

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9689 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.PC. to quash the FIR No.252 of 2017 of Kothavalasa Police Station, Vizianagaram District, registered for the offences punishable under Sections 270 and 273 IPC and Sections 22 and 5 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. The case of the prosecution is that the complainant, who is Head Constable of Kothavalasa on credible information went to Chiranjeevi Kirana Shop along with his staff and verified the plastic handbags lying in the shop and when the owner trying to keep the said bags in his shop, the police caught him and verified his details and seized the stocks and issued FIR.

3. The petitioner/A4 filed the present petition on the ground that the prohibited Tobacco would not fall within Sections 270 and 273 IPC, and it will not attract an offence punishable under 22 and 5 of the COTPA, 2003 and, therefore, the Investigating Agency will not get jurisdiction to proceed against the petitioner, and requested to quash the proceedings.

4. During hearing, learned counsel for the petitioner contended that so far as the offences punishable 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 are covered, and in the absence of any allegation that pockets do not contain the Warning on the label, which prohibiting manufacturing etc., they do not constitute any offence punishable under Section 22 and 5 of COTPA, 2003, and requested to quash the proceedings.

5. As seen from the allegations made in the complaint, the petitioner

was found keeping Tobacco packets. As per the order, dated 27.08.2018, passed by this Court in CrI.P. No.3731 of 2018 and batch, keeping of Tobacco packets would not attract the offences punishable under Sections 270 and 273 IPC, but the offences punishable under Sections 22 and 5 of the COTPA, 2003 was also registered against the petitioner. Since the petitioner herein was found keeping Tobacco packets, but there is no allegation in the *panchanama* about the label on the packets. But, at this stage, it is difficult to accept the contention of the petitioner that there is label on the Tobacco products being kept. 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 verified the packets being kept, it is difficult to find that there is label. This Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings for contravention of Sections 22 and 5 of the COTPA, 2003.

6. Time and again the Apex Court issued certain directions to the Courts not to quash proceedings at the stage when investigation is not yet 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 foetus stage and not yet commenced and the facts are incomplete and hazy before the Court, the Court cannot exercise power under Section 482 Cr.P.C. to stifle legitimate prosecution at this stage. Therefore, I find that it is a fit case to quash the proceedings in Crime No.252 of 2017 for the offences punishable under Sections 270 and 273 IPC, while declining to quash the proceedings for the offences punishable under Section 22 and 5 of the COTPA, 2003.

¹. (1977) 4 SCC 451

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

7. In the result, the Criminal Petition is allowed in part, at the stage of admission itself.

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

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2018
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