

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: 10073 OF 2022

Between:

1. Syed Ather @ Khalleed, s/o Syed Syeed Mohammed, Aged about 44 years, occ. Business, r/o H.No.14-2-211, Shahinayathgunj, Begum Bazar, Hyderabad. (A-1)
2. Shaik Turab Ali, s/o Late Hameed Ali, Aged about 38 years, occ.Worker in Taha Chaliya Stores, r/o H.No.19-2-23/M/4/B, Kalapather, Vattapally, Hyderabad. (A-2)
3. Syed Imran, s/o Syed Babu Jani, aged about 24 years, Occ. Worker in Taha Chaliya Stores, r/o Near Bilal Mosque, Jhirra, Tappachabutra, Hyderabad. (A-3)
4. Mohd. Hyder @ Mohd. Hyder Ali, s/o late Mohammed Ali, Aged about 57 years, occ. Salesman Taha Chaliya stores, r/o H.No.22-8-73, Yousuf Bazar, Chatta Bazar, Mirchowk, Hyderabad. (A-4)

...PETITIONER/ACCUSED Nos.1 to 4

AND

The State of Telangana, through S.H.O Police Station Mangalhat, Hyderabad,
rep by Public Prosecutor, High Court, Hyderabad.

...RESPONDENT/COMPLAINANTS

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 C.C.No.4341/2019 on the file of the Hon'ble XVI Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad, against the petitioners/Accused No.1 to 4 herein, for the interest of justice.

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 pass an order, directing the Hon'ble XVI Additional Chief

Metropolitan Magistrate, at Nampally, Hyderabad, to release the seized permissible tobacco products in C.C.No,4341/2019 (F.I.R.No.297/ 2018 dated: 21-12-2018 of Police Station Mangalhat, Hyderabad), i.e. 65 tobacco sachets by named Goa 1000 each packet contains 65 sachets and as well as seized net cash of Rs.58,600/- and handover the same to the petitioner/Accused No.1, pending disposal of main 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 S CHANDRASEKHAR ,Advocate for the Petitioner and of the Additional Public Prosecutor on behalf of the Sole Respondent.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10073 OF 2022**
ALONG WITH I.A.No.1 of 2022**COMMON ORDER:**

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioners to quash the proceedings against them in C.C.No.4341 of 2019, pending on the file of XVI Additional Chief Metropolitan Magistrate at Nampally, Hyderabad.

2. The petitioners herein are the accused Nos.1 to 4 in the said crime. The offences alleged against them are under Sections 188 and 273 of Indian Penal Code (for short "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').

3. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent. Perused the record.

4. Perusal of the record would reveal that the lis involved in this case had already been dealt with by this Court extensively vide

common order dated 05.07.2021 in Crl.P. No.152 of 2020 and batch which was reported in **Mohd. Jameel Ahmed v. State of Telangana**¹ and also vide common order dated 10.06.2022 in Crl.P.No.5619 of 2020 and batch.

5. Therefore, this Criminal Petition is allowed quashing, the proceedings in C.C.No.4341 of 2019, pending on the file of XVI Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, in terms of the common order, dated 05.07.2021 passed by this Court in **Mohd. Jameel Ahmed (Supra)** and also common order dated 10.06.2022 in Crl.P.No.5619 of 2020 and batch.

6. Since the charge sheet is already filed the petitioners are 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.

¹ 2022 Cril J 642.

7. The copy of the common orders passed by this Court in Criminal Petition No.152 of 2020 and batch on 05.07.2021 and also in Criminal Petition No.5619 of 2020 and batch on 10.06.2022, shall form part of this order.

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

//TRUE COPY//

SD/-N.SRIHARI
ASSISTANT REGISTRAR
GP
SECTION OFFICER

To,

1. The XVI Additional Chief Metropolitan Magistrate at Hyderabad.
2. The Station House Officer, Mangalhat Police Station, Hyderabad.
3. One CC to SRI. S CHANDRASEKHAR, Advocate. [OPUC]
4. Two CCs to the PUBLIC PROSECUTOR, High Court for the State of Telangana at Hyderabad.[OUT]
5. Two CD Copies

SB



HIGH COURT

DATED:19/12/2022

ORDER

CRLP.No.10073 of 2022



ALLOWING THE CRLP WITHOUT COSTS

8
MA
30/1/23

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.5619, 5638, 6421 OF 2020; 3314, 6926, 7361, 7391, 7455, 7543, 7873, 7885, 8116, 8461, 8716, 8998, 9020, 9044, 9053, 9065, 9068, 9071, 9072, 9073, 9077, 9079, 9095, 9098, 9099, 9101, 9105, 9107, 9112, 9116, 9121, 9124, 9143, 9153, 9168, 9205, 9226, 9252, 9256, 9264, 9266, 9294, 9298, 9339, 9341, 9343, 9368, 9461, 9469, 9489, 9518, 9534, 9569, 9583, 9587, 9599, 9629, 9651, 9655, 9753, 9759, 9764, 9788, 9793, 9864, 10195, 10311 & 10314 OF 2021 AND 308, 469, 471, 537, 559, 574, 598, 606, 615, 627, 759, 776, 777, 783, 788, 947, 1131, 1141, 1192, 1205, 1206, 1369, 1472, 1606, 1751, 1756, 1772, 1853, 1854, 1863, 1934, 1944, 2004, 2042, 2047, 2050, 2154, 2376, 2432, 2433, 2459, 2635, 2640, 2733, 2768, 2822, 2823, 2981, 3040, 3093, 3094, 3110, 3233, 3290, 3297, 3362, 3373, 3378, 3386, 3543, 3673, 3758, 3769, 3824, 4055, 4087, 4103, 4104, 4154, 4159, 4209, 4307, 4322, 4323 & 4586 OF 2022.

COMMON ORDER:

All these Criminal Petitions are filed by the respective petitioners under Section - 482 of the Code of the Criminal Procedure, 1973, to quash the proceedings in the respective

Crimes/Calendar Cases/Sessions Cases registered for the offences under Sections - 188, 269, 270, 272, 273, 328, 336 & 420 read with 34, 149, 511 of IPC; Sections - 3 (m), 20 (2), 21 (1), 21 (2), 22, 7 (3) and 7 (5) 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') and Sections - 58 and 59 (i) of the Food Safety and Standards Act, 2006 (for short 'FSS Act').

2. The nature of allegations in all these offences relate to transportation, sale, possession, manufacture, storage, etc. of tobacco products including khaini, zarda, pan masala and other such allegedly harmful and banned products.

3. Heard learned counsel for the respective parties and learned Public Prosecutor appearing on behalf of the respondents – State, and perused the record.

4. Perusal of the record would reveal that the *lis* involved in this batch of cases had already dealt with by this Court extensively vide common order dated 05.07.2021 in Crl.P. No.152 of 2020 and batch which was reported as **Mohd. Jameel Ahmed v. State of**

Telangana¹. This Court in the said case by relying on various decisions of the Supreme Court explained and interpreted the relevant provisions with which the Petitioners herein are charged.

5. With regard to offences under Sections - 58 and 59 (i) of the FSS Act, 2006 it was held by this Court that police cannot initiate prosecution and investigate the offences under the FSS Act, 2006. The power to initiate prosecution is conferred only on the Food Safety Officers appointed under the FSS Act, 2006. Further, this Court held that 'tobacco' does not fall within the definition of 'food' under the FSS Act, 2006. Therefore, the Petitioners herein cannot be charged for offences under Sections - 58 and 59 (i) of the FSS Act, 2006.

6. Further, in relation to the offences under Sections - 188, 269, 270, 272, 273, 328, 336 & 420 read with 34, 149, 511 of the IPC, this Court gave detailed findings as to how the said provisions do not attract merely because tobacco products were being sold, transported, possessed, etc. This Court relying on the decisions of the Apex Court held that only the COTP Act, 2003 will apply in relation to offences relating to sale, manufacture and distribution of

¹ 2022 CrilJ 642

tobacco products. Therefore, in light of this Court's decision in **Mohd. Jameel Ahmed** (Supra), the offences alleged under the IPC are not made out against the Petitioners herein.

7. In relation to offences under Sections - 20 (2), 7 (3) and 7 (5) this court in **Mohd. Jameel Ahmed** (Supra) had held as follows:

29. With regard to the offences under COTP Act, it is relevant to mention the objects and the reasons of the said Act itself clearly state that the act is meant to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto. A reading of the said objects of the said Act would reveal that a total ban of tobacco products was not envisaged by the said Act. The Parliament merely felt it expedient to control the advertisement and sale of tobacco products. As noted earlier in the order, Section-3 (p) of the COTP Act and the schedule therein define tobacco products. Pan masala, gutkha and chewing tobacco are included in the definition of tobacco products. Section-5 of the COTP Act deals with prohibition of advertisement of cigarette and other tobacco products only. No person, who is engaged in the production, supply or distribution of cigarettes or other products shall advertise the same. Similarly, no person having the control over a medium can advertise cigarettes or tobacco products, and no person shall be a part of any advertisement.

30. Section-7 of the COTP Act deals with the imposition of restriction on the sale, trade, commerce of tobacco products unless every package of cigarette or tobacco product contains a specified warning (pictorial or otherwise). Section-4 of the COTP Act, bans smoking in public places. In addition, Section-6 of the COTP Act, prohibits the sale of cigarettes or other tobacco products to a person who is under the age of 18 years or in an area within 100 yards of any educational institution.

31. A reading of this Act, particularly Sections-4, 5, 6 and 7 clearly shows that there is no general ban or general prohibition on the manufacture/sale of tobacco products. 22 What is barred is merely the sale of these products to a person, who is below the age of 18 years and in an area within 100 yards of an educational institution. The other aspects covered by Sections-5 and 7 of the COTP Act, deal with the advertisement and the warning, which is to be contained on a package, in which the tobacco product is packed. This is a regulatory mechanism only. Therefore, according to this Court, the above said allegations of transportation, possession, storage, sale and purchase of banned tobacco products will not attract the offence under Section-7 of the COTP Act.

32. As far as Section-20 of the COTP Act is concerned, as stated above, the allegations against the petitioner in respective complaints/charge sheets are that they were transporting, possessing, storing, selling and purchasing the banned tobacco products to the customers illegally in order to gain wrongful profits. 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) ...

(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."

33. Thus, Section-20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. But, in the complaints/charge sheets, there is no allegation against the petitioners 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. Thus, registering the crimes for the said offence against the petitioners is not only contrary to Section-20 (2)

of COTP Act, but also contrary to the principle laid down in Chidurala Shyamsubder1. In view of the same, the offence under Section-20 (2) of COTP Act is also liable to be quashed against the petitioners. I once again reiterate that I agree with the principle laid down by the learned Single Judges of the High Court of Andhra Pradesh in Chidurala Shyamsubder1, Sri. Jaganath Enterprises 2020 (1) ALT (Crl.) 215 (APHC) and V. Nageswara Rao 2020 Supreme (AP) 348.

Therefore, in the present batch of the Petitions, there are no allegations which support the ingredients of Section 7 and 20 of the COTP Act, 2003.

8. It is relevant to note that in some of the cases, the Petitioners were charged under Sections 21 and 22 of the COTP Act, 2003, and the said provisions are extracted below.

"21. Punishment for smoking in certain places.-(1) Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to two hundred rupees. (2) An offence under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974)."

“22. Punishment for advertisement of cigarettes and tobacco products.—Whoever contravenes the provision of section 5 shall, on conviction, be punishable— (a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and (b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.”

9. According to this Court, the ingredients of Section 21 of COTP Act, 2003 are not satisfied. There is no allegation against the Petitioners herein that they were smoking in a public place. Therefore, the Petitioners cannot be charged with Section 21 of COTP Act, 2003.

10. Further, the ingredients of Section 22 of the COTP Act, 2003 are also not attracted. There is nothing to suggest that the Petitioners in anyway advertised cigarettes and other tobacco products which is prohibited under Section 5 of the COTP Act, 2003. The allegations only pertain to transportation, sale, possession, manufacture, storage and do not include advertisement

of such products. Therefore, the Petitioners cannot be charged with Section 22 of COTP Act, 2003.

11. In view of the abovesaid discussion, all these Criminal Petitions except Crl.P. No.7455 of 2021 are allowed quashing the proceedings in the respective Crimes/Calendar Cases/Sessions Cases in terms of the common order, dated 05.07.2021 passed by this Court in **Mohd. Jameel Ahmed (Supra)**.

12. However, it is relevant to note that in Crl. P. No.7455 of 2021, the petitioner - accused was charged with Sections - 270 and 273 of the IPC and Section - 8 (c) read with Section - 20 (b) of the NDPS Act. The allegation against the petitioner in the said case is that he was found in possession of tobacco products and ganja. Therefore, the said Crl.P. No.7455 of 2021 is partly allowed and Crime No.148 of 2021 is quashed as far as the offences under Sections - 270 and 273 of the IPC are concerned. The Investigating Officer shall proceed with the investigation in relation to the allegations and offence under Section - 8 (c) read with Section - 20 (b) of the NDPS Act.

13. As the proceedings in the aforesaid Criminal Petitions are quashed against the respective petitioners, the respective Station House Officers/Investigating Officers are hereby directed to return the seized property/vehicles on proper identification and verification of ownership under due acknowledgment. In cases where charge sheets are already filed the respective petitioners are at liberty to file appropriate applications before the concerned Magistrate for return of the seized property/vehicle and the Magistrate shall consider the same in accordance with law.

14. 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.

15. During the course of hearing, it was brought to the notice of this Court that the learned Magistrates are receiving remand of accused and sending them to judicial remand for the aforesaid offences without going through the order dated 05.07.2021 passed by this Court in **Mohd. Jameel Ahmed**. In view of the same, the Registrar (Judicial) is directed to circulate a copy of this order and a copy of the said order dated 05.07.2021 to

all the Magistrates in the State of Telangana for perusal and taking necessary action in the cases relating to the aforesaid offences.

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

10th June, 2022

K. LAKSHMAN, J

Note:

Annex a copy of the order dated 05.07.2021
in Crl.P. No.5619 of 2020 & batch.
Crl.P. No.152 of 2020 and batch. (B/O.) Mgr

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.152, 153, 155, 162 & 5826 OF 2020 AND
3498, 3500, 3509, 3514, 3768, 3879, 4046, 4070, 4077, 4098, 4099, 4100,
4102, 4110, 4119, 4140, 4141, 4151, 4157, 4178, 4182, 4187, 4194, 4216,
4230, 4247, 4249, 4251, 4258, 4262, 4277, 4361, 4405, 4415, 4542, 4612,
4615, 4622, 4632, 4640, 4681, 4727, 4775 & 4825 OF 2021.

COMMON ORDER:

All the above Criminal Petitions are filed to quash the proceedings against the petitioners - accused in respective Crimes / Calendar Cases. The details of relevant Crimes / Calendar Cases, offences alleged, nature of offences etc., are mentioned in the following tabular form:

Sl. No.	Crl.P. No.	Crime No.	Accused Number	Offences allegedly committed	Nature of offence
01.	3768/21	217/20 of PS Manoharabad	sole accused	272, 273 IPC & 20 (2) r/w 7(2) of COTPA	Transportation of Amher tobacco
02.	3879/21	33/21 of PS Kadam	sole accused	270 & 273 IPC	Sale of banned tobacco products
03.	4046/21	78/21 of PS (1) Adilabad	A1 & 2	-do-	Sale of gutka/tobacco illegally in godown
04.	4077/21	21/21 of PS Easgoan	sole accused	-do-	Possession of gutka /tobacco in pan shop
05.	4098/21	185/21 of PS (T) Nirmal	A1 to 3	270, 273 IPC & 20 (2) of COTPA	Transportation of prohibited gutka
06.	4099/21	No.36/21 of PS Koutala	sole accused	270 & 273 IPC	Possession of tobacco products in the house
07.	4100/21	No.38/21 of PS Easgoan	sole accused	270 & 273 IPC	Possession of banned gutka & other tobacco items in pan shop
08.	4102/21	455/21 of PS Kukatapally	sole accused	336, 273 & 188 IPC & 59 (i) of FSSA	Transportation and sale of prohibited tobacco products

09.	4141/21	45/21 of PS Chiragpally	A1 to 3	270 & 273 IPC & 20(2) r/w 7(2) of COTPA	Transportation of tobacco products
10.	4151/21	198/21 of PS Choutuppal	sole accused	272 & 273 IPC & 20 (2) of COTPA	Storage of tobacco products for sale
11.	4157/21	134/21 of PS Chityal (N.L.G)	A1 to 4	272, 273 & 328 IPC & 20 (1) & 7 (3) of COTPA	Purchase and sale of prohibited tobacco products
12.	4182/21	74/21 of PS Raghunadhpalem	A1 & 2	270&273 IPC	Transportation of banned tobacco/gutka
13.	4187/21	202/21 of PS (T) Mancherial	sole accused	-do-	Possession of banned tobacco products
14.	4247/21	61/21 of PS II Town Adilabad	sole accused	-do-	Possession of banned gutka products
15.	4249/21	101/21 of PS I Town Adilabad	A1 & 2	-do-	Sale of gutka and tobacco products
16.	4251/21	90/21 of PS I Town Adilabad	sole accused	-do-	About to transport noxious gutka and tobacco products
17.	4258/21	91/21 of PS I Town Adilabad	sole accused	-do-	Sale of banned gutka and tobacco products
18.	4262/21	107/21 of PS I Town Adilabad	A1 & 2	-do-	Transportation of gutka and tobacco products
19.	4277/21	162/21 of PS Abdullahpurmet	A1 to 3	188, 272, 273 & 328 IPC	Sale of banned tobacco (tambaku) products in lorry
20.	4405/21	202/21 of PS I Town Nalgonda	sole accused	188, 272 & 273 IPC	Transportation of gutka/tobacco products
21.	4415/21	232/21 of PS II (T) Nalgonda	sole accused	-do-	Possession of banned gutka /tobacco products
22.	4542/21	87/21 of PS III (T) Kothagudem	A1 & 2	188, 269, 270, 273 r/w 34 IPC & 3 of EDA & 51 (b) of DMA	Possession of tobacco products in kirana shop
23.	4615/21	225/21 of PS Nirmal Town	A1 & 2	270 & 273 IPC	Possession of prohibited tobacco products for sale
24.	4640/21	89/20 of PS Mamada	A1	-do- r/w 34 IPC	Transportation of banned tobacco/gutka packets
25.	4681/21	186/21 of PS Peddavoora	A2	328 r/w 511, 272 & 273 IPC	Possession of banned gutka & tobacco products in kirana shop
26.	4727/21	164/21 of PS Adibatla	A2	270, 272 & 273 IPC & 20 (2) of COTPA	Transportation of cigarette or other tobacco products without valid license
27.	4775/21	234/21 of PS I (T) Nalgonda	A1 to 4	328, 272, 273 & 188 IPC	Sale of gutka & khaini
28.	4825/21	245/21 of PS Khammam (R)	A1 & 2	328, 270 & 273 r/w 511 IPC & 20 (2) of COTPA	Transportation of banned gutka

CALENDAR CASES					
29.	152/20	3515/19 of I-AJMFC, Warangal	A2	270, 273 & 188, 420 IPC & 58 of FSSA	Transportation of banned zarda products
30.	153/20	2724/19 of xvii ACMM, Hyd.	A2	272 & 273 IPC & 59 of FSSA, 2006	Sale of zarda illegally
31.	155/20	3518/19 of I-AJMFC, Warangal	A3	420, 270 & 273 IPC & 58 of FSSA	Transportation of banned zarda
32.	162/20	4737/18 of XI AMM, Sec.bad	A2	272, 273, 336 & 420 IPC & 20 (2) of COTPA	Sale of prohibited gutka and chewing tobacco products
33.	5826/20	Special Magistrate of II Class, Jagtial	A1 & 2	188, 270 & 273 IPC	Transportation of Amber gutka pockets.
34.	3498/21	216/20 of JFCM, Devarkonda	A1 & 2	420 & 273 IPC	Sale of banned tobacco and gutka products
35.	3500/21	963/19 of JFCM, Miryalguda	A1 to 4	420 & 273 IPC & 20 (ii) of COTPA, 2003	Transportation of tobacco and gutka products
36.	3509/21	452/20 of XXV MMC, Ibrahimpatan	A1 & 2	188, 270 & 273 IPC, 20 (2) of COTPA, 3 of FDA & 51 (b) of DMA	Storage of banned gutka and other tobacco products illegally for sale
37.	3514/21	632/19 of XXV MMC, Ibrahimpatan	A1 to 8	188, 270, 273 & 420 IPC & 20 (2) of COTPA	Supply of gutka and other tobacco products
38.	4070/21	547/21 of PJMFC, Gajwel	A1 & 2	272 & 273 IPC & 20 (2) r/w 7 (2) of COTPA	Transportation of Amber tobacco
39.	4110/21	509/20 of SplPCR Mobile Court cum- JMFC, Adilabad	A1 to 5	270 & 273 IPC & 20 (2) r/w 7 (2) of COTPA	Transportation of pan masala and banned gutka
40.	4119/21	512/20 of Spl.PCR Mobile	A1 to 4	270, 271, 272 & 273 r/w 34	Transportation of cotton seeds and

		Court-cum- JMFC, Adilabad		IPC Sec.3 of EDA	banned gutka
41.	4140/21	STC No.20/21 of IV AMM- cum-IV AJCJ, L.B. Nagar	A1 & 2	272 & 273 IPC & Sec.20 (1), 20 (2) of COTPA	Transportation of banned tobacco and gutka
42.	4178/21	810/21 of I AJMFC, Khammam	sole accused	270 & 273 IPC & 20 (2) of COTPA	Purchase and sale of banned gutka
43.	4194/21	6167/21 of XVII ACMM, Nampally	sole accused	188, 272 & 273 IPC & 20 (2) & 5 of COTPA	Sale of tobacco products in his shop and disobeying the rules imposed by Govt. in Not.No.505/FSS-1/21,dt.6.1.21
44.	4216/21	1298/21 of PJMFC, Khammam	A1 & 2	270 & 273 IPC & 20 (2) of COTPA	Transportation of Amber gutka
45.	4230/21	829/21 of PJMFC, Khammam	A1 & 2	-do-	Transportation of gutka/pan massala
46.	4361/21	108/21 of AJMFC, Asifabad	A1 & 2	270 & 273 IPC	Possession of tobacco products illegally for sale
47.	4612/21	533/20 of AJMFC, Nirmal	Sole accused	-do-	Purchase and sale of prohibited gutka pockets
48.	4622/21	622/19 of AJMFC, Nirmal	A1 & 2	-do-	Possession of gutka packets at bus stand for sale illegally
49.	4632/21	413/20 of AJMFC, Nirmal	A3	-do- r/w 34 IPC & 20 (2) of COTPA	Transportation of banned tobacco products

2. Heard Mr. M.A.K. Mukheed, Mr. Gajanand Chakravarthy, Mr. K. Surender, Mr. Praveen Kumar Veerjala, Ms. P. Radhika, Mr. Srinivas Reddy Balakisti, Ms. C. Sunitha Kumari, Mr. Kondadi Ajay Kumar, Mr. S.M. Subhan, Ms. N. Arthi, Mr. Y. Bala Murali, Mr. Boggula Raju, Mr. S. Chandrasekhar, Mr. V. Yadukrishna Sainath, learned counsel

appearing on behalf of respective petitioners and learned Public Prosecutor appearing on behalf of respondents - State.

3. The question involved in all the above matters is one and the same and, therefore, the same are disposed of by way of this common order.

4. The main allegations against the petitioners - accused are that they were transporting, possessing, storing, selling and purchasing the banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala respectively. The offences alleged against the petitioners are under Sections - 188, 270, 269, 271, 272, 273, 328, 336 & 420 read with 34 and 511 of the Indian Penal Code, 1860 (for short 'IPC'); Sections - 20 (1), 20 (2) and 5 read with 7(2) and 7 (3) 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'); Sections - 58 and 59 of the Food Safety and Standards Act, 2006 (for short 'FSS Act'); Section - 3 of the Epidemic Diseases Act, 1897 (for short 'ED Act') and Section - 51

(b) of the Disaster Management Act, 2005 (for short DS Act) respectively.

5. The respective learned counsel appearing on behalf of the petitioners in the above criminal petitions would submit that the contents of complaint / charge sheet lacks the ingredients of the offences alleged against the accused. For the offences under the provisions of FSS Act, only Food Safety Officer is having power to initiate criminal proceedings against accused and the police are not having any power to register a case for the offences under the provisions of FSS Act. There is no inducement by the petitioners and, therefore, offence under Section - 420 of IPC does not arise. According to them, the contents of complaint / charge sheet are also lacking the ingredients of the offences under Sections - 269, 270, 271, 272, 273, 328 and 336 of IPC.

i) According to them, there is no violation of Sections - 20 (1), 20 (2) and 5 read with 7 (2) and 7 (3) of the COTP Act. The Investigating Officers / Complainants without following the procedure laid down under the Code of Criminal Procedure, 1973

(for short 'Cr.P.C.'), have registered the cases for the offence under Section - 188 of IPC and laid charge sheet against the accused. Necessary ingredients to attract the provisions of Section - 3 of the ED Act and Section - 51 (b) of the DM Act are lacking in the complaint / charge sheet.

ii) With the above said submissions, the respective learned counsel sought to quash the proceedings in the aforesaid crimes / calendar cases.

6. On the other hand, learned Public Prosecutor referring to the principle laid down in **the State of Maharashtra v. Sayyed Hassan Sayyed Subhan¹** by the Hon'ble Supreme Court and in **Ganesh Pandurang Jadhao v. The State of Maharashtra²** and **Anand Ramdhani Chaurasia v. The State of Maharashtra³** by the Bombay High Court would submit that police are having power to register cases under various provisions of IPC, COTP Act, ED Act and DM Act. There is no irregularity in registering crimes, seizing material including the vehicles and laying charge sheet

¹ 2018 AIR (SC) 5348

² 2016 Cri. L.J. 2401

³ 2019 SCC OnLine Bom 1857

against respective accused in the aforesaid crimes / calendar cases. According to him, the accused were transporting, possessing, storing, selling and purchasing the banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala respectively. According to him, the accused have to face either investigation or trial and prove their innocence, and instead of doing so, they have filed the present criminal petitions under Section - 482 of Cr.P.C. which cannot be considered at this stage.

i) With the above said submissions, learned Public Prosecutor sought to dismiss the above criminal petitions.

7. In view of the above rival submissions, it is apposite to extract the relevant provisions of IPC, COTP Act, FSS Act, ED Act and DM Act, which are as under:

RELEVANT PROVISIONS UNDER IPC

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction,

annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished 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.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.”

“269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

"270. Malignant act likely to spread infection of disease dangerous to life.—Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

"271. Disobedience to quarantine rule.—Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

"272. Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished 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."

"273. Sale of noxious food or drink.—Whoever sells, or offers or exposes 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, knowing or having reason to believe that the same is noxious as food or drink, shall be punished

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.”

“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.”

“336. Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

"34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

"51L. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

RELEVANT PROVISIONS UNDER COTP ACT

"5. Prohibition of advertisement of cigarettes and other tobacco products.—(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or

promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall—

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to—

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.”

“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."

"7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.-

(1) No person shall, directly or indirectly, produce, supply or distribute 6 cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label such specified warning including a pictorial warning as may be prescribed.

(2) 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 on its label, the specified warning.

(3) 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.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof: Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act."

RELEVANT PROVISIONS UNDER F.S.S. Act:

"58. Penalty for contraventions for which no specific penalty is provided.-Whoever contravenes any provisions of this Act or the rules or regulations made thereunder, for the contravention of which no penalty has been separately

provided in this Chapter, shall be liable to a penalty which may extend to two lakh rupees.”

“59. 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, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees.”

RELEVANT PROVISION UNDER F.D. ACT:

“3. Penalty. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).”

RELEVANT PROVISION UNDER D.M. ACT:

"51. Punishment for obstruction, etc.—

(1) Whoever, without reasonable cause— (1) Whoever, without reasonable cause—"

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences."

8. The *lis* involved in the present petitions is no more *res integra*. A learned Single Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Chidurala Shyamsubder v. State of Telangana**⁴ had an occasion to deal with the issues involved in the present criminal petitions. After referring to various provisions of IPC, FSS Act,

⁴. Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018

COTP Act and also the principle laid down by the Apex Court and other High Courts in several judgments, the learned Single Judge had framed the issues, which are as under:

"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.?"

9. After an elaborate discussion and on consideration of various aspects, the learned Single Judge has held that the police cannot take cognizance of the offence, to investigate into and file charge sheet against the accused therein for the offence punishable under Sections - 54 and 59 (1) of FSS Act, as they were not empowered under the said Act to launch the prosecution, but only Food Safety Officer appointed by the Government alone is competent to launch prosecution for those two offences. With the

said findings, the learned Single Judge has quashed the proceedings where the offences are under Sections - 54 and 59 of FSS Act initiated by the police.

10. In the very same judgment, the learned Single Judge further held that chewing tobacco and khaini are not the 'food' within the definition of Section - 3(j) of the 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. The respondents - police are incompetent to investigate the offence punishable under Sections - 54 and 59 (1) of the FSS Act and allegations in the charge sheet coupled with the statements do not disclose the commission of the offence punishable under Section - 273 of IPC since transportation of noxious food is not included under Section - 273 of IPC. The act done by the accused therein 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 by itself is not an offence under Section - 270 of IPC. Pan Masala is not a tobacco product to fall within the purview of COTP Act. Therefore, the provisions of the COTP Act have no application, thereby registration of crime on the ground of violation of Sections - 7 (1) (2) (3) (5) and Section - 26 of COTP Act is an illegality. The learned Single Judge further held that registration of cases for the offence under Section - 20 (2) read with 7 (2) of COTP Act is illegal. With the said findings, the learned Single Judge has quashed the crimes and calendar cases in the said judgment.

11. In **Sri Jaganath Enterprises Eluru Vasadhi Tripathi Rao v. The State of Andhra Pradesh**⁵, a learned Single Judge of the High Court of Andhra Pradesh at Amaravti had also an occasion to deal with the said issue. After referring to the contentions of the respective parties therein, various provisions of IPC, FSS Act, COTP Act and relying on the principle laid down in **Anand Ramdhani Chaurasia**³, **Joseph Kurian v. State of**

⁵. 2020 (1) ALT (CrL) 215 (APHC)

Kerala⁶, Sayyed Hassan Sayyed Subhan¹, M/s. Pepsico India Holdings (Pvt) Ltd., v. State of U.P.⁷, Sanjay Anjay Stores v. Union of India⁸, Boop Singh Tyagi v. State⁹, State of Haryana v. Bhajan Lal¹⁰ and Chidurala Shyamsubder⁴, the learned Single Judge has quashed the FIRs / Calendar Cases. The learned Single Judge referring to the law laid down in **Chidurala Shyamsubder**⁴ held that despite the said authoritative pronouncement of law, status quo continues. The said judgment attained finality. Even then, the police are registering cases against accused on the very same allegations for the very same offences.

i) Referring to the provisions of Sections - 153, 188, 269, 270, 271, 272, 273, 284, 328, 353 of IPC, the learned Judge in **Sri Jaganath Enterprises**⁵ held that the offences registered under the said Sections are not maintainable. It further held that the provisions of the COTP Act can only be pressed into service in the limited circumstances only where there is violation of Sections - 4, 5, 6, 7 and 10 of the COTP Act. By referring to the principle

⁶. 1995 (1) SCJ 277

⁷. 2011 (2) Crimes 250

⁸. 2017 SCC Online Cal 16323

⁹. 2002 Cr.L.J. 2872

¹⁰. 1992 Supp (1) SCC 335

laid down by the Apex Court in **Bhajan Lal¹⁰** and **M/s. Pepsico India Holdings (Pvt) Ltd.⁷**, the learned Single Judge has quashed the proceedings in various crimes / calendar cases.

12. Another learned Single Judge of the High Court of Andhra Pradesh at Amaravati in **V. Nageswara Rao v. State of Andhra Pradesh¹¹** had also an occasion to deal with the said issue and agreed with the principle laid down in **Chidurala Shyamsubder⁴**.

13. In **Sayyed Hassan Sayyed Subhan¹**, the Apex Court while dealing with legality of the order passed by the Bombay High Court in a batch of criminal writ petitions and criminal applications, which were filed challenging the registration of FIRs for the offences under Sections - 188, 272, 273 and 328 of IPC and Sections - 26 and 30 of the FSS Act where there is an allegation of transportation and sale of Gutka / Pan Masala etc., held that the judgment of Bombay High Court is contrary to the provisions of the Act and law laid down by it. With the said finding, the Apex Court remitted the matter to the Bombay High Court for fresh

¹¹. 2020 Supreme (AP) 348

consideration on the issue that whether the aforesaid offences are made out in the FIRs, which are subject matter of the cases pending before the Bombay High Court.

14. In view of the authoritative pronouncement of law in the aforesaid judgments, as discussed above, coming to the facts of the cases on hand, the allegations against the accused in respective cases are transportation, possession, storage, sale and purchase of banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala etc., respectively. In **Chidurala Shyamsunder**⁴, the learned Single observed that transportation of chewing tobacco or khaini or pan masala do not constitute an offence punishable under Section - 270 of IPC and that manufacturing of pan masala is not included in Section - 273 of IPC and, therefore, the same is not an offence since it is not a noxious food. The learned Single Judge has further observed in the said judgment which is as under:

"...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 IPC and it would fall within Section 270 of IPC.”

15. Section - 272 of IPC makes punishable an offence by a person, who adulterates any article of food or drink. Therefore, the said section would only come into play if food or drink is adulterated. There is no definition of ‘adulteration’ in IPC. The definition of ‘adulterant’ is found in the provisions of the FSS Act. Section - 3 (1) (a) of the FSS Act deals with ‘adulterant’ which means a material which could make the ‘food’ unsafe or sub-standard or mis-branded. According to Section - 272 of IPC, if a material is used to make the food unsafe/sub-standard or mis-branded, then only the offence would be attracted. Whereas, as discussed supra, the allegation in the present batch of cases is with regard to transportation, possession, storage, sale and purchase of banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala etc., respectively. Therefore, according to this Court, the said allegation does not fall within the ambit of Section - 272 of

IPC. Therefore, I agree with the principle laid down by the learned Single Judges of the High Court of Andhra Pradesh in **Chidurala Shyamsubder⁴**, **Sri Jaganath Enterprises⁵** and **V. Nageswara Rao¹¹**.

16. In **Joseph Kurian⁶**, the Hon'ble Supreme Court held that for Section - 272 IPC to be attracted, the following should be present, (1) That the article involved was food and drink meant to be consumed by live persons; (2) that the accused adulterated it and the adulteration rendered it noxious as a 'food or drink'; (3) that the accused knew at the time of adulteration that he would sell the article as food or drink and knew that such article cannot be sold as food or drink. The Hon'ble Supreme Court clearly held that the offence is completed on the introduction of the adulterant. 'Adulterant' would mean that a material which is mixed to make the 'food' unsafe or drink unsafe. In the present case on hand, tobacco is not a food or drink and what is stated to be mixed in it is not clearly established by any cogent material as an 'adulterant' for the offence under Section - 272 IPC to be pressed into service.

17. As far as Section - 328 of IPC is concerned, in the same judgment it was held as follows:

“10. In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug etc, that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely 19 that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another.....”

Tobacco does not fit into this definition.

18. Section - 273 of IPC deals with sale of a noxious food or drink, and as per which, whoever sells, or offers or exposes 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, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment specified therein. Therefore, if a person offers for sale a “food or drink” any article which has become noxious or is in a state of unfit for “food or drink”. Thus, the said section would apply, when an article which has become

noxious or which has been rendered noxious. It also applies to food or drink only. As held in **Sri Jaganath Enterprises**⁵, the word 'noxious' is not defined in IPC or in FSS Act. As per the dictionary meaning, the word 'noxious' is harmful, deleterious, injurious, poisonous etc. As stated above, the allegation in the entire batch of present criminal petitions is with regard to transportation, possession, storage, sale and purchase of banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala etc., respectively. Therefore, according to this Court, the contents of the complaint/charge sheet lacks the ingredients of Section - 273 of IPC.

19. As far as section - 188 IPC is concerned , as per the settled law on the subject, 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. In

Boop Singh Tyagi⁹ a Division Bench of Allahabad High Court held that right to promulgate the ordinance/order is also an issue which is being raised, because under the FSS Act, the Commissioner of Food Safety alone has the authority to pass the orders only if the article of 'food' can causes danger or is injurious to health.

20. In **N.T. Rama Rao v. The State of A.P., rep. by Public Prosecutor**¹² while dealing with the offences under Sections - 188 and 283 of IPC, the learned Single Judge of the combined High Court of Andhra Pradesh held as under:

"5) Even if the allegation that the petitioner conducted public meetings at three road junctions contrary to the permission accorded for conducting of a public meeting only at one specified place is true, such a direction under Section 30 of the Police Act, 1861 could have been given only by the Superintendent or the Assistant Superintendent of Police of the District but not by any of their subordinates. If such a permission is granted under Section 30 of the Police Act, 1861 and is violated, Section 195 (1) (a) of Code of Criminal Procedure

¹². Criminal Petition No.5323 of 2009, decided on 17.09.2009

mandates that the complaint in this regard has to be made by the public servant concerned or some other person to whom such a public servant is administratively subordinate to enable any Court to take cognizance of an offence under Section 188 of Code of Criminal Procedure. In the present case, the charge sheet was filed by the Sub Inspector of Police, who could not have been the authority to grant permission for the public meeting and therefore, the complaint/charge sheet is in violation of the mandatory provision of Section 195(1)(a) of Code of Criminal Procedure.

6) That apart, the offence alleged to have been committed under Section 283 of the Indian Penal Code by the petitioners and others is obviously in consequence to the alleged offence under Section 188 of Indian Penal Code and is not an independent of the same. Even otherwise, the conduct of public meeting at three road junctions or obstruction to the traffic could not have been considered as causing any danger or injury to any person. In so far as the obstruction in any public way is concerned, which can also be covered by Section 283 of the Indian Penal Code, the charge sheet cites only one witness to speak

about the traffic jam caused by the road show. But, when the conduct of the public meeting at least at one place has been permitted and if the gathering for that public meeting resulted in any inconvenience by way of obstructing the traffic, the same cannot be considered to be with necessary guilty *mens rea* to construe the existence of an offence punishable under Indian Penal Code. Under the circumstances, none of the offences alleged can be said to have any reasonable basis and in any view, the complaint/charge sheet being in violation of Section 195 (1) (a) of Code of Criminal Procedure, has to fail.

7) As the complaint has failed due to its unsustainability, the proceedings in their entirety have to fail, though the 1st accused alone approached this Court by way of this Criminal Petition.”

21. In **Thota Chandra Sekhar v. The State of Andhra Pradesh, through S.H.O., P.S. Eluru Rural, West Godavari District**¹³, wherein by relying on various judgments including **N.T. Rama Rao**¹² and also the guidelines laid down by the Apex Court in **Bhajan Lal**¹⁰ more particularly, guideline No.6, which says that

¹¹. Criminal Petition No.15248 of 2016, decided on 26.10.2016

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 remedy to redress the grievance of the party, it was held that the proceedings in the said C.C. were quashed by exercising power under Section - 482 of Cr.P.C. It was also further held that the proceedings shall not be continued due to technical defect of obtaining prior permission under Section - 155 (2) of Cr.P.C. and taking cognizance on the complaint filed by V.R.O. and it is against the purport of Section - 195 (1) (a) of Cr.P.C.

22. Vide Notification No.501/FSS-1/2020, dated 06.01.2020, the Commissioner of Food Safety, Telangana Directorate of Institute of Preventive Medicine, Public Health Labs and Food (Health) Administration, Narayanguda, Hyderabad, restricted the manufacture, storage, distribution, transportation and sale of gutka / pan masala, which contains tobacco and nicotine, as ingredients and chewing tobacco products, like chap tobacco, pure

tobacco, khaini, kharra, scented tobacco / flavoured tobacco or by whatever name locally it is called packed in sachets / pouches / package in the entire State of Telangana under FSS Act, 2006. It is for one year. Vide Notification No.505/FSS-1/2021, dated 06.01.2021, the same was extended for one more year. As per the information furnished and instructions received, several writ petitions were filed challenging the said Notifications before this Court as well as the Hon'ble Supreme Court. A Division Bench of this Court declined to entertain some writ petitions on the ground that the Hon'ble Supreme Court seized of the said issue. It is also relevant to note that the Hon'ble Supreme Court remanded back the matter to this Court. Therefore, such a notification can only be issued for emergency situations and for prohibiting the distribution and sale of any article of a food cannot be lost sight of. Therefore, in view of the law laid down in the above judgments including the judgments in **Chidurala Shyamsubder⁴**, **Sri Jaganath Enterprises⁵** and **V. Nageswara Rao¹¹**. According to this Court, Section - 188 of IPC will not attract to the allegations leveled against the petitioners herein in this batch of criminal petitions.

23. As far as Section - 328 of IPC is concerned, it deals with causing hurt by means of poison, etc., with intent to commit an offence. As per the said provision, 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. Therefore, there should be administering poison, intoxicating etc., 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. As stated above, the allegations in the entire batch of criminal petitions are lacking. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 328 of IPC.

24. As far as Section - 336 of IPC is concerned, it deals with an act endangering life or personal safety of others, and as per which, whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both. In the complaints / charge sheets, there is no such allegation of rash and negligent act which endangers human life or personal safety of others. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 336 of IPC.

25. As far as Section - 420 of IPC is concerned, it deals with Cheating and dishonestly inducing delivery of property. There is no such inducement either at the inception or at a later stage. Thus, the contents of complaints / charge sheet lack the ingredients of Section - 420 of IPC.

26. As far as Section - 269 of IPC is concerned, it deals with negligent act likely to spread infection of disease dangerous to life,

and as per which, whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. But, a perusal of the contents of complaints / charge sheets in the present batch of cases, such ingredients are lacking and, therefore, Section - 269 of IPC does not arise in the present batch of cases.

27. In view of the above said discussion, according to this Court, transportation, possession, storage, sale and purchase of tobacco products are not totally banned in the State of Telangana and also in the Country. Therefore, it cannot be said that Sections - 269, 270, 271, 272 and 273, 328, 336 and 420 of IPC are attracted to the cases in this batch.

28. As far as the offences under FSS Act is concerned, as already discussed above, in **Chidurala Shyamsubder**⁴, the learned Single Judge following the guidelines laid down by the Hon'ble Supreme Court in **Bhajan Lal**¹⁰ held that the police are

incompetent to take cognizance of the offences punishable under Sections - 54 and 59 (1) of the FSS Act, investigating into the offences along with other offences under the provisions of the IPC. It was further held that 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. In the present case, the police have registered the crime for the offences under Sections - 188, 270 and 273 of IPC. Therefore, in the present batch of cases, entertaining the complaints / filing the charge sheets by the police is contrary to the principle laid down in **Chidurala Shyamsubder**⁴.

29. With regard to the offences under COTP Act, it is relevant to mention the objects and the reasons of the said Act itself clearly state that the act is meant to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto. A reading of the said objects of the said Act would reveal that a total ban of tobacco products was not envisaged by the said Act.

The Parliament merely felt it expedient to control the advertisement and sale of tobacco products. As noted earlier in the order, Section - 3 (p) of the COTP Act and the schedule therein define tobacco products. Pan masala, gutkha and chewing tobacco are included in the definition of tobacco products. Section - 5 of the COTP Act deals with prohibition of advertisement of cigarette and other tobacco products only. No person, who is engaged in the production, supply or distribution of cigarettes or other products shall advertise the same. Similarly, no person having the control over a medium can advertise cigarettes or tobacco products, and no person shall be a part of any advertisement.

30. Section - 7 of the COTP Act deals with the imposition of restriction on the sale, trade, commerce of tobacco products unless every package of cigarette or tobacco product contains a specified warning (pictorial or otherwise). Section - 4 of the COTP Act, bans smoking in public places. In addition, Section - 6 of the COTP Act, prohibits the sale of cigarettes or other tobacco products to a person who is under the age of 18 years or in an area within 100 yards of any educational institution.

31. A reading of this Act, particularly Sections - 4, 5, 6 and 7 clearly shows that there is no general ban or general prohibition on the manufacture/sale of tobacco products. 22 What is barred is merely the sale of these products to a person, who is below the age of 18 years and in an area within 100 yards of an educational institution. The other aspects covered by Sections - 5 and 7 of the COTP Act, deal with the advertisement and the warning, which is to be contained on a package, in which the tobacco product is packed. This is a regulatory mechanism only. Therefore, according to this Court, the above said allegations of transportation, possession, storage, sale and purchase of banned tobacco products will not attract the offence under Section -7 of the COTP Act.

32. As far as Section - 20 (2) of the COTP Act is concerned, as stated above, the allegations against the petitioner in respective complaints / charge sheets are that they were transporting, possessing, storing, selling and purchasing the banned tobacco products to the customers illegally in order to gain wrongful profits. 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) ...

(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.”

33. Thus, Section - 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. But, in the complaints / charge sheets, there is no allegation against the petitioners 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. Thus, registering the crimes for the said offence against the petitioners is not only contrary to Section - 20 (2) of COTP Act, but also contrary to the principle laid down in **Chidurala Shyamsubder**⁴. In view of the same, the offence under Section - 20 (2) of COTP Act is also liable to be quashed against the petitioners. I once again reiterate that I agree with the principle laid down by the learned Single Judges of the High Court of Andhra Pradesh in **Chidurala Shyamsubder**⁴, **Sri Jaganath Enterprises**⁵ and **V. Nageswara Rao**¹¹.

34. For the foregoing discussion and the authoritative principle of law, Criminal Petition Nos. 3768, 3879, 4046, 4077, 4098, 4099, 4100, 4102, 4141, 4151, 4157, 4182, 4187, 4247, 4249, 4251, 4258, 4262, 4277, 4405, 4415, 4542, 4615, 4640, 4681, 4727, 4775 and 4825 of 2021 are allowed quashing the proceedings against the petitioners therein in the respective crimes mentioned therein. Since the proceedings in the aforesaid Criminal Petitions are quashed against the respective petitioners, the respective Station House Officers / Investigating Officers are

hereby directed to return the seized property / vehicles on proper identification and verification of ownership under due acknowledgment.

35. Further, Criminal Petition Nos. 152, 153, 155, 162 & 5826 of 2020, 3498, 3500, 3509, 3514, 4070, 4110, 4119, 4140, 4178, 4194, 4216, 4230, 4361, 4612, 4622 and 4632 of 2021 are also allowed quashing the proceedings against the petitioners therein in the respective Calendar Cases mentioned therein. Since the proceedings are quashed, the respective petitioners are at liberty to file appropriate applications before the concerned Magistrate for return of the seized property / vehicle and the Magistrate shall consider the same in accordance with law.

As a sequel, miscellaneous petitions, if any, pending in all the Criminal Petitions shall stand closed.

K. LAKSHMAN, J

05TH JULY, 2021

Note: L.R. copy to be marked.
(B/O.) Mgr