

Abdul Wasay vs The State Of Telangana on 24 March, 2021

Author: K. Lakshman

Bench: K. Lakshman

HONOURABLE SRI JUSTICE K. LAKSHMAN

I.A. No.3 OF 2021

IN/AND

CRIMINAL PETITION No.2495 OF 2021

COMMON ORDER:

This petition is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in S.C.No.50 of 2021 on the file of I Additional Metropolitan Sessions Judge, Hyderabad against the petitioners/accused Nos.A-1 to A-3 and for a consequential direction as to the Police to return the seized property. The petitioners are accused in the above said S.C. The offences alleged against them are under Sections 328 and 188 of IPC and Section 4 and Section 20(2) 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'). Whereas, the petitioners also filed I.A.No.3 of 2020 for return of material, which was seized in the above said crime.

2. Heard 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, Humayunnagar is not having power to register a case in Cr.No.328 of 2018 for the offences under Sections - 328 and 188 of IPC and Section 4 and Section 20(2) 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 have committed the aforesaid offences. The learned counsel by referring to the provisions of COTP Act, including 20 (2), 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 Telangana¹ 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 Lal², 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'), . CrI.P. No.3731 of 2018 & batch, decided on 27.08.2018 . 1992 Supp. (1) SCC 335 investigating into the offences along with other offences under the provisions of the Indian Penal Code, 1860. It was

further 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 328 and 188 of IPC and Section 4 and Section 20(2) of COTPA Act. Therefore, the said proceedings in S.C. No.50 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 - 20 (2) of the COTPA Act is concerned, as stated above, the allegations against the petitioners are that they are selling the tobacco products to the customers illegally in order to gain wrongful profits. In view of the said allegations, it is apt to refer to Section - 20 (2) of the COTPA Act for better appreciation of the case and to decide the issue in question, and the same is as under:

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

(1)

(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."

6. Thus, Section 20 of COTPA Act deals with punishment for failure to give specified warning and nicotine and tar contents. 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. The petitioners are neither traders, nor suppliers/distributors of cigarettes or any other tobacco products. There is no allegation in the charge sheet against the petitioners that they are carrying on the trade or commerce in contraband or any other tobacco products without label and specified warning on the said products. In view of the same, the contents of the charge sheet lacks the ingredients of Section - 20 (2) of the COTPA Act. In the entire charge sheet, there is no allegation that the seized products do not contain the labels as well as statutory warning. Therefore, registering the crime for the said offences against the petitioners is also contrary to Section - 20 (2) of COTPA Act. Thus, the offence under Section - 20 (2) of COTPA 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 S.C.No.50 of 2021 on the file of I Additional Metropolitan Sessions Judge, Hyderabad are hereby quashed against the petitioners- accused.

8. I.A. No.3 of 2021 is filed by the petitioners for return of material, which were seized in the above said crime. Since the proceedings in the aforesaid case are quashed against the petitioners in S.C. No.50 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 verification of ownership of seized property under due acknowledgment. Accordingly, I.A. No.3 of 2021 is closed.

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

_____ K. LAKSHMAN, J 24.03.2021 pgs