

Syed Azamathulla vs The State Of Andhra Pradesh on 26 November, 2021

Author: D.Ramesh

Bench: D.Ramesh

THE HONOURABLE SRI JUSTICE D.RAMESH

CRIMINAL PETITION No. 6770 of 2021

ORDER:

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Seeking quashment of proceedings in C.C.No. 45 of 2021 on the file of the Hon'ble Judicial Magistrate of First Class, Sidhout, YSR Kadapa District, registered against the petitioners for the offences punishable under Sections 273,279,188 R/W 34 IPC and Sec.59(1) of Food Safety and Standard Act, 2006, COTPA Act, 2006, this Criminal Petition has been filed under Section 482 of the Code of Criminal Procedure, 1972.

2. Counsel for the petitioners has placed reliance on the common order dated 18-12-2019 passed by a coordinate Bench of this Court in Criminal Petition Nos. 5421 of 2019 and batch, holding that 'tobacco' does not fall within the definition of 'food', as specified under Section 3(i)(j) of the Act, therefore, registration of FIR is not permissible. Reliance has also been placed on common order dated 05-03-2020 passed by another coordinate Bench of this Court in Criminal Petition Nos.5103 of 2019 and batch, quashing the FIRs, therein. In view of the aforesaid, it is urged that FIR may be quashed.

3. On the other hand, though the Public Prosecutor opposed the relief prayed for, but he is not in a position to dispute the fact that various petitions filed before this Court under Section 482 Cr.P.C have been allowed and FIRs., have been quashed on the basis of the analogy has put forth by the petitioners before this Court.

4. Considering the aforesaid and looking to be undisputed fact that previously, FIRs have been quashed by this Court in similar matters, however, registration of FIR and proceeding with trial is wholly undesirable.

5. It is to observe here that by use of tobacco, said to be poisonous or intoxicant, on human consumption, therefore, Section 328 of IPC is added. But no such FSL Report is on record. In fact, it is an outcome of the offence under section 273 of IPC. Once it is found that Tobacco is not 'food', the said offence also is not made out.

6. In that view of the matter, this Criminal Petition is allowed and of proceedings in C.C.No. 45 of 2021 on the file of the Hon'ble Judicial Magistrate of First Class, Sidhout, YSR Kadapa District, is hereby quashed; consequently no further action is necessary in the facts of the case.

7. As a sequel, all the pending Miscellaneous applications shall stand closed.

_____ D.RAMESH, J Date: 26.11.2021 IS THE HONOURABLE SRI JUSTICE
D.RAMESH (Allowed) CRIMINAL PETITION No.6770 of 2021 Date:26.11.2021 IS