

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.10093 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C.to quash the proceedings in FIR No.123 of 2018 of Malkapuram Law and Order Police Station, Visakhapatnam District, registered for the offences punishable under Sections 328, 188, 273 IPC and Section 59(i) of the Food Safety Standards Act.

The petitioners are A1 to A3 and they are allegedly selling Gutka to various shops in the Purna Market, Visakhapatnam to earn more money as they are not getting sufficient income from the line business and used to sell the chocolates and bickets to the shops. The petitioners were allegedly found transporting Gutka packets in college bags to pan shops and on suspicion they were apprehended by the police and they confessed before the police about sale of Gutka carrying the same in college bags to various shops at Purna Market, Visakhapatnam. Based on the occurrence report, the police registered the above crime.

The present petition is filed on the ground that the police Law and Order are incompetent to investigate into the offences in view of Section 42 of the Food Safety Standards Act. Therefore, registration of crime against the petitioners for the offence punishable under Section 59(1) of FSS Act is illegal. It is also contended that the petitioners did not cause hurt to any one with poisonous substance to commit the offence and thereby, the facts in the complaint would not attract the offence punishable under Section 323 IPC and to investigate cognizance of offence punishable under Section 188 IPC shows clear power under Section 195(1)(a) Cr.P.C. and thereby proceeding to investigate the offence punishable under Section 188 IPC by the police is an illegality.

The other offence allegedly committed by the petitioners is punishable under Section 273 IPC i.e. sale of noxious food or drink and it is punishable with imprisonment for six months or with fine or with both. So far as the offence under Section 273 IPC and Section 59 of FSS Act is covered by judgment of this Court in CrI.P.No.3713 of 2018 and batch as fairly conceded by learned counsel for the petitioners and learned Public Prosecutor. Therefore, I need not again decide the same issue.

The other offence allegedly committed by the petitioner is punishable under Section 328 IPC. Section 328 IPC deals with causing hurt by means of poison, etc with intent to commit an offence. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In this case, the petitioners allegedly selling Gutka, though it is prohibited by Food Safety Commissioner issuing a Government Order by exercising power under Food Safety Standards Act. But there is no material to show that Gutka containing any poisonous substance and that too they are selling in private, not with intent to cause any hurt to any person. When, the petitioners are trading Gutka for private, the act done by the petitioners did not fall within Section 328 IPC. It is settled law that unless the allegations made in FIR constitute any offence, the police will not get jurisdiction to investigate into such offence.

In the present facts of the case, the police are incompetent to investigate into the case under Section 59(1) of FSS Act and there is nothing to establish that Gutka is a noxious food or drink to bring within the ambit of Section 273 IPC and in view of bar under Section 195(1)(a)

Cr.P.C., the offence punishable under Section 188 IPC cannot be investigated into apart from that sale of gutka in directly to various sundry chops does not amount to causing hurt with the aid of poisonous or any other substance or with an intent to cause hurt.

Taking into consideration of the facts and circumstances of the case, including the allegations made in the occurrence report, it is difficult to accept the contention of the prosecution and thereby the proceedings against the petitioners are liable to be quashed exercising jurisdiction under Section 482 Cr.P.C. as none of the allegations constitute the offences referred supra.

In the result, the criminal petition is allowed quashing the proceedings in Crime No.123 of 2018 of Malkapuram Law and Order Police Station, Visakhapatnam District.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

27.09.2018
kvrm

M.SATYANARAYANA MURTHY,J