

Devari Gopal vs The State Of Telangana on 15 July, 2021

Author: K. Lakshman

Bench: K. Lakshman

THE HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.5417 OF 2021

ORDER:

This petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 to quash the proceedings in Crime No.631 of 2021 pending on the file of Kukatpally Police Station, Cyberabad. The petitioner herein is sole accused in the said crime. The offences alleged against him are under Sections - 188, 273 and 268 of IPC and Section 59(1) of Food Safety and Standards Act, 2006 (for short 'FSS Act')

2. Heard Mr. Srinivas Reddy Balakisti, learned counsel for the petitioner and the learned Assistant Public Prosecutor appearing on behalf of respondent - State.

3. This Court, by common order dated 05.07.2021 in Crl.P. No.152 of 2020 and batch, has extensively dealt with the issue covered in the present criminal petition observing that transportation, possession, storage, sale and purchase of tobacco products are not totally banned in the State of Telangana and, therefore, it cannot be said that offences under Sections - 188, 268, 269, 270, 271, 272 and 273, 328, 336 and 420 of IPC are attracted to the petitioners therein.

4. With regard to offences under Section - 59(1) of the FSS Act, this Court in the said common order dated 05.07.2021, relying on the judgments in Chidurala Shyamsubder v. State of Telanganal¹ and 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 FSS Act, investigate into the offences along with other offences under the provisions of the IPC and 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. It was further held that entertaining the complaints / filing the charge sheets by the police is contrary to the principle laid down in Chidurala Shyamsubder's case (supra). Observing so, this Court quashed the proceedings against the accused therein for the offence under Section - 59 (1) of FSS Act.

5. In the present case also, the allegations against the petitioner are that he was transporting and selling the banned tobacco products and the contents of the complaint do not attract the ingredients of offences mentioned above and that the police are incompetent to investigate into the offence under Section 59 (1) of FSS Act along with other offences. Crl.P.No.3731 of 2018 & batch, decided on 27.08.2018 1992 Supp. (1) SCC 335 Therefore, the proceedings against the petitioner in the above crime are also liable to be quashed.

6. The present Criminal Petition is accordingly allowed in terms of the common order dated 05.07.2021 in Crl.P.No.152 of 2020 and batch and the proceedings in Crime No.631 of 2021 pending on the file of Kukatpally Police Station, Cyberabad, against the petitioner - accused are hereby quashed.

7. Since the proceedings are quashed against the petitioner in the above crime, the Station House Officer, Kukatpally Police Station, is hereby directed to return the seized property to the petitioner on proper identification and verification of ownership under due acknowledgment.

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

_____ K. LAKSHMAN, J Date: 15.07.2021 TJMR