

# **Tabrej Tabraiz Qualique vs The State Of Telangana on 17 March, 2021**

**Author: K. Lakshman**

**Bench: K. Lakshman**

HONOURABLE SRI JUSTICE K. LAKSHMAN

I.A. No.2 OF 2021

IN/AND

CRIMINAL PETITION No.2029 OF 2021

COMMON ORDER:

This petition is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in Cr.No.51 of 2020 on the file Indalwai Police Station, Nizamabad District against the petitioners/accused Nos.1 and 2 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 272, 273, 328 of IPC and Section 5 and 22 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'). 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 Sri Gajanand Chakravarthi, 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.51 of 2021 on the file of Indalwai Police Station, Nizamabad District for the offences under Sections 270 and 273 of IPC and Sections 5 and 22 of the COTP Act. 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 Sections 5 and 22, 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 Telangana<sup>1</sup> 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 Lal<sup>2</sup>, 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 . CrI.P. No.3731 of 2018 & batch, decided on 27.08.2018 . 1992 Supp. (1) SCC 335 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 - Sections 270 and 273 of IPC and Sections 5 and 22 of the COTP Act. Therefore, the said proceedings in Cr.No.51 of 2021 against the petitioners herein are contrary to the principle laid down in Chidurala Shyamsunder (Supra) and, therefore, the same are liable to be quashed.

5. As far as Sections - 5 and 22 of the COTP Act is concerned, as stated above, the allegations against the petitioners are that they are selling the tobacco products to the customers illegally in order to gain wrongful profits. In view of the said allegations, it is apt to refer to Sections - 5 and 22 of the COTP Act for better appreciation of the case and to decide the issue in question, and the same is as under:

"Section 5 in the Cigarettes and Other Tobacco Products (Prohibition of Brand Promotion of all Tobacco Products)

5. Prohibition of advertisement of cigarettes and other tobacco products.--

(1) No person engaged in, or purported to be engaged in, the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall--

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a firm or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product: Provided that this sub-section shall not apply in relation to--

(A) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(B) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of--

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

"Section 22 in The Cigarettes And Other Tobacco Products (Prohibition Of advertisement And Regulation Of Trade And Commerce, Production, Supply and Distribution) Act, 2003

22. Punishment for advertisement of cigarettes and tobacco products.- Whoever contravenes the provision of section 5 shall, on conviction, be punishable-

(a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and

(b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

6. Thus, Section 22 of COTP Act deals with punishment for advertisement of cigarettes and tobacco products. As stated above, the allegations against the petitioners herein are 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 are no allegations 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 lacks the ingredients of Sections - 5 and 22 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 offences against the petitioners is also contrary to Section - 5 and 22 of COTP Act. Thus, the offences under Section - 5 and 22 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 Cr.No.51 of 2021 on the file of Ghatkesar Police Station, Rachakonda District, are hereby quashed against the petitioners - accused Nos.1 and 2.

8. It is submitted by the learned counsel for the petitioners that the seized property is in the custody of Police, Indalwai Police Station, and sought direction to the Station House Officer, Indalwai Police Station, Nizamabad District, to return the seized property to the petitioners.

9. 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 petitioners/Accused No.1 and 2 in Cr.No.51 of 2021, the Station House Officer, Indalwai 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