

Bench: Ninala Jayasurya

1

of Miraj Super Swadeshi Tobacco - each bag containing 70 boxes and each box with 15 pouches and total 6300 pouches, total worth Rs.94,500/-; (2) 5 plastic bags mind free readymade khaini uttam tobacco and each bag containing 50 packets having 20 pouches each - total 5000 pouches and total worth of Rs.25,000/-; (3) 13 plastic bags of RK deluxe mix swad containing 128 kits, each kit having 33 packets and each packet having 70 pouches and 13 bags, total worth Rs.3,90,000/-; (4) 5 plastic bags of RR Tobacco, each bag containing 42 packets, each packet containing 20 pouches - total worth Rs.25,200/-; (5) 2 boxes of Raja khaini, each box containing 50 packets and each packet having 20 pouches and total worth Rs.20,000/-; (6) 6 plastic bags of dilkush bangu and each bag containing 50 packets and each packet 20 pouches - total worth of Rs.8,000/- and also grand total 35 plastic bags and 2 boxes worth of Rs.5,72,700/- which are not having proper documents i.e., receipts, invoice and GST from them which are unclaimed. The said stock was seized and the police registered a case in Cr.No.212 of 2022. Aggrieved by the said registration of F.I.R, the present Criminal Petition came to be filed.

3. The learned counsel for the petitioner, while drawing the attention of this Court to the above said provisions of Law i.e., Sections 41 and 102 Cr.P.C, inter alia, contends that a reading of the Occurrence Report would not disclose commission of any offence, that Section 41 of Cr.P.C contemplates the situations, wherein a police official may arrest a person without an order from a Magistrate and without a warrant and further Section 102 Cr.P.C contemplates seizure of certain property by a police official as laid down therein. He submits that the above provisions of Law only provides for the powers and the procedure and registration of F.I.R under the said Sections without reference to commission of any offence is wholly un-sustainable in Law. The learned counsel also submits that though this Court had quashed thousands of F.I.Rs, as also Charge Sheets, with regard to tobacco products, the police are still registering the crimes, which is highly deplorable. The learned counsel further submits that in similar circumstances, F.I.Rs registered with reference to Sections 41 and 102 of Cr.P.C were quashed in Crl.P.No.583 of 2022 dated 11.04.2022 etc., The learned counsel also places reliance on the decision of a Learned Single Judge dated 03.09.2021 in Crl.P.No.4964 of 2021. Making the submissions that the tobacco products are perishable in nature, the learned counsel would urge that the Criminal Petition may be allowed, with a direction to the respondents to release the seized stock.

4. The learned Assistant Public Prosecutor on the other hand while opposing the said submissions, inter alia contends that the police are empowered to register the F.I.R under Section 102 Cr.P.C, as the petitioner failed to produce any documents in proof of ownership of the seized stock and registration of F.I.R is legally sustainable. He also places reliance on the decision of the Learned Judge of High Court of Madras in Ramesh vs. The State and another [Crl.O.P.No.5190 of 2021 and Crl.M.P.No.3332 of 2021 dated 17.03.2021]. He submits that the Criminal Petition is without any merits and liable to be dismissed.

5. Considered the submissions made and perused the material on record. It is not in dispute that several cases were disposed of by different benches of this Court quashing the F.I.Rs/Charge Sheets registered against the persons transporting, possessing or selling tobacco products under the provisions of Indian Penal Code, Cigarettes And Other Tobacco Products (Prohibition of Advertisement and Regulation Of Trade and Commerce, Production, Supply and Distribution) Act,

2003 as also under the provisions of the Food Safety and Standards Act, 2006 inter alia, holding that possession or transportation or sale of tobacco products would not constitute a crime under the said enactments. Therefore, registration of F.I.R, in the absence of any complaint to the effect that the products in question are stolen or on mere suspicion, is not warranted. The F.I.R must disclose commission of an offence.

6. Though the learned Assistant Public Prosecutor tried to justify registration of F.I.R by placing reliance on the above cited decision, the same is not applicable to the facts of the present case. In the said decision, the Learned Judge was dealing with a case, where F.I.R registered under Section 102 of Cr.P.C, was under challenge. Basing on the complaint given by the election squad, the F.I.R was registered and a report was sent to the Learned Magistrate on the seizure of money in compliance with Section 102(3) Cr.P.C. The police, on completion of investigation felt that the materials collected prima facie constitutes an offence punishable under Section 171-E of IPC. In the said case, the F.I.R was not registered on the basis of commission of cognizable or non- cognizable offence, but on the basis of the seizure of money by the election squad, which was un-accounted and a complaint was given in that regard. But, as stated earlier, possession of tobacco products would not constitute any crime under the above referred enactments. Therefore, the decision relied on by the learned Assistant Public Prosecutor is of not much aid to the case of the respondents.

7. In Crl.P.No.4964 of 2021 relied on by the learned counsel for the petitioner, a Learned Judge of this Court while quashing the F.I.R registered under Section 107 Cr.P.C, inter alia, held as follows:-

"A reading of Section 154 Cr.P.C makes it manifest that only when the information that is furnished to the police discloses commission of a cognizable offence, then only police are required to register an F.I.R under Section 154 Cr.P.C and investigate the case. Even in a case relating to non-cognizable offence, the police have to first obtain prior permission from the concerned Magistrate and register an F.I.R and then proceed according to Law. So, basically the Law contemplates registration of F.I.R only when the information discloses commission of a cognizable offence."

8. In the light of the above expression and the conclusions that possession of tobacco products would not constitute an offence under the above mentioned statutes, registration of F.I.R on mere suspicion and seizure of the tobacco products is not sustainable in Law.

9. Accordingly, the Criminal Petition is allowed. F.I.R.No.212 of 2022 on the file of Ramabhadrapuram Police Station, Vizianagaram District, registered against the petitioner is quashed. The Station House Officer, Ramabhadrapuram Police Station, Vizianagaram District shall return the tobacco products seized in connection with the F.I.R in question to the petitioner. Consequently, all pending applications shall stand closed.

JUSTICE NINALA JAYASURYA Date: 08.11.2022 IS THE
HON'BLE SRI JUSTICE NINALA JAYASURYA CRIMINAL PETITION NO.6672 of 2022 Date:
08.11.2022 IS