

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10299 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the FIR No.214 of 018 on the file of Chodavarm Police Station, Visakhapatnam, registered for the offence punishable under Section 273 IPC and Section 22, 5(1) 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').

On the basis of the seizure *panchanama*, the police registered the aforesaid Crime and issued FIR.

The petitioner/A1 filed the present petition on the ground that transportation of prohibited Tobacco would not fall within Section 273 IPC, and, therefore, the Investigating Agency will not get jurisdiction to proceed against the petitioner, and requested this Court to quash the proceedings against him.

During hearing, learned counsel for the petitioner contended that so far as the offence punishable under Section 273 IPC is concerned, order dated 27.08.2018, passed by this Court in Criminal Petition No.3731 of 2018 and batch is covered and requested to quash the proceedings.

As seen from the allegations made in the complaint, the petitioner was found transporting Tobacco products i.e. Raja Premium Tobacco. As per the order, dated 27.08.2018, passed by this Court in Crl. P. No.3731 of 2018 and batch, transporting Tobacco products would not attract the offence punishable under Section 273 IPC, but the offence punishable under Section 22 and 5(1) of the COTPA, 2003 was also registered against the petitioner.

Since the petitioner was found transporting Tobacco, 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 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 has verified the packets being transported, 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.

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 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.214 of 2018 for the offence punishable under Section 273 IPC, while declining to quash the proceedings for the offence punishable under Section 22 and 5(1) of the COTPA, 2003.

¹ (1977) 4 SCC 451

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

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.

M. SATYANARAYANA MURTHY,J

Date:27.09.2018
usd

