

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

**FRIDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION NO: 5685 OF 2021

Between:

Shankar Naik, S/o Megya Naik, Aged about 28 years, Occ: Driver H.No.2-2-489/B,
beside Navya School, Amberpet Telangana

...PETITIONER

AND

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

...RESPONDENT/COMPLAINANT

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 against the Petitioners in Crime No.237/2021, on the file of P.S. Amberpet, Hyderabad for the alleged offences U/s 188, 272, 273, 328 r/w 511 IPC 20(2) of COTPA Act.

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 direct the Court below to return tobacco material and vehicle bearing registration No. TS 08 FJ 5560 Mahindra Logan seized from the Petitioner in connection with Crime No.237 of 2021, on the file of P.S. Amberpet, Hyderabad forthwith immediately pending disposal of the Cr.P. in the interest of justice.

I.A. NO: 3 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 stay all further proceedings including appearance of the Petitioner in Crime. No. 237/2021, on the file of P.S. Amberpet, Hyderabad pending disposal of the Cr.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 Assistant Public Prosecutor on behalf of the Respondent.

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.5685 OF 2021

ORDER:

This petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 to quash the proceedings in Crime No.237 of 2021 pending on the file of Amberpet Police Station, Hyderabad. The petitioner herein is sole accused in the said crime. The offences alleged against him are under Sections - 188, 272, 273, 328 read with 511 of IPC and Section 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').

2. Heard Mr. Srinivas Reddy Balakisti, learned counsel for the petitioner and the learned Assistant Public Prosecutor appearing on behalf of respondent - State.

3. This Court, by common order dated 05.07.2021 in Crl.P. No.152 of 2020 and batch, has extensively dealt with the issue covered in the present criminal petition observing that transportation, possession, storage, sale and purchase of tobacco products are not totally banned in the State of Telangana and, therefore, it cannot be said that offences

under Sections - 269, 270, 271, 272 and 273, 328, 336 and 420 of IPC are attracted to the petitioners therein.

4. As far as section - 188 IPC is concerned, this Court further observed in the said common order that the law is well settled on the subject that before an accused is charged, there must be an order duly promulgated by the public servant; the public servant must have the lawful authority to promulgate the order; the person flouting the same should have knowledge about the order directing him to abstain from the act; he must disobey the said order with the knowledge; and such disobedience of the duly promulgated order should cause a danger to the human life, etc. By observing so, this Court held that the offence under Section - 188 of IPC did not attract to the petitioners therein. Now, coming to the case on hand also, the complaint lacks the ingredients of the said offence against the petitioner herein.

5. Concerning provisions of Section - 20 of COTP Act, in the said common order, this Court also observed that the said provision deals with punishment for failure to give specified warning and nicotine and tar contents. But, in the complaints / charge sheets therein, there is no allegation against the petitioners therein that they were carrying on trade or commerce in contraband or any other tobacco

products without label and specified warning on the said products. In view of the same, the contents of the complaints / charge sheets lack the ingredients of Section - 20 (2) of the COTP Act. Even, there is no allegation that the seized products do not contain labels with statutory warning. Observing so, this Court held that registering the crimes for the said offence against the petitioners therein is contrary to Section - 20 (2) of COTP Act,

6. In the present case also, the allegations against the petitioner are that he was selling the prohibited tobacco products and the contents of the complaint do not attract the ingredients of offences under Sections - 188, 272, 273, 328 read with 511 of IPC and Section - 20 (2) of COTP Act and, therefore, the proceedings against the petitioner in the above crime are also liable to be quashed.

7. The present Criminal Petition is accordingly allowed in terms of the common order dated 05.07.2021 in CrI.P.No.152 of 2020 and batch and the proceedings in Crime No.237 of 2021 pending on the file of Amberpet Police Station, Hyderabad, against the petitioner - accused are hereby quashed.

8. Since the proceedings are quashed against the petitioner in the above crime, the Station House Officer, Amberpet Police Station, Hyderabad, is hereby directed to return the seized property to the petitioner on proper identification and verification of ownership under due acknowledgment.

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

SD/- I.NAGA LAKSHMI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The IV Additional Chief Metropolitan Magistrate at Nampally, Hyderabad.
2. The Station House Officer, Amberpet Police Station, Hyderabad.
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
6. One Spare Copy

kul

gbr

CWA

HIGH COURT

DATED: 23/07/2021



ORDER

CRLP.No.5685 of 2021

ALLOWING THE CRL.PETITION

[Signature]
23/07/2021