

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9572 OF 2018

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') questioning the order, dated 28.07.2018, passed in CrI.M.P. No.115 of 2018 in Crime No.84 of 2018, by the learned Judicial Magistrate of First Class, Madugula.

2. The petitioner filed a petition under Section 475 of the Code for grant of interim custody of 66 bags of Gutka Packets containing a label in English Letters i.e., PREM RAJA, which were seized by the Station House Officer V. Madugula in connection with Crime No.84 of 2018 registered for the offences punishable under Section 273 of the Indian Penal Code, 1860 (for short 'IPC') and Section 5 read with 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 'COTPA, 2003'), contending that he is carrying on business in the State of Odisha and obtained license from the concerned authorities with GST, and he was sending the stock to the licensed vendor at Berhampur, and he did not commit any offence and he is owner of the stock seized and requested the Court to grant interim custody of the property during pendency of investigation. The learned Magistrate dismissed the said petition by an order which is impugned in the present Criminal Petition, without

following the judgments of the Hon'ble Supreme Court reported in **Sunderbhai Ambalal Desai v. State of Gujarat**¹, and **General Insurance Council & others v. State of Andhra Pradesh & others**². In fact, the Apex Court directed to dispose of the property produced before the Court within one month from the date of its production before the Magistrate. Instead of following the principle laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai**¹, the Magistrate passed the impugned order without adhering to the guidelines issued by the Apex Court and, hence, remanded the petition to trial Court. Therefore, the order passed by the Magistrate is hereby set aside, directing the learned Magistrate to follow the guidelines issued in **Sunderbhai Ambalal Desai**¹ and **General Insurance Council**², and pass appropriate orders within one week from the date of receipt of a copy of this order.

3. With the above direction, the present Criminal Petition is disposed of, at the stage of admission itself. No order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2018

Mgr

¹. (2002) 10 SCC 283

². (2010) 6 SCC 768