

Chennaboina Venkatesh vs Sub Inspector Of Police on 1 March, 2021

Author: K. Lakshman

Bench: K. Lakshman

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

I.A. No.1 OF 2021

IN/AND

CRIMINAL PETITION No.1210 OF 2021

COMMON ORDER:

This petition is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in C.C.No.75 of 2021 on the file of the XXIV Additional Metropolitan Magistrate, Rachakonda at Hayathnagar against the petitioners/accused. The petitioner also filed I.A.No.1 of 2021 for return of material and Ashok Leyland Dosth four wheeler bearing registration No.TS-28-TA-1531, which was seized in the above said crime. The petitioner is accused in the above said C.C. The offences alleged against them are under Sections 188, 270 and 273 of IPC and Section 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 (for short 'COTP Act').

2. Heard Ms.C.Suneetha Kumar, 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 Abdullapurmet Police Station, is not having power to register a case in Crime No.4 of 2021 for the offences under Sections 188, 270 and 273 of IPC and Section 20(2) read with Section 7(2) of the COTP Act. She 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, she 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'), .
Crl.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 Sections 188, 270 and 273 of IPC. Therefore, the said proceedings in C.C. No.75 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) read with 7 (2) 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 Section 20 (2) and 7 (2) of the COTP 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.

7. Restrictions on trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products. --

(1) ...

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning."

6. Thus, Section 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents and Section 5 deals with restrictions on trade and commerce in and production, supply and distribution of cigarettes and other tobacco products. 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 lack the ingredients of Section 20 (2) read with 7 (2) of the COTP 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 offence against the petitioners is also contrary to Sections 20 (2) and 7 (2) of COTP Act. Thus, the offence under Section 20 (2) and 7 (2) 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.75 of 2021 on the file of the XXIV Additional Metropolitan Magistrate, Rachakonda at Hayathnagar, are hereby quashed against the petitioner - accused.

8. I.A. No.1 of 2021 is filed by the petitioners for return of material as well as Ashok Leyland Dosth four wheeler bearing registration No.TS-28-TA-1531, which were seized in the above said crime. Since the proceedings in the aforesaid case are quashed against the petitioners in C.C. No.75 of 2021, the petitioners are at liberty to file appropriate application for return of seized property, including the vehicle, and the learned Magistrate shall consider the same and return the seized property and the vehicle on proper identification and verification of ownership of seized property under due acknowledgment. Accordingly, I.A. No.1 of 2021 is closed.

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

_____ K. LAKSHMAN, J Date: 01.03.2021 PGS