

# Venkata Reddy Kotla vs The State Of Andhra Pradesh on 6 November, 2023

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Criminal Petition No.8567 of 2023

ORDER:

This Criminal Petition under Section 482 CrPC is filed by the petitioners to quash the proceedings against them in FIR No.320 of 2022 of Narasaraopet Rural Police Station, Palnadu District, registered for the offences under Sections 7(1), 7(3) and 20 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short, the "COTPA") and consequently to return the seized tobacco product.

2. Heard Sri D.Kasi Rao, learned counsel for the petitioners/ accused and the learned Assistant Public Prosecutor appearing for the respondent/State.

3. The facts of the case, in brief, are that the 1st petitioner is running a tea stall in front of the Government Hospital in Lingamguntla village of Narasaraopet Mandal along with his son. As the income earned from the said business is not enough for his family needs, he used to buy Rajakyeni pan masala from the government and sell the same at a lower price. The police registered a case against the petitioners for the offences BSB, J punishable under Sections 7(1), 7(3) and 20(1) of the COTPA since they were found manufacturing and transporting tobacco products.

4. Learned counsel for the petitioners submitted that the police have mechanically registered the case contrary to the settled principles of law. It is further submitted that the police are incompetent to take cognizance of the offences punishable under Sections 7(1), 7(3) and 20(1) of the COTPA. The filing of charge sheet itself is illegal in view of the law declared in various judgments to the effect that chewing tobacco and khaini are not 'food' items and that the Food Safety Officer alone is competent to investigate into the offence and file charge sheet. Learned counsel for the petitioners placed reliance on the orders of this Court, dated 27.8.2018, passed in Criminal Petition No.3731 of 2018 and batch, as well as the order, dated 18.12.2019, passed in Criminal Petition No.5421 of 2019, wherein, this Court had held that police cannot register these type of cases and the sections under which the present crime was registered are not attracted. Therefore, the proceedings are liable to be quashed.

5. Learned counsel for the petitioners further submitted that there is no prohibition or ban of tobacco, and therefore, no offence can be said to have been committed by the petitioners, and BSB, J therefore, when complaint basing on which the FIR was registered does not disclose any act of the accused in the commission of any crime, the FIR is liable to be quashed.

6. Learned Assistant Public Prosecutor submitted to pass appropriate orders.

7. Before proceeding further, it is apt to note paragraph No.16 of the decision in Ramesh Chandra Gupta Vs. State of U.P and others<sup>1</sup> wherein it was held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 202 Cr.P.C. (SC) 993 BSB, J 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal

grudge."

8. The present case is fully covered by categories (1) and (3) as enumerated above. A Division Bench of this Court in W.P.Nos.30185 of 2022 and batch, dated 24.03.2023, held that seizure of tobacco products by the respondents is held to be bad in law and the respondents therein were directed not to interfere with the lawful day-to-day business activities of the petitioners therein with regard to tobacco products. Further, in Crl. Petition No.3731 of 2018 and BSB, J batch, dated 27.08.2018, a learned Single Judge of this Court held that the police would not have jurisdiction to initiate or investigate any offences punishable under the provisions of the FSSA, 2006. It was further held that transport or storage of tobacco and tobacco products would not constitute an offence punishable under Sections 270 to 273 IPC.

9. In Criminal Petition No.6626 of 2022, this Court held as under:

"....It is not in dispute that several cases were disposed of by difference Benches of this Court quashing the FIRs/ 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 FIR 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 offence."

10. In the present case, as per the allegations, no offence could be made out either under any of the provisions of FSSA, 2006; or COTPA; or the provisions of the Indian Penal Code. In a similar case, this High Court in Devarasetti Venkata Rao v. State of BSB, J Andhra Pradesh<sup>2</sup>, dealt with the similar matter and quashed the FIR registered under Sections 41 and 102 CrPC as no cognizable offence was made out from the allegations to register FIR as per Section 154 CrPC which mandates its registration only if the information discloses commission of cognizable offence.

11. In view of the aforesaid findings which are being consistently followed by this Court, this Criminal Petition is allowed quashing the proceedings against the petitioners in F.I.R.No.320 of 2022 of Narasaraopet Rural Police Station, Palnadu District. Since the offences registered against the petitioners are quashed, the tobacco products seized in connection with the crime shall be returned to the petitioners.

Pending miscellaneous petitions, if any, shall stand closed.

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B.S.BHANUMATHI, J 06.11.2023 RAR Criminal Petition No.6626 of 2022, dated 08.11.2022