

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.5498 AND 5519 OF 2020

COMMON ORDER:

Criminal Petition No.5498 of 2020 is filed under Section 482 of Cr.P.C., seeking to quash the proceedings in C.C.No.190 of 2019 on the file of Judicial Magistrate of First Class at Adilabad against the petitioners - accused Nos.1 and 2 arising out of Crime No.313 of 2017 of Adilabad - II Town Police Station. The petitioners are accused Nos.1 and 2 in the above said C.C. The offences alleged against them are under Sections - 270 and 273 of IPC and also under Section - 7 (2) read with 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 'COTP Act'). The petitioners herein are also filed another petition viz., Criminal Petition No.5519 of 2020 seeking to quash the proceedings in the very case i.e., C.C. No.190 of 2019.

2. Heard Mr. M.A.K. Mukheed, learned counsel for the petitioners, and learned Public Prosecutor. Perused the entire material available on record.

3. The learned counsel for the petitioners would submit that the Sub-Inspector of Police is not having authority to lodge the present

complaint, and the Adilabad - II Town Police Station is not having power to register a case in Crime No.313 of 2017 for the offences under Sections 270 and 273 of IPC and Section - 7 (2) read with 20 (2) of the COTP Act. He would further submit that the allegation against the petitioners is that accused No.1 has purchased the tobacco packets from accused No.2 and used to sell it to various *kirana* and *pan* shops at higher prices without any prior permission and valid license from the Government. Thus, both the accused have committed the aforesaid offences. The learned counsel by referring to the provisions of COTP Act, including Sections 7 (2) and 20 (2), would submit that the allegations made in the charge sheet do not attract the ingredients of the aforesaid provisions and, therefore, the aforesaid offences alleged against the petitioners are liable to be quashed. In support of the same, he has placed reliance on the judgment in **Chidurala Shyamsubder v. State of Telangana**¹ rendered by the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh. Whereas, the learned Public Prosecutor has tried to distinguish the principle laid down in the said judgment to the facts of the present case.

4. Perused the judgment in **Chidurala Shyamsubder** (supra), wherein a learned Single Judge of the High Court following the

¹. Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018

guidelines laid down by the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal**², held that the police are incompetent to take cognizance of the offences punishable under Sections 54 and 59 (1) of the Food Safety and Standards Act, 2006 (for short 'FSS Act'), investigating into the offences along with other offences under the provisions of the Indian Penal Code, 1860. It was further held that filing charge sheet is a grave illegality, as the Food Safety Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections - 41 and 42 of FSS Act. In the present case, the police have registered the crime for the offences under Sections - 270 and 273 of IPC. Therefore, the said proceedings in C.C. No.190 of 2019 against the petitioners herein are contrary to the principle laid down in **Chidurala Shyamsubder** (Supra) and, therefore, the same are liable to be quashed.

5. As far as Section - 7 (2) of the COTP Act is concerned, as stated above, the allegations against both the petitioners are that accused No.1 has purchased the tobacco packets from accused No.2 and used to sell it to various *kirana* and *pan* shops at higher prices without any prior permission and valid license from the Government. In view of the said allegation, it is apt to refer to Section - 7 (2) of the

². 1992 Supp. (1) SCC 335

COTP Act for better appreciation of the case and to decide the issue in question, and the same is as under:

“7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.–

(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label, such specified warning including a pictorial warning as may be prescribed.

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3).....

(4).....

(5).....”

6. Thus, as per Section 7 of COTP Act, tobacco product shall not be sold without label including specified warning / pictorial warning as may be prescribed. Section 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. As stated above, the allegation against the petitioners herein is that purchase and sale of tobacco packets without prior permission and valid license from the Government. The petitioners are neither traders, nor suppliers/distributors of cigarettes or any other tobacco products. There is no allegation in the charge sheet against the petitioners that they are carrying on the trade or commerce in cigarettes or any other tobacco products without label and specified

warning on the said products. In view of the same, contents of the charge sheet lacks the ingredients of Section 7 (2) of the COTP Act. In the entire charge sheet, there is no allegation that the seized products do not contain the labels as well as statutory warning. Therefore, registering the crime for the said offence against the petitioners is also contrary to Section - 7 (2) of COTP Act. Thus, the offence under Section 7 (2) read with 20 (2) of COTP Act is also liable to be quashed against the petitioners.

7. In view of the above discussion, the Criminal Petition No.5498 of 2020 is allowed, and the proceedings in C.C.No.190 of 2019 on the file of the Judicial Magistrate of First Class at Adilabad, arising out of Crime No.313 of 2017 of Adilabad - II Town Police Station, are hereby quashed against the petitioners - accused Nos.1 and 2.

8. Further, since the proceedings in the aforesaid case are quashed against the petitioners in C.C. No.190 of 2019, the petitioners are at liberty to file appropriate application for return of seized property, and the learned Magistrate shall consider the same and return the seized property on proper identification and verification of ownership of seized property under due acknowledgment.

9. In view of allowing Criminal Petition No.5498 of 2020, Criminal Petition No.5519 of 2020 stands closed.

As a sequel, miscellaneous petitions pending, if any, in the criminal petitions, shall stand closed.

K. LAKSHMAN, J

11th November, 2020
Mgr

