

Nimmana Nageshwar Rao vs The State Of Telangana on 23 April, 2021

Author: K. Lakshman

Bench: K. Lakshman

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.6708 OF 2019

ORDER:

This petition is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in C.C.No.159 of 2018 on the file of Principal Judicial Magistrate of First Class, Shadnagar, R.R.District. The petitioners herein are accused Nos.1 to 9 in the above said crime. The offences alleged against them are under Sections - 273, 188, 420 and 374 read with 34 of IPC, 59(1) of Food Safety and Standards Act, 2006, Section 3(k) and Section - 20 (1) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short 'COTP Act') and Sections 75 and 79 of Juvenile Justice Act.

2. Heard Mr. S.M.Subhan, learned counsel for the petitioners, and learned Assistant Public Prosecutor appearing on behalf of respondents. Perused the entire material available on record.

3. The learned counsel for the petitioners would submit that the allegations levelled against the petitioners lacks the ingredients of the aforesaid offences and, therefore, he sought to quash the proceedings against the petitioners. In support of the same, he has placed reliance on the judgment in Chidurala Shyamsubder v. State of Telangana¹ . CrI.P. No.3731 of 2018 & batch, decided on 27.08.2018 rendered by a learned Single Judge of the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh.

4. In Chidurala Shyamsubder's case (supra), a learned Single Judge of the High Court, following the guidelines laid down by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal², held that the Police are incompetent to take cognizance of the offences punishable under Sections 45 and 59(1) of the Food Safety and Standards (FSS) Act, 2006, investigating into the offences along with other offences under the provisions of the Indian Penal Code, 1860, and filing charge sheet is grave illegality, as the Food Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections 41 and 42 of FSS Act.

5. Perused the judgment in Chidurala Shyamsubder (supra), wherein a learned Single Judge of the High Court observed that transportation of chewing tobacco or Khaini or Pan Masala do not constitute an offence punishable under Section 270 of IPC and that manufacturing of pan masala is not included in Section - 273 of IPC and, therefore, the same is not an offence since it is not a noxious food. The learned Single Judge further observed as under:

"....The act done by the petitioners i.e., transportation of khaini and chewing tobacco though dangerous to human life, it would not spread or infect or cause any disease on account of transportation 1992 Supp. (1) SCC 335 and if those products are consumed by human being, it would certainly cause damage to the health. Therefore, transportation of khaini or chewing tobacco is not by itself is not an offence under Section - 270 of IPC and it would fall within Section 270 of IPC."

6. On the other hand, learned Assistant Public Prosecutor has tried to distinguish the principle laid down in the said judgment to the facts of the present case.

7. In the present case, the allegations levelled against the petitioners herein are that they are purchasing the banned tobacco products and selling them to retailers to get more profits illegally. In view of the above said decision, the contents of the complaint lacks the ingredients of Sections - 272 and 273 of IPC and so also Section 188, 420 and 374 read with 34 of IPC, therefore, the proceedings in the aforesaid crime for the said offences are liable to be quashed against the petitioners herein - accused Nos.1 to 9.

8. As far as Section - 20 (1) of the COTP Act is concerned, as stated above, the allegations against the petitioners are that they are selling the tobacco products to the customers illegally in order to gain wrongful profits. In view of the said allegation, it is apt to refer to Section - 20 (1) of the COTP Act for better appreciation of the case and to decide the issue in question, and the same is as under:

"20. Punishment for failure to give specified warning and nicotine and tar contents.-

(1) Any person who produces or manufactures 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 two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees".

...

9. Thus, Section - 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. As stated above, the allegations against the petitioners herein are that they purchase tobacco products and sell them to customers at higher prices to gain wrongful profits. But, in the complaint, there are no allegations against the petitioners that they are carrying on trade or commerce 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 lack the ingredients of Section 20 (2) of the COTP Act. Even, there are no allegations that the seized products do not contain labels with statutory warning. Thus, registering the crime for the said offences against the petitioners are not only contrary to Section - 20 (1) of COTP Act, but also contrary to the principle laid down in Chidurala Shyamsudher (supra). In view of the same, the offence under Section - 20 (1) of COTP Act

is also liable to be quashed against the petitioners - accused Nos.1 to 9.

10. In view of the above discussion, the present Criminal Petition is allowed, and the proceedings in C.C.No.159 of 2018 on the file of Principal Judicial Magistrate of First Class, Shadnagar, R.R.District, are hereby quashed against the petitioners - accused Nos.1 to 9.

11. Though the proceedings in the aforesaid case are quashed against the petitioners herein - accused Nos.1 to 9 in C.C.No.159 of 2018, learned counsel for the petitioners does not insist for release of the seized property stating that the said stock was seized in the year 2017 and due to efflux of time, the same might have got damaged by now.

As a sequel, miscellaneous petitions, if any, pending in the criminal petition shall stand closed.

_____ K. LAKSHMAN, J April 23, 2021 Note:

Registry is directed to annex a copy of Common Order, dated 27.08.2018 in CrI.P. No.3731 of 2018 & batch to this order. (B/O.) dv