

Mohd. Ismail vs The State Of Telangana on 16 August, 2022

Author: Chillakur Sumalatha

Bench: Chillakur Sumalatha

1

Dr.CSL, J
Crl.P.No.7472 of 2022
and batch

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

Crl.P.Nos.7472, 5054, 5057, 6157, 6181, 6187, 6247, 6289, 6290, 6292, 6329, 6370, 6392, 6393, 6394, 6395, 6396, 6397, 6507, 6511, 6513, 6517, 6527, 6535, 6548, 6549, 6551, 6593, 6594, 6595, 6596, 6619, 6637, 6638, 6661, 6713, 6714, 6721, 6747, 6749, 6772, 6791, 6792, 6799, 6805, 6829, 6838, 6842, 6867, 6893, 6894, 6898, 6906, 6928, 6968, 6969, 6974, 6982, 6998, 7023, 7102, 7159, 7173, 7176 and 7189 of 2022

COMMON ORDER:

With a request to quash the charge sheets, Criminal Petition Nos.7472, 6247, 6289, 6290, 6329, 6370, 6392, 6393, 6394, 6395, 6396, 6397, 6507, 6511, 6517, 6527, 6549, 6551, 6594, 6595, 6596, 6619, 6637, 6638, 6713, 6714, 6747, 6749, 6772, 6791, 6792, 6799, 6805, 6829, 6838, 6842, 6893, 6894, 6906, 6928, 6968, 7023, 7159, 7173 and 7176 of 2022 are filed.

2. Likewise, seeking to quash the F.I.Rs, Criminal Petition Nos.5054, 5057, 6157, 6181, 6187, 6292, 6513, 6535, 6548, 6593, 6661, 6721, 6867, 6898, 6969, 6974, 6982, 6998 and 7175 of 2022 are filed.

Dr.CSL, J and batch

3. Highlighting that the provisions of law under which the accusation is made does not attract the facts of the case, these Criminal Petitions are filed.

4. Accusation against the petitioners is made invoking Sections 20(1), 20(2), 20(2) read with Section 7(2) 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 COTPA Act, 2003", for brevity). The provisions of Indian Penal Code viz., Sections 188, 269, 270, 271, 272, 272 read with 34, 273, 273 read with 511, 328 read with 511, 336, 336 read with 34, 353 and 420 IPC are also invoked.

5. The allegations in capsule is that the petitioners were in possession of the tobacco products like gutka, pan masala, etc., and they were found involved in activities like selling, storing or transporting the said tobacco products.

6. For proper understanding of the case, the provisions of law involved, 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. CrI.P. RELIEF SOUGHT FOR SECTIONS OF LAW NATURE OF No No. INVOLVED OFFENCES IPC COTP Act 1 7472 of Quash of C.C.No.8393 420, 272, 20(2) Illegal transport and 2021 of 2019 on the file of 273, 336 selling of tobacco VIII Addl. Chief products.

Metropolitan Magistrate at Nampally.

(Sole Accused) 2 5054 of Quash of Cr.No.128 of 270, 273 20(2) Illegally selling gutka 2022 2022 of Nizamabad III packets.

		TN Police Station pending on the file of I Addl. JFCM Court, Nizamabad. (Sole Accused)				
3	5057 of 2022	Quash of Cr.No.65 of 2022 of Tappachabutra Police Station, Hyderabad. (Sole Accused)	188, 273	20(2)	Illegally doing business of Gutka, tobacco and other contraband tobacco products.	
4	6157 OF 2022	Quash of Crime No. 87 of 2022 of Charminar police station. (petitioners/ A1-A3)	272, 273, 328 r/w 511	20(2)	Illegally transporting gutka products. Premium rani gutka 3 white colour bags.	
5	6181 of 2022	Quash of CrimeNo. 398 of 2022 of Ghatkeshwar police station. (petitioners/ A1-A3)	270, 272, 188	20(1), 20(2)	Illegally transporting of gutka packets. Amber tobacco gutka 30 bags	
6	6187 of 2022	Quash of Crime No. 136 of 2022 of Narayanpet police station. (sole accused)	188, 273	21(2)	Transporting gutkha, pan masala and zarda from Raichur Hyderabad. 1.RR gutka- packets. 2.meraz gutka- 35 packets. 3.vimal tobacco and masala - 364 packets. 4.sagar pan masala and tobacco-364 packets. 5.sagar pan masala- 52 packets.	
7	6247 of 2022	Quash of CC No. 149 of 2021 on the file of Judicial First Class Magistrate, Uttnoor,	270, 273	NIL	Illegally selling tobacco products which are noxious in nature.	

Adilabad.
(petitioner A1-A2)

1.baba- 54(11)
packets.
2.baba black tobacco-

Dr.CS

and b

28 packets.
3.vimal tobacco- 6
packets.
Knowingly and malig-
nantly selling banned
gutka.
From A1

8 6289 of Quash of CC No.64 of NIL 20(2)
2022 2019 on the file of r/w 7(2)
Judicial First Class
Magistrate, Utnoor,

Adilabad. 1. Vimal packets -150 (Sole Accused) 2. Naazar packets -4

3. Bajira packets -3

4. Sagar packets -9

5. Amber packets -2

6. SR-1 packets -9

7. Baba-120 packets -

8. Chetan packets -5

9. Surya chapt tota Tabacco packets- 3

10. Tabacco packet -1

11. Rathna packets -4

12. Maja packets -1

13. Vimal packets -3

14. Vimal packets

15. RMD packet -1 9 6290 of Quash of CC No. 159 of 270, 273 NIL Selling noxious 2022 2021 on the
file of IPC. tobacco products.

Judicial First Class 1.amber tobacco Magistrate, Utnoor. packets-16 (petitioners/ A1&A2) 2.vimal
tobacco-15

3.vivo tobacco packets-15

4.hot premium pan masala-14 packets.

					5.H-5 premium chewing tobacco packets-9
					6.big vimal tobacco packets-5
					7.V-1 tobacco packets-5
					8.rajnivas sugandith pan masala packets-6
					9.premium NP-1 zafrini zardha packets-8
10.	6292 of 2022	Quash of Crime No. 89 of 2022 of Maripeda police station. (petitioners A1-A6)	270, 273 IPC	NIL	Selling of tobacco products. 1.amber packets-116 big size 2.vimal packets-197 big size 3.RR tobacco packets-10 big size
11.	6329 of 2022	Quash of CC No. 106 of 2022 on the file of Special PCR Mobile Court Cum Judicial First Class Magistrate, Adilabad. (Petitioners/A1 & A2)	270, 273	NIL	4.jharda packets-10 Selling noxious products. 1.N-05 tobacco packets-3 2.XL-01 zafani zarda packets-7 3.H-5 tobacco packets-6 4.RK classic tobacco packets-2 5.SR-01 tobacco-3 6.N-01 tobacco packets-1
12.	6370 of 2022	Quash of CC No. 1319 of 2022 pending on the file of Additional Judicial First class	270, 273 of IPC.	NIL	Transporting gutka products. 900 amber gutka packets.

Magistrate, Sathupalli. (petitioners/ A1-A3)

13. 6392 of Quash of CC No. 122 of 270, 273 NIL Selling of noxious 2022 2022 on the file of gutka products.

		special PCR mobile court cum judicial first class magistrate, Adilabad. (petitioners A1 & A2)				1.Seized Sitar panmasala -3 packets, 2.H-5 Premium Tobacco -9packets, 3.HOT premium panmasala -5packets, 4.Amber Tobacco -4 packets, 5.Vimal Panmasala -8 packets, 6.RK Classic panmasala -6packets, 7.RK classic Tobacco -11 packets. 8.Vimal panmasala -5 packets, 9.SR tobacco -2 packets, 10.Vimal tobacco -8packets, 11.XL Zafrani Zarda - packet, 12.Rajnivas panmasala -1 packet, 13.Sagar panmasala - 1 packet, 14.V-1 tobacco -8 Illegally selling gutka packets. 1.RK classic tobacco packets-11
14.	6393 of 2022	Quash of CC No. 145 of 2022 on the file of special PCR mobile court cum judicial first	270, 273	NIL		
		class magistrate, Adilabad. (petitioners/A1 and A2).				Dr.CSL, and bat
						2.XL-1 tobacco packets-3 3. NP-1 tobacco packets-2 4.V-1 tobacco packets-3
15.	6394 of 2022	Quash of CC No. 504 of 2022 on the file of	270, 273	NIL		Selling banned tobacco products.

Junior Civil Judge Cum 1. Sitar Pan masala - Judicial First Class 89 packets Magistrate, Adilabad. 2. Amber tobacco -10 (petitioners / A1 &A2) packets

3. H-5 tobacco -63 packets

4. SR-1 tobacco -35 packets

5. Ganesh pandarpuritobacco -

39 packets

6. Chetakn tobacco -5 packets

7. XL-01 tobacco -29 packets

8. Thota tobacco- 4 packets

9. X-1 tobacco -27 packets

10. RK chetan tobacco -28 packets

11. Baba tobacco -1 packets

16. 6395 of Quash of CC No. 499 of 270, 273 NIL Selling banned 2022 2022 on the file of tobacco products.

Junior Civil Judge Cum 1.V-1 tobacco Judicial First Class packets-65 Magistrate, Adilabad. 2.H5 premium (petitioners /A1&A2) chewing tobacco packets-31

3.XL-01 zafri packets-

4.RK classic scented tobacco packets-15.

5.ganesh pandarpuri tobacco packets-2

6.SZ tobacco packets-

7.F-9 chewing tobacco packets-140

17. 6396 of Quash of CC No. 338 of 270, 273 NIL Selling noxious gutka 2022 2022 on the file of packets.

Junior Civil Judge Cum 1.amber tobacco Judicial First Class packets-500 Magistrate, Adilabad. 2.vimal pan masala Dr.CSL, J and batch (petitioners A1&A2) packets- 200

18. 6397 of Quash of CC No. 501 of 270, 273 NIL Purchasing and 2022 2022 on the file of selling tobacco Junior Civil Judge Cum products. Judicial First Class 1.RK classic scented Magistrate, Adilabad. tobacco packets -60 (petitioners/ A1&A2) 2.V-1 tobacco packets-585

19. 6507 of Quash of CC No. 14174 NIL 20(2) Illegally selling 2022 of 2021 on the file of banned and VIII Additional Chief prohibited gutka and Metropolitan zarda packets. Magistrate, Nampally.

1.K-9000 gutka (Sole accused) packets-120

2.RR tobacco packets

-50

3.sagar gold tobacco packets -30

4.maharaj tobacco packets -10

5.miraj tobacco- 60 pouches.

6. swagath gold tobacco packets -15

20. 6511 of Quash of CC No. 3471 188, 270, 20(2) Illegally transporting 2022 of 2022 pending on the 272 r/w 34 of gutka packets.

		file of V Additional Metropolitan Magistrate, Medchal Malkajgiri. (petitioners/ A1-A3)			Amber tobacco gutka packets- 30 bags
21	6513 of 2022	Quash of CrimeNo. 108 of 2022 of III TN police station, Kothagudem. (petitioner A1)	270, 273 IPC	NIL	Knowingly selling tobacco products. From A1 1.pan bahar -17 barrels 2.bahubali-40 boxes 3.pan bahar crystal- 18 boxes 4.JK zarda tobacco - 45 packets.
22.	6517 of 2022	Quash of CC No. 347 of 2022 on the file of XXII Additional Chief	272, 273	NIL	Illegally selling noxious tobacco products.

MetropolitanMagistrate, Secunderabad.

(Sole Accused)

23. 6527 of Quash of CC No. 362 of 270, 273, 20(2) Transporting the 2022 2021 on the file of 328 r/w banned Ambar stocks Special Judicial 511 from Hyderabad to Magistrate of First Kotha-gudem. Class (Mobile) for Trial Amber packets- 20 of cases under PCR Act plastic bags.

cum IV Additional

		Junior Civil Judge, Khammam. (petitioner/ A1)			
24.	6535 of 2022	Quash of Crime No.60 of 2022 on the file of Annapureddypalli Police Station, Bhadradi-Kothagudem District. (Petitioners/ A1 & A2)	270, 273	NIL	Possession of banned Tobacco ingredients.
25.	6548 of 2022	Quash of Crime No. 811 of 2022 of Gachibowli police station. (Sole accused).	188, 273	20(2)	Illegally selling and transporting tobacco and gutka. 1.rajnivas pa masala- 5 bags 2.XL-01 zafrani zard -4 bags
26.	6549 of 2022	Quash of CC No. 402 of 2020 on the file of Special PCR Mobile Court cum Judicial First Class Magistrate, Adilabad. (Petitioners/ A1 & A2)	279, 270, 273	20(2) r/w 7(2)	Illegal possession transportation a selling noxio products.
27	6551 of 2022	Quash of C.C.No. 426 of 2017 on the file of the A.J.F.C.M. Court, Gajwel. (Petitioners/A1 to A3)	420, 188, 270, 273 r/w 34	NIL	Knowingly selling banned tobacco pro- ducts.
28	6593 of 2022	Quash of CrimeNo. 329 of 2022 of II town police station, Khammam. (Sole accused)	270,273	NIL	Illegally running business of Gutkha packets. 1.vimal packets-1150 2.RR tobacco packets 3.amber tobacco packets- 76 4.jardha tobacco packets-70. 5.RMD packets-240 6.swagath tobacco packets-3 7.baba tobacco boxes 8.RMD jardh packets-740 9.baba 160 packets- 10.baba 120 packets- 11.pan bar packets-

					12.V1	tobacco
						D
						a
						packets-1150
						13.baba navaratn
						packets-180.
29	6594 of 2022	Quash of CC No. 720 of 2022 on the file of I Additional Judicial First Class Magistrate, Khammam. (Sole accused)	270, 273	20(2)		Illegally business of gutka products.
						1.2 super bags of amber packets.
						2.2 super bags of JK tobacco packets.
						3.1 super bag of RMD tobacco packets.
30	6595 of 2022	Quash of CC No. 532 of 2022 on the file of I Additional Judicial First Class Magistrate, Khammam. (Sole accused)	270, 273	20(2)		Illegal business of tobacco products.
						1.amber packets
						2.meraj packets
						3.JK packets
						4.RR packets
						5.V1 packets.
31	6596 of 2022	Quash CC No. 725 of 2022 on the file of I additional judicial first class magistrate, Khammam. (Petitioners A1 & A2)	270, 273	20(2)		Possession of tobacco products for selling.
						1.amber gutka -390 big size packets.
						2.RR gutka - 42 big size packets.
32.	6619 of 2022	Quash of CC No.295 of 2018 on the file of judicial first class magistrate, Adilabad. (petitioners/ A1 to A3)	NIL	20(2) r/w 7(2)		Selling of tobacco products.
						1.R-1 tobacco plastic bags
						2.V-1 tobacco - 30 plastic bags
						3.vimal pan masala - 4 plastic bags.
33.	6637 of 2022	Quash of CC No.147 of 2022 on the file of judicial first class magistrate, Adilabad. (petitioners A1-A3)	270, 273	NIL		Illegal possession and selling gutka/tobacco bags.
						1.XL-01 Zarda -50 bags
						2.V-1 Tobacco - 4 big bags
						3.V-1 Red - 9 big bags
						4.H-5 Premium chewing tobacco - 13 big bags
						5.SR-1 Tobacco - 24 big bags
						6.Surya thota - 66 boxes

34.	6638 of 2022	Quash of CC No.138 of 2022 on the file of Special PCR Mobile Court Cum Judicial First Class Magistrate, Adilabad. (Sole accused)	270, 273	NIL	7.M-scented tobacco gold-3 boxes. Illegal possession and selling of Gukta. 1.M scented tobacco gold - 18 cartons 2.H-5 premium chewing tobacco - 23 big bags 3.V-1 tobacco 4.XL-01 zafrsn zarda bags white colour - 50 bags 5.amber - 280 packets
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Dr.CS

and b

35. 6661 of Quash of FIR No. 241 of 272, 273, 20(2) Illegally transporting 2022 2022 of Ghat-keshwar 188, 328 Tobacco and Gutka Police Station. r/w 511 products. (Petitioners/A1 to A3)

36. 6713 of Quash of CC No.1087 270, 273 NIL Transporting noxious 2022 of 2020 on the file of substance i.e., Junior Civil Judge Cum Gutkas/ Judicial First Class Tobacco for selling. Magistrate, Adilabad. 1.SR-1 tobacco - 27 (petitioners A1-A3) packets

2.RK classic -51 packets

3.V-1 tobacco - 8 small box

4.RK classic -9 small bags

5.sagar tobacco-5 small bags

6.amber - 30 packets

7.vimal -1 small bag

8.hot gutka -40 packets.

37. 6714 of Quash CC No.930 of 270, 273, NIL Illegal possession and 2022 2019 on the file of 353 selling of noxious Junior Civil Judge Cum subs-tance. Judicial First Class 1.Maza Big (08) Box, Magistrate, Adilabad. 2. Baba Big (01) Box (Sole accused) 3, Maza Small Box (05), 4.Eagle (01)Box, baba small (10) Box,

5.Baba big single (01) Box,

- 6.Baba 160 (20) Box,
- 7.Baba Black Packets 60 (box),
- 8.Eagle Pouch (02) Box,
- 9.Baghban (01) Box,
- 10.Baba Small (08) Box,
- 11.RMD (30) Box,
- 12.Chetavani (17) Box,
- 13.Nav chetan (02) Box,
- 14.Rathna (10) Box, Dr.CSL, J and batch
15. Raj Rathan (10) Box, 16.Minar 129 (01) Box, 17.Baba (04) Box,
- 18.Buland Kiman (04) Box,
19. 24 Carat Panmala (33) Box,
- 20.RMDPanmasala (216) Box,
- 21.Pan Bahar Pan Masala (35),
22. 10 Rajini Gandha rams Pansmalasa (16) Box,
23. Rajini Gandha 10 Rupees (41) Box, Rupees
25. (123) Box,
- 26.Rajini Gandha 100 Grams (60) Box,
- 27.Vimalaan Masala 5 rupees (50) Box,
- 28.Vimal Panmasala 3 rupees (65) Box,
- 29.RR panmasala (21) Box,
30. Rajini Gandha (10) Rupees (120) Box, 31.RMD Panmasala

38. 6721 of Quash of Crime No. 270, 273 20(2) Illegal possession and 2022 113 of 2022 of Wyra selling of tobacco police station, Kham- packets.

		mam. (Petitioners/A1&A2)				1.vimal 2.pan bahar 3.JK 4.RMD 5.M.tobacco
39.	6747 of 2022	Quash CC No.444 of 2022 on the file of Junior Civil Judge Cum Judicial First Class Magistrate, Adilabad. (Petitioners/A1 & A2)	270, 273	NIL		Illegal possession and selling of tobacco products.
40.	6749 of 2022	Quash of CC No. 524 of 2021 on the file of Junior Civil Judge Cum Judicial First Class Magistrate, Adilabad. (Petitioners/ A1&A2)	270, 273	NIL		Illegally selling the noxious products i.e., Gutka and Tobacco. 1.XL- tobacco -2 small bags. 2.rajnivas pan masala -1 small bag.
						Dr.C
						and
41.	6772 of 2022	Quash CC No.3712 of 2022 on the file of Chief Metropolitan Magistrate, Nampally. (Sole Accused)	272, 273	20(2)		3.vimal gutka -1 small bag. Illegal possession and selling of Tobacco products. 1.baba -120 zarda -1 carton 2.F9 zarda -1 carton In Godown 1.RR tobacco - 15 bags 2.win cigarettes -164 boxes
42.	6791 of 2022	Quash of CC No.326 of 2022 on the file of Junior Civil Judge Cum Judicial First Class Magistrate, Adilabad. (petitioners/ A1&A2)	270, 273	NIL		Illegal possession of tobacco products. 500 amber packets
43.	6792 of 2022	Quash of CC No.414 of 2022 on the file of Junior Civil Judge Cum Judicial First Class Magistrate, Adilabad. (petitioners A1&A2)	270, 273	NIL		Illegal purchase and selling of gutka products 1.V-1 tobacco - 50 packts 2.amber tobacco -10 packets 3.vimal pan masala - 50 packets

					4.ganesh pandarpuri tobacco-5 packets 5.sagar pan masala - 10 packets 6.SR-1 tobacco - 10 packets Illegal possession and selling of noxious substances i.e., Gutkha & Tobacco products. 1.V-1 tobacco - 40 packets and one small bag 2.SR-1 tobacco -37 packets 3.mazadar tobacco-3 packets 4.143 tobacco -2 packets 5. RK classic tobacco - 1 small bag 6.H-5 tobacco- 17 packets 7.zafrani tobacco - 20 packets
44.	6799 of 2022	Quash of CC No.267 of 2022 on the file of Junior Civil Judge Cum Judicial First Class Magistrate, Adilabad. (Sole accused)	270, 273	NIL	
45.	6805 of 2022	Quash of C.C.No.440 of 2022 on the file of Judicial First Class Magistrate at Madhira. (Petitioners/A1 to A3)	270, 273	NIL	Secretly selling Gutka/ pan mashala and other chewable products containing tobacco and Nicotine.
46.	6829 of 2022	Quash of C.C.No.532 of 2022 on the file of Special PCR Mobile Court Cum Judicial First Class Magistrate, Adilabad. (Petitioners/A1 to A3)	270, 273	NIL	Illegal transport and possession of banned Gutkha products.
47	6838 of 2022	Quash of P.R.C.No. 481 of 2021 on the file of CMM Court, Hyderabad (Sole Accused)	188, 272, 273 & 328 r/w 511	NIL	Illegal selling banned Ghutka/Zarda and other tobacco products.
48	6842 of 2022	Quash of C.C.No.1990 of 2022 on the file of XVI A.C.M.M. Court, Hyderabad. (Sole Accused)	188, 336, 272, 273	20(2)	Possession and selling of nicotine content products.

49	6867 of 2022	Quash of FIR No.266 of 2022 of Inthegar Gunj Police Station. (Sole accused)	270,273	NIL	Illegal possession of Tobacco, Jardha and Ghukta packets.
50	6893 OF 2022	Quash of C.C.No.442 of 2022 on the file of Junior Civil Judge Cum Judicial First-Class Magistrate, Adilabad (Petitioners/A1&A2)	270, 273	NIL	Illegal business Gutka products.
51	6894 OF 2022	Quash of C.C.No.262 of 2021 on the file of Junior Civil Judge Cum Judicial First-Class Magistrate, Adilabad	270, 273, 328, 353	20(2) r/w 7(2)	Illegal business of Gutka and Tobacco products i.e., 1.Tobacco 200 gunny bags.

(Petitioners/A1 to A6) 2. AJ Gold Gutka 55 Boxes.

3.G1 Tobacco 50 bags

4. Chetan Tabacco 16 bags

5. Nava chetan Tabacco 16bags

6. Mazza 4 Bags

7.Baba 124 (30) packets

8. Mera Chap Tabacco 100 packts

9. Bile Jodi 200 packets

10.V1 Tabacco 1 bag

11. Tabali Tabacco 16 Dr.CSL, J and batch packets

12. Shanti Tabacco 1

13. Metro Jardha 600 packets

14. Kubare Tabacco 480 packets

15. Red made Tabacco 01 bag

16. VIP Tabacco (2 loose bag)

17. Chunna Mesra Tabacco 01 bag

18. V1 Tabacoo 01 bag

19. Pan Parakh 1 loose bag

20. Salam Gutka 01 loose bag

21. Vimal Gutka 1 loose bag

22. Nagsree Gold Tobacco (loose)

23. V1 Tobacco 01 small bag

24. Chetan Tobacco 7 bags.

52. 6898 of Quash of FIR No. 192 of 336, 272, 20(2) Transporting tobacco 2022 2022 on the file of 273 r/w products.

Bahadurpura Police 511 Station, Hyderabad.

(Petitioners/ A1 & A2) 53 6906 of Quash of CC.No.1035 270,273 20(2) Illegal selling of Gutka 2022 of 2019 on the file of r/w 7(2) products.

Court of Junior Civil Judge cum Judicial First-Class Magistrate, Adilabad (petitioners/A1&A2) 54 6928 of Quash of CC.No.2234 420,270,27 20(2) Illegal selling of 2022 of 2022 on the file of II 3 tobacco products.

		Additional Judicial First Class Magistrate, Khammam (Petitioners/ A1-A3)			
55	6968 of 2022	Quash of C.C.No.333 of 2021 on the file of Junior Civil Judge Cum Judicial First-Class Magistrate, Adilabad (Petitioners/ A1 to A3)	270, 273	NIL	Illegal possession selling of noxi substances Gutkha and Tobacco.
56	6969 of 2022	Quash of Crime No.225 of 2022 of Charminar Police Station, Hyd.	420	20(2)	Possession a transporting banned Paris Cigarettes.
		(Petitioners/A1 & A2)			Dr.C and
57	6974 of 2022	Quash of FIR No.1004 of 2021 of Chanda- nagar Police Station.	420	20(2)	Illegally dumping and selling of tobacco products i.e.,

(Petitioners/A1 to A5) 1. Oscar Khaini 1 bag (300 packets), Miraj Khaini 2 Bags (1250) Packets, Blue Bull Tobacco - 4 bags (3075) packets, and Mahak Chaini Tobacco - 1 bag (900 packets) from A. Kishore Kumavath

2. Oscar tobacco pacets 900, sagar Gold 600 packets, R.R. Gold chewing Tobacco - 2000 packets and Bandar Tobacco - 50 packets from Dandu Manish Kumar

3. Shaukeen Super 3 tobacco 25 packets, Miraj Jarda 10 packets, G1 Zarda-50 packets, XL-01 Zafrani Zarda - 100 packets, V1 Tobacco-

200 packets and SR-1 Tobacco-125 packets from Patel Laxman;

4. Oscar Tobacco - 40 packets, Aashiqui Pan Masala - 20 packets and BlueBull Tobacco

- 12 packets, from Pottumurthy Rajesh Kumar;

5. Oscar Tobacco - 20 packets, Vimal Pan Masala - 10 packets, SR-1 Tobacco-20 packets, Baba 120-4 packets and Munna Chaini-5 packets from Gurrupu Srinu 58 6982 of Quash of FIR No.173 of 270, 273 20(2) Illegally transporting 2022 2022 of Dichpally Police and selling of tobacco Station. products.

(Sole Petitioner) 59 6998 of Quash of FIR No.23 of 272, 273, 20(2) Illegally selling Gutka 2022 2022 of Bhavaninagar 336 r/w 34 products i.e., Dr.CSL, J and batch Police Station. 1.K-9000 Gutka - 4 (Petitioner/A5) bags

2. SR-1 Tobacco - 158 packets

3. RR Tobacco - 47 packets,

4.Paris Cigarettes -

171 Chiris

5. Ustad Jafrani Tobacco-28 packets,

6. Merage Tobacco -

70 packets

7. Swagath Tobacco -

60 packets,

8. RR gold chewing tobacco 7 boxes

9. JK 5200 Tobacco-

12 boxes

10. Shivaji Tobacco 5 boxes

11. Loose Tobacco -

03 bags

12. Baba 120-258 small boxes

13. Baba 120-15 nBig boxes

14. Baba Black - 10 boxes

15. Baba 160-90 boxes

16. V1 Tobacco 23 packets

17. Raj Nivas Tobacco 14 packets

18. Win cigarettes - 4 boxes

19. Black cigarettes -

6 boxes,

20. Guden Garam 3 boxes.

60 7023 of Quash of C.C.No.692 of 273, 420 24(A)(i) Illegally selling 2022 2022 on the file of Gutkha and Tobacco Principal Judicial First products. Class Magistrate Court, Suryapet.

(Sole Accused) 61 7159 of Quash of P.R.C.No.310 420,269, 20(2) Illegally doing 2022 of 2021 of Moghalpura 271, 273, business of Police Station. 328, r/w Gutka/Zardha and (Petitioners/A1 & A2) 511 other tobacco products.

62	7173 of 2022	Quash of C.C.No.813 of 2022 on the file of XXII ACMM Court,	272, 273, 336	NIL	Illegally transporting tobacco products i.e., I
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Dr.CSL,

and batc

Secunderabad.
(Petitioners/A1 to A3)

1.Sagar Pan Masala
mixing in Tobacco

3000 packets,
2. RR Khaini Tobacco
760 Packets
3. Sagar Tobacco 450
packets
4. 24 Carret Pan
Masala 50 packets
5. Vimal pan Masala
550 packets
6. Vimal Tobacco 80
packets
7. 24 Carret Pan
Masala in 3 cartoons
150 packets
8. RR Pan Masala 150
packets from Prakash
Kumawath.

II

1.RR Tobacco 10
packets
2. Swagath Gold
Tobacco 9 packets
3. Amber Tobacco 13
packets
4. Chaini Tobacco 5
packets
5. Raja Tobacco 25
packets
6. SR-1 Tobacco 40
packets,
7. V-1 Tobacco 45
packets,
8. RR Gold Tobacco
40 packets,
9. Miraje Tobacco 40
packets from Manak
Kumawat.

III

1.Swagath Gold
Tobacco 20 packets,
2.RR Khaini Tobacco
250 packets,
3.Amber Tobacco 10
packets
4. Raja Tobacco 50
packets and
5. RR Jardha 200
packets from Sohan
Lal.

64	7176 of	Quash of C.C.No.2889	272, 188	20(1),	Illegally dumped and
	2022	of 2022 on the file of		20(2)	selling banned Gutka

PJCJ Cum IV Addl.
Metropolitan
Magistrate, Medchal -

packets and other
tobacco products i.e.,
1.Amer tobacco

Malkajgiri District. 2. RR Tobacco (Sole Accused) 3. V1 Tobacco

4. SR1 Tobacco

5. Chaini - Chaini Tobacco

6. Swagath Tobacco

7. Raja Tobacco

8. RR Gold Tobacco

9. Sagar Pan Masala

10. Raja Wives Pan Masala

11. H10 Cigarettes 25 boxes

12. JK tobacco.

65 7189 of Quash of C.C.No.244 of 270, 273 NIL 14 polyethene bags 2022 2022 on the file of Addl.
r/w 34 containing amber.

Judicial Magistrate of First Class, Yellandhu. (Accused No.1)

7. In the light of the allegations laid, the points thus emerges for consideration are:

(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, 273, 278, 328 read with 511, 336, 409 and 420 IPC.

8. Point No.1:-

Dr.CSL, J and batch 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.

Making their submissions, the learned counsel appearing for the petitioners viz., Sri Y.Bala Murali, Sri Nanda Kishore Amarchand Yadav, Sri Srinivas Reddy Balakisti, Sri Gajanand Chakravarthi, Ms C.Sunitha Kumari, Ms N.Arthi, Sri Prasad Ravanaboina, Sri S.Chandrasekhar, Sri P.Rama Sharana Sharma, Sri M.A.K.Mukheed and Sri Laxmalla Sandeep contended that the petitioners have not committed any offence whatsoever either under the COTP Act, 2003 or under the Indian Penal Code and possession of tobacco products like gutkha, panmasla and alike is not prohibited in the State of Telangana and further, none of the provisions of COTP Act, 2003 attracts the alleged acts if any committed by the petitioners and therefore, the proceedings that are initiated against them are liable to be quashed.

9. However, the learned Assistant Public Prosecutor contended that use of tobacco products is injurious to health, and that, Rules and Regulations were framed by the Dr.CSL, J and batch Government to restrict the use of tobacco products and there is a mandatory requirement to exhibit on the overleaf of the tobacco products sold that the said product is injurious to health. He stated that wide publicity is given by the Government to restrict the use of tobacco products and thus, possession of huge quantity of tobacco products is a punishable offence.

10. The test of the veracity of the submissions made should be based on the provisions contained in the relevant legislation i.e., Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

The accusation of police is that Sections 20(1), 20(2) and 20(2) read with Section 7(2) of COTP Act, 2003 attracts to the acts committed by the petitioners, though not collectively.

Section 20(1) of COTP Act, 2003 reads as under:-

"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, Dr.CSL, J and batch 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."

Section 20(2) of COTP Act, 2003 reads as under:-

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

(2) Any person who sells or distributes 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 one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees".

11. This court while dealing with identical matters in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022, at para 13 of the order observed as follows:-

"A meticulous perusal of the afore-mentioned provisions makes it abundantly clear that the prohibition is not in toto. The COTP Act, 2003 lays down that a person is prohibited from producing, supplying or distributing tobacco products directly or indirectly where the package of those products does not bear a label giving specified warning in such style and type prescribed. Section 8 lays down the manner in which specific warning shall be made. Likewise, Section 9 gives details of the language in which the said specified warning shall be expressed. In the same manner, the size of letters and figures is prescribed under Section 10. It is not the case of the prosecuting agency that the petitioners were in possession of tobacco products which does not bear such a label in the prescribed manner or in such a language that is prescribed or in such size of letters and figures that is prescribed. Therefore, it can undoubtedly be held that Section 3

(m) which defines the word "sale", Section 7(2) which imposes restriction on trade and commerce of tobacco products without there being a prescribed label of specified warning, Section 7(5) which prohibits production, supply or distribution of Dr.CSL, J and batch cigarettes or any other tobacco products which does not contain a label regarding the nicotine and tark content, Section 20(2) which prohibits sale or distribution of cigarettes or tobacco products which does not contain the specified warning on the package, attracts to the facts of the case."

Indicating the same view, the point is answered accordingly.

12. Point No.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, 273, 278, 328 read with 511, 336, 409 and 420 IPC.

It is also alleged that the petitioners committed offences punishable under different provisions of the Indian Penal Code, 1860. There is a narration that the petitioners in different cases have committed offences attracting Sections 188, 269, 270, 271, 272,

272 read with 34, 273, 273 read with 511, 328 read with 511, 336, 336 read with 34, 353 and 420 IPC.

Dr.CSL, J and batch

13. Allegation is that by involving in the activities like transporting, storing or selling of the tobacco products in huge quantity, the petitioners have committed offences punishable under the relevant provisions of the Indian Penal Code, 1860.

Section 188 IPC reads as follows:-

"188. Disobedience to order duly promulgated by public servant.--Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Dr.CSL, J and batch Explanation.--It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

Regarding this provision, the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 23 of the order is as under:

"Therefore, by the above provision, it is clear that if an order is promulgated by a public servant who is lawfully empowered to promulgate such an order and when a person knowingly disobeys the said order, he/would be guilty of the act of disobeying that order and would be liable for punishment under Section 188 IPC."

14. However, in the case on hand, there is nothing on record to show that any one of the petitioners against whom such accusation is made had done such an act. Also, there is nothing on record to show that there is any order that is promulgated by the public servant in respect of the activities that were found to have been conducted by the petitioners and are restrained or prevented by the public servant.

Dr.CSL, J and batch Therefore, this Court is of the view that continuation of proceedings against the petitioners under such a provision is unsustainable in law.

15. Section 269 IPC reads as follows:-

"Negligent act likely to spread infection of disease dangerous to life. -Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Regarding this provision, the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 26 of the order is as under:

"It is not the case of the prosecuting agency that any of the petitioners against whom such accusation is made have done any such act either unlawfully or negligently which is likely to spread the infection of any disease dangerous to life. None of the activities, if any, alleged to have been undertaken by the petitioners like transporting, storing or selling the tobacco products can be Dr.CSL, J and batch termed to be unlawful or negligent acts which are likely to spread the infection of any disease dangerous to life. Therefore, it cannot be held that the petitioners against whom such an accusation is made would be liable for the said offence."

16. Section 270 IPC reads as under:-

"Malignant act likely to spread infection of disease dangerous to life.--Whoever malignantly does any act which is, and which he knows or has reason the believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Regarding this provision the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 29 of the order is as under:

"Though use of tobacco products reportedly is said to cause diseases like cancer, etc., spread of infection through use of tobacco products or by sale of tobacco products is not reported anywhere. Even the learned Assistant Public Prosecutor failed to state how the acts alleged to have been committed by the Dr.CSL, J and batch petitioners falls within the ambit of Section 270 IPC. No material whatsoever is on record to show that either possessing or selling or transporting the tobacco products like gutka, etc., would spread the infection of any disease dangerous to life. Therefore, this court is of the view that quoting of the said provision and booking a case with an allegation that the acts committed by the petitioners would fall within the ambit of the said provision of law is unsustainable."

17. Section 271 IPC reads as under:-

"Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. The above provision undoubtedly does not apply to case facts.

Dr.CSL, J and batch

18. Section 272 IPC reads as under:-

Adulteration of food or drink intended for sale.-- Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Regarding this provision, the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 32 of the order is as under:

"There is no material on record to show that the persons against whom such an allegation i.e., that they have committed the offence punishable under Section 272 IPC is made, have used or employed any material in an article which is to be used for consumption as food or drink so as to make the said article unsafe or sub-standard or noxious. Therefore, this court holds that invoking the said provision is bad in law."

Dr.CSL, J and batch

19. Section 273 IPC reads as under:-

"Sale of noxious food or drink.--Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

Regarding this provision the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 34 of the order is as under:

"Though the word 'food' is not defined in Indian Penal Code, 1860, we can get the definition of 'food' from the Food Safety and Standards Act, 2006. Section 3(j) of the Food Safety and Standards Act, 2006 defines the word 'food'. It is incumbent at least to prima facie project that the article which was found in possession of the petitioners was offered for sale or exposed for sale and the said food has become noxious or is in a state unfit to use as food or drink. Admittedly, the articles that were seized Dr.CSL, J and batch from the possession of the petitioners does not fall within the ambit of the definition either 'food' or 'drink'. Therefore, this court holds that none of the petitioners would become liable for the punishment prescribed under Section 273 IPC. Therefore, initiation of proceedings against the petitioners for the said offence does not hold good."

20. Section 328 IPC reads as under:-

"Causing hurt by means of poison, etc., with intent to commit and offence.--Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Regarding this provision the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 38 of the order is as under:

"For bringing the case within the ambit of the said provision, it is incumbent to show that the Dr.CSL, J and batch person/persons with an intention to cause hurt have administered or have caused any person to take the following materials:

poison or stupefying drug or intoxicating drug or unwholesome drug or other thing.

The above acts must have been done with an intention to cause hurt to such person against whom the said act is committed or with an intention to commit or facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. Mere transportation/ possession/sale of tobacco products does not mean that they were intended to be administered to any person or persons with an intention to cause hurt. Therefore, the investigating agency grossly erred in booking a case against the petitioners herein under the said Dr.CSL, J and batch provision. Even a charge for attempting to commit the said offence i.e., the offence under Section 328 read with 511 IPC cannot be appreciated."

21. Section 336 IPC reads as under:-

"Act endangering life or personal safety of others.-- Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both."

Regarding this provision the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022 at para 40 of the order is as under:

"Which act or acts were done rashly or negligently by the petitioners so as to endanger human life or personal safety of others is not stated anywhere. Rashness is not even remotely shown and negligence is not projected. As earlier discussed, no rule or regulation is brought to the notice of this court regarding the transportation/storage/sale of tobacco products. Therefore, this court holds that the Dr.CSL, J and batch petitioners cannot be held to have committed the offence punishable under Section 336 IPC."

22. Section 353 IPC reads as under:-

"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 to 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.

23. Learned Assistant Public Prosecutor failed to state or project any of such acts of the petitioners which attract the above provision of law.

24. Section 420 IPC which deals with cheating and dishonestly inducing delivery of property reads as under:-

"Cheating and dishonestly inducing delivery of property.--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable Dr.CSL, J and batch security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Regarding this provision, the observation of this court in Criminal Petition No.9062 of 2021 and batch, dated 14.7.2022, at para 45 of the order is as under:

"Which person was deceived fraudulently or dishonestly and which person so deceived was ordered to deliver any property or to consent to do so is not stated anywhere. Even an omission in that regard which is prohibited is not projected anywhere. It is not the case of the prosecuting agency that the person so deceived was induced to deliver any property or do any other acts falling within the ambit of Section 420 IPC. For what reason the said provision was invoked is not even stated by the learned Assistant Public Prosecutor. Therefore, the prosecuting agency grossly erred in invoking the said provision of law."

25. Thus, the ultimate conclusion is that the provisions invoked viz., Sections 188, 269, 270, 271, 272, 272 read with 34, 273, 273 read with 511, 328 read with 511, 336, 336 read with 34, 353 and 420 IPC does not attract the facts as projected by the prosecuting agency.

Dr.CSL, J and batch

26. No provision is shown by the learned Assistant Public Prosecutor which prohibits transportation, storing and sale of tobacco products. Though various types of diseases are admittedly due to consumption of tobacco and tobacco related products, without any legislation prohibiting the manufacture and business to that effect, the Court cannot make the persons involved in those activities liable for punishment.

27. In view of the aforesaid reasons, all the Criminal Petitions are allowed. The proceedings that are initiated against the petitioners in the respective cases are hereby quashed. The property and the vehicles, if any, seized shall be returned to the lawful claimants by Police or the Court concerned, following due procedure.

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

Dr.CHILLAKUR SUMALATHA, J 16.8.2022 dr