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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024 / 13TH BHADRA, 1946

CRL.MC NO. 8950 OF 2016

AGAINST THE ORDER/JUDGMENT DATED IN ST NO.303  
OF 2016 OF CHIEF JUDICIAL MAGISTRATE ,THALASSERY

PETITIONER/ACCUSED:

PEPSICO INDIA HOLDINGS PVT. LTD  
3B, DLF CORPORATE PARTK, S-BLOCK, QUTAB  
ENCLAVE, PHASE -III, GURGAON, 122002  
-HARYANA, HAVING ITS MANUFACTURING, UNIT AT  
PLOT NO. D-7, PAITHAN MIDC, TALUKA PAITHAN,  
AURANGABAD.

BY ADVS.

SRI.RAJESH BATRA  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.SANDEEP GOPALAKRISHNAN

RESPONDENTS/COMPLAINANTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH  
COURT OF KERALA, JUDICATURE OF KERALA, AT  
ERNAKULAM - 682 031.
- 2 SHRI.ANOOP KUMAR M.T  
FOOD SAFETY OFFICER, DHARMADAM CIRCLE,



2024:KER:67629

THALASSERY TALUK, KANNUR - 670 106.

BY ADVS.  
ADVOCATE GENERAL OFFICE, KERALA  
SRI.GRASHIOUS KURIAKOSE, ADGP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 04.09.2024, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:



“CR”

**P.V.KUNHIKRISHNAN, J.**

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**CrI.M.C. No.8950 of 2016**  
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**Dated this the 04<sup>th</sup> day of September, 2024**

**O R D E R**

Petitioner is the 4<sup>th</sup> accused in S.T. No.303/2016 on the file of the Chief Judicial Magistrate Court, Thalassery. The above case is filed by the 2<sup>nd</sup> respondent alleging offences punishable under Sections 3(1) (zz) (v) and 3(1) (zf) (B) (ii) & C(i), 26, 26(2) (i) & (ii), 27(1) & (2)(c), 27(3) (c) of the Food Safety and Standards Act, 2006 (for short, the FSS Act) read with Regulation No.2.12 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (for short, the FSS



Regulations) and Regulation No.2.4.5.(38) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (for short, FSS (P&L) Regulations).

2. On 22.06.2015 at about 11.15 am, the 2<sup>nd</sup> respondent Food Safety Officer, Dharmadam Circle inspected the premises of M/s. Day Mart Hyper Market, running in door No: AP. 15/14 to 19, situated at Chakkarakal in Anjarakkandy Grama Panchayat. At the time of inspection, the 1<sup>st</sup> accused was conducting the trade of food articles. After observing all formalities under the FSS Act, Rules and Regulations made thereunder and after giving Form-VA notice duly acknowledged by the 1<sup>st</sup> accused and in the presence of the 1<sup>st</sup> accused and the witnesses called there, the complainant purchased for analysis 4 sealed bottles of "Mint & Lemon Flavoured Green Ice Tea" (350ml x 4 bottles) having identical label declarations. Rs. 80/- was paid as its cost, and a cash receipt was obtained.



It is also stated that the sample so purchased was sampled as per Rule 2.4.1 (15) of the Food Safety and Standards Rules, 2011 (for short, the FSS Rules). It is further stated that the signature of the designated officer was affixed lengthwise around each packet and obtained signature of the 1<sup>st</sup> accused on each Packet as per Rule 2.4.1 (9) (iv) of the FSS Rules. It is submitted that the 4 sample packets were further secured with thick twine and sealed in accordance with the Rules. One Part of the sample along with Form-VII memorandum in a sealed packet was sent to the Food Analyst, Regional Analytical Laboratory, Kozhikode on 23.06.2015 through Trackon Couriers. A copy of the Form-VI memorandum and specimen impression of the seal used to seal the sample in a sealed packet was also sent to the Food Analyst, Kozhikode through Trackon couriers on 23.06.2015. The remaining 3 parts of the sample



with 3 copies of Form-VI memorandum in a sealed packet along with intimation letter under Sections 47 (1)(c)(i) & (iii) of the FSS Act and specimen impression of the seal were handed over to the designated officer, Kannur on the same day, in the manner prescribed by Law is the submission. It is also submitted that the Food Analyst, Kozhikode delivered Form-B Report No.139 through designated officer, Kannur in which he opined that the said sample contains saccharin as sodium saccharine and is therefore unsafe as per the FSS Act and the FSS Regulations. Form-VA intimation notice sent to the 4<sup>th</sup> accused as per the label declarations on 22.6.2015 is the submission. The 1<sup>st</sup> accused produced tax invoice Bill No.F004646 dated 28.05.2015 on 10.09.2015. Form-V intimation notice was also sent to the 3<sup>rd</sup> accused as per the bill address on 10.09.2015. Letters were sent to accused Nos.3 and 4 requesting their



FSS License details for conducting the trade of food articles, but no response was received is the submission. On enquiry, it is found that the FSS License was issued to the 2<sup>nd</sup> accused firm as per online verification. It is further submitted that, based on the appeal filed under Section 46(4) of the FSS Act, the sample was sent to the referral Laboratory and the Director of the Referral Food Laboratory, Kolkata in his Form-A report opined that the said sample is unsafe and misbranded under Sections 3(1) (zz) (v) and 3(1)(zf) (B) (ii) & (C) (i) respectively of the FSS Act. Thereafter the commissioner of Food Safety, Thiruvananthapuram issued a sanction order, after considering all the documents forwarded by the designated Officer, Kannur, to launch prosecution against Accused Nos.1 to 4 before the Courts is the submission. According to the Food Safety Officer, the 1<sup>st</sup> accused sold unsafe and misbranded Mint & Lemon



Flavoured Green Ice Tea to the complainant for the 2<sup>nd</sup> accused, who is the FSS Licensee of the shop Day Mart Hyper Market, Chakkarakal. The 3<sup>rd</sup> accused is the distributor of the said sample and distributed to the 2<sup>nd</sup> accused shop. The 4<sup>th</sup> accused is the manufacturer and marketer of unsafe and misbranded Mint & Lemon Flavoured Green Ice Tea is the submission. Hence it is alleged that the accused committed the offence.

3. According to the petitioner, even if the entire allegations in Annexure-A are accepted in toto, no offence is made out and therefore, the order taking cognizance against the petitioner is illegal. Hence this criminal miscellaneous case.

4. Heard Adv.Rajesh Batra, who appeared for the petitioner and also Adv.Grashious Kuriakose, the Additional Director General of Prosecution (ADGP).

5. Adv.Rajesh Batra raised a short point in this





case. According to the counsel, there are divergent findings by the Food Analyst and the Referral Food Laboratory and therefore the prosecution is unsustainable. The ADGP submitted that the contention raised by the petitioner is to be raised before the trial court at the appropriate stage and this Court may not interfere with the prosecution at this stage.

6. This Court considered the contentions of the petitioner and the ADGP. Annexure-C is the report of the Food Analyst. It will be better to extract the conclusion note in Annexure-C report of the Food Analyst:

"Note: 1. The test report relates to the received sample only and not for the whole batch No. item No.

opinion \*\*\*. The said sample contains Saccharin as Sodium Saccharin to the extent of not less than 262.8 mg/kg and is therefore unsafe as per Section 3(1) (zz) (v) of Food



Safety and Standards Act 2006 read with Regulations 3.1.3 (1) of Food Safety and Standards Food products standards & Food Additives) Regulations 2004.”

7. Annexure-D is the certificate of analysis by the Referral Food Laboratory, Kolkata. The opinion of the Referral Food Laboratory is extracted hereunder:

“Opinion : The sample was tested as per standard Food Safety norms falling under regulation no. 2.12 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and found non-conforming as per the parameters tested above as it contains 'Caffeine' in it which is not declared on the label and thus, violating regulation no. 2.4.5(38) of FSS (Packaging & Labelling) Regulations, 2011. Hence, the sample is unsafe and misbranded under section 3(1)(zz)(v) and 3(1)(2f)(B(ii)&c(i) respectively of FSS Act, 2006.”

8. As per Annexure-C report of the Food



Analyst, the sample contains Saccharin as Sodium Saccharin to the extent of not less than 262.8 mg/kg and is therefore unsafe as per Section 3(1) (zz) (v) of the FSS Act read with Regulation 3.1.3 (1) of Food Safety and Standards Food products standards & Food Additives) Regulations 2004. As per Annexure-D certificate of analysis by the Referral Food Laboratory, the sample tested contains 'Caffeine' in it which is not declared on the label and thus, violating Regulation No. 2.4.5(38) of FSS (P&L) Regulations and hence, the sample is unsafe and misbranded under section 3(1)(zz)(v) and 3(1)(2f)(B(ii) & c(i) respectively of the FSS Act. Therefore, these two reports are admittedly divergent. As per the former report, i.e., the report of the Food Analyst, the sample contains Saccharin as Sodium Saccharin to the extent of not less than 262.8 mg/kg and as per the latter report, the sample contains Caffeine. The question to be



decided is that, if the sample was sent to the Referral Food Laboratory at the instance of the accused and the opinions of the Food Analyst and the Referral Food Laboratory are divergent, whether the prosecution can be initiated against the accused? The Bombay High Court in **Tata Chemicals Limited and Others v. State of Maharashtra** [2024 SCC Online Bom 1342], considered a similar question. The relevant portion is extracted hereunder:

"14. The Appellants had filed Appeal against the report of DHL describing the sample as misbranded. The Director, RFL found that the sample was not misbranded, in the sense, it has found the sample as substandard. The Appeal filed by the Appellants was, in a way, thus allowed, but in the Appeal so filed, more serious consequences followed against the Appellants because they were blamed to have manufactured substandard food product. Thus, despite having found the analysis of DHL incorrect, the Appellants were made to suffer serious consequences that would attract



aggravated punishment. This cannot be the scope of the Appeal.

15. It is well settled that in an appeal filed against a finding/report of authority below, the appellate authority shall either allow the appeal or dismiss it. In a given case, the finding may be modified in favour of the Appellants but not against the Appellants. In the present case, the appellate authority has neither upheld the finding of DHL nor set it aside but has replaced the finding. The net result is that the sample which was found misbranded is now found substandard.

16. In the circumstances, one would expect the Director, RFL to assign reasons as to how the DHL has incorrectly arrived at a conclusion of misbranded product when the sample was substandard. In absence of such reasons, the report of DHL loses significance, so also the purpose of filing appeal against such report. One cannot lose sight of the fact that RFL's report is final. Thus, appellate Laboratory's report is treated as final. The finality will have to be considered in the light of challenge made by the Appellants. In that sense, the finality would be attracted, if the Director, RFL upholds the report of DHL or sets



it aside.

17. If the Director, RFL has to give different finding/opinion than what has been recorded by the DHL, the finding/opinion being rendered afresh, the Appellant must get opportunity to challenge such report. The Act of 2006 or the Rules of 2011 do not provide for mechanism in such contingency where the RFL arrives at a different opinion than that of DHL. In the circumstances, the least that could be expected from the Director, RFL is to assign reasons as to what went wrong before the DHL. The Director, RFL has not assigned any reason as to how the sample of TATA Salt was found as substandard when the Food Analyst, DHL found it to be misbranded. The report of RFL, sans reasons against DHL's report is nothing but a fresh report, without remedy of appeal against such report. Such a report cannot be accepted."

9. Section 46 of the FSS Act deals about the functions of Food Analyst. It will be better to extract Section 46 of the FSS Act:

"46. Functions of Food Analyst.-



(1) On receipt of a package containing a sample for analysis from a Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the conditions of the seal thereon:

Provided that in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send requisition to him for sending second part of the sample.

(2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.

(3) 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 can not 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.

(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion.”

10. From the above it is clear that an appeal against the report of the Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion. It will be better to extract Rule 2.4.6 of the FSS Rules:

**“2.4.6: Appeal to the Designated Officer**

1. When an appeal as provided under subsection (4) of Section 46 is preferred to the Designated Officer by the Food Business Operator





against the report of the Food Analyst, the Designated Officer, shall if he so decides, within thirty days from the receipt of such appeal after considering the material placed before him and after giving an opportunity to Food Business Operator to be heard shall forward one part of the sample to the referral lab. Such appeal shall be in Form VIII which shall be filed within 30 days from the date of the receipt of the copy of the analysis report from the Designated Officer. Report of the referral laboratory shall be final in this regard.

2. The Designated Officer shall forward one part of the sample under appropriate condition as specified for the product including transport, to retain the integrity of the sample. The cost of analysis of the sample shall be borne by the Food Business Operator. The remaining samples will also be safely kept under appropriate conditions to prevent deterioration."

11. As per Rule 2.4.6, the appeal shall be in Form VIII of the FSS Rules. Form VIII of the FSS Rules is extracted hereunder:

**"FORM VIII**

[Refer Rule 2.4.6(1)]

**FORM OF APPEAL BEFORE THE DESIGNATED OFFICER**



**APPEAL BEFORE THE DESIGNATED OFFICER  
(PLACE)**

In the matter of appeal under Section 46(4) of  
the Food Safety and Standards Act, 2006 (34 of 2006)

AND

In the matter of appeal against the report dated  
..... from the Food Analyst

1. No. and date of the report of the Food Analyst against which the appeal is being preferred.
2. Brief details of the facts and the grounds on which the report is being challenged.
3. Relief being claimed.

Signature of Appellant”

12. From the above provisions, it is clear that the appeal is filed against the report of the Food Analyst and Form VIII of the FSS Rules also shows that the appeal is against the report from the Food Analyst. If the report of the Referral Laboratory is divergent from the report of the Food Analyst, there is no right of further appeal to the accused. Chapter 3 of the FSS Rules deals about the adjudication and appeal



to Tribunal. Rule 3.1 deals about the adjudication proceedings. Rule 3.1.1 deals about the holding of inquiry. It will be better to extract Rule 3.1.1 of the FSS Rules:

**“3.1.1: Holding of inquiry**

1. On receipt of the copy of the report of Food Analyst in Form VII-A from the Designated Officer, the person from whom the sample was taken or the persons, whose names and addresses and other particulars have been disclosed under Rule 2.5 of these rules or wholesaler or manufacturer has preferred an appeal against the findings of the report of the Food Analyst before the Designated Officer in terms of sub-section (4) of Section 46 of the Act and the same has been dismissed, or the referral laboratory has, pursuant to the reference made by the Designated Officer in terms of sub-section (4) of Section 46 of the Act **confirmed** the findings of the Food Analyst in his report, or if no appeal has been preferred, the Designated Officer shall examine the case on the basis of the sections under which the person has been charged as to whether the contravention is punishable with imprisonment or the same is punishable with fine only under the Act. However, if no contravention is established and the



sample conforms to the requirement of FSS regulations, the same will be communicated to the Food Business Operator immediately.

2. If the Designated Officer decides that such contravention is not punishable with imprisonment but only with fine under the provisions of the Act, he shall cause and authorize the Food Safety Officer to file with the Adjudicating Officer an application for adjudication of the offence alleged to have been committed by the person from whom the food sample has been taken or the person whose name and address and other particulars have been disclosed under Rule 2.5 of these rules and/or the seller or manufacturer of the food item in respect of which the report has been received.

3. On receipt of the communication from the Designated Officer authorizing the filing of the adjudication application, the Food Safety Officer shall file the application for adjudication with the Adjudicating Officer for adjudication of the offence/contravention alleged to have been committed.

4. On receipt of the application for adjudication from the Food Safety Officer, the Adjudicating Officer shall commence the inquiry proceedings.

5. The Adjudicating Officer shall have power to hold an inquiry for purpose of adjudicating offences



punishable under Sections 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the Act.

6. For holding an inquiry for the purpose of adjudication under Section 68 of the Act as to whether any person(s) has/have committed contravention of any of the provisions of the Act referred to in Rule 3.1.1.(5) herein or the rules or regulations in respect of which the offence is alleged to have been committed, the Adjudicating Officer shall, in the first instance, issue a notice to such person or persons giving him or them an opportunity to make a representation in the matter within such period as may be specified in the notice (not being less than 30 days from the date of service thereof).

7. Every notice under Rule 3.1.1.(6) to any such person shall indicate the nature of offence alleged to have been committed by him or them, the section(s) of the Act alleged to have been contravened, and the date of hearing of the matter. A copy of the report of the Food Analyst shall also be annexed to such notice.

8. On the date fixed for hearing, the Adjudicating Officer shall explain to the person or persons proceeded against or to his authorized representative, the offence alleged to have been committed by such person, indicating the provision of the Act, rules or regulations in respect of which



the contravention is alleged to have taken place.

9. The Adjudicating Officer shall then give an opportunity to such person or persons to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date:

Provided that the notice referred to in Rule 3.1.1. (6) may, at the request of the person concerned, be waived:

Provided further that the Adjudicating Officer shall pass the final order within 90 days from the date of first hearing mentioned in Rule 3.1.1(8) above:

10. The State Government may appoint a presenting officer from amongst the panel of advocates of the court of local jurisdiction, in an inquiry under this rule.

11. While holding an inquiry under this rule, the Adjudicating Officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Adjudicating Officer may be useful for or relevant to, the subject-matter of the inquiry.

12. If any person fails, neglects or refuses to appear as required by Rule 3.1.1 (6&7) before the Adjudicating Officer, the Adjudicating Officer may



proceed with the inquiry in the absence of such person, after recording the reasons for doing so.”  
(underline and emphasis supplied)

13. As per the above Rule, on receipt of the copy of the report of the Food Analyst in Form VIIA from the Designated Officer, the person from whom the sample was taken or the persons, whose names and addresses and other particulars have been disclosed under Rule 2.5 of these rules or wholesaler or manufacturer has preferred an appeal against the findings of the report of the Food Analyst before the Designated Officer in terms of sub-section (4) of section 46 of the FSS Act and the same has been dismissed, or the referral laboratory has, pursuant to the reference made by the Designated Officer in terms of sub-section (4) of section 46 of the FSS Act confirmed the findings of the Food Analyst in his report, or if no appeal has been preferred, the



Designated Officer shall examine the case on the basis of the sections under which the person has been charged as to whether the contravention is punishable with imprisonment or the same is punishable with fine only under the FSS Act. Therefore the Designated Officer shall examine the case on the basis of the section under which the person has been charged as to whether the contravention is punishable with imprisonment or the same is punishable with fine only under the FSS Act, only in the following situations:

- (i) If an appeal against the finding of the report of the Food Analyst before the Designated Officer in terms of sub-section (4) of section 46 of the act has been dismissed.
- (ii) The referral laboratory has, pursuant to the reference made by the Designated Officer in terms of sub-section (4) of section 46 of the Act **confirmed** the findings of the Food Analyst in his





report.

(iii) If no appeal has been preferred.

14. Rule 2.4 deals about Sampling and Analysis. Rule 2.4.3 deals about the action by Designated Officer on the report of Food Analyst. It will be better to extract Rule 2.4.3 of the FSS Rules also:

**“2.4.3: Action by Designated Officer on the report of Food Analyst.—**

If, after considering the report, the Designated Officer is of the opinion for reason(s) to be recorded in writing, that the report delivered by the Food Analyst under Rule 2.4.2 (5) is erroneous, he shall forward one of the parts of the sample kept by him to referral laboratory, for analysis and if the analysis report of such referral laboratory is to the effect that the article of food is unsafe or substandard or misbranded or containing extraneous matter, the provisions of Rule 3.1 shall, so far as may be, apply.”

15. From the above, it is clear that, if the Designated Officer on obtaining the report of the Food Analyst is of the opinion for reason to be recorded in



writing, that the report delivered by the Food Analyst under Rule 2.4.2 (5) is erroneous, he can forward one of the parts of the sample kept by him to referral laboratory, for analysis and if the analyst report of such referral laboratory is to the effect that the article of food is unsafe or substandard or mis-branded or containing extraneous matter, the provisions of Rule 3.1 shall, so far as may be, apply. Hence, if the Designated Officer is of the opinion that the report delivered by the Food Analyst is erroneous, he can forward one part of the sample to the referral laboratory and even if the report of the referral laboratory is divergent from the report of the Food Analyst, the provisions of Rule 3.1 is applicable. But on the other hand, if the report of the Food Analyst is challenged by way of appeal under Section 46 (4) of the FSS Act by the persons mentioned in Rule 3.1.1: (1) and the report of the referral laboratory



**confirmed** the report of the Food Analyst, then only the prosecution steps can be initiated. In other words, if the referral laboratory report is divergent from the report of the Food Analyst instead of confirming the report of the food analyst, no prosecution is possible. Such a rule may be framed for the reason that, there is no further appeal to the accused to challenge the report of the referral laboratory, if it is divergent from the report of the Food analyst. I am of the considered opinion that, there is a lacuna in the rules. It is true that in Rule 2.4.6:(1), it is stated that, '*the report of the referral laboratory shall be final in this regard*'. The word used is "final" and not "supersede". Now, it will be useful to consider Section 13(3) of the Prevention of Food Adulteration Act 1954. It says that, Certificate given by the Director of the Central Food Laboratory shall supersede the report given by



the Public analyst. Such a provision is not there in the FSS Act. The words "final" and "supersede" have different meanings. The word "final" emphasizes completion or conclusiveness while "supersede" implies replacement.

16. It is a fact that, in this case, the Referral Laboratory found that the sample is unsafe and misbranded. Even then, this court is now forced to quash the proceedings against the petitioner, because of the lacuna in FSS Act and Rules. It is the duty of the state and the union to see that, only unadulterated food items are available in the market. A person who sells adulterated food should face the consequences and such persons should not escape from the clutches of law on technical grounds. A foolproof Act and Rules are the need of the hour. Right to get unadulterated food is part of the fundamental right of every citizen. In **Centre for**

**Public Interest Litigation v. Union of India** [2013

(4) KHC 383], the Apex Court considered the right to get safe food. The relevant portion of the judgment is extracted hereunder:

“21. We may emphasize that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.”

The Apex Court recognised the right to get safe food as a part of the fundamental right guaranteed under Article 21 of the Constitution. The lacuna, as discussed above in the Act and the Rules renders the



right to safe food at the risk of infringement. The Central Government should think seriously about this lacuna in the Act and Rules. The registry will forward a copy of this order to the competent authority of the Central government for taking appropriate steps to make necessary amendments in the Act and Rules, if the legislature and Rule making authority thinks so.

17. In this case, admittedly an appeal is filed against the report of the Food Analyst in terms of sub-section (4) of section 46 of the FSS Act. It is also an admitted fact that the report of the referral laboratory is divergent from the report of the Food Analyst. If that be the case, in the light of Rule 3.1.1 of the FSS Rules, the prosecution against the petitioner is unsustainable, because the referral laboratory is not confirming the report of the Food Analyst, and instead of confirming, a divergent opinion is given by it.



18. Upshot of the above discussion is that the prosecution against the petitioner is to be quashed.

Hence this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner alone in S.T. No.303/2016 on the file of the Chief Judicial Magistrate Court, Thalassery are quashed. Registry will do the needful as directed in paragraph 16 of this order.

*Sd/-*

**P.V.KUNHIKRISHNAN  
JUDGE**

JV/DM



APPENDIX OF CRL.MC 8950/2016

PETITIONER ANNEXURES

- ANNEXURE A TRUE COPY OF THE COMPLAINT IN ST NO.303/2016 ON THE FILES OF THE HON'BLE CIEF JUDICIAL MAGISTRATE COURT-I, THALASSERY
- ANNEXURE B A TRUE COPY OF THE IMPUGNED ORDER PASSED BY THELEARNED CHIEF METROPOLITAN MAGISTRATE, THALASSERY DATED 13.5.2016
- ANNEXURE C A TRUE COPY OF THE FOOD ANALYST REPORT
- ANNEXURE D A TRUE COPY OF THE REPORT OF REFERRAL LABORATORY
- ANNEXURE E A TRUE COPY OF THE RELEVANT LITERATURA ON CAFFEINE
- ANNEXURE F TRUE COPY OF THE COMMISIONER OF FOOD SAFETY, KERALA THIRUVANNATHAPURAM SACNTIONED THE PROSECUTION VIDE ITS ORDER DATED 11.3.2016

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE