

Chowta Rajkumar vs The State Of Andhra Pradesh on 29 January, 2024

THE HONBLE Ms. JUSTICE B.S.BHANUMATHI

Criminal Petition No. 221 of 2024

ORDER:

This criminal petition under Section 482 CrPC to quash the proceedings in FIR No.194 of 2023 of Tenali I Town Police Station, Guntur District under Sections 270 and 273 IPC 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 brevity, "COTPA") and consequently to direct the Station House Officer, Tenali I Town Police Station to return the tobacco products mentioned therein.

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

3. The learned counsel for the petitioners submitted that the present case is squarely covered by the common order, dated 28.12.2021 passed by this Court in the decision Uppara Veerendra Vs. State of Andhra Pradesh¹ and the decision in Polisetty Srinivasa Rao Vs. State of Andhra Pradesh ².

4. The learned Assistant Public Prosecutor submitted that those decisions are applicable only in relation to the offences punishable CrI. Petition No.2966 of 2021 and batch, dt.18.12.2021 CrI. Petition No.9356 of 2023, dated 04.12.2023 BSB, J under Sections 270 and 273 IPC relating to the present crime whereas Section 20(2) of the COTPA is in relation to violation of the conditions therein, and therefore, the present case is not completely covered by the decisions cited supra. Further, he submitted that the material would clearly show the violation of Section 20(2) of the COTPA, and therefore, the proceedings cannot be quashed.

5. In reply, learned counsel for the petitioners submitted that the proceedings in relation to Sections 270 & 273 IPC are certainly to be quashed in view of the above referred decisions.

6. Perused the record.

7. The definitions of Sections 270 & 273 IPC read as under:

"270. Malignant act likely to spread infection of disease dangerous to life:

Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

273. Sale of noxious food or drink.--Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a BSB, J term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

8. This Court in Jaganath Enterprises Vs. State of A.P³, held at paras 15 & 23 as follows:

"15. Coming to the offences under the IPC, the sections that are most often being pressed into service are Sections 272 and 273 IPC. Section 272 IPC makes punishable an offence by a person, who adulterates any article of 'food or drink'. Therefore, this Section would only come into play if food or drink is adulterated. The Indian Penal Code does not describe or define adulteration. The definition of adulterant is found in the provisions of the FSS Act. According to the said definition as found in Section 3(1)(a) of the FSS Act, adulterant is a material which could make the 'food' unsafe or sub-standard or mis-branded. Therefore, according to Section 272 IPC, if a material is used to make the food unsafe/sub-standard or mis-branded, then only the offence would be attracted. In the case on hand, as tobacco or tobacco products do not come within the definition of food or drink, these products do not come within the ambit of Section 272 IPC. Similarly, Section 273 IPC talks of the sale of a noxious food or drink. If a person offers for sale a "food or drink" any article which has become noxious or is in a state of unfit for "food or drink". This section would apply, when an article which has become noxious or which has been rendered noxious. It also applies to food or drink only. The word 'noxious' is not defined in IPC, but as per the dictionary meaning noxious means harmful, deleterious, injurious, poisonous etc."

23. This Court's conclusion is that sale, manufacture, processing etc., of tobacco are not totally banned and in the latter part of the order this is discussed. Therefore, since the sale of tobacco products is still not banned in this country and it is only regulated to a certain extent, it cannot be said that Sections 269 and 270 IPC are attracted to a case of possession and sale of tobacco or tobacco products." 2020 (2) ALD (Crl.) 769 (AP) BSB, J

9. As per the decision in Uppara Veerendra (1 supra), tobacco is not food within the meaning of Food Safety and Standards Act, 2006 and a similar view is also expressed in Polisetty Srinivasa Rao (2 supra).

10. It is pertinent to mention that in circumstances similar to the case on hand (3 supra), applicability of many provisions of the Indian Penal Code fell for consideration and in view of the finding that tobacco is not food, the application of Section 273 IPC is held to be unsustainable since it applies to food or drink only whereas with reference to Section 270 IPC also, it is held not applicable since sale of tobacco products is still not banned in this country and it is only regulated to certain extent.

11. Since investigation should be held in relation to Section 20(2) of the COTPA, but not in relation to the proceedings for the offences under Sections 270 & 273 IPC, the proceedings to that extent are liable to be quashed as rightly contended by the learned counsel for the petitioners.

12. Accordingly, the Criminal Petition is allowed in part quashing the proceedings against the petitioners for the offences under Sections 270 & 273 IPC, while leaving the proceedings relating to Crime No.194 of 2023, dated 11.12.2023, of Tenali I Town Police BSB, J Station, Guntur District registered for the offence under Section 20(2) of the COTPA for investigation.

Pending miscellaneous petitions, if any, shall stand closed.

_____ B.S.BHANUMATHI, J 29-01-2024 RAR