



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27/04/2022

DATED : 26/07/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WEB COPY

Crl.O.P.(MD)Nos.1546 to 1548 of 2019andCrl.OP(MD)Nos.1643 to 1645 of 2019&Crl.MP(MD)Nos.798, 799, 800, 801, 802, 803, 864, 865, 866, 867, 868
and 869 of 2019(1)Crl.OP(MD)No.1546 of 2019:-

M/s.Tej Ram Dharam Paul Pvt. Ltd.,
represented by its Managing Partner,
Neeraj Kumar Singla,
Son of Dharman Paul,
Nathapur Village,
Sonapat District,
Haryana-131 029.

: Petitioner/A2

Vs.

The State Government
through the Food Safety Officer,
Nagercoil Zone-1,
Service Centre Upstairs,
Nagercoil Municipality Office,
Nagercoil-629 001

: Respondent/
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the private complaint filed in STC No.59 of 2018 on the file of the Judicial Magistrate No.II, Nagercoil and quash the same.

(2)Crl.OP(MD)No.1547 of 2019:-

M/s.Tej Ram Dharam Paul Pvt. Ltd.,
represented by its Managing Partner,
Neeraj Kumar Singla,
Son of Dharman Paul,
Nathapur Village,
Sonapat District,
Haryana-131 029.

: Petitioner/A2



Vs.

The State Government
through the Food Safety Officer,
Nagercoil Zone I,
Service Centre Upstairs,
Nagercoil Municipality Office,
Nagercoil-629 001

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records records pertaining to the private complaint filed in STC No.60 of 2018 on the file of the Judicial Magistrate No.II, Nagercoil and quash the same.

(3)Crl.OP(MD)No.1548 of 2019:-

- 1.M/s.Tej Ram Dharam Paul Pvt. Ltd.,
represented by its Director-I,
Mr.Vijayakumar
- 2.M/s.Tej Ram Dharam Paul Pvt., Ltd.,
Represented by its Director-II,
Mr.Manmohan Kumar Punia
- 3.M/s.Tej Ram Dharam Paul Pvt. Ltd.,
represented by its Managing Partner,
Neeraj Kumar Singla

: Petitioners/A2 to A4

Vs.

The State Government
Through the Food Safety Officer,
Thiruvattaru Union,
Block Development Office,
Thiruvattaru-629 177.

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records records pertaining to the private complaint filed in STC No.131 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram and quash the same.

(4)Crl.OP(MD)No.1643 of 2019:-

- 1.M/s.Tej Ram Dharam Paul Pvt. Ltd.,
represented by its Director-I,
Mr.Vijayakumar



2.M/s.Tej Ram Dharam Paul Pvt., Ltd.,
Represented by its Director-II,
Mr.Manmohan Kumar Punia

3.M/s.Tej Ram Dharam Paul Pvt. Ltd.,
represented by its Managing Partner,
Neeraj Kumar Singla

: Petitioners/A2 to A4

Vs.

The State Government
Through the Food Safety Officer,
Thiruvattaru Union,
Block Development Office,
Thiruvattaru-629 177.
Kanyakumari District.

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records records pertaining to the private complaint filed in STC No.151 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram and quash the same.

(5)Crl.OP(MD)No.1644 of 2019:-

M/s.Tej Ram Dharam Paul Pvt., Ltd.,
Represented by its Managing Partner,
Neeraj Kumar Singla, Son of Dharam Paul,
Nathapur Village, Sonapat District.
Haryana-131 029.

: Petitioner/A2

Vs.

The State Government
Through the Food Safety Officer,
Rajapalayam Union Place,
Chettiyarpatti Panchayat Union Office-626 122
Virudhunagar District.

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records records pertaining to the private Complaint filed in STC No.2233 of 2018 on the file of the Judicial Magistrate, Rajapalayam and quash the same.

(6)Crl.OP(MD)No.1645 of 2019:-

M/s.Tej Ram Dharam Paul Pvt., Ltd.,
Represented by its Managing Partner,
Neeraj Kumar Singla, Son of Dharam Paul,
Nathapur Village, Sonapat District,
Haryana-131 029

: Petitioner/A2



Vs.

The State Government
Through the Food Safety Officer,
Rajapalayam Union Place,
Chettiyarpatti Panchayat Union Office-626 122
Virudhunagar District.

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records records pertaining to the private complaint in STC No.2234 of 2018 on the file of the Judicial Magistrate, Rajapalayam and quash the same.

For Petitioners : Mr.K.R.Laxman
(all cases) for Mr.A.S.Vaigunth

For Respondent : Mr.P.Kottai Chamy
(all cases) Government Advocate
(Criminal side)

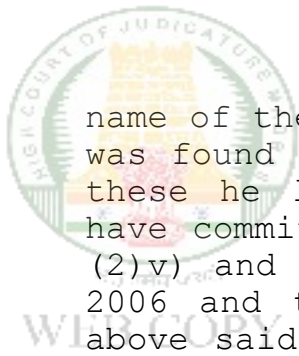
COMMON ORDER

These criminal original petitions are filed seeking quashment of the case in STC Nos.59 and 60 of 2018 on the file of the Judicial Magistrate No.II, Nagercoil, in STC Nos.131 and 151 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram and in STC Nos.2233 and 2234 of 2018 on the file of the Judicial Magistrate, Rajapalayam, Virudhunagar District.

2.Since the question of law in all the matters are common, even though the facts are different, all the matters are disposed of by this common order.

3.The case of the prosecution in all the cases is that samples of tobacco products were taken from the respective area shops. On the basis of the samples taken and subsequent reports from the food analyst, independent complaints have been launched. In all the matters, the first question of law that was commonly raised is that the tobacco products are the food products as defined under the Food Safety and Standard Act 2006. With these backgrounds, let us go to the independent cases.

4.Crl.OP(MD)No.1546 of 2019:- The case of the prosecution is that on 26/10/2017 the complainant inspected the shop of the petitioner in M/s.Sudha Traders dealing with grocery items. Al is the owner. They were found selling Ganesh 701 tobacco and Cool lip filter tobacco. These were banned products in Tamil Nadu. They were seized and sent for laboratory for examination and in the packet the



name of the manufacture was found. As per the food analyst : it was found to be unsafe and seriously prohibited in Tamil Nadu. With these he lodged the prosecution stating that the accused persons have committed the offence under section 26(2)(i), 26(2)(iv) and 26(2)(v) and sections 58 and 59 of the Food Safety and Standards Act, 2006 and this petitioner is found to be the manufacturer of the above said products. Seeking quashment of the case in STC No.59 of 2018, this petition has been filed.

5.Crl.OP(MD)No.1547 of 2019:- The case of the prosecution is that on 26/10/2017 the complainant inspected the shop of the petitioner by name M/s.Sudha Traders dealing with grocery items. A1 is the owner. They were found selling Ganesh 701 tobacco and Cool lip filter tobacco. These were banned products in Tamil Nadu. They were seized and sent for laboratory for examination and in the packet the name of the manufacture was found. As per the food analyst report it was found to be unsafe and seriously prohibited in Tamil Nadu. With these he lodged the prosecution stating that the accused persons have committed the offence under section 26(2)(i), 26(2)(iv) and 26(2)(v) and sections 58 and 59 of the Food Safety and Standards Act, 2006 and this petitioner is found to be the manufacturer of the above said products. Seeking quashment of the case in STC No.60 of 2018, this petition came to be filed.

6.Crl.OP(MD)No.1548 of 2018 is filed in respect of STC No.131 of 2018 by the very same person on the ground that on 14/09/2019, Ganesh 701 tobacco and Cool lip filter tobacco were found sold by the shop namely M/s.Athithyan Stores. Seeking quashment of the same, the Director and Managing Partner have filed this petition.

7.Crl.OP(MD)No.1643 of 2019 is filed by the very same persons in respect of the occurrence said to have taken place on the very same day on 14/09/2019 in a shop called M/s.Athithyan Stores and they have found in selling of Ganesh 701 tobacco and Cool lip filter tobacco. Seeking quashment of the case in STC No. 151 of 2018, the Director and and Managing Partner have filed this petition.

8.Crl.OP(MD)No.1644 of 2019 has been filed in respect of the offence that had been taken place on 08/02/2019 at Srinivasa Stores when they were found selling of Cool lip filter tobacco products. On the basis of the food analyst report, now prosecution has been lodged in STC No.2233 of 2018. Challenging the same, A2 has filed this petition.

9.Crl.OP(MD)No.1645 of 2019 has filed in respect of the prosecution that was launched by the respondent in STC No.2334 of 2018 for selling cool lip filter tobacco which was found sold in the shop called Srinivasa stores. Challenging the prosecution, A2 has filed this criminal original petition.



10. In all these matters counter affidavit has been filed by the respondent herein.

11. Heard both sides.

12. As noticed above, let us take the first issue, whether the tobacco products will come under the definition of Food Safety and Standards Act 2006.

13. A long standing history with regard to the above said tobacco issue has been dealt by various courts under various circumstances and has come to different and varied conclusions. In some of the cases, it has been held that tobacco and tobacco products will not come under the definition of Food Safety and Standard Act 2006. In some other cases, it has been held that it will come under the definition of Food Safety and Standard Act, 2006. Noting that there is difference of opinion between various High Courts with regard to the above said issue, the matter has been referred to the Larger Bench of the Hon'ble Supreme Court and now the final opinion is awaited. So this is the background of issue.

14. The petitioners would rely upon judgments in favour of their cases to the effect that they will not come under the definition of the Food Safety and Standard Act 2006. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent would submit that even by this court the uniform stand has been taken to the effect that tobacco will come under the definition of the Food Safety and Standard Act 2006. They will rely upon the various rulings.

15. Let us take the back ground facts of the tobacco products issue.

16. While disposing of the case in Krishnakumar Thupaty Vs. The Inspector of Police, Tilagar Thidal Police Station, Madurai City, (Crl.OP(MD)No.12686 of 2018, dated 21/06/2022), this court has made the following observation which is relevant for our discussion. For better undertaking of the issue, let me extract the relevant portion as under:-

"6. For the purpose of better understanding the issue, let us start the discussion on the basis of the judgment rendered by the High Court of Telangana in the case of **Kamadhenu Traders Vs. State of Telangana and others [2022(1)ALT 112]**. The ill effects of tobacco and tobacco products were felt from time immemorial and various legislations were enacted to control the manufacturing, storing of the tobacco and tobacco products. Originally, during the era of **Godawat Pan Masala Products I.P Vs. Union of**



India and others (Appeal civil) 4674 of 2004, regarding the definition of food under the provisions of Prevention of Food Adulteration Act, 1954 was under consideration.

7.The Hon'ble Supreme Court, on the basis of the definition under the provision of the Prohibition of Food Adulteration Act, found that the tobacco and tobacco products did not fit into the definition. But later, new Act has been brought in 2006 namely the Food Safety and Standard Act, 2006, wherein entirely new dimensions have been given to the definition of food and now, whether the tobacco and tobacco products will fit into the definition is under consideration by the Hon'ble Supreme Court, which is admitted by both sides during the course of arguments.

8.The learned counsel appearing for the petitioner would submit if the court directs, he can wait till the disposal of the matter by the Hon'ble Supreme Court. A similar contention has been raised before the Telungana High Court over the issue. But however, the matter is of the year 2018 and the offence is of the year 2017. Five years lapsed and there is no point in keeping the matter pending, when the process of committal is underway. This court directed the parties to get along with hearing. On that ground, it was heard."

17.So the above discussion made in the above said case makes the issue more clear. So with these we will now proceed to discuss with regard to the harmful effect of the tobacco products, which are causing to the human life. For that purpose also we can extract the further observation of his court in the above said case viz., Crl.OP (MD)No.12686 of 2018, dated 21/06/2022. The observation runs like this:-

"11.Before we go into the main issue, the back ground must also be taken into account again. The reason being that the Hon'ble Supreme Court in the case of **Ankur Gutka Vs. Indian Asthma Care Society (SLP No.16308 of 2007, dated 07/12/2010)** has directed the Government of India to make a study with regard to the harmful effect or human life by the use of the Gutka, tobacco, panmasala and similar articles. In pursuance of the above said direction, a detailed study was undertaken and a report was also filed before the Hon'ble Supreme Court.

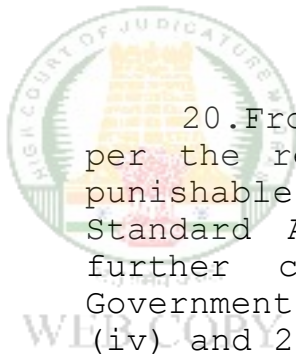


12. On going through the report, the Hon'ble Supreme Court, by order, dated 03/04/2013 in the above said recommendation, directed the Health Department of the States and Union Territories, to file affidavits with regard to the compliance of the ban imposed on manufacturing and sale of gutka and panmasala with tobacco and/or nicotine. In pursuance of the above said direction, several State Governments issued notifications, orders under the provisions of the Food Safety and Standard Act, 2006. The notification, that was issued by the Government of Telungana in compliance of the above said order was under challenge in **Kamathenu Traders case**. Here, in Tamil Nadu, in No.VI(1)155(a)/2017, a similar notification was issued on 23/05/2017, banning and prohibiting the manufacture, storage, transport, distribution or sale of Gutkha, Panmasala, Chewing Tobacco, containing tobacco or nicotine as ingredients for a period of one year with effect from 23rd May 2017. This is the continuation of the ban order. It is seen that on the date of the inspection and seizure and registration of the case, the ban was in force."

18. So these observations are relevant for our discussion in this case also. In the background of the above stated, let us proceed further. As on date, as things today, the tobacco products will come under the definition of 'FOOD'.

19. Section 3(j) reads as under:-

"food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances: Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;



20.From the discussion made above, point to the effect as per the report of food analyst, the product is unsafe, which is punishable under section 58 and 59(i) of the Food Safety and Standard Act 2006. From the discussion made above, it is also further clear that the tobacco products are banned by the Government, which is also punishable under sections 26(2)(i), 26(2)(iv) and 26(2)(v) of the Food Safety and Standards Act, 2006. So the first point is decided against the petitioners. Apart from this issue, no other ground is raised by the petitioners. So all the cases must be proceeded in accordance with law to its logical conclusion.

21.In the result, all the criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/10/2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate Court No.II,
Nagercoil.
- 2.The Judicial Magistrate Court No.II,
Padmanabhapuram.
- 3.The Judicial Magistrate Court,
Rajapalayam.
- 4.The Food Safety Officer,
Nagercoil Zone-1,
Service Centre Upstairs,
Nagercoil Municipality Office,
Nagercoil-629 001.



5.The Food Safety Officer,
Thiruvattaru Union,
Block Development Officer,
Thiruvattaru.

6.The Food Safety Officer,
Rajapalayam Union Place,
Chettiyarpatti Panchayat Union Office,
Virudhunagar District.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+3 CC to M/s.A.S.VAIGUNTH, Advocate (SR-34172, 34173, 34171[F]
dated 26/07/2022)

Crl.O.P.(MD)Nos.1546 to 1548 of 2019

and

Crl.OP(MD)Nos.1643 to 1645 of 2019

26/07/2022

SI(03.10.2022) 10P 11C