

Yellappa vs The State Of Maharashtra on 29 August, 2024

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S) . 1206/2024

YELLAPPA & ANR.

VERSUS

THE STATE OF MAHARASHTRA & ANR.

WITH

CRIMINAL APPEAL NO(S) . 1207/2024

O R D E R

1. The appellants in both these appeals have challenged criminal proceedings initiated against them by means of an FIR No.31/2019 dated 06.02.2019 by which offences have been registered against them punishable under Sections 26 (2) (i) and (iv), 27 (2) and 23 of Food Safety and Standards Act, 2006 r/w 2.3.4 of the Food Safety and Standards Rules, 2011, and under Sections 30(2), 2, 3, 4, 59 (iv) of Food Adulteration (Maharashtra Amendment), Act, 1969 and under Sections 328 and 188 of Indian Penal Code. The relevant Sections 328 and 188 read as follows:-

“328. Causing hurt by means of poison, etc., with intent to commit and offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome such person, or with intent to commit or to Reason: facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

188. Disobedience to order duly promulgated by public servant.—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, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be

punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if 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 six months, or with fine which may extend to one 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.

Illustration An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.”

2. In Criminal Appeal No.1206/2024, the appellants are the drivers of the vehicle and in Criminal Appeal No.1207/2024, they are the buyers and the sellers of the contraband articles which has been recovered from them, and according to the prosecution, the articles are banned in the State of Maharashtra. The vehicle bearing no. K.A. 25 A.A.5198, which was coming from the State of Karnataka had crossed the border, entering the State of Maharashtra in the District of Osmanabad. The vehicle was intercepted and on search, it was found that they were carrying sacks of “Sweet Supari” (sweetened beetle nut) bearing the brand “Tiger”. An FIR was registered under Sections 26 (2) (i) and (iv), 27 (2) and 23 of Food Safety and Standards Act, 2006 r/w 2.3.4 of the Food Safety and Standards Rules, 2011, and under Sections 30(2), 2, 3, 4, 59 (iv) of Food Adulteration (Maharashtra Amendment), Act, 1969 and under Sections 328 and 188 of Indian Penal Code as stated above for the offences, as the accused had violated a circular dated 20.07.2018 issued by the Government of Maharashtra by which, according to the prosecution, the sale of sugar coated beetle nut/supari was also banned in the State of Maharashtra. The case of the appellants was that although ‘gutka’, ‘pan masala’ and any variant of tobacco whether scented or in any other form was indeed banned as per the aforesaid circular but sweetened beetle nut was not one of the banned items as per the said circular. The learned senior counsel for the appellants has taken us to the circular dated 20.07.2018. The operative portion of the said circular reads as:-

“Therefore I, the Food Safety Commissioner, Maharashtra State, prohibit in the interest of public health, for a period of one year from 20th July 2018, the manufacture, storage, distribution, transport or sale of tobacco which is either flavoured, scented or mixed with any of the said additives, and whether going by the name or form of gutka, pan masala, flavoured/scented tobacco, manufactured chewing tobacco with additives, kharra, or otherwise by whatsoever name called,; whether packaged or unpackaged and/or sold as one product, or though packaged as separate products, sold distributed in such a manner so as to easily facilitate mixing by the consumer, for its consumption.”

3. A bare reading of the aforesaid provision/circular shows that what is banned is tobacco which is either flavoured, scented or mixed with any of the additives which may or may not go by the name of 'gutka', 'pan masala' or any other name whether it is flavoured / scented tobacco, chewing tobacco with additives, kharra or otherwise and what is banned is the manufacturing, sale, storage, distribution, transport of such a product. What can be easily determined from the above circular is that what is banned is tobacco and its various forms. What was being transported by the appellants was not tobacco but beetle nut which is sweetened. This is not a banned item. Moreover, the learned counsel representing the State of Maharashtra, Shri Aditya Aniruddha Pande, in his usual fairness has also stated before this Court that the items recovered from the appellants' vehicle were sent for chemical analysis and the report says that all which was added in the beetle nut was "sugar saccharine".

4. Under these facts, we absolutely see no reason why the appellants should be subjected to criminal proceedings where actually no criminal act was done by the hands of the appellants. What is being carried out by the prosecution in the present appeals is nothing but an abuse of the process of law and therefore, in our opinion this is a case where High Court ought to have exercised its powers under Section 482 of the Criminal Procedure Code and could have quashed these criminal proceedings, initiated against the appellants.

5. In view of the above the present appeals are allowed and the criminal proceedings in connection with FIR No.31 of 2019 and Charge sheet No. 247 of 2019 filed in Regular Criminal Case No. 33 of 2020 pending before Judicial Magistrate First Class, Osmanabad are hereby quashed and set aside.

6. All the natural consequences of this order shall be followed and abided by the respondents.

7. The learned counsel for the State of Maharashtra has apprised this Court that there is a bunch of petitions/appeals relating to the applicability of Section 328 of the Indian Penal Code, in cases of seizure of gutka, pan masala etc. and whether they can be treated to be poison is pending consideration before this Court. We make it clear that since, on the face of it the present material which was being carried and which is the subject matter in the present appeals is not a banned item at all, therefore, our decision in these matters will not prejudice the right of any other party in the said cases, which are presently not before us.

8. All pending applications stand disposed of.

.....J .

[SUDHANSHU DHULIA]J. [SATISH CHANDRA SHARMA] New Delhi;

August 29, 2024.

ITEM NO.107

COURT NO.16

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(S). 1206/2024
YELLAPPA & ANR.

APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA & ANR.

RESPONDENT(S)

(IA No. 172085/2022 - EXEMPTION FROM FILING O.T., IA No.
167162/2022 - EXEMPTION FROM FILING O.T. & IA No. 172084/2022 -

PERMISSION TO FILE ADDL.DOCS./FACTS/ANNEXURES) WITH CrI.A. No. 1207/2024 (II-A) (IA No.174512/2022-EXEMPTION FROM FILING O.T., IA No.175645/2022- EXEMPTION FROM FILING O.T., IA No.174511/2022-PERMISSION TO FILE ADDL.DOCS./FACTS/ANNEXURES) Date : 29-08-2024 These matters were called on for hearing today. CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA For Appellant(s) Mr. Sudhanshu S. Choudhari, Sr. Adv.

Mr. Shakul R. Ghatole, Adv.

Ms. Bhavana Duhoon, AOR Ms. Gautami Yadav, Adv.

Ms. Pranjal Chapalgaonkar, Adv.

Mr. Anshul Syal, Adv.

For Respondent(s) Mr. Aaditya Aniruddha Pande, AOR Mr. Siddharth Dharmadhikari, Adv. Mr. Bharat Bagla, Adv.

Mr. Sourav Singh, Adv.

Mr. Aditya Krishna, Adv.

Ms. Preet S. Phanse, Adv.

Mr. Adarsh Dubey, Adv.

UPON hearing the counsel the Court made the following O R D E R The present appeals are allowed in terms of the signed order, which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)

(RENU BALA GAMBHIR)

COURT MASTER (SH)

COURT MASTER (NSH)