

Fasiullah Khan vs The State Of Telangana on 17 March, 2021

Author: K. Lakshman

Bench: K. Lakshman

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.1955 OF 2021
With I.A. No.2 OF 2021

COMMON ORDER:

This petition is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in Cr.No.35 of 2021 on the file of Adilabad I Town Police Station, Adilabad District against the petitioners/ accused Nos.1 to 3 and for a consequential direction as to the Police to return the seized property. The petitioners are accused in the above said Crime. The offences alleged against them are under Sections 270 and 273 of IPC. Whereas, the petitioners also filed I.A.No.2 of 2021 for return of material, which were 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 is not having power to register a case in Cr.No.35 of 2021 on the file of Adilabad I Town Police Station, Adilabad District for the offences under Sections 270 and 273 of IPC. He would further submit that the allegations against the petitioners are that they are selling the tobacco products to the customers illegally in order to gain wrongful profits. Thus, the accused has 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'), 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 . Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 .

1992 Supp. (1) SCC 335 present case, the police have registered the crime for the offences under Sections - Sections 270 and 273 of IPC. Therefore, the said proceedings in Cr.No.35 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. In view of the above discussion, the present Criminal Petition is allowed, and the proceedings in Cr.No.35 of 2021 on the file of Adilabad I Town Police Station, Adilabad District, are hereby quashed against the petitioners- accused No.1to 3.

6. It is submitted by the learned counsel for the petitioners that the seized property is in the custody of Police, Adilabad I Town Police Station, and sought direction to the Station House Officer, Adilabad I Town Police Station, Adilabad District, to return the seized property to the petitioner.

7. I.A. No.2 of 2020 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 petitioner/Accused Nos.1 to 3 in Cr.No.35 of 2021, the Station House Officer, Adilabad I Town Police Station, is directed to return the seized property on proper identification and verification of ownership of seized property under due acknowledgment. Accordingly, I.A. No.2 of 2020 is closed.

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

_____ K. LAKSHMAN, J 17.03.2021 dv