

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10569 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.PC. to quash the FIR No.63 of 2018 of Ichapuram Rural Police Station, Srikakulam District, registered for the offences punishable under Sections 188, 270, 272, 273 IPC and Sections 20 (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') read with Sections 58, 59 and 60 of the Food Safety Standards Act.

2. The petitioner/A1 filed the present petition on the ground that the prohibited Tobacco would not fall within Sections 188, 270, 272 and 273 IPC, and it will not attract an offence punishable under 20(2) of the COTPA, 2003 read with Sections 58, 59 and 60 of the Food Safety Standards Act 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 188, 270, 272, 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 packets do not contain the Warning on the label, which prohibiting manufacturing etc., they do not constitute any offence punishable under Section 20(2) of COTPA, 2003 read with Sections 58, 59 and 60 of the Food Safety Standards Act, 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

188, 270, 272, 273 IPC, but the offences punishable under Section 20(2) of the COTPA, 2003 read with Sections 58, 59 and 60 of the Food Safety Standards Act 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, 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 Section 20(2) of the COPTA read with Sections 58, 59 and 60 of the Food Safety Standards Act.

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 fetus 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.63 of 2018 for the offences punishable under Sections 188, 270, 272, 273 IPC, while declining to quash the proceedings for the offences punishable under Section 20(2) of the COPTA read with Sections 58, 59 and 60 of the Food Safety Standards Act.

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 quashing the proceedings against the petitioner for all the offences except Section 20(2) of the COPTA, in view of the order dated 27.08.2018, passed by this Court in CrI.P.No.3731 of 2018 and batch.

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

M. SATYANARAYANA MURTHY,J

04.10.2018
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