

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9674 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') to quash the Crime/FIR No.160 of 2018 on the file of Zaheerabad Town Police Station, Sangareddy District, Telangana State, registered for the offences punishable under Sections 270 and 273 of the Indian Penal Code, 1860 (for short 'IPC') and Section 20 (2) read with 7 (2) 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').

2. Brief allegations of the FIR are as follows:

“(i) On 23.08.2018 at 0900 hours, while de facto complainant - Sub-Inspector of Police, Zaheerabad Town, along with police constable No.747, HG 281, conducting vehicle checking at Old RTC Check Post, Bidar 'T' Road in front of Leprosy Hospital on National Highway No.65 road in Zaheerabad Town, one TATA Ace auto-rickshaw bearing registration No.TS 26T 0450 coming from Bidar side to Khammam at high speed in suspicious circumstance containing plastic bags.

(ii) On seeing the same, the police intercepted the auto-rickshaw. On verification of the plastic bags, they found prohibited tobacco bags. Immediately, the police summoned two respectable mediators of the locality to that place, and in the presence of the mediators, driver of the Tata Ace auto-rickshaw was interrogated and during interrogation he disclosed the identity and informed that he confessed that he is doing Kirana business and could not

get more money to maintain his family; that he decided to get easy money by illegally transporting the prohibited Tobacco Zarda from Bidar of Karnataka State to Khammam and sell on exorbitant rate i.e., higher rate and earn lot of money and lead luxurious life.

(iii) In pursuance of pre-plan, on 22.08.2018, he went to Bidar and purchased the prohibited products secretly viz., 30 plastic bags Amber Khaini Tobacco on low rate price of Rs.3,20,000/-, and on the very next day i.e., 23.08.2018 in the morning hours he started from Bidar to Khammam through Zaheerabad. At about 09:45 hours when he reached near Old RTA Check Post in Zaheerabad Town, the police stopped his vehicle and, thus, the petitioner was found transporting the prohibited Tobacco Zarda, and on verification of the vehicle in the presence of the mediators, found 4 Bags of Sagar and 30 plastic bags Amber Khaini Tobacco and seized the same under cover of panchanama, and pasted the panch chits duly signed by the panchas and the police officials on the property. ”

3. On the basis of the seizure *panchanama*, the police registered the aforesaid Crime and issued FIR against the petitioner herein for various offences referred supra.

4. The petitioner herein filed the present Criminal Petition under Section 482 of the Code to quash the proceedings in the aforesaid Crime on the ground that transportation of prohibited Tobacco Zarda would not fall within Sections 270 and 273 IPC, and it will not attract an offence punishable under Section 7 (2) of the COTPA, 2003, as there was a label on the pockets and, therefore, the Investigating Agency will not get jurisdiction to proceed against the petitioner herein, and requested this Court to quash the proceedings against him in the aforesaid Crime for the offences referred supra.

5. During hearing, learned counsel for the petitioner, Sri Kambhampati Ramesh Babu, contended that so far as the offences under Sections 270 and 273 IPC are concerned, order, dated 27.08.2018, passed by this Court in Criminal Petition No.3731 of 2018 and batch is covered, and in the absence of any allegation that pockets did not contain the Warning on the label etc., they do not constitute any offence punishable under Section 7 (2) of COTPA, 2003, and requested to quash the proceedings.

6. As seen from the allegations made in the complaint, the petitioner was found transporting Chewing Tobacco, and registered the above Crime for the offences referred supra. As per the order, dated 27.08.2018, passed by this Court in Crl.P. No.3731 of 2018 and batch, transportation of Tobacco Zarda would not attract the offences punishable under Sections 270 and 273 IPC, but the offence punishable under Section 20 (2) read with 7 (2) of the COTPA, 2003 was also registered against the petitioner herein, and in the absence of any symbol on the Tobacco Zarda as contemplated under the provisions of the COTPA, 2003 is a contravention and liable for punishment under Section 20 (2) of the COTPA, 2003. Since the petitioner herein was found transporting of Tobacco, but there is no allegation in the *panchanama* about the absence of label on the pockets. But, at this stage, it is difficult to accept the contention of the petitioner that there is label on the Tobacco products being transported. The basis for registration of crime is confessional statement of the accused. But,

based on FIR, the Court cannot quash the proceedings since FIR is only information about commission of cognizable offence by the accused to set the criminal law into motion, and it need not contain minute details. Unless the Investigating Agency is verified the pockets being transported, it is difficult to find that there is label. This Court cannot exercise power under Section 482 of the Code to quash the proceedings for contravention of Section 7 (2) of the COTPA, 2003, which is punishable under Sections 20 (2) of the COTPA, 2003.

7. Time and again the Hon'ble Supreme Court issued certain directions to the Courts not to quash proceedings at the stage when investigation is not commenced as laid down in **Kurukshetra University v. State of Haryana**¹ and **State of Orissa v. Saroj Kumar Sahoo**². In view of the law declared by the Apex Court that when the investigation is at crime stage and not yet commenced and the facts are incomplete and hazy before the Court, the Court cannot exercise power under Section 482 of the Code to stifle legitimate prosecution at this stage. Therefore, I find that it is a fit case to quash the proceedings in Crime No.160 of 2018 for the offences punishable under Sections 270 and 273 IPC, while declining to quash the proceedings for the offences punishable under Section 20 (2) read with 7 (2) of the COTPA, 2003.

8. Accordingly, the present Criminal Petition is allowed in part, at the stage of admission itself. No order as to costs.

¹. (1977) 4 SCC 451

² (2005)13 SCC 540 : 2006(2) ALT (CrI.) 16

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

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2018
Mgr

