defence that can be considered under Section 251 of the Code.

9. The petitioner has raised several grounds to claim discharge. Most of these are disputed questions of fact which require appreciation of evidence. The petitioner claims that he has not sold or kept for sale the seized food items. On the other hand, the respondent contends that the sample was taken from an opened, unlabelled 50 kg bag, indicating that the item was kept for sale. Further, the respondent has produced an invoice dated 26.11.2018 showing sale of 2 kg of jaggery by the petitioner to the Food Safety Officer. Thus, the question whether the petitioner kept the food for sale is a disputed

question of fact which cannot be determined at this stage. The petitioner also contends that the additives found are not classified as unsafe. The respondent relies on Regulation 2.8.4.1 and Appendix A, which mandate that jaggery must be free from unsafe substances and added colour. Therefore, whether the additives contained in the sample are unsafe is a matter to be determined by way of evidence.

10. Another contention raised by the petitioner is that a seller is liable under Section 27(3)(e) of the Act only for any article of food received by him with knowledge of it being unsafe, and the complaint does not indicate such knowledge on the part of the accused. The existence of such knowledge is itself a question of fact. Apart from that, Section 26(2) of the Act also casts liability on the Food Business Operator. The provision reads as follows: "*No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food which is unsafe*." The petitioner comes within the definition of a Food Business Operator, and therefore, even if his case does not fall under Section 27(3)(e), he will still be liable under Section 26(2) on the ground relied upon by him.

11. The petitioner also challenges his prosecution on the ground that the manufacturer has not been prosecuted. The complainant explains that since the bag from which the sample was taken carried no label, the manufacturer or marketer of the product could not be identified, and therefore there was no evidence to include the manufacturer as a respondent. Whatever be the reason for not prosecuting the manufacturer, the petitioner cannot use that omission as a shield to defend himself. The Food Safety and Standards Act creates a comprehensive framework of liability that extends to every participant in the food supply chain. Section 27 imposes liability on manufacturers, packers, and

distributors in specified circumstances, while Section 26(2) imposes a direct prohibition on Food Business Operators against manufacturing, storing, selling, or distributing unsafe food. The scheme of the Act makes it clear that liability is independent and concurrent. The culpability of one actor does not negate or extinguish the responsibility of another. Thus, even if the manufacturer is also liable, the seller or Food Business Operator cannot escape liability for his own acts of sale or storage of unsafe food. The omission to prosecute the manufacturer may be due to evidentiary limitations, but that does not absolve the petitioner of his liability. In other words, the Act does not permit an accused to argue that because another potentially liable party has not been prosecuted, he himself should be discharged. Each person in the chain of distribution is individually accountable, and the prosecution of one does not depend upon the prosecution of another. Therefore, the petitioner's contention on this ground is unsustainable.

12. The final and material contention of the petitioner concerns violations of Sections 42(2), 42(3), and 46(3) of the Act. Let us first consider Section 46(3) and 42(2). The Form B report is dated 17.12.2018. According to the report, the sample was collected on 27.11.2018, analysed on 30.11.2018, and the analysis was completed on 12.12.2018. The report was thereafter prepared on 17.12.2018. The contention that the documents bear forged dates cannot be entertained at this stage merely because Document No. 14 refers to the Form B report as dated 7.12.2018 instead of 17.12.2018. Considering that the analysis was completed only on 12.12.2018, and that the other documents and wording in the Form B report are consistent, it must prima facie be treated as dated 17.12.2018.

13. **Section 46(3)** of the Act provides: *"The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send— (i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and (ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with a copy to the Designated Officer: Provided that in case the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis."*

14. The documents produced by the complainant show that Section 46(3) was not complied with, as the report was not issued within fourteen days. Nevertheless, whether the proviso applies is a matter of evidence. This is evident from the decision of hon'ble Madras High Court in **B.Selvakumar v Food Safety Officer** (Crl.O.P.No.3406 of 2022). The relevant portion of the decision is as follows: "*As per Section 46(3)(2) of the Act, if a Food Analysis is delayed beyond 14 days, a reason must be provided by the Food Analyst. Valid communication regarding the delay can only be proved or disproved during the trial*."

15. Now let us consider **Section 42(3)**. The provision states: *"The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the 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."* The objection filed by the complainant

does not address this material issue, nor has any provision been pointed out by which the Designated Officer could seek extension of the statutory time limit under Section 42(3). The statute also does not appear to provide any consequence for the delay.

16. The question whether non-compliance with Section 42(3) of the FSS Act would be fatal to the prosecution has been decided by the Hon'ble High Court of Kerala in **Sreehari R. v. State of Kerala** (2025 KHC 522), wherein it was held: "*As per Rule 2.4.6, the Food Business Operator can file an appeal within 30 days of receipt of a copy of the Analysis Report. Once such appeal is filed, Rule 2.4.6(1) provides thirty days' time to the Designated Officer for forwarding one part of the sample to the referral lab. Rule 2.4.6(3) stipulates that the Certificate of Analysis, duly signed by the Director of the Referral Laboratory, shall be forwarded within fourteen days of receipt of the sample. Therefore, if the Food Business Operator files an appeal under Section 46(4), the Designated Officer will have to await the outcome of the second analysis before deciding whether a recommendation should be sent to sanction prosecution of the Food Business Operator. In view of the procedure prescribed by the Rules, it would be irrational to hold the time limit for making the recommendation under Section 42(3) to be mandatory. As held by this Court in Subramanian (supra), while determining whether a provision is directory or mandatory, not only the language, but also the context, subject matter, and object of the provision should be taken into account. In the present case, the absence of consequence for non-compliance, as well as the provision for filing appeal and the procedure to be followed upon filing appeal, clearly indicate that the provision is only directory, although the expression used is 'shall*'." Thus, mere non-compliance with Section 42(3) of the Act is not a ground to discharge the petitioner.

17. From the above discussion, it can be concluded that the grounds raised by the petitioner are either dependent on evidence or are not sufficient to hold that the charge against him is groundless.

This point is found against the petitioner.

18. **Point No.2:** In the result, the petition is dismissed.

(Pronounced by me, in open court, on this the 17th day of February, 2026)

Judicial First Class Magistrate-I
Mavelikara