

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

TUESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION NO: 1826 OF 2021

Between:

1. Surya Nithin, S/o Surya Vanshi Ram, Aged 28 years, Occ. Driver, R/o 32-432, Shapur Nagar, Qutubullapur, Telangana State,
2. M.Gangishetty Veer Kumar, S/o Gangishetty Eshwaraiah, Aged about 39 years, Occ. Business, proprietor Business and R/o. Papi Reddy Colony, 3-34, Gokul Nagar, Patancheru, Sangareddy District, Telangana-502319
3. Mohd Wajeed Ali, S/o Wali Mohammed, Aged 51 years, Occ. Driver R/Panchagama Village, Narayankhed.

...PETITIONERS

AND

The State of Telangana, Rep by the Public Prosecutor at High Court at Hyderabad
Through P.S. Zaheerabad

...RESPONDENT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the proceedings in Crime No 234/2020, dated 10-12-2020, on the file of P.S. Zaheerabad Town for the offences U/s 270, 273 IPC and Sec.20(2) R/w 7(2) of COTP Act, 2003.

I.A. NO: 2 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings in Crime No. 234/2020, dated 10-12-2020, on the file of P.S. Zaheerabad pending disposal of the CrI.P. in the interest of justice.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri. Srinivas Reddy Balakisti, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.1826 of 2021

ORDER:

This petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings in Crime No.234 of 2020 of Zaheerabad Town Police Station, Sangareddy District against the petitioners. The petitioners are accused Nos.1 to 3 in the above said crime. The offences alleged against them are under Sections 270 and 273 of IPC and Section 20 (2) r/w.7(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').

2. Heard Sri Srinivas Reddy Balakisti, 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 Inspector of Police is not having authority to lodge the present complaint, and the Zaheerabad Town Police Station, is not having power to register a case in Crime No.234 of 2020 for the offences under Sections 270 and 273 of IPC and Section - 20 (2) r/w.7(2) of the COTP Act. He would further submit that the allegations leveled against the petitioners do not

attract the ingredients contained in the aforesaid offences and, therefore, the proceedings against the accused 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 would submit that the allegations levelled against the petitioners satisfy the ingredients of the aforesaid provisions of law and, therefore, sought to dismiss the present petition.

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

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

² 1992 Supp. (1) SCC 335

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 Crime No.234 of 2020 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 - 20 (2) of the COTP Act is concerned, the allegations levelled against the petitioners, accused Nos.1 to 3 in the aforesaid crime, is that they used to dump the banned tobacco items without statutory warning on them which were harmful to human life and thereby contravened the order of the Government of Telangana and selling the same to the public illegally by taking huge amount. In view of the said allegation, it is apt to refer to Section - 20 (2) of the COTP Act for better appreciation of the case and to decide the issue in question, and the same is as under:

"20. Punishment for failure to give specified warning and nicotine and tar contents.-

(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable

with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees."

6. Thus, 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 they used to dump the banned tobacco products and sell them to public illegally without statutory warning on them. In view of the same, the contents of the complaint lacks the ingredients of Section - 20 (2) of the COTP Act. Thus, the offence under Section - 20 (2) of COTP Act is liable to be quashed against the petitioners.

7. In view of the above discussion, the Criminal Petition is allowed quashing the proceedings in Crime No.234 of 2020 of Zaheerabad Town Police Station, Sangareddy District against the petitioners - accused Nos.1 to 3.

8. Further, since the proceedings in the aforesaid case are quashed against the petitioners in Crime No.234 of 2020, 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. As a sequel, miscellaneous petitions pending, if any, in the criminal petition, shall stand closed.

//TRUE COPY//

SD/-K.ONESIM
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Judicial First Class Magistrate at Zaheerabad, Sanga Reddy District.
2. The Station House Officer, Zaheerabad Police Station, Zaheerabad, Sanga Reddy District.
3. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
4. One CC to Sri. Srinivas Reddy Balakisti, Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:16/03/2021

ORDER

CRLP.No.1826 of 2021



ALLOWING THE CRL.PETITION.

ppk
02/04

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