

Mohd. Junaiduddin vs The State Of Telangana on 4 February, 2025

Author: Juvvadi Sridevi

Bench: Juvvadi Sridevi

THE HONOURABLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL PETITION Nos.41 & 54 of 2025

COMMON ORDER:

As these Criminal Petitions are arising out of same crime, they are being disposed of by way of this Common Order.

02. These Criminal Petitions are filed by the petitioners- accused Nos.1 and 2 to quash the proceedings against them in Crime No.1647 of 2024 of the Station House Officer, Miyapur Police Station, Cyberabad, registered for the offences under Sections 223 of BNS (Section 188 of IPC) and 20(2) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short 'COTPA').

03. Heard Sri Syed Ahmed, learned counsel for the petitioners-accused Nos.1 and 2 and Sri Jithender Rao Veeramalla, learned Additional Public Prosecutor for the State.

04. Learned counsel appearing for petitioners submits that the petitioners are innocent and have been falsely implicated in the case. Section 195(1)(a) of Cr.P.C. bars taking cognizance of the offence under Section 223 of BNS, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case, the complaint was lodged by the de facto complainant, who is not a competent person, the present FIR is not maintainable and the same is liable to be quashed. He further submits that the offence under Section 20(2) of the COTPA, shall be deemed to have been committed under Section 223 of BNS. When Section 223 of BNS warrants filing of a private complaint, the same restriction applies to Section 20(2) of the COTPA also. Since the prime offence under Section 223 of BNS is barred by Section 195(1)(a) of Cr.P.C., the whole proceedings are without jurisdiction. Hence, he prayed to quash the criminal proceedings against the petitioners-accused Nos.1 and 2.

05. On the other hand, learned Additional Public Prosecutor for the State submitted that the petitioners have also been charged with the offence other than 223 of BNS and the truth or otherwise of the allegations levelled against the petitioners can only be known after conducting full-fledged trial, and hence, he prayed to dismiss these petitions.

06. In view of the facts and circumstances of the case, it is relevant to note that the Honourable Supreme Court of India in State of Karnataka v. Hemareddy 1, at Paragraph No.8, it is held as

follows:

"We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a Court is necessary under Section 195(1) (b) of the Code of Criminal Procedure and an offence for which a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld".

07. For the sake of convenience, Section 223 of BNS and Section 195 of Cr.P.C. are extracted hereunder:-

Section 223 of BNS: Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,--

(a) shall, if such disobedience causes or tends to cause obstruction, annoyance AIR 1981 SC 1417 or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand and five hundred rupees, or with both;

(b) and where such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Explanation.--It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Section 195 of Cr.P.C: Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1)No Court shall take cognizance-

(a)(i)of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii)of any abetment of, or attempt to commit, such offence, or

(iii)of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b)(i)of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii)of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii)of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause

(ii),[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.] [Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate" (w.e.f. 16-4-2006).]

08. Having heard both sides and perused the material on record, it is evident that the proceedings against the petitioners for the offence under Section 223 of BNS have been initiated, basing on the complaint made by the de-facto complainant, who is a Police Officer, but not on the basis of complaint in writing of the public servant concerned, as is required under Section 195(1)(a) of Cr.P.C. Therefore, the proceedings against the petitioners for the offence under Section 223 of BNS are liable to be quashed.

09. Insofar as other offences i.e., Section 20(2) of COTPA, the allegations against the petitioners are that he is selling the tobacco products to the customers illegally in order to gain wrongful profits. In view of the said allegations' it is apt to refer to Section - 20 (2) of the COTP Act for better appreciation of the case and to decide the issue in question' and the same is as under:

"20(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees."

10. Thus, the Section 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. As stated above, the allegation against the petitioners is that they purchase the tobacco products and sell them to customers to gain wrongful profits. The petitioners

are neither trader, nor supplier/distributor of cigarettes or any other tobacco products. There is no allegation in the complaint against the petitioners that they are carrying on the trade or commence in contraband or any other tobacco products without label and specified warning on the said products. In view of the same, the contents of the complaint lacks the ingredients of Section 20(2) of the COTP Act. In the entire complaint, there is no allegation that the seized products do not contain the labels as well as statutory warning. Therefore, registering the crime for the said alleged offence against the petitioners is also contrary to Section - 20 (2) of COTP Act. Thus, the offence under Section - 20 (2) of COTP Act is also liable to be quashed against the petitioners. Even as per the Judgment of Honourable Supreme Court of India in Hemareddy's case (supra), it is clear that if the offences formed part of the same transaction of the offences contemplated under Section 195 of Cr.P.C., it is not possible to split up and hold the prosecution of the petitioners. Hence, the FIR culminating in taking cognizance of the aforesaid offences against the petitioners stands vitiated and the continuation of criminal proceedings against the petitioners amounts to abuse of process of law.

11. Accordingly, these Criminal Petitions are allowed and the proceedings against the petitioners-accused Nos.1 and 2 in Crime No.1647 of 2024 of the Station House Officer, Miyapur Police Station, Cyberabad, are hereby quashed.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

_____ JUVVADI SRIDEVI, J Date: 04-FEB-2025 KHRM