

Oggu Anil Kumar vs Asst. Subinspector Of Police on 4 July, 2022

Author: K. Lakshman

Bench: K. Lakshman

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.370, 372, 378, 380, 775, 3451, 9517, 9557,
9597 & 9598 OF 2021 AND 109, 1290, 1985, 3922 & 5214 OF 2022

COMMON ORDER:

All these Criminal Petitions are filed by the respective petitioners under Section - 482 of the Code of the Criminal Procedure, 1973, to quash the proceedings in the respective Crimes/Calendar Cases/Sessions Cases registered for the offences under Sections - 188, 270, 272, 273, 420, 353 and 328 read with 511 of IPC; Sections - 20 (2) read with 7 (2) and 24 (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 - 2, 3 and 4 of the Food Safety and Standards Act, 2006 (for short 'FSS Act').

2. The nature of allegations in all these offences relate to transportation, sale, possession, manufacture, storage, etc. of tobacco products including khaini, zarda, pan masala and other such allegedly harmful and banned products.

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3. Heard learned counsel for the respective parties and learned Public Prosecutor appearing on behalf of the respondent - State, and perused the record.

4. Perusal of the record would reveal that the lis involved in this batch of cases had already been dealt with by this Court extensively in Mohd. Jameel Ahmed v. State of Telangana¹. This Court in the said cases by relying on various decisions of the Supreme Court explained and interpreted the relevant provisions with which the petitioners herein were charged. Following the said judgment, this Court had also disposed of similar matters vide Common Order dated 10.06.2022 in Crl.P. No.5619 of 2020 and batch. Thus, nothing remains further to be discussed in this batch of cases. Following the said judgments, the proceedings in the subject crimes/C.Cs/S.Cs for the offences under Sections - 188, 270, 272, 273, 420 and 328 read with 511 of IPC and Section -20 (2) read with 7 (2) and 24 (1) of the COTP Act are liable to be quashed.

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5. As far as Sections - 2, 3 and 4 of the FSS Act are concerned, perusal of the complaints/charge sheets do not disclose the ingredients of the said offences and, therefore, the proceedings for the said offences are liable to be quashed.

6. As far as the offence under Section - 353 of IPC is concerned, learned Assistant Public Prosecutor would contend that there is specific allegation against the petitioners with regard to the offence under Section - 353 of IPC. Perusal of the charge sheets/complaints in some of the cases would reveal that the accused persons used criminal force and obstructed the police in checking vehicles and deterred them from discharging their legitimate duties. In some of the cases, it is mentioned that on seeing the police, accused person (s) pushed them to escape and obstructed their lawful duties. Thus, the police have registered the subject crimes for the said offence.

7. Section - 353 of IPC deals with 'assault or criminal force to deter public servant from discharge of his duty'. In view of the same, it is apposite to extract the said provision which is as under:

KL,J CrI.P. No.370 of 2021 & batch "353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. In this regard, relying on the decision rendered by the High Court of Andhra Pradesh at Amaravati in Jaganath Enterprises, Eluru v. State of A.P., through SHO, Pamur P.S., Prakasam District², learned counsel for the petitioner herein would submit that the complaints/charge sheets lacks the ingredients of offence under Section -353 of IPC and, therefore, the proceedings for the said offence are also liable to be quashed.

9. Further, in Durgacharan v. State of Orissa³, the Hon'ble Apex Court held that under Section - 353 of IPC, the ingredients of assault or use of criminal force while the public servant is doing his . 2020 (1) ALT (CrI) 215 . AIR 1966 SC 1775 KL,J CrI.P. No.370 of 2021 & batch duty as such is necessary. It was also held that mere use of force, however, is not enough to bring an Act within the terms of Section 353 of IPC. It has further to be shown that force was used intentionally to any person without that person's consent in order to commit an offence or with the intention or with the knowledge that the use of force will cause injury, fear or annoyance to the person against whom the force is used. In the case on hand, perusal of the record would reveal that there were no injuries caused out of the force alleged to have used by the petitioner injuries were caused.

10. In Jaganath Enterprises², the learned Single Judge of the High Court of Andhra Pradesh at Amaravati observed as under:

"Section 353 IPC is also pressed into service by the police in these cases. In the case on hand, the only issue that is raised is that the accused 'pushed' away the police officer while trying to escape. This by itself, in the opinion of this Court, would not amount to use of assault or criminal force against a public servant from discharging of his duties."

11. Thus, prima facie, the complaints/charge sheets lack the ingredients of the offence under Section - 353 of IPC and, KL,J CrI.P. No.370 of 2021 & batch therefore, the proceedings for the said offence are also liable to be quashed.

12. Following the Common Order in Mohd. Jameel Ahmed (Supra) and the Common Order dated 10.06.2022 in CrI.P. No.5619 of 2020 and batch, all these Criminal Petitions are allowed quashing the proceedings in the respective Crimes/Calendar Cases/Sessions Cases against the respective petitioner (s) - accused.

13. As the proceedings in the aforesaid Criminal Petitions are quashed against the respective petitioners, the respective Station House Officers/Investigating Officers are hereby directed to return the seized property/vehicles on proper identification and verification of ownership under due acknowledgment. In cases where charge sheets are already filed the respective petitioners are at liberty to file appropriate applications before the concerned Magistrate for return of the seized property/vehicle and the Magistrate shall consider the same in accordance with law.

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14. However, it is made clear that if the seized stock of tobacco products or other products are expired, the same shall be destroyed by taking permission from the concerned Magistrate.

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

_____ K. LAKSHMAN, J 4th July, 2022 Note:

Annex a copy of the order dated 05.07.2021 in CrI.P. No.152 of 2020 & batch and Common Order dated 10.06.2022 in CrI.P. No.5619 of 2020 & batch.

(B/O.) Mgr