

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

**MONDAY, THE NINETEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 9563 OF 2022

Between:

Salman @ Abdul Aleem, S/o. Md. Abdul Hakeem, Aged about 32 years, Occ.
Professional Services, R/o. 18-8-104/106, PN Nagar, Edi Bazar, Hyderabad,
T.S.

...PETITIONER/ACCUSED No. 1

AND

1. The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad.
2. The State of Telanana, through P.S. Jubilee Hills, 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 petitioner/accused No.1 C.C.No.856 of 2018 in Crime No. 819 of 2017 of P.S. Jubilee Hills, Hyderabad, for the U/Sec. 270, 290 R/w.188 IPC and Sec. 4 and 20 (2) COTP Act.

I.A. NO: 1 OF 2022

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 including arrest of the petitioner in CC No. 856 of 2018 in Crime No. 819 of 2017 of PS Jubilee Hills Hyderabad for the U/Sec 328, 188 IPC and Sec 4 and 20 (2) COTP Act pending disposal of the above criminal petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri MOHD MAHBOOB AHMED KHAN, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No. 1 and none appeared for the Respondent No. 2.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.9563 OF 2022****ORDER:**

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioner to quash the proceedings against him in C.C.No.856 of 2018, pending on the file of XVII Additional Chief Metropolitan Magistrate at Hyderabad.

2. The petitioner herein is the accused No.1 in the said crime. The offences alleged against him are under Sections 270 and 290 read with 188 of Indian Penal Code (for short "IPC") and Sections 4 and 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').
3. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent. Perused the record.
4. Learned counsel for the petitioner submits that this case is squarely covered with the Common Order rendered by this Hon'ble

Court in Criminal Petition No.3731 of 2018 and batch, dated 27.08.2018.

5. This Court had repeatedly quashed the proceedings wherein tobacco products were found on the ground that the provisions under Sections 270 and 290 read with 188 of IPC and Sections 4 and 20(2) of COTP Act, are not attracted. This Court vide Criminal Petition No.3731 of 2018 and batch, dated 27.08.2018 had quashed the proceedings against the accused persons.

6. In the said circumstances, this Criminal Petition is allowed quashing the proceedings in C.C.No.856 of 2018, pending on the file of XVII Additional Chief Metropolitan Magistrate at Hyderabad..

7. Since the charge sheet is already filed, the petitioner is at liberty to file an appropriate application before the concerned Magistrate for return of the seized property/vehicle and the Magistrate shall consider the same in accordance with law. However, it is made clear that if the seized stock of tobacco products or other products are expired, the same shall be destroyed by taking permission from the concerned Magistrate.

8. The copy of the common order passed by this Court in Criminal Petition No.3731 of 2018 and batch, dated 27.08.2018, shall form part of this order.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

//TRUE COPY//

Sd/- K. VENKAIAH
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The XVII Additional Chief Metropolitan Magistrate at Nampally, Hyderabad
2. The Station House Officer, Jubilee Hills Police Station, Hyderabad
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
4. One CC to SRI. MOHD MAHBOOB AHMED KHAN Advocate [OPUC]
5. Two CD Copies
(Along with a copy of the order dt.27.08.2018 in Crl.P.No.3731 of 2018)

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HIGH COURT

DATED: 19/12/2022

ORDER

CRLP.No.9563 of 2022



Allowing the Criminal Petition

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25/1/23

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

**CRIMINAL PETITION Nos.3731, 3634, 3765, 3766, 5966,
5967, 5968, 5969, 5970, 5971, 5972, 6754, 6755, 6758,
6811, 6816, 6859, 6954, 6955, 7081, 8216 and 7851 of 2018**

COMMON ORDER

These criminal petitions are filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against the petitioners, who are accused in different cases. The details of offences, crime numbers, accused number, nature of offence are mentioned in the table given below.

Sl. No	Cr.P.No.	Crime Number	Accused Number	Offences allegedly committed	Nature of offence
1	3731 of 2018	34 of 2018 of Manakondur Police Station	A.1	U/S 328, 270 and 273 of I.P.C.	Transportation of Pani Masala and Tobacco Products
2	3634 of 2018	26 of 2018 of Nakkapalli Police Station	A.2 and A.3	U/S 272, 273, 328 and 120 B of I.P.C.	Transportation of Khaini Packets
3	3765 of 2018	509 of 2017 of Nacharam Police Station	A.1	U/S 272, 273, 420, 188 of I.P.C. and Section 7 (1) (2) (3) (5) and 26 of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short "COTP	Manufacturing Pani Masala.

				Act*	
4	3766 of 2018	509 of 2017 of Nacharam Police Station	A.2	U/S 272, 273, 420, 188 of I.P.C. and Section 7 (1) (2) (3) (5) and 26 of COTP Act, 2003	Manufacturing Pan Masala.
5	5966 of 2018	215 of 2018 of Nacharam Police Station	A.1	U/S 188, 272, 273 of I.P.C.	Transportation of Pan Masala
6	5967 of 2018	215 of 2018 of Nacharam Police Station	A.2	U/S 188, 272, 273 of I.P.C.	Transportation of Pan Masala
7	5968 of 2018	215 of 2018 of Nacharam Police Station	A.3	U/S 188, 272, 273 of I.P.C.	Transportation of Pan Masala
8	5969 of 2018	215 of 2018 of Nacharam Police Station	A.4	U/S 188, 272, 273 of I.P.C.	Transportation of Pan Masala
9	5970 of 2018	215 of 2018 of Nacharam Police Station	A.5	U/S 188, 272, 273 of I.P.C.	Transportation of Pan Masala
10	5971 of 2018	372 of 2018 of Medipally Police Station	A.1	U/S 188, 272, 273 read with 34 of I.P.C.	Manufacturing and packing of Pan Masala
11	5972 of 2018	372 of 2018 of Medipally Police Station	A.2	U/S 188, 272, 273 read with 34 of I.P.C.	Manufacturing and packing of Pan Masala
12	6754 of 2018	13 of 2018 of Golkonda Police Station	A.3	U/S 273, 188 of I.P.C. and Section 59 (i) FSS Act	Sale of Pan Masala and Tobacco Products (Zarda)
13	6755 of 2018	509 of 2017 of Nacharam Police Station	A.3 and A.4	U/S 272, 273, 420, 188 of I.P.C. and Section 7 (1) (2) (3) (5) and 26 of COTP Act, 2003	Manufacturing Pan Masala.
14	6758 of 2018	61 of 2017 of Karunnagar Police Station	A.3	U/S 270, 273 and 328 of I.P.C.	Dealing with Tobacco products
15	6811 of 2018	235 of 2018 of	A.3	U/S 270, 273 of I.P.C.	Transportation of Pan Masala

		Patancheru Police Station		Section 20 (2) read with 7 (2) of COTPA Act, 2003	and Tobacco
16	6816 of 2018	235 of 2018 of Patancheru Police Station	A.1 and A.2	U/S 270, 273 of I.P.C. Section 20 (2) read with 7 (2) of COTPA Act, 2003	Transportation of Pan Masala and Tobacco
17	6859 of 2018	26 of 2018 of Nakkapalli Police Station	A.1	U/S 272, 273, 328, 120 - B of I.P.C.	Transportation of Khaini Packets
18	6954 of 2018	231 of 2018 of Visakhapatnam IV Town Police Station	A.1 to A.4	U/S 328, 273, 188 read with 34 of I.P.C. and U/S 59, 58 and 63 of FSS Act	Transportation of Khaini Packets
19	6955 of 2018	53 of 2018 of Nakkapalli Police Station	A.1	U/S 273 of I.P.C. and U/S 156 (3) of Cr.P.C.	Transportation of Gutka Packets
20	7081 of 2018	C.C.No.160 of 2016 on the file of Judicial Magistrate of First Class at Ichapuram.	A.2 to A.4	U/S 270, 273 of I.P.C. U/S 54 and 59 of FSS Act and Section 20 of COTPA Act	Manufacturing of Tobacco Products.
21	8216 of 2018	C.C.No.159 of 2016 on the file of Judicial Magistrate of First Class at Ichapuram.	A.2 and A.3	U/S 270, 273 of I.P.C. U/S 54 and 59 of FSS Act and Section 20 of COTPA Act	Transportation of Tobacco products.
22	7851 of 2018	84 of 2018 of Modugula Police Station	A.1 and A.2	U/S 273 of I.P.C. and under Section 22 read with 5 of COTPA Act	Transportation of Raja Khaini

As the question involved in all the petitions is identical, I find that it is expedient to decide all the petitions by common order.

The petitioners filed these criminal petitions under Section 482 of Cr.P.C. on the ground that the local police are incompetent to take up investigation and to file charge sheet for the offence punishable under Sections 54 and 59(1) of FSS Act. Whereas the allegations made in the charge sheet and the statements recorded by the police during investigation under Section 161(3) Cr.P.C. does not disclose the commission of offence punishable under Sections 270 and 273 of I.P.C. or any other offences referred in column No.4 of the Table referred supra. When the charge sheets and F.I.Rs do not disclose *prima facie* material to conclude that they committed the above offences, the Court can exercise power under Section 482 of Cr.P.C. to quash the proceedings against the petitioners.

During hearing, Sri P.Vikram and R.Siva Sai Swaroop, learned counsel for the petitioners contended that though khaini is a Tobacco product, it would not fall within the definition of Section 3(j) of the FSS Act. Therefore, the police are incompetent to investigate into and file charge sheet, totally contravening the procedure prescribed under the provisions of FSS Act. Under the

FSS Act, Food Safety Officer alone is competent to draw samples and investigate into. Therefore, the police lacks inherent jurisdiction to investigate into the offences. On this ground alone, the proceedings against the petitioners for the offences punishable under Sections 54 and 59(1) FSS Act are liable to be quashed. Similarly, registration of crimes against the petitioners is also an illegality since local police are not competent to investigate into the offences.

Yet, another contention raised by the counsel for the petitioners is that none of the allegations made in the charge sheet and statements recorded by the police during investigation so also in F.I.Rs. does not disclose the basic ingredients to constitute the offence punishable under Sections mentioned in the table above.

Learned counsel for the petitioners relied on the judgment of High Court of Patna rendered in "**Omkar Agency v. The Food Safety and Standards Authority of India**"¹ in support of their contentions.

Per contra, the learned Public Prosecutor for the State for the States of Andhra Pradesh and Telangana contended that Tobacco is prohibited by the Central Government by amending

¹ AIR 2016 Pat160

the provisions of COTP Act, which came into force on 18.05.2003, whereby the trade and commerce, and production, supply and distribution of cigarettes and other tobacco products are prohibited. The sale and transportation of Tobacco products would constitute the offence punishable under Sections 270 and 273 of I.P.C., so also under Sections 54 and 59(1) FSS Act and prayed to dismiss the criminal petitions. Similarly, manufacturing of Pan Masala is also contravention of provisions of FSS Act.

Learned Public Prosecutor for the State mainly contended that Chewing Tobacco is a food product in view of comprehensive definition of food under Section 3 [j] of FSS Act since it is wider than the definition of food under Food Adulteration Act and placed reliance on the judgment of High Court of Bombay rendered in "***Dhariwal Industries Limited, Ghodawat Pan Masala Products (I) Pvt. Ltd, Rajnandini Foods Pvt. Ltd, SDD Agencies Pvt.Ltd., Hira Enterprises, Rajat Industries Private Limited, MSS Food Processors v. State of Maharashtra***"² and another judgment of High Court of Madras rendered in "***J.Anbazhagan v. The Union of India***"³

² LAWS (BOM)-2012-9-29

³ 2018 SCC OnLine Mad 1231

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) *Whether the respondent/ Sub-Inspector of Police, is competent to investigate into the offence punishable under Sections 54 and 59(1) of FSS Act?*
- 2) *Whether the petitioners in all the petitions are found committing any act with malicious intention, with knowledge and reason to believe that such act likely to spread the infection of any disease dangerous to life? And whether the petitioners selling or offering or exposing for sale as food or drink, any article which has been rendered or has become noxious or is in a state unfit for food or drink or reason to believe that the same is noxious as food or drink? If so, are they liable to be proceeded for the offence punishable under Sections 270 and 273 IPC.?*

POINT No.1:

The first and foremost contention raised before this Court is that the respondents – Sub-Inspector of Police and the Inspector of Police are not competent to investigate into the offence punishable under Sections 54 and 59(1) of FSS Act.

“Section 54 of FSS Act deals with penalty for food containing extraneous mater - Any person whether by

himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption containing extraneous matter, shall be liable to a penalty which may extend to one lakh rupees.

Section 59(i) of FSS Act deals with punishment for unsafe food, - any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,-

(i) where such failure or contravention does not result in injury."

Therefore, both the offences pertaining to sale, store and manufacturing of such food article, which is prohibited and unsafe for human consumption. The word 'food' is defined under Section 3(j) of FSS Act, which reads thus:

"Food means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extend 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;"

Though the word 'food' as defined under section 3(j) of FSS Act is inclusive, the chewing tobacco was not included in Section 3(j) of FSS Act. Manufacturing or transportation of Pan Masala is not an offence. In **"Godawat Pan Masala Products I.P. Ltd. and another v/s. Union of India"**⁴ the Apex Court analyzed the definition of 'food' under Section 2(v) of the Prevention of Food Adulteration Act and Rules, 1955 as under:

"There is merit in the contentions of the appellants. Rule 3 of the Maharashtra Prevention of Food Adulteration Rules, 1962 and the corresponding rule in the Goa, Daman and Diu Prevention of Food Adulteration Rules, 1982 suggest that the power given to the Food (Health) Authority is only a pro tem power to deal with an emergent situation, such as outbreak of any infectious disease, which may be due to any article of food. Certainly, such power would include the power to ban "for the time being" the sale of such injurious articles of food. Hence, there is a corresponding provision in Section 7(iv) of the Act. In other words, when a contingency envisaged by Rule 3, or one similar thereto, arises and it becomes necessary for FHA to take immediate steps, FHA is empowered to prohibit "for the time being" the injurious article concerned and to take any appropriate step "in the interest of public health".

⁴ (2004) 7 SCC 68

On the collocation of the statutory provisions, it is not possible to accept the states' contention that Section 7(iv) is an independent source of power or that the 1964 amendment to Section 7(iv) had the effect of empowering FHA to prohibit the sale of any article "in the interest of public health". This conclusion is also supported by its legislative history.

It was improper that despite the 1964 amendment in Section 7(iv), the rules were not correspondingly updated. However, going strictly by the State Rules, which actually determine the extent of the power of FHA, the argument of the States that the said amendment was intended to give a carte blanche to FHA cannot be accepted. The power of the State FHA, which is discernible under Section 24(2)(a) read with the State Rules, operates only for a temporary period during which an emergent situation exists which needs to be controlled. Section 7(iv) does not clothe FHA with the power to issue a ban order for a longer period.

Even assuming that gutka and tobacco products are injuries to health, the power of their prohibition is only vested with the Central Government and not with the State Food (Health) Authorities.

Again, applying the principles of harmonious construction, it is not possible to hold that Section 7(iv) is an independent source of power. The power of the State under Section 7(iv) of the Act is statutory; absolute to the extent provided therein, and limited to the extent indicated by Section 23(1-A) of the Act."

The definition of the word 'food' under Section 3(j) of FSS Act is identical to the definition of the word 'food' under Section 2(v) of Prevention of Food Adulteration Act and Rules, 1955 made therein, chewing tobacco is not included in the definition of 'food' under Section 3(j) of FSS Act, but it is a prohibited product under the COTP Act, 2003.

Therefore, the Inspector of Police and the Sub-Inspector of Police are incompetent to investigate into the offence punishable under the provisions of FSS Act. Even assuming that chewing tobacco is a food within the definition provided under Section 3(j) of FSS Act, the Food Safety Officer is empowered to investigate into the offence punishable under the provisions of the FSS Act.

In "***M/s.Pepsico India Holdings (Pvt) Ltd., and Another v. State of U.P.***"⁵ the Allahabad High Court had an occasion to deal with similar question, extracted the definition of the word 'food' under Section 3(j) of FSS Act, so also the word 'food additive' as defined under Section 3(k) of FSS Act, it means any substance not normally consumed as a food by itself or used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing,

⁵ 2011(2) Crimes 250

preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by products becoming a component of or otherwise affecting the characteristics of such food but does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities. Therefore, chewing tobacco is not covered by food additive.

Section 41 of FSS Act deals with powers of search, seizure, investigation, prosecution and procedure thereto and it is appropriate to extract the same:

"41. Power of search, seizure, investigation, prosecution and procedure thereof- (1) Notwithstanding anything contained in sub-section (2) of Section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food and shall thereafter inform the designated officer of the actions taken by him in writing:

Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 relating to search, seizure, summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act."

According to Section 42 of FSS Act, the Food Safety officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis; the Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to designated officer with a copy to Commissioner of Food Safety; the Designated Officer, after scrutiny of the report of the Food Analyst, shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. The commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years or a special court in case of offences punishable with imprisonment for a term exceeding three years where such special court is established and in case no special court is established, such cases shall be tried by a court of ordinary jurisdiction; The Commissioner of Food Safety shall

communicate his decision to the Designated officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be, and such communication shall also be sent to the purchaser if the sample was taken under Section 40 of the Act.

Thus, Section 42 of the FSS Act laid down procedure to be followed by the Food Safety Officer appointed under this Act to investigate and file complaint before the competent courts.

In view of specific procedure prescribed in the FSS Act, the Food Safety Officer alone is competent to launch the prosecution after compliance of the procedure contemplated under sub-sections (2) to (4) of Section 42 of FSS Act.

In "*Omkar Agency v. The Food Safety and Standards Authority of India*"⁵ the Division Bench of High Court of Patna held that chewing tobacco is not a food product as defined under Section 3 (j) of FSS Act.

The High Court of Madras in "*J.Anbazhagan v. The Union of India*" (referred supra) and the High Court of Bombay in "*Dhariwal Industries Limited, Ghodawat Pan Masala Products (I) Pvt. Ltd, Rajnandini Foods Pvt. Ltd, SDD Agencies Pvt.Ltd., Hira Enterprises, Rajat Industries Private*

⁵ AIR 2016 Pat160

Limited, MSS Food Processors v. State of Maharashtra" (referred above) held that chewing Tobacco are food products within the definition of food as defined under Section 3 (j) of FSS Act and the police are competent to investigate into the offence along with the offence punishable under I.P.C.

In "**Ganesh Pandurang Jadhao v. State of Maharashtra**"⁷ an identical issue came up for consideration, wherein the Division Bench of Bombay High Court took different view and held that the Food Safety Officer alone is competent to investigate and to file charge sheet against the persons who committed the offence under the provisions of FSS Act.

Therefore, later judgment in "**Ganesh Pandurang Jadhao v. State of Maharashtra**" (referred above) has to be relied upon for the purpose of deciding the present cases. Since these two judgments are rendered by the coordinate bench of same High Court and the law laid down in **Dhariwal Industries Limited's case** (referred above) was adverted to and considered, but came to a different conclusion. Moreover, the judgment of High Court of Madras in "**J.Anbazzhagan v. The Union of India**" (referred supra) is based on the judgment of High Court of Bombay in **Dhariwal Industries Limited's case** (referred above).

⁷ 2016 Law Suit (Bom) 234

In "**Joshi v. State of Kerala**⁸" Kerala High Court held that tobacco and tobacco products are not food as defined under Section 3(j) of FSS Act as it is not a food product as specified in regulation 2.3.4 of the regulations and the tobacco and tobacco products are to be manufactured in accordance with the provisions of COTP Act and Rules therein. Food Safety Officer has no right to take action against tobacco and tobacco products by virtue of Government order.

In another judgment in **Jayavilas Tobacco Traders LLP rep. by its Partner v. The Designated Officer, Food Safety & Drugs Control Dept.** (W.P.No.21 of 2017) the Madras High Court adverted to the various provisions of FSS Act and Food Adulteration Act and concluded that when the petitioner was manufacturing of fine quality of tobacco prior without violating the provisions of law, the proceedings against him are to be quashed. The Madras High Court relied on its judgment in **Manufacturer, M/s.Tejram Dharam Paul, Maurmandi, Bhatinda District Punjab and another v. The Food Safety Inspector, Ambasamudram** (Crl.O.P.(MD) No.5505 of 2015 decided on 27.04.2015) wherein it was held that tobacco shall not be used as ingredients in any food products, as it does not

⁸ 2013 Cr.L.J. 2789.

come within the purview of the food product, the FSS Act has no application and that the manufacturer of gutka and pan masala cannot be proceeded under the FSS Act as Tobacco covered under the COTP Act.

Similarly in ***M/s.Vaipugaiyilai Urpathiyalargal Matrum Virpanaiyalargal Nala Sangam v. The Commissioner of Food Safety*** (W.P.(MD) No.10319 of 2017) an identical question whether chewing tobacco manufactures comes within the purview of FSS Act and the Food Safety Officer is competent to investigate and to file charge sheet. It was held that chewing tobacco is covered by COTP Act and Food Safety Officer is not an authority to interfere with the business of the petitioner.

One of the contentions raised by the learned Public Prosecutor is that when the petitioner/accused allegedly committed the offences both under FSS Act and I.P.C., police can investigate into the offences punishable under the provisions of I.P.C. and FSS Act.

In view of Section 155 (4) of Cr.P.C., no doubt, police are competent to investigate into the offences when the accused committed both cognizable and non-cognizable offences. Section 155 (4) of Cr.P.C. reads thus:

"Section 155 (4) of Cr.P.C.;

Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

But the FSS Act is a different enactment, power was conferred only on Food Safety officer to investigate into offence. Though police are competent to investigate into the offences punishable under I.P.C., they cannot investigate into the offence punishable under the provisions of FSS Act in view of the power conferred on Food Safety Officer and the procedure for investigation is totally distinct from the investigation prescribed for the offence punishable under I.P.C. When the police did not conduct investigation as specified in the provisions of FSS Act, the investigation done by the police is vitiated due to non-compliance of mandatory procedure prescribed under FSS Act. Therefore, on this ground the contention of the Public Prosecutor cannot be upheld.

In view of the law declared by various Courts referred supra, the police cannot take cognizance of the offence, to investigate into and to file charge sheet against the petitioners for

the offence punishable under Sections 54 and 59(1) of FSS Act, as they were not empowered under the FSS Act to launch the prosecution, but only Food Safety Officer appointed by the Government alone is competent to launch prosecution for those two offences. This view is supported by the Judgment of the Allahabad High Court in **M/s.Pepsico India Holdings (Pvt) Ltd.** case referred supra and the Judgment of Patna High Court in **"Dharmendra Kumar @ Raja v. The State of Bihar"**.

The Inspector of Police, Ichapuram and Sub-Inspector of Police, Kanchili, without any authority launched the prosecution against the petitioners in C.C.Nos.159 and 160 of 2016 on the file of Judicial Magistrate of First Class, Ichapuram, therefore, the proceedings under Sections 54 read with 59 of FSS Act are liable to be quashed on the sole ground. The point is answered accordingly.

P O I N T No.2:

The other contention of the counsel for the petitioners is that the allegations made in the complaint/charge sheet, if accepted on its face value, would not constitute any offence punishable under Sections 270 and 273 of I.P.C. The offence under Section 270 is punishable with imprisonment of either

⁹ CrI.W.P.No.119 of 2016

description for a term which may extend to two years or with fine or with both and the offence under Section 273 I.P.C. is punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

The offence punishable under Section 270 I.P.C. is cognizable whereas the offence punishable under Section 273 is non-cognizable. But when the police received information about the commission of both cognizable and non-cognizable offences, the police can investigate into both the offences in view of Section 155 (4) Cr.P.C. Therefore, investigation done by the Inspector and Sub-Inspector of Police in both the Calendar Cases is in accordance with Section 155(4) Cr.P.C. and therefore the Inspector of Police or Sub-Inspector of Police are competent to investigate into the offence punishable under Sections 270 and 273 I.P.C.

Section 270 of I.P.C. deals with committing any act with the knowledge or reason to believe that such act is likely to spread any infection or any disease, dangerous to life, but the act done by the petitioners is only transportation of Pan Masala, Khaini and chewing tobacco in different vehicles.

Therefore, transportation of Pan Masala, khaini and chewing tobacco would not spread infection or any disease dangerous to life. To constitute an offence punishable under Section 270 I.P.C., the petitioner must have done an act which spreads infection of any disease dangerous to human life. The charge sheet and the statements recorded by the police during investigation does not disclose that the said transportation of khaini or chewing tobacco would spread infection or any disease dangerous to any human life.

According to the West's legal thesaurus/ dictionary, the word 'infect' means contaminate, corrupt, pollute, imbue, impress, animate. The word 'disease' means deviation from the healthy or normal condition of any of the functions or tissues of the body (occupational disease), sickness, infirmity, disorder, illness, affliction, weakness, distemper, ill health, ailment, defect, handicap, disability, breakdown, malady, abnormality, plague, complaint derangement, attack, discomfort, delicate constitution, delicate condition, debility, suffering, malaise, nausea, pathology, frailty, attack, cancer, cholera, virus, "bug", syndrome.

According to Section 33 of I.P.C., the word 'act' denotes as well a series of acts as a single act; the word 'omission' denotes as well a series of omissions as a single omission. Thus, it

means, anything done by any of the persons. Transportation of Khaini, Pan Masala or chewing tobacco itself would not spread any infection or disease and if the khaini is chewed, it may cause danger to health of any individual, but transportation will not spread any infection or disease dangerous to health. Therefore, the allegations made in the complaint i.e. transportation of chewing tobacco or Khaini or Pan Masala also do not constitute an offence punishable under Section 270 of I.P.C.

The other offence allegedly committed by the petitioners is punishable under Section 273 I.P.C. which deals with punishment for sale, offers or exposes for sale food or any article which has been rendered or has become noxious. The word 'noxious' is not defined in I.P.C. As per the dictionary meaning, noxious means harmful, deleterious, injurious, poisonous.

Therefore, the sale or offers or exposes for sale of Pan Masala chewing tobacco or khaini are the prohibited products under the COTP Act, 2003. '**Transportation**' of such noxious food is not included in the offence punishable under Section 273 I.P.C., only few acts were included i.e., sale of noxious food or drink is an offence.

Thus the allegations made in the charge sheet coupled with the statements recorded by the police during investigation under

Section 161 (3) Cr.P.C. do not disclose ingredients to constitute an offence punishable under Section 273 I.P.C. However, it is consistent view of the prosecution from the beginning that these petitioners were found transporting Pan Masala, khaini and chewing tobacco in the different vehicles referred supra, but, transportation of noxious food viz., khaini and chewing tobacco is not included in the offence punishable under Section 273 I.P.C. Manufacturing Pan Masala is not included in Section 273 of I.P.C., hence, manufacturing of Pan Masala is not an offence since it is not a noxious food.

Therefore, I find no *prima facie* material against the petitioners to proceed against them for the offence punishable under Section 273 I.P.C. accepting the allegations made in the charge sheets and the statements recorded by the police under Section 161(3) Cr.P.C. and F.I.Rs. issued against the petitioners.

The scope of Section 482 of Cr.P.C. was time and again discussed in catena of perspective pronouncements of the Apex Court and in a Constitutional Bench judgment of the Apex Court in "**State of Haryana v. Bhajan Lal**"¹⁰, seven guidelines were laid down and they are as under:

¹⁰ 1992 Supp. (1) SCC 335

(a) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned

Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself.

In view of the guidelines laid down by the Apex Court in "**State of Haryana v. Bhajan Lal**" (referred supra), the police are incompetent to take cognizance of the offences punishable under Sections 54 and 59(1) of FSS Act, investigating into the offence along with the other offences under the provisions of I.P.C. and 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 and the Judgments of the Allahabad High Court and Patna High Court are clear that the police are not competent to investigate and to file charge sheet.

Therefore, in view of the law declared in various judgments referred supra, chewing tobacco and khaini are not the food within the definition of Section 3(j) of FSS Act and the manufacture, sale or exposing for sale of tobacco etc., is governed by the provisions of COTP Act, but not by FSS Act and so also the provisions of IPC.

As discussed in the earlier paragraphs, the respondents are incompetent to investigate the offence punishable under Sections 54 and 59(1) of FSS Act and the allegations in the charge sheet coupled with the statements does not disclose the commission of the offence punishable under Section 273 of I.P.C., since transportation of noxious food is not included under Section 273 of I.P.C. The act done by the petitioners i.e. transportation of khaini and chewing tobacco though dangerous to human life, it would not spread or infect or cause any disease on account of transportation and if those products are consumed by human being, it would certainly cause damage to the health. Therefore, transportation of khaini or chewing tobacco is not by itself is not an offence under Section 270 of I.P.C., and it would fall within Section 270 of I.P.C.

In Criminal Petition Nos.3765, 3766 and 6755 of 2018 (sl.Nos.3, 4 and 13) police registered case for the offence

punishable under Section 7 (1) (2) (3) (5) and Section 26 of COTP Act, wherein the accused were found manufacturing Pan Masala. But Pan Masala is not a Tobacco product to fall within the purview of COTP Act. Therefore, the provisions of COTP Act have no application, thereby registration of crime for violation of Sections 7 (1) (2) (3) (5) and Section 26 of COTP Act is an illegality.

In Criminal Petition Nos.6811 of 6816 of 2018 (Sl.No.15 and 16) police registered case for the offence punishable under Section 20 (2) read with 7 (2) of COTP Act since the accused found transporting Pan Masala and Tobacco.

According to Section 7 (2) of COTP Act, 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 in its label, the specified warning.

Section 7 (3) of COTP Act says that no person shall import cigarettes or any other Tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes, or any other Tobacco products so imported by him bears thereon, or on its label, the specified warning. Since the petitioners are transporting Tobacco products

without any label, it would fall within the provisions of Section 7 (3) of COTP Act.

In Criminal Petition Nos.7081, 8216 and 7851 of 2018 (sl.Nos.20, 21 and 22), police registered a case against the petitioners for the offence punishable under Sections 20 and 22 of COTP Act. Since the petitioners are found manufacturing and transportation of Tobacco products without any label prescribed by the Act is violation of Section 7 (1) and 7 (3) of COTP Act, which is punishable under Section 20 of the Act. Section 5 of COTP Act, deals with prohibition of advertisement of cigarettes and other tobacco products, which is punishable under Section 22 of COTP Act, but no such allegation is found in the entire record to attract the offence punishable under Section 22 of COTP Act.

The material on record in Crime Nos.235 of 2018 of Patancheru Police Station, Crime No.84 of 2018 of Modugula Police Station and in C.C.Nos 159 and 160 of 2016 on the file of Judicial Magistrate of First Class at Ichapuram *prima facie* disclosed commission of offence punishable under Section 20 (2) read with 7 (2), 20 and Section 22 of COTP Act, hence the proceedings against the petitioners in Crime Nos.235 of 2018 of Patancheru Police Station, Crime No.84 of 2018 of Modugula

Police Station and in C.C.Nos.159 and 160 of 2016 on the file of Judicial Magistrate of First Class at Ichapuram for the offences punishable under the provisions of COTP Act cannot be quashed.

In the result, these criminal petition Nos. 3731, 3634, 3765, 3766, 5966, 5967, 5968, 5969, 5970, 5971, 5972, 6754, 6755, 6758, 6859, 6954 and 6955 of 2018 are allowed. The proceedings (details of crime numbers are given in the table referred supra) against the petitioners herein are hereby quashed. No costs.

Criminal Petitions Nos. 6811, 6816, 7081, 8216 and 7851 of 2018, are partly allowed. The proceedings against the petitioners in Crime Nos.235 of 2018 of Patancheru Police Station, Crime No.84 of 2018 of Modugula Police Station and in C.C.Nos.159 and 160 of 2016 on the file of Judicial Magistrate of First Class at Ichapuram for the offences punishable under Indian Penal Code and FSS Act are only hereby quashed while permitting to proceed against the petitioners for the offences punishable under the provisions of COTP Act. No costs.

Miscellaneous petitions, if any, pending in these criminal petitions shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

27.08.2018
Ksp