

Shaik Nayeem vs The State Of Telangana on 26 September, 2022

Author: Chillakur Sumalatha

Bench: Chillakur Sumalatha

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION Nos.6235, 7084, 7174, 7240, 7264,
7269, 7273, 7277, 7289, 7294, 7318, 7333, 7348, 7490,
7508, 7509, 7590, 7676, 7855, 7949, 7996, 8017, 8035,
8088, 8124, 8139, 8140, 8255, 8465, 8467, 8475, 8477,
8501, 8502, 8510, 8511, 8515, 8518, 8519, 8526, 8545,
8590, 8591, 8596, 8604, 8611, 8612, 8613, 8614, 8627,
8639, 8680, 8681, 8682 and 8694 of 2022

COMMON ORDER:

Challenge in these Criminal Petitions are the charge sheets and the First Information Reports which were registered alleging that the respective petitioners committed offences punishable under Sections 188, 269, 270, 271, 272, 273, 328, 336 and 420 IPC. The allegation is also that the petitioners committed offences under the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter be referred to as "the COTP Act, Dr.CSL, J And batch 2003", for brevity) and that, Section 59 (1) of the Food Safety and Standards Act, 2006, is violated. Though not collectively, for the said offences, different provisions of law were quoted basing on different set of case facts, however, regarding the same subject matter.

2. Heard Sri Y.Bala Murali, Sri Balakisti Srinivas Reddy, Sri Prasad Ravanaboina, Sri S.Chandrasekhar, Ms. C.Sunitha Kumari, Sri M.A.K.Mukheed, Sri Kondadi Ajay Kumar, Sri Gajanand Chakravarthi, Sri Mohd Muzaffer Ullah Khan, Sri Nanda Kishore Amarchand Yadav, Sri P.Padma Rao and Sri B. Balaji, learned counsels appearing for the petitioners, and also the learned Public Prosecutor representing the respondent-

State.

3. For proper understanding of the case, the provisions of law invoked, the gist of the allegations and the crux of the matters taken up for adjudication are tabulated as under:

Dr.CSL, J And batch Sl. CRL.P.NO. RELIEF SOUGHT FOR SECTIONS OF NATURE OF OFFENCES No LAW INVOLVED IPC COTP Act 1 6235 of Quash of FIR.No.168 of 188,273 20(2) Illegal selling of 2022 2022 of Nagarkurnool 1.RR Tobacco-410 packets Police Station 2. V-1 Tobacco-200 packets (petitioner/A1) 3. SR Tobacco-200 packets

4. Swagath Gold Tobacco-1 packets

5. Sagar Pan Masala-170 packets

6. Vimal Pan Masala-1850 packet

7. Raj Nivas pan Masala-4 packets

8. Famous Pan Masala -16 packets 2 7084 of Quash of FIR.No.486 of 188,273 20(2) Illegal selling of 2022 2022 of Sanathnagar 1.Vimal-50 packets Police Station 2.RR tobacco-65 packets (petitioners/A1 & A2) 3.Miraj tobacco-35 packets.

3. 7174 of Quash of FIR No.140 of 273 24(1) Illegal transportation of 2022 2022 of Kodad(R) 1.9,975 Mirage super toba Police Station sachets - 19 plastic bags. (Petitioner/Accused 2. 14,400 Raja tobacco sachets No.3) plastic bags.

4. 7240 Quash of CC.No.98 of 269, NIL Illegal transportation of of 2022 2021 pending on the file 273 1.Amber packets 52 of the Court of Special II 2. RR zarda packets 42 Class Judicial 3.Balaji Baba zarda packets 9 Magistrate, 4. J.K.Zarda-57 Hanamkonda. 5.Swagath Gold Packets-12 (petitioner/Accused) Dr.CSL, J And batch

5. 7264 Quash of FIR.No.223 328, 20(2) Illegal storing of two bags containin of 2022 of 2022 of Langar 336, 273 K9000 (102 packets) House Police Station.

(petitioners/Accused 1 & 2) 6 7269 Quash of 272,273 20(2) Illegal selling of of 2022 CC.No.4368 of 2022 1.R.R Gold Tobacco- 4 bags.

on the file of the 2. R.R.Panmasala- 4 bags. Court of VI Addl. 3. Miraj Tobacco- 31 packets. Chief Metropolitan 4. Suraj Tuta Tobacco- 20 packets. Magistrate, 5.SR-1 Tobacco- 1 bag. Nampally, 6.Sagar panmasala-1 bag. Hyderabad. 7. V-1 Tobacco-1 bag.

8.Vimal 7-155 packets.

9.Baba-120 Tobacco-35 Ladis

10. Rajnivas-12 packets

11.Premium XL Tobacco-18 packets

12. Loose Zarda-38 packets

13.KP Tobacco-44 packets

14. RR Tobacco- 18 packets

15. Kamla Pasand Tobacco-4 packets

16. Vimal panmasala- 40 packets

17. Amber Tobacco- 6 packets

18. Sawagth Tobacco- 24 packets

19. Vimal Kesari- 146 packets

20. Paris Cigarettes-4 boxes

21. A-10 Cigarettes-16 boxes. 7 7273 Quash of CC.No. 328,336, 20(2) Illegal storing of of 2022 218 of 2022 on the 272,273 1.Maha Baba-15 packets file of the court of r/w 511 2.KP double black-40 packets Special judicial First 3. R.R Pan masala-40 packets Class Magistrate for 4.Baba 160-10 packets Excise cases at 5. Baba 120-22 packets Nampally, 6. Vimal pan masala-10 pouches Hyderabad. 7. Swagath gold-22 packets

8.Maha baba-60 pouches

9. Rajini Gandha-10 boxes

10. Meraj Qani-06 pouches

11.patta Zarda-4kg

12. Rush brand Zafrani pathi-o small bags.

13. Kamala pasand-07 boxes

14. Baba black-3 tins

15. Sugar-15 packets

16. K-9000-2 packets.

8 7277 of Quash of CC.No.101 273,188 3(M) Illegal transportation of 2022 of 2022 on the file of ambar tobacco gutka - 19 bags.

the court of Special Magistrate of first class Prohibition and Excise offences Court at Dr.CSL, J And batch Sangareddy.

9 7289 of Quash of FIR.No.64 420,270, 20(2) Illegal selling of 2022 of 2022 of 273 1.Gutka Sachets about total 20,885 Nizamabad II Town 2.Tobacco sachets about total 66,733 Police station, 3.Cigarette packets about 7,626 Nizamabad. 4. Pan masala about total 55,10 sachets

10. 7294 of Quash of FIR No. 328,273 20(2) Illegal selling of 2022 268 of 2022 of 1.Paris Cigarette-560 boxes Kachiguda police 2. Black cigarettes-13 boxes station, Hyderabad. 3.ESSE lights cigarette-28 boxes

4.Mond cigarette-19 boxes

5. win cigarettes-12 boxes.

6. ESSE Gold-2 boxes

7.Ruli river cigarettes-2 boxes

8.Gudang garam cigarettes-6 boxes

9. Mirage Tobacco-315 packets

10. Loose tobacco-15 packets

11. Loose tobacco-39 packets

12.RR ICE lip-24 packets

13. XL-01-425 packets

14. SR-1- 51 packets

15.Chaini Tobacco-42 packets

16. Amber Tobacco-30 packets

17. swagath tobacco- 50 packets

11. 7318 of Quash of CC.No.202 188,272, 20(2) Illegal selling of 2022 of 2022 on the file of 273,328 1.Paris cigarettes- 7 packets the court of Special r/w 511 2. Meraj tobacco packers-24 sachets judicial First Class 3.SR-1 Tobacco-132 sachets Magistrate for excise 4. Sagar Pan Masala-69 sachets cases at Nampally, 5. R.R.Pan masala - 35 sachets Hyderabad. 6. R.R. tobacco- 35 sachets

7. Vimal Pan masala- 12 sachets

8. pan Bahar 120 mixed sachets-13

9. 24 pan masala 120 mixed sachets

12. 7333 of Quash of STC.No. 270,273 Nil Illegal selling of 2022 539 of 2020 on the r/w 34 1.25 vimal packets file of the court of 2. (51) V-1 packets Judicial Magistrate 3. (24) Vimal 7 packets of First Class 4. (24) V1-7 packets Bellampalli 5.(32) Pulchap sachets.

13. 7348 of Quash of 272, 273 20(2) Illegal selling of 2021 C.C.No.3435 of 2022 r/w 511 1.RR gold tobacco-37 packets on the file of the 2.RR tobacco-4 packets Court of VIII Addl. 3.Swagath Gold tobacco-9 packets Chief Metropolitan 4.Baba 120 mini tobacco-986 packet Magistrate, 5.Baba 120 tobacco-986 pouches Hyderabad 7. Baba black tin-1 tin.

7. Ratna tin-1 tin

8.Channi Khaini tobacco-4 packets

9.Black cigarattes-7 boxes

10. Raja Tobacco-1 Packet

11. Loose Zarda Gold Packets -

Dr.CSL, J And batch Packets

12. Loose Zarda Gold Packets-1 Packets

13.Loose Zarda Gold Packets -10 Packets

14. VI Tobacco-100 Packets

15. Meraj Tobacco- 42 laddis

16. F-9 Tobacco-2 Bags

17. SR-1 Tobacco -51 Packets

14. 7490 of Quash of C.C.No.85 270, 273 20(1) Illegal possession of 2022 of 2021 on the file of 1.Amber packets-25 the Court of Judicial 2. Sagar pan masala packets-10 Magistrate of First 3. vimal vimal pan masala-24 packet Class, Kortula 4.SR-1- 10 packets

15. 7508 of Quash of 270, 273 20(2) Illegal possession of 2022 C.C.No.188 of 2021 1.Amber packets-200 on the file of the 2.Sagar pan masala-50 packets Court of Judicial 3.Sitara-60 packets Magistrate of First Class, Kortula

16. 7509 of Quash of Crime 270, 273 Illegally transporting 3 bags o 2022 No.189 of 2021of NIL banned tobacco Dandepalli police station

17. 7590 of Quash of 270, 273 Illegal possession/selling of 2022 C.C.No.303 of 2022 NIL 1.Sri Ganaesh pandarpur-45 pouches pending of the file 2.Hola tobacco-30 pouches of the Court of 3.Maaza-108 pouches Judicial Magistrate of First Class, Adilabad

18. 7676 of Quash of 270, 20(2) 1). Chota Bai Jardha - 20 packets 2022 C.C.No.478 of 2022 272, 273 2. China Khaini 130 packets pending on the file 3. Swagat Tobacco - 378 packets of the Court of XXV 4. RR Tobacco Miraj 387 Packets Metropolitan 5.Jumbo Miraj 245 packets Magistrate, 6.Vimal 300 packets Cyberabad 7. Raj Niwas- 100 packets

8. Joda Bai - 144 9. Vimal Jardha 300 packets

10. RR Pan Masala- 65 packets

11. 9000 gutka - 7 packets

12. Sagar bag- 60 packets

13. Amber - 40 packets

14. RK Tobacco 25 packets

19. 7855 of Quash of CC.No. 270,272 20(2) Illegal transporting of 2022 265 of 2022 pending r/w 1.3 bags - Jarda ambar on the file of the 7(2) 2.5 bags - sagar jarda Court of Judicial Magistrate of First Class, Narayankhed, Sangareddy.

20. 7949 of Quash of CC.No.801 328 r/w NIL Illegal selling of 2022 of 2022 pending on 511 , 1.575 packets of amber tobacco the file of the Court 270, 273 2. JK Zardha Tobacco - 150packets Dr.CSL, J And batch of IV Additional r/w 34 3. RR Zardha tobacco- 210 packets Judicial First Class 4. Swagath tobacco - 38 packets Magistrate at Warangal.

21. 7996 of Quash of CC.No. 273 r/w Nil Illegal selling of 2022 1278 of 2022 34 1.RR Tobacco (7) packets pending on the file 2. Sagar (6) packets (70 pouches) of the Court of 3.SR-I (5) packets (70 pouches) Judicial First Class 4. Raja tobacco (2) packets magistrate(Special 5.K-900 (01) packet. Mobile) at Nalgonda.

22. 8017 of Quash of CC.No. 272,273 20(2) Illegal selling of 2022 1232 of 2020 r/w 34 1.55 packets of RR Tobacco pending on the file 2. 90 packets of blue bull tobacco of the Court of the 3. 20 packets

of Sagar gutka Judicial First Class 4. 20 packets of S.R-1 Gutka packets Magistrate for 5. 45 packets of Vimal Pan masala prohibition & Excise 6. 25 packets of RR black packets offences at Nalgonda 7. 50 packets of Raja premium District. tobacco.

23. 8035 of Quash of CC.No. 55 273,420 59(1) Illegal selling of 2022 of 2021 pending on of food 1.vimal Pan masala-17 packets the file of the court safety 2.Sugar Gold-7 packets of Principal Judicial and 3.V-1 tobacco 17 packets First Class standa 4.Miraj -75 sachets Magistrate at rds 5.Mahababa Zafrani Zarda 5 packets Shadnagar, Act 6.SR-1 (75) sachets Cyderabad district. 7.Sagar Pan masala 75 sachets

8.Blu chewing tobacco-50 packets

9.Bahubali pan masala-50 packets

10. Sagar Active one pan masala packets

11.SA-One 6 packets

12.RR Pan masala- 70 sachets

13. RR Chewing Tobacco- 70 sachets

24. 8088 of Quash of CC.No.255 270,273 Nil Illegal selling of 2022 of F2021 on the file 1.Cash gold pan masala with C-

of the court of tobacco (690) packets Judicial First Class 2.M- scened tobacco gold VC Magistrate at chewing tobacco (18) packets Utnoor, Adilabad 3. Raj Niwas (3) packets District.

25. 8124 of Quash of PRC.No.6 272,273, NIL Illegal selling of 2022 of 2021 on the file of 328 1.RR Tobacco- 25 pouches the court of Addl. r/w34 2.Miraj tobacco- 705 pouches Judicial First Class 3.K-9000 tobacco-3600 pouches Magistrate at 4.Raja tobacco-100 pouches Ramannapet. 5.Amber tobacco-75 pouches

6.Black tobacco-2 packets

7.Blue Bull tobacco- 35 pouches

8. Swagath gold-11

9.SR1-5

10.Vimal-10

11.V1 tobacco-180

12.Chaini-15 pouches Dr.CSL, J And batch

13. RR Gold-50 pouches

14. Rani-51 pouches.

26. 8139 of Quash of 420,188, 20(2) Illegal selling of 2022 Cr.No.252/2022 of 273 1.Paris Special filter cigarette - 3 Mahabubnagar II boxes town Police Station. 2.H-10 Filter cigarette-4 bags

3.A-10 filter cigarette-2 bags.

27. 8140 of Quash of Cr.No.255 420,188, 20(2) Illegal transportation of 2022 of 2022 of 273 Gai chap tobacco packets- 22 bags.

Mahabubnagar II Town Police Station.

28. 8255 of Quash of CC.No. 272,273, NIL Illegal selling of 2022 624 of 2019 pending 188 1.Golden Zarda 6 pieces on the file of the 2.Raza Premium tobacco-3 boxes Court of Chief 3.Baba 1220 premium chewin Metropolitan tobacco 2 pieces Magistrate, 4.Baba 160 premium chewin Hyderabad. tobacco 2 pieces

5. Juhi Luxury Zafari Zarda- 2 pieces

6. RR Gold chewing tobacco 10 packets

7. Baba 160 premium chewin tobacco - 8 pieces.

29. 8465 of Quash of 272,273, 20(2) Illegal selling of 2022 CC.No.13048 of 188, 336 1.baba-120 tobacco 3 boxes 2021 pending on the 2. Baba 120, 4 small cotton boxes file of the Court of 3. Baba-120 Tobacco 400g Chief Metropolitan Magistrate, Hyderabad at Nampally.

30. 8467 of Quash of Cr.No. 236 270 r/w NIL Illegal selling of 2022 of 2021 of 273 r/w Banned tobacco packets- 5 bags Dandepalli Police 34 Station, Mancherial District.

31. 8475 of Quash of CC.No. 188,420 20(2) Illegal selling of 2022 12429 of 2020 on 1.(12) cartons of P10 cigarettes the file of the the 2.(03) cartons of Paris cigarettes, court of XVI 3.(02) cartons of P10 cigarettes. Additional Chief 4. (486) carton boxes of variou Metropolitan brands of foreign cigarettes Magistrate, at Nampally, Hyderabad.

32. 8477 of Quash of CC.No. 279,337, Sec. Illegal selling of 2022 772 of 2022 on the 338,427, (03) of 1.Amber bags -15 file of the court of I 429. PDPP 2. amber packets -540 Additional Judicial Act 3. Sitara - 50 packets Magistrate of First and 4. XL packets -1344 class at Jagtial. Sec. 3 5. V1 packets -1000 r/w 181 of M.V. Dr.CSL, J And batch Act

33. 8501 of Quash of 270,273 20(2) Illegal selling of 2022 CC.No.2726 of 2022 1.baba Tobacco tins-10 on the file of the 2. lakshmi Tobacco packets-21 court of I Addl. 3. VIP Tobacco packets-6 Judicial First Class 4. vijaya Durga tobacco packets-4 Magistrate, 5.J.K. tobacco packet-1 Khammam 6. baba Tobacco packet-6

7. Mirza tobacco packet-110

8. Amber packets-45

9. RMD tobacco packets-140

10. Baba tobacco packets-100

11. V1 Tobacco packets-70

34. 8502 of Quash of CC.No. 188,272, 20(2) Illegal selling of 2022 253 of 2022 on the 273,328 1.Paris Cigarettes-49 packets file of the court of r/w 511 2.Pan Bahar pan masala-14 sachets Special Judicial IPC 3.Rajinigandha-2 packs First Class 4.V-1 Tobacco 148 sachets Magistrate for excise 5. SR-1 Tobacco 132 sachets cases at Nampally, 6. Vimal pan masala-102 sachets Hyderabad. 7. Sagar Pan masala-163 sachets

8.Maha baba Zarda 1 pack

9. Mirage Tambaku 14 packets

10. RR.Gold 141 sachets

11. RR pan masala 37 sachets.

35. 8510 of Quash of CC. 336,272, 20(2) Illegal selling of 2022 No.11657 of 2021 273 1.Baba -120 6 boxes on the file of the 2. Baba-160 -1 box court of XVI ACMM 3.Baba 54- 3 boxes Court, Hyderabad 4. Ratna Tobacco- 3 boxes

5.Shivaji tobacco-3 boxes

6. Raj Ratan Tobacco special-2 boxes

7. Ratna tobacco 30 pieces

8. Loose tobacco packets 6 bi packets

9. Loose Tobacco packets-13 sma packets

36. 8511 of Quash of PRC.No. 272,273, 20(2) Illegal selling of 2022 341 on the file of the 328 r/w 1.RR Gold tobacco- 25 packs court of VIII 511 2.SR-1 Gutka-8 packs Additional Chief 3.V-1 Tobacco-5 small size packs Metropolitan 4, Vimal pan masala-3 packs Magistrate, 5. Meraj Tobacco-12 pouches Hyderabad. 6.RR Tobacco-14 pouches

7. Baba-120 tobacco 1 box

37. 8515 of Quash of CC.No. Nil 20(2) Illegal selling of 2022 13954 of 2021 on 1.Miraj Tobacco 20 bags the file of the court 2.Baba 120 Tobacco 2 bags of II Additional Chief 3.Amber Tobacco 12 bags Metropolitan Magistrate, Hyderabad.

38. 8518 of Quash of 188,273, Nil Illegal transportation of 2022 CC.No.1441 of 2022 272,336 1.Amber Tobacco-2 bags Dr.CSL, J And batch on the file of the r/w 34 2. Miraj Tobacco-20 bags court of Chief 3. V-1 Tobacco-16 bags Metropolitan And Magistrate, 1.RR.Tobacco-15 bags Hyderabad 2.RR Pan masala-08 bags

3.Vimal Pan masala-16 bags

4. Raja Tobacco-1 bag .

39. 8519 of Quash of CC.No. 188,272, Nil Illegal transportation of 2022 4060 of 2022 on the 273,336 1.K-9000 -20 packers file of the Chief r/w 34 2.Sagar-02 bag Metropolitan 3.Sagar Jarda-03 bags Magistrate, 4.Sagar S1 bag Hyderabad. 5.RR Pan Masala- 2bags

6.RR Khaini-1 bag

7. Meeraj 1 bag

8.Vimal -3 bags

40. 8526 of Quash of Crime No. 188,272, 20(2) Illegal transportation of 2022 26 of 2022 of 273, 328 No.1 Ambar packets - 4 white bags.

Makloor Police r/w 34 2.RR - Tobacco -4 White bags Station, Warangal. IPC 3. JK - 4 bags

4. Miraj -2 bags

41. 8545 of Quash of CC.No. 188,420, 20(2) Illegal storing and selling of 2022 8110 of 2021 269 foreign cigarettes pending on the file 1.Paris cigarettes i.e, 98 boxes of the court of VI ACMM Court, Hyderabad.

42. 8590 of Quash of Cr.No.428 269,273 NIL Illegal transporting of 2022 of 2022 of Gutka packets and 5 Ambar bags.

Hanumakonda Police Station.

43. 8591 of Quash of Crime 272,273, 20(2) Illegal selling and illegal storage of 2022 No.141 of 2022 of 336 1.RR Gold chewing tobacco-2 Maddannapet Police packets Station, Hyderabad, 2. Paris cigarettes-19 packets

3.Maha Baba Tobacco-22 pouches.

4.V-1 tobacco-38 packets

5.RR.tobacco-22 packets

6.Mirage super tobacco-2 packets

7.Baba 160-2 packets

8.K-9000-4 packets

9.RR.Pan Masala-2 packets

10.S.R-1 Tobacco-34 packets.

44 8596 of Quash of Crime No. 270,271, 20(1) Illegal storage of 2022 421 of 2019 on the 273 (2) 1.Pouch packing machines(02) file of the court of 2.Gutka Bags(16) VI Additional Chief 3.Tobacco Bags(02) Metropolitan 4.Sagar Gutka Bag (01) Magistrate, 5.MDM Gutka Bag(01) Hyderabad. 6.Baba 120 tobacco labels rolls(02)

7. A-Zarda Bag (01)

8. Swagath gold Zarda Bag (01) Dr.CSL, J And batch

9. Blue bull zarda bag (01)

10. Rajiganda Label rolls (08)

11. RR Gutka label rolls (20)

12. Empty packing covers (10)

45. 8604 of Quash of 420 20(2) Illegal storing and selling of 2022 CC.No.3078 of 2022 1.Baba 120-33 mini boxes on the file of the 2.Baba Black Tobacco-20 boxes court of Chief 3.Raj Ratan Qiwam- 2 cartoons Metropolitan 4. Ratna Tobacco- 5 cartoons Magistrate at 5.Chaini Khaini- 1 bag Nampally, 6. Royal 3320 Tobacco- 8 cartoons Hyderabad. 7. UK 3300 Tobacco- 1 cartoon

8. Juhi Tobacco 2 star-1 cartoon

9. Juhi Tobacco 3 star -35 boxes

10. Ratna Tobacco- 8 boxes

11. Golden Jarda- 4 Cartoons

12. Mixed tobacco tins- 1 bag

13. Raja Tambaku-1 bag

46. 8611 of Quash of CC.No. 270,273 NIL Illegal transportation of 2022 1169 of 2020 on the 1. Amber (04) bags.

file of court of 2. SR-01 Tobacco (06) small bags Judicial First Class 3. V1- tobacco (20) small bags. Magistrate at 4. Ganesh Tobacco (01) Adilabad. 5. RK classic tobacco (02) small bags

47. 8612 of Quash of CC.No.335 270,273 NIL Illegal selling of 2022 of 2022 on the file of 1. vimal Gutka Small -(09) bags court of Judicial 2. H5 Tobacco small- 09 bags. First Class 3. Rajnivas tobacco- 03 small bags. Magistrate, 4. Sagar tobacco- 500 packets Adilabad. 5. Amber tobacco- 34 packets

6. Z black Tobacco-11 packets

7. Sagar Tobacco-80 packets

8. Baba tobacco-10 packets

9. Tota tobacco- 01 packet

10. Mazza tobacco -01 packet

48. 8613 of Quash of CC.No. 270,273 NIL Illegal selling of 2022 547 of 2021 on the 1. V1 tobacco-08 small bags file of court of 2. Vimal panmasala-02 small bags Judicial First Class Magistrate, Adilabad.

49. 8614 of Quash of CC.No. 270,273 Nil Illegal selling of 2022 258 of 2022 on the 1. V1 tobacco-15 packets.

file of Court of 2. Sagar-2 packets. Judicial First Class 3. RK. Classic Tobacco - 02 Packets. Magistrate at 4. H5 Tobacco-4 packets. Adilabad. 5. Big Vimal -02 packets.

6. Small vimal -02 packets.

7. H5 Tobacco-02 packets

50. 8627 of Quash of CC.No.769 420,273 20(2)2 Illegal selling of 2022 of 2022 on the file of 4(1) 1.Amber packets -12 the court of Judicial 2.V1 Tobacco packets -370 First Class 3.RR Tobacco -50 Magistrate at 4.RR pan Masala -10 Dr.CSL, J And batch Suryapet. 5.Zafrani Zarda- 18

6.JK tobacco -34

7. Blue Bull tobacco -58

8.Banarsi perfumed tobacco -38

9.Sapna Tobacco -25

10.SR-1 Tobacco -70

11.Sagar pan masala -20

12.RR Gold Tobacco -20

13.Swagath gold Tobacco- 18

51. 8639 of Quash of 420,328, Nil Illegal transportation of 2022 P.R.C.No.34 of 2021 270,273 50 big amber packets on the file of the court of Additional Judicial First Class Magistrate at Mahabubabad.

52. 8680 of Quash of Crime No. 188 5 Illegal transportation of 2022 390/2022 of 1. Raja Tobacco - 7 packets Saidabad Police 2. Sudhakar tobacco - 8 packets Station. 3. Vimal pan masala 1 bag

4. V-1 tobacco 1 bag

5. Sagar Pan Masala - 1 bag

6. SR-1 Tobacco - 1 bag

53. 8681 of Quash of Crime No. 270, 273 20(2) Illegal selling of 2022 197/2022 of Khaini Tobacco packets - 20 bags Maridepa Police Station.

54. 8682 of Quash of CC No. 188, 20(2) Illegal selling of 2022 3489/2022 on the 270, 272 1. SR -1 tobacco - 2184 file of the court of V pouches Additional 2. V-1 tobacco -6240 pouches. Metropolitan 3. RR tobacco -2240 pouches Magistrate, 4. Miraz tobacco -1575 pouches Medchal-Malkajgiri. 5. Amber tobacco - 500 pouches

6. Chaini Chaini tobacco - 7 pouches

7. Keshav gold tobacco -136 pouches

8. Sagar pan masala -2184 pouches

9. RR pan masala -170 pouches

10. Vimal Pan masala -624 pouches

11. Keshav gold pan masala 1350 pouches.

55. 8694 of Quash of CC No. 270, 273 20(2) Illegal transportation of 2022 1665/2022 on the r/w 1. V1 tobacco - 5 big bags file of the Court of 7(2) 2. SR 1 tobacco - 2 big bags Judicial First Class 3. Swagat tobacco - 2 big bags Magistrate, 4. Raja tobacco - 25 packets Zaheerabad. 5. Mirage tobacco - 11 packets Dr.CSL, J And batch

4. A common submission was made by the learned counsels for the petitioners that this Court through order dated 14.07.2022 in CrI.P.No.9062 of 2021 and batch, while extensively dealing with the provisions of law applicable, has observed that those provisions of law does not attract to the facts of the said cases and as the allegations against the petitioners in these Criminal Petitions are also similar, a similar order may be passed.

5. Learned Assistant Public Prosecutor also stated the same.

6. This Court while dealing with the subject matter in the above referred batch of cases, comprehensively dealt with the law involved by framing the following points for consideration:-

(1) Whether being in possession and having found involved either in transporting or selling the tobacco products like cigarettes, gutka, chaini, etc., attract the provisions of COTP Act, 2003.

(2) Whether the acts of possessing, transporting or selling tobacco products like cigarettes, gutka, chaini, etc attract the provisions of the Indian Penal Code, 1860 more particularly Sections 188, 269, 270, 272, Dr.CSL, J And batch 273, 278, 328 read with 511, 336, 409 and 420 IPC.

(3) Whether either transporting or selling or possessing tobacco products like cigarettes, gutka, chaini, etc attracts Section 59(1) of Food Safety and Standards Act, 2006.

(4) Whether there exists any justifiable grounds to invoke the power granted to this Court under Section 482 Cr.P.C. and to quash the proceedings that are pending against the petitioners as prayed for.

7. Answering point No.1, this court in the common order dated 14.07.2022 rendered in Criminal Petition No.9062 of 2021 and batch, gave a clear finding at paras 16 and 17 of the order, which is as

follows:-

"16. Though as rightly projected by the learned Assistant Public Prosecutor, the use of cigarettes and allied tobacco products is injurious to health and there is every need to adopt stringent approach for curtailing the said use by the public, to prohibit production, transportation and sale of those products, there is no specific provision in the COTP Act, 2003, which makes such production, transportation and sale of the tobacco products a prohibited offence. At the same time, this Court is Dr.CSL, J And batch not inclined to accept the submission of the learned counsel on record for the petitioners that as Rs.53,750/- crores of revenue is being generated in the country through the sale of tobacco products, the same has to be taken into consideration for disposal of the present criminal petitions. It is not out of place to mention that for treatment of tobacco related diseases, the victims and their families are laying their lives and there are more than eight lakhs casualties every year in the country due to direct or indirect use of tobacco related products which includes cigarettes, chaini, gutkha, etc. Also, it is estimated that loss of productivity due to use of these products is almost Rs.13,500/- crores annually. That means, the revenue generated through the tobacco industry is worthless in the light of the annual casualties and loss of productivity due to use of those products.

17. Article 47 of the Constitution of India casts a duty upon the State to raise the level of nutrition and the standard of living of its people. It also states that the State should take steps for improvement of public health as the same is its primary duty. It also lays down that the State shall endeavour to bring about prohibition of consumption of intoxicating drinks which are injurious to health. This provision is under Part-IV of the Constitution of India which lays down the Directive principles of State Policy. Basing on the said salutary provision, the legislature by its wisdom ought have framed a stringent Dr.CSL, J And batch legislation which prohibits the transportation, storage and sale of the tobacco products. However, such a legislation has not yet seen the light of the day. The only legislation that is invoked time and again is COTP Act, 2003. The said legislation does not prohibit production, supply and transportation of cigarettes and tobacco products in toto. It says that only when package of the products does not contain the label as prescribed, then the possessors of those products would be held liable for punishment. It further covers the circumstances where the said products are being sold to any person who is below the age of 18 years or that they are sold within a radius of 100 yards from any educational institution. If the possession is otherwise, it does not fall within the ambit of the said legislation. None of the acts alleged to have been committed by the petitioners therefore fit to any of the provisions of the COTP Act, 2003. Therefore, this court holds that the petitioners cannot be held to have committed offences punishable under the provisions of the COTP Act, 2003."

8. Answering point No.2, i.e., in respect of the offences punishable under different provisions of the Indian Penal Code, the findings of this Court in the aforesaid common order at para 46 are as

under:-

"46. The entire version of the investigating agency is that the petitioners were involved in the business of Dr.CSL, J And batch possessing/transporting/storing/selling of tobacco products like gutka, chaini, etc. There is no whisper that the said products were banned by the competent authority. No legislation is brought to the notice of this court to show that possession of tobacco products viz., gutka and alike and involving in the business of selling those products is banned and committing such acts is declared as disobedience to order duly promulgated by a public servant, or that the acts committed would amounts to public nuisance or those acts are likely to spread infection of disease dangerous to life, or noxious for consumption as food or drink whose sale is prohibited, or that possession of tobacco products makes the atmosphere noxious to health, or there was an attempt to administer those products to any person with an intention to cause hurt, or that those acts amounts to rashly or negligently endangering life or personal safety of others or amounts to criminal breach of trust or cheating. Therefore, the provisions invoked viz., Sections 188, 269, 270, 272, 273, 278, 328 read with 511, 336, 409 and 420 IPC does not attract to the bundle of facts that are projected by the investigating agency."

9. Likewise, answering point No.3, with regard to the applicability of Section 59(1) of Food Safety and Standards Act, 2006, this Court discussing the law on Dr.CSL, J And batch the subject at para 52 of the aforesaid common order observed as follows:-

"52. Narcotic and psychotropic substances were kept out of the ambit of the term "food" specifically. It is clearly indicated that they do not fall within the ambit of the term "food". A food item means a substance intended to be used for human consumption either as a primary food or genetically modified or engineered food. Tobacco products in whatever form they may be, does not therefore fall within the ambit of the term "food". Therefore, invoking Section 59(1) of the Food Safety and Standards Act, 2006 against the petitioners is undesirable."

10. Further more, though the Government of Telangana issued notification vide notification No.501/FSS/I/2022, on 07.01.2022, prohibiting manufacturing, storing, distribution, transportation and sale of gutka and pan masala in the entire state of Telangana, the Hon'ble Supreme Court of India in the case between Shri Venkateshwara Traders Vs. State of Telangana and others, vide SLA No.20441 of 2021 with SLP(C).No.1656 of 2022, stayed operation of the said notification.

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11. Likewise, a Division Bench of this Court through common order, dated 08.9.2022, rendered in Writ Petition No.20212 of 2022 and batch, at paras 4 to 8 of the order observed as under :-

"4. During pendency of the aforesaid SLP, the impugned notification bearing No.501/FSS-I/2022 dated 07.01.2022 came to be issued. By order dated 31.03.2022, Supreme Court has stayed the impugned notification dated 07.01.2022.

5. Learned counsel for the petitioners have made a grievance that despite the notification being stayed by the Supreme Court, yet the petitioners are being harassed by the local police authorities by interfering with their day-to-day businesses.

6. We make it clear that since the entire matter is before the Supreme Court, it would not be proper on our part to have a parallel adjudication as the order of the Supreme Court would be binding on all courts and authorities. Since the Supreme Court has stayed the impugned notification vide the order dated 31.03.2022, respondents shall comply with the said order of the Supreme Court in letter and spirit.

7. If any of the petitioners feel that the stay order of the Supreme Court has been violated or breached, they would be at liberty to take appropriate steps in accordance with law.

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8. This disposes of the writ petitions."

12. Ultimately, a circular Memorandum was issued by the Director General of Police, Telangana State, Hyderabad in RC.No.295/R1-NS/2022, wherein and whereby instructions were issued to the Station House Officers not to interfere with the business activities who carry out the business as per the Rules of the Food Safety and Standards Authority of India and also not to take any coercive measures against the petitioners as long as the orders of the Hon'ble Supreme Court are in force.

Further more, as earlier indicated, none of the provisions of law indicated in the respective First Information Reports and the charge sheets apply to the case facts.

13. So far as Criminal Petition No.8477 of 2022 is concerned, the allegation against the petitioner, who is arrayed as accused No.2, is only that he committed offences punishable under Sections 188, 270 and 273 IPC, which does not attract to the said transaction.

Therefore, this Court is of the view that the proceedings against him are unsustainable Dr.CSL, J And batch

14. The petitioner in Criminal Petition No.8596 of 2022, who challenged the proceedings in C.C.No.421 of 2019 that is pending on the file of the Court of I Additional Chief Metropolitan Magistrate, Hyderabad, was alleged to have committed offences punishable under Sections 270, 271 and 273 IPC and Sections 20(1) and 20(2) of COTP Act and also under the provisions of Prohibition of Trade Act. Learned Assistant Public Prosecutor failed to state how the said legislation i.e.,

Prohibition of Trade Act, applies to the case facts where the allegations against the petitioner is only that he procured gutka, pan masala and other allied tobacco products and kept for distribution.

15. Therefore, this Court is of the view that continuation of proceedings against the respective petitioners would definitely amount to abuse of process of Court and thus, the proceedings, as prayed for, are liable to be quashed.

16. Resultantly, all the Criminal Petitions are allowed.

The proceedings initiated against the petitioners in the Dr.CSL, J And batch respective cases are hereby quashed. The property and vehicles, if any, seized shall be returned to the lawful claimants by Police or the Court concerned in case, no other proceedings are pending against any other suspects/accused in the respective cases.

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

_____ Dr. CHILLAKUR SUMALATHA, J 26.9.2022 dr