

# Chalamalla Padma Reddy And Another vs The State Of Telangana on 31 March, 2021

**Author: K. Lakshman**

**Bench: K. Lakshman**

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.2727 OF 2021

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.107 of 2021 on the file of the Prl. Judicial Magistrate of First Class, Suryapet against the petitioners/accused Nos.2 and 3 and for a consequential direction as to the said Court to return the seized property. The offences alleged against the petitioners are under Sections 420 and 273 of IPC and Section 24(i) 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').

2. Heard Sri Srinivas Reddy Balakisti, learned counsel for the petitioners, and learned Assistant Public Prosecutor. Perused the entire material available on record.

3. The learned counsel for the petitioners would submit that the Sub-Inspector of Police is not having authority to lodge the present complaint, and the Suryapet II Town Police Station, is not having power to register a case in Crime No.517 of 2020 for the offences under Sections 420 and 273 of IPC and Section 24 (i) of the COTP Act. He would further submit that the allegation against the petitioners is that they are selling the tobacco products to the customers illegally in order to gain wrongful profits. Thus, the accused has committed the aforesaid offences. The learned counsel by referring to the provisions of COTP Act, including 24 (i), would submit that the allegations made in the charge sheet do not attract the ingredients of the aforesaid provisions and, therefore, the aforesaid offences alleged against the petitioners are liable to be quashed. In support of the same, he has placed reliance on the judgment in Chidurala Shyamsubder v. State of Telangana<sup>1</sup> rendered by the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. Whereas, the learned Public Prosecutor has tried to distinguish the principle laid down in the said judgment to the facts of the present case.

4. Perused the judgment in Chidurala Shyamsubder (supra), wherein 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 Lal<sup>2</sup>, held that the police are incompetent to take cognizance of the offences punishable under Sections 54 and 59 (1) of the Food Safety and Standards Act, 2006 (for short 'FSS Act'), investigating into the offences along with other offences under the provisions of the Indian Penal Code, 1860. It was further . CrI.P. No.3731 of 2018 & batch, decided on 27.08.2018 . 1992 Supp. (1)

SCC 335 held that filing charge sheet is a grave illegality, as the Food Safety Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections - 41 and 42 of FSS Act. In the present case, the police have registered the crime for the offences under Sections 420 and 273 of IPC and Section 24 (i) of COTP Act. Therefore, the said proceedings in C.C. No.107 of 2021 against the petitioners herein are contrary to the principle laid down in Chidurala Shyamsubder (Supra) and, therefore, the same are liable to be quashed.

5. As far as Section - 24 (i) of the COTP Act is concerned, as stated above, the allegations against the petitioners is 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 Sections - 24 (i) and 6 of the COTP Act for better appreciation of the case and to decide the issue in question, and the same is as under:

"24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years.-(1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees. (2) All offences under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).

6. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area.-No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product- (a) to any person who is under eighteen years of age, and

(b) in an area within a radius of one hundred yards of any educational institution."

6. Thus, Section 24 of COTP Act deals with sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years and any person who contravenes the provisions of Section 6 i.e., prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years. As stated above, the allegation against the petitioners herein is that they purchase the tobacco products and sell them to customers at higher prices to gain wrongful profits. There is no allegation in the charge sheet against the petitioners that they are selling the same to the customers below the age of 18 years or at a particular area. In view of the same, the contents of the charge sheet lack the ingredients of Section 24 (i) of the COTP Act. Therefore, registering the crime for the said offence against the petitioners is also contrary to Section 24 (i) of COTP Act. Thus, the offence under Section 24 (i) of COTP Act is also liable to be quashed against the petitioners.

7. In view of the above discussion, the present Criminal Petition is allowed, and the proceedings in C.C.No.107 of 2021 on the file of the Prl. Judicial Magistrate of First Class, Suryapet, are hereby quashed against the petitioners - accused Nos.2 and 3.

8. Since the proceedings in the aforesaid case are quashed against the petitioners in C.C.No.107 of 2021, the petitioners are at liberty to file appropriate application for return of seized property and the learned Magistrate shall consider the same and return the seized property on proper

identification and verification of ownership of seized property under due acknowledgment. Miscellaneous petitions pending, if any, in the criminal petition, shall stand closed.

\_\_\_\_\_ K. LAKSHMAN, J 31st March, 2021 PN THE HONOURABLE SRI  
JUSTICE K. LAKSHMAN CRIMINAL PETITION No.2727 OF 2021 31st March, 2021 PN