

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No. 3046 OF 2022

ORDER:

1. This criminal petition is filed by A1 and A2 seeking relief of anticipatory bail in Cr.No.139 of 2022 on the file of Police Station, Abdullapurmet, Rachakonda, Ranga Reddy District.

2. Having heard the learned counsel for the petitioners/A1 and A2, this Court passed order on 11.04.2022 as follows:

“The facts of the case are that A3 was taken into custody while he was transporting tobacco products purchased at Bidar, at the instance of A1 and A2. The Police, Abdullapurmet Police Station, registered a case in Crime No.139/2022 for the offences under Sections 188, 272, 273, 328 r/w 511 IPC and Section 20(2) of the Cigarettes and Other Tobacco Products Act, 2003 (for brevity ‘the Act of 2003’). A.3 was produced before the XXIV Additional Metropolitan Magistrate at Hayathnagar, who remanded the A3.

As seen from the remand report, 17 bags of Amber Tobacco were seized. The Police sought A3 to be remanded under Sections 188, 272, 273, 328 r/w 511 IPC and Section 20(2) of the Act of 2003.

Section 328 of the IPC is a non bailable offence and punishable with imprisonment of either description for a term which may extend to ten years and also be liable to fine. For the sake of convenience, the same is reproduced as under:

“328. Causing hurt by means of poison, etc., with intent to commit an offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished

with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Section 328 of IPC makes an act of administering any person any poison or any stupefying, intoxicating or unwholesome drug. There is no averment in the remand case diary that the A3 had administered any drug any poison or any stupefying substance except saying that Amber Tobacco was being transported.

Further, this Court in similar circumstances passed orders in CrI.P.No.3731 of 2018 & batch, dated 27.08.2018 and CrI.P.Nos.152 of 2020 & batch, 05.07.2021, quashing the proceedings on the ground that transportation of tobacco or sale of tobacco will not amount to offence under IPC including Sections 188, 272, 273, 328 r/w 511 IPC and Section 20(2) of the Act of 2003. When this Court specifically held in several cases that the aforesaid offences are not attracted, how the XXIV Additional Metropolitan Magistrate at Hayathnagar took cognizance of the offences under Sections 188, 272, 273, 328 r/w 511 IPC and Section 20(2) of the Act of 2003, when there is no averment to that effect in the remand report or in the First Information Report.

In view of above, the XXIV Additional Metropolitan Magistrate at Hayathnagar is directed to file his/her report stating reasons as to how A3 was remanded to custody when none of the allegations in the First Information Report or in the remand report constitute offences under Sections 188, 272, 273, 328 r/w 511 IPC and Section 20(2) of the Act of 2003, and also in view of several orders of this Court quashing the cases under the said provisions holding that the offences are not attracted in the case of transportation of tobacco, within 15 days from today.

List this matter on 20.04.2022. Till then, the earlier direction not to arrest the petitioners shall continue.”

3. After notice was issued to the learned XXIV Additional Metropolitan Magistrate at Hayathnagar, she submitted report dated 28.04.2022 vide Dis.No.2206 of 2022 stating that she was not aware of the orders passed by this Court in CrI.P.No.3731 of 2018 and batch dated

27.08.2018 and other cases, wherein this Court had quashed the proceedings registered by the police for the offence under Sections 188, 272, 273, 328 r/w 511 IPC and Section 20(2) of Cigarettes and other Tobacco Products Act, 2003.

4. The concerned courts before whom the accused are brought for the purpose of judicial remand and also when police custody is sought, the concerned courts shall record reasons both for granting judicial remand and also for granting police custody, if any. As seen from the wording of Section 167 of Cr.P.C, it is necessary that remand report and the complaint and any connected documents filed in the cases where remand of accused is sought, initially, the Police Officer has to be satisfied that the facts of the case attract the penal provisions quoted in the First Information Report. It is the duty of the concerned Court while ordering remand, to go through the facts of the case and unless there is a prima facie satisfaction of the concerned Court that the facts of the case satisfy the ingredients of the penal provisions

mentioned therein, the concerned Court shall not order remand in a mechanical manner. While ordering remand, the concerned court is taking away the personal liberty of an accused. In the said circumstances, when personal liberty of a person/accused is curtailed, it is the duty of the concerned Court ordering such remand to convince itself regarding the offence mentioned in the First Information Report being attracted in the facts of that particular case.

5. The mechanical order of remand will not only affect the personal liberty of a person violating his constitutional right of freedom but at the same time in violation of criminal procedure code, which mandates the reasons or a prima facie satisfaction regarding the necessity of accused being remanded to custody(police/judicial).

6. In the facts and circumstances of this case, since this Court quashed criminal proceedings in CrI.P.Nos.3731 of 2018 & batch registered under Sections 188, 272, 273, 328 r/w 511 of IPC and Section

20(2) of the Cigarettes and other Tobacco Products Act, 2003 and also CrI.P.No.5619 of 2020 & batch, vide order dated 10.06.2021, the order dated 11.04.2022 passed by this Court directing not to arrest, is made absolute.

7. In view of the illegality committed by the learned Metropolitan Magistrate in remanding A3 and A4 and the Magistrate's explanation that she was unaware of any such orders by this Court, it is just and necessary that a copy of this order be circulated to all the concerned courts in the State to appraise regarding the law laid down by this Court.

Accordingly, the criminal petition is allowed with the aforementioned direction.

K.SURENDER,J

Date : 15.06.2022

Note: LR copy to be marked.

B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.3046 OF 2022

Date: 15.06.2022

kvs

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

Criminal Petition No.3046 OF 2022

Between:

Kaleru Vinay & another ... Petitioners/A1 & A2

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court of Telangana, Hyderabad.
Respondent.

DATE OF JUDGMENT PRONOUNCED: 15.06.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |

3 Whether Their
Ladyship/Lordship wish to see Yes/No
the fair copy of the Judgment?

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.P. No.3046 of 2022

% Dated 15.06.2022

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High Court of Telangana at Hyderabad.

..Respondent.

! **Counsel for the Appellant:** Smt. C.Sunitha Kumari

^ **Counsel for the Respondent:** Learned Public Prosecutor

>**HEAD NOTE:**

? **Cases referred**