HC-KAR

NC: 2026:KHC:61305
CRL.P No. 4236 of 2025

CNR: KAHC010190572025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 4236 OF 2025 (482(Cr.PC) / 528(BNSS)-)

BETWEEN:

1. SHRI. NAZEEB K M @ NAZIB
S/O MUHAMMED SHERIEF.K.S
AGED ABOUT 36 YEARS
R/AT NO T01, 3RD FLOOR, 2ND CROSS,
1ST MAIN, MARUTI NAGAR,
MADIVALA BENGALURU CITY,
KARATAKA 560068

PERMANENT ADDRESS
KANNAKKATTU PONTHAAL ROAD,
MUTTOM JUNCTION, ERATTUPETTA,
KOTTAYAM, KERALA 686121

2. SHRI MOIDIN KUNHI @ SHARIF
AGED ABOUT 25 YEARS
S/O R ABDULLA
R/AT NO T01, 3RD FLOOR, 2ND CROSS,
1ST MAIN, MARUTI NAGAR,
MADIVALA BENGALURU CITY,
KARATAKA 560068

PERMANENT ADDRESS
RAVALIKE, KODLAMUGARU POST,
KOLIYOOR, KODLAMUGARU, KASARGODE
KERALA 671323

3. SMT FATHIMA
W/O NAZEEB K M
D/O ABDUL LATHEEF
AGED ABOUT 28 YEARS
R/AT NO T01, 3RD FLOOR, 2ND CROSS,

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1ST MAIN, MARUTI NAGAR,
MADIVALA BENGALURU CITY,
KARATAKA 560068

PERMANENT ADDRESS
R/AT 1ST SIGNAL, AJARE HOUSE,
UDYAWAR P O MANJESHWAR
KUNJATHUR, MAJESHWAR,
KASARGODE KERALA 671323

...PETITIONERS

(BY SRI. SHIVAMURTHI A R.,ADVOCATE)

AND:

1. THE STATE BY
MADIVALA POLICE STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU 560001

2. KUMAR
S/OF MUKANAVARA
AGED ABOUT 37 YEARS
PSI MADIWALA P.S.,
MADIWALA,
BENGALURU CITY - 560068

...RESPONDENTS

(BY SMT. RASHMI PATEL., HCGP FOR R1 & R2)

THIS CRIMINAL PETITION IS FILED U/S 482 CR.PC (FILED U/S 528 BNNS) PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN THE COURT OF THE XXXIX ACMM AT BENGALURU IN C.C NO.23673/2024 O/U/S 284, 285, 511 OF IPC 1860 AND SECTION 52, 59, 63 OF FOOD SAFETY AND STANDARDS ACT 2006 AND U/S 7, 20(2) OF CIGARETTES AND OTHER TOBACCO PRODUCTS 2003 AND THE SAME IS PENDING ON THE FILE OF 32ND ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT AT BENGALURU.

THIS CRIMINAL PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The Petitioners are before this court seeking for the following reliefs:

   i. *Quash the entire proceedings in the court of the XXXIX ACMM at Bengaluru in C.C No.23673/2024 o/u/s 284, 285, 511 of IPC 1860 and section 52, 59, 63 of Food Safety and Standards Act 2006 and u/s 7, 20(2) of Cigarettes and Other Tobacco Products 2003 and the same is pending on the file of 32nd Additional Chief Judicial Magistrate court at Bengaluru*.

   ii. *Issue any other order and grant such other and further reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice.*

2. Respondent No.2 lodged a suo motu complaint on 15.02.2024, which came to be registered as FIR in Crime No.42/2024 by Madiwala Police Station for the offences punishable under Sections 7 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 (hereinafter referred to as '**COTPA, 2003**'), Sections 52, 59 and 63 of the Food Safety and Standards Act, 2006 (hereinafter referred to as '**FSSA, 2006**'), and Sections 284, 285, 328

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and 511 of the Indian Penal Code, 1860 (hereinafter referred to as '**IPC**').

3. Investigation having been completed, a charge sheet came to be filed on 27.05.2024 for the aforesaid offences. It is challenging the said proceedings that the petitioners are before this Court.

4. The substance of the allegations in the suo motu complaint and the charge sheet is that the petitioners were carrying on business in the name and style of 'Smoker's Zone' and were making available hookah products and e-cigarettes without obtaining the requisite licence.

5. The relevant portion of the charge sheet, contained in Column No.17, is extracted hereunder:

ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರದಲ್ಲಿನ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಬಾತ್ಮೀದಾರರಿಂದ ಬಂದ ಮಾಹಿತಿ ಮೇರೆಗೆ ಸಾಕ್ಷಿ-1 ರವರು ಸಿಬ್ಬಂದಿಗಳಾದ ಸಾಕ್ಷಿ-2 ರಿಂದ ಸಾಕ್ಷಿ-4 ರವರು ಮತ್ತು ಪಂಚರಾದ ಸಾಕ್ಷಿ-5 & ಸಾಕ್ಷಿ-6 ರವರೊಂದಿಗೆ ಇದೇ ಬೆಂಗಳೂರು ನಗರ ಮಡಿವಾಳ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿಗೆ ಸೇರಿರುವ, ಮಾರುತಿನಗರ 1ನೇ ಮುಖ್ಯರಸ್ತೆ, ಜಂಕ್ಷನ್ ನಲ್ಲಿರುವ ಸ್ಮೋಕರ್ ಜೋನ್ ಹೆಸರಿನ ಅಂಗಡಿಯ ಮೇಲೆ ಮತ್ತು ಅಂಗಡಿ ಮಾಲೀಕನ ಮನೆಯ ಮೇಲೆ ದಾಳಿ ಮಾಡಲಾಗಿ ಎ-1 ರಿಂದ ಎ-3 ರವರೆಗಿನ

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ಆರೋಪಿಗಳು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರ ನಿಷೇಧ ಮಾಡಿರುವ ಹುಕ್ಕಾ ಮತ್ತು ಹುಕ್ಕಾಗೆ ಸಂಬಂಧಿಸಿದ ಸಲಕರಣೆಗಳು ಹಾಗೂ ಇ-ಸಿಗರೇಟ್ ಗಳನ್ನು ಯಾವುದೇ ಅಗ್ನಿ ಸುರಕ್ಷತಾ ಕ್ರಮಗಳನ್ನು ಕೈಗೊಳ್ಳದೇ ಅಕ್ರಮವಾಗಿ ವಶದಲ್ಲಿಟ್ಟುಕೊಂಡು, ಅವುಗಳನ್ನು ಗ್ರಾಹಕರಿಗೆ ಮಾರಟ ಮಾಡುವ ಮೂಲಕ ಆಹಾರ ಮತ್ತು ಸಾರ್ವಜನಿಕ ಆರೋಗ್ಯದ ಅಸುರಕ್ಷತೆಯಿಂದ ಆರೋಗ್ಯದ ಮೇಲೆ ದುಷ್ಪರಿಣಾಮ ಉಂಟು ಮಾಡುವುದು ಕೃತ್ಯವಸೆಗಲು ಪ್ರಯತ್ನಿಸಿರುವುದು ಈವರೆಗಿನ ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ, ಆದ್ದರಿಂದ ಎ-1 ರಿಂದ ಎ-3 ರ ವರೆಗಿನ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ದೋಷಾರೋಪಣೆಯನ್ನು ಹೊರಿಸಿರುತ್ತದೆ.

6. The substance of the above allegation is that, on receiving information, the police conducted a raid at the shop known as 'Smoker's Zone', situated at Maruthi Nagar, First Main Road Junction, and at the residence of the shop owner. It is alleged that accused Nos.1 to 3 were in illegal possession of hookah products, related equipment and e-cigarettes, which were prohibited by the State Government, without taking fire-safety precautions, and were selling them to customers, thereby causing an adverse impact on health and public safety.

7. Sri Shivamurthi A.R., learned counsel appearing for the petitioners, makes the following submissions:

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7.1. There is an omnibus allegation against accused Nos.1 to 3. Accused No.3 is the wife of accused No.1 and is in no manner concerned with the business carried on in the name and style of 'Smoker's Zone'.

7.2. Learned counsel submits that the allegations concerning e-cigarettes and hookah do not attract the provisions of the FSSA, 2006. According to him, there is a special and separate enactment, namely COTPA, 2003, which governs tobacco products. He places reliance on Section 52 of the FSSA, 2006, which is reproduced hereunder for ready reference:

> ***52. Penalty for misbranded food.-***
>
> *(1) 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 misbranded, shall be liable to a penalty which may extend to three lakh rupees.*
>
> *(2)The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.*

7.3. By referring to Section 52, learned counsel submits that the provision relates to penalty for misbranded food and that, for invoking the said

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provision, there must be misbranding of an article of food.

7.4. Learned counsel refers to Section 59 of the FSSA, 2006, which is reproduced hereunder for ready reference:

> ***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.*

7.5. Learned counsel submits that Section 59 would be attracted only where unsafe food is

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manufactured, stored, sold, distributed or imported.

7.6. He next refers to Section 63 of the FSSA, 2006, which is reproduced hereunder for ready reference:

> ***63. Punishment for carrying out a business without licence.-***
>
> *If any person or food business operator (except the persons exempted from licensing under sub-section (2) of section 31 of this Act), himself or by any person on his behalf who is required to obtain licence, manufactures, sells, stores or distributes or imports any article of food without licence, shall be punishable with imprisonment for a term which may extend to six months and also with a fine which may extend to five lakh rupees.*

7.7. By referring to Section 63, learned counsel submits that the provision would be attracted only where a person required to obtain a licence carries on a food business involving the manufacture, sale, storage, distribution or import of an article of food without such licence.

7.8. His further submission is that e-cigarettes and hookah are not food and, therefore, Section 63 of the FSSA, 2006 would also not be applicable.

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7.9. Learned counsel places reliance on Section 3(1)(j) of the FSSA, 2006, which defines 'food' and is reproduced hereunder for ready reference:

> ***3. Definitions. -***
>
> *(1) In this Act, unless the context otherwise requires,-*
>
> *(a) to (i) xxxx*
>
> ***(j)"food"*** *means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:*
>
> *Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;*

7.10. By referring to Section 3(1)(j), learned counsel submits that the definition of food refers to substances intended for human consumption, including the articles specifically enumerated therein, subject to the exclusions contained in the provision.

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7.11. His submission is that the proviso to Section 3(1)(j) makes it clear that the Central Government may declare any other article as food by notification in the Official Gazette, having regard to its use, nature, substance or quality. According to him, e-cigarettes and hookah cannot be regarded as food within the meaning of the said provision.

7.12. Section 3(1)(ZK) of the FSSA, 2006 is reproduced hereunder for ready reference:

> ***(ZK) "primary food"*** *means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form, resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman;*

7.13. By referring to clause (ZK) of Section 3(1), learned counsel submits that primary food refers to produce of agriculture, horticulture, animal husbandry, dairying or aquaculture in its natural form. According to him, e-cigarettes and hookah cannot be treated as primary food.

7.14. Learned counsel refers to Section 3(1)(n) of the FSSA, 2006, relating to food business, which is reproduced hereunder for ready reference:

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> ***(n) "food business"*** *means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;*

7.15. By referring to Section 3(1)(n), learned counsel submits that a food business would mean an undertaking, whether for profit or otherwise and whether public or private, carrying out activities relating to any stage of manufacture, processing, packaging, storage, transportation, distribution or import of food, including food services, catering services and sale of food or food ingredients.

7.16. Learned counsel also relies upon Section 3(1)(o) of the FSSA, 2006, which is reproduced hereunder for ready reference:

> ***(o) "food business operator"*** *in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;*

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7.17. By referring to Section 3(1)(o), learned counsel submits that a food business operator is a person by whom the business is carried on or owned and who is responsible for ensuring compliance with the Act, rules and regulations made thereunder.

7.18. Learned counsel submits that e-cigarettes and hookah not being food under Section 3(1)(j) or primary food under Section 3(1)(ZK), the activity in question cannot constitute a food business under Section 3(1)(n). The petitioners cannot, therefore, be treated as food business operators under Section 3(1)(o), and the proceedings under Sections 52, 59 and 63 of the FSSA, 2006 cannot be invoked against them.

7.19. As regards the IPC offences, learned counsel submits that Sections 284, 285 and 511 have been invoked against the petitioners. He relies upon Section 284 of the IPC, which is reproduced hereunder for ready reference:

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284. Negligent conduct with respect to poisonous substance.—

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, 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.

7.20. By referring to Section 284, learned counsel submits that the provision requires negligent conduct with respect to a poisonous substance, involving an act done so rashly or negligently as to endanger human life or be likely to cause hurt or injury, or an omission to take sufficient precautions against probable danger to human life. His submission is that e-cigarettes and hookah cannot, merely by reason of their nature or use, be treated as poisonous substances within the meaning of Section 284 IPC.

7.21. Learned counsel next refers to Section 285 of the IPC, which is reproduced hereunder for ready reference:

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285. Negligent conduct with respect to fire or combustible matter.—

Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

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.

7.22. By referring to Section 285, learned counsel submits that the ingredients of the said provision are not attracted. According to him, the provision concerns negligent conduct involving fire or combustible matter in circumstances endangering human life or likely to cause hurt or injury. The mere fact that e-cigarettes or hookah may involve ignition does not, by itself, establish the ingredients of the offence.

7.23. Learned counsel also refers to Section 511 of the IPC, which is reproduced hereunder for ready reference:

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511. 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.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

7.24. Learned counsel submits that Section 511, which deals with attempts to commit offences, cannot independently sustain the prosecution in the absence of the ingredients of the underlying offence. According to him, since the ingredients of Sections 52, 59 and 63 of the FSSA, 2006 and Sections 284 and 285 of the IPC are not

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made out, the invocation of Section 511 IPC is also unsustainable.

7.25. As regards Sections 7 and 20(2) of COTPA, 2003, learned counsel initially contends that the said provisions are also not attracted. However, when it is pointed out that hookah tobacco is expressly included in the Schedule to the Act, learned counsel fairly submits that the proceedings under COTPA, 2003 may continue, subject to his contention that the same can be maintained only against accused Nos.1 and 2.

7.26. Learned counsel attributes mala fides to the action of the respondents. He submits that petitioner No.1, being a law student, had questioned respondent No.2-Police, pursuant to which a false case has been registered against the petitioners, including petitioner No.3, who is the wife of petitioner No.1.

7.27. Learned counsel further submits that petitioner Nos.1 and 2 were merely working at the shop operating under the name and style of 'Smoker's Zone' and were not its owners. According to him, the actual owner of the shop is a different person, against whom no action

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has been initiated. If any licence was required to be obtained, the responsibility to obtain the same, according to learned counsel, would rest with the owner and not with the petitioners, who were merely employees.

7.28. Lastly, learned counsel submits that the offences under the FSSA, 2006 could not have been prosecuted without a complaint by the Food Safety Officer and that the police officer was not competent to initiate prosecution for the said offences.

7.29. On the above grounds, learned counsel submits that the proceedings are liable to be quashed.

8. Smt. Rashmi Patel, learned High Court Government Pleader, opposes the petition and submits as follows:

8.1. At the time of inspection and raid at the subject premises, no licence was produced before the authorities. It is in that background that the prosecution alleges that the business relating to e-cigarettes and hookah was being carried on without obtaining the requisite licence.

8.2. Learned HCGP further submits that a mahazar was drawn and the e-cigarettes and hookah

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products were seized after following due process of law. According to her, the articles seized fall within the purview of COTPA, 2003 and were being sold without the requisite statutory compliance. The offences under Sections 7 and 20(2) of COTPA, 2003 are, therefore, made out and require to be tried.

9. Heard Sri Shivamurthi A.R., learned counsel for the petitioners, and Smt. Rashmi Patel, learned High Court Government Pleader appearing for respondents Nos.1 and 2. Perused the papers.

10. The following questions arise for consideration:

(i) Whether the provisions of Sections 52, 59 and 63 of the FSSA, 2006 are attracted to the allegations concerning e-cigarettes and hookah products?

(ii) Whether the allegations in the charge sheet disclose the ingredients of the offences punishable under Sections 284, 285, 328 and 511 of the IPC?

(iii) Whether the proceedings under Sections 7 and 20(2) of COTPA, 2003 can be quashed insofar as the petitioners are concerned?

(iv) What Order?

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11. This court answers the above points as follow:

12. **<u>Answer to Point No. (i):</u> Whether the provisions of Sections 52, 59 and 63 of the FSSA, 2006 are attracted to the allegations concerning e-cigarettes and hookah products?**

12.1. The first question concerns the applicability of the FSSA, 2006. The definition of 'food' under Section 3(1)(j) refers to any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes the articles specifically enumerated therein. The definition has to be understood in the context of the object and scheme of the enactment, which is to regulate food and food-related activities to ensure the availability of safe and wholesome food for human consumption.

12.2. The expression 'intended for human consumption' is significant. The definition does not extend to every substance or product which may be used by, introduced into, or consumed in some manner by a human being. The substance must be intended for consumption in the sense contemplated by the Act, namely, as an article of food. The nature of the substance,

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its intended use, the manner in which it is ordinarily consumed or used, and the purpose for which it is made available in the market are relevant considerations in determining whether it falls within the statutory definition.

12.3. This distinction is material because several products are intended to be used by human beings or introduced into the human body, but that circumstance does not, by itself, make them food. Drugs, medicinal products and cosmetics are expressly excluded by Section 3(1)(j), notwithstanding that they are intended for use by or application to human beings. Likewise, the mere fact that a product is inhaled or smoked does not bring it within the definition of food. The statutory test is not merely whether the product is capable of entering the human body, but whether it is intended for human consumption as an article of food.

12.4. The articles alleged to have been seized in the present case are e-cigarettes, hookah products and equipment connected with their use. The fact that these products are used or consumed

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by human beings does not, by itself, bring them within the definition of food. Their intended use, as disclosed in the charge sheet, is inhalation or smoking and not consumption as food.

12.5. An e-cigarette is an electronic device intended to facilitate the inhalation of vapour or aerosol. Similarly, hookah apparatus is used for inhaling smoke generated by the heating or burning of the substance placed in the apparatus. Hookah tobacco, where involved, is intended to be used by heating or burning and inhaling the resulting smoke. The apparatus, its accessories and the substance used therein have to be distinguished from articles intended to be consumed as food.

12.6. The allegation that these products may adversely affect human health does not alter their character or intended use. A product does not become an article of food merely because its use has consequences for human health. The requirement of the FSSA is that the subject matter of the activity must first answer the description of an article of food. Only thereafter can the provisions relating to misbranding,

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unsafe food or carrying on a food business without a licence be attracted.

12.7. The proviso to Section 3(1)(j) empowers the Central Government to declare, by notification in the Official Gazette, any other article as food, having regard to its use, nature, substance or quality. The proviso is an enabling provision by which the Central Government may extend the definition to an article which may not otherwise fall within the ordinary scope of the definition, having regard to the considerations specified therein.

12.8. In the present case, no notification issued by the Central Government under the said proviso, declaring e-cigarettes, hookah apparatus, hookah tobacco or the products alleged to have been seized as articles of food, has been placed before this Court. In the absence of such notification, and having regard to the nature and intended use of the products disclosed in the charge sheet, the said articles cannot be brought within the definition of food under Section 3(1)(j).

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12.9. The definition of primary food under Section 3(1)(ZK) does not assist the prosecution, as the articles in question are not agricultural, horticultural, animal husbandry, dairy or aquaculture produce in their natural form. Equally, the definitions of 'food business' and 'food business operator' under Sections 3(1)(n) and 3(1)(o) cannot be invoked independently of the requirement that the business must relate to food.

12.10. The definition of 'food business' is wide enough to include undertakings carrying out activities at any stage of manufacture, processing, packaging, storage, transportation or distribution of food, as well as food services, catering services and sale of food or food ingredients. However, the width of the definition relates to the nature and stages of the business activity; it does not dispense with the essential requirement that the activity must concern food. Similarly, a food business operator is a person by whom the food business is carried on or owned and who is responsible for ensuring compliance with the Act. The definition cannot be applied to a person merely

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because he or she carries on a commercial activity involving products which are not food.

12.11. Consequently, the allegation that the petitioners were operating a commercial establishment and storing or selling products at the premises cannot, by itself, make them food business operators under the FSSA, 2006. The nature of the business and the products dealt with must first satisfy the statutory definition.

12.12. The above conclusion is also evident upon examining the individual provisions invoked against the petitioners. Section 52 deals with misbranded food. The provision presupposes the existence of an article of food intended for human consumption which is misbranded in the manner contemplated by the Act. The question of misbranding can arise only after the article in question is established to be food. In the present case, the allegation concerns the possession and sale of e-cigarettes, hookah products and equipment connected with their use. No allegation has been made that any article of food was misbranded. The essential

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subject matter of Section 52 is, therefore, absent.

12.13. Section 59 deals with punishment for unsafe food. The expression 'unsafe food' is defined under Section 3(1)(zz) of the FSSA, 2006. The provision concerns an article of food whose nature, substance or quality is so affected as to render it injurious to health in the circumstances enumerated therein. Thus, the allegation that a product may be harmful to health cannot, by itself, attract Section 59. The product must first be an article of food, and it must then satisfy the statutory description of unsafe food. In the present case, the prosecution allegation that the products may adversely affect health does not overcome the absence of the foundational requirement that the products are articles of food.

12.14. Section 63 penalises a person or food business operator who is required to obtain a licence under Section 31 but carries on the manufacture, sale, storage, distribution or import of an article of food without such licence. The requirement of a licence under

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Section 31 arises in relation to a food business. Where the activity alleged does not concern an article of food, the question of obtaining a licence under the FSSA, 2006 does not arise. The mere allegation that the petitioners did not possess a licence for operating the establishment cannot attract Section 63 unless the prosecution first establishes that the establishment was carrying on a food business within the meaning of the Act.

12.15. In the absence of material to bring the articles seized within the definition of food under Section 3(1)(j), the activity alleged against the petitioners cannot be treated as a food business merely because the products are made available to customers for use. Consequently, the foundational ingredients for invoking Sections 52, 59 and 63 of the FSSA, 2006 are not disclosed. The proceedings under the said provisions are, therefore, liable to be quashed.

12.16. Learned counsel has also raised an objection regarding the competence of the police to initiate prosecution under the FSSA, 2006. Sections 41 and 42 of the Act prescribe the

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procedure concerning search, seizure, investigation and launching of prosecution. In the present case, the provisions of the FSSA, 2006 are being quashed on the substantive ground that the articles alleged to have been dealt with are not food within the meaning of the Act. It is, therefore, unnecessary to adjudicate upon the separate procedural objection concerning the competence of the complainant or the procedure followed for launching prosecution. No finding is recorded on that issue.

13. **<u>Answer to Point No. (ii):</u> Whether the allegations in the charge sheet disclose the ingredients of the offences punishable under Sections 284, 285, 328 and 511 of the IPC?**

13.1. Insofar as the offences under the IPC are concerned, Section 284 deals with negligent conduct with respect to poisonous substances. The provision is attracted where a person, in respect of a poisonous substance, does an act in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury, or knowingly or negligently omits to take such precautions against the probable

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danger to human life from the substance as are sufficient to guard against such danger.

13.2. The essential ingredients of the provision are, therefore, the existence of a poisonous substance; an act or omission attributable to the accused in relation to that substance; and the requisite rashness or negligence, resulting in danger to human life or a likelihood of hurt or injury. The provision does not penalise the mere possession, storage or sale of a substance merely because it may be harmful. The prosecution must disclose the particular conduct which is alleged to be rash or negligent and the manner in which that conduct gives rise to the danger contemplated by the provision.

13.3. It would not be appropriate to proceed on the broad premise that nicotine or every substance used in hookah is incapable of being regarded as poisonous. The nature and composition of the particular substance may be relevant in determining whether it answers that description. However, the mere presence of nicotine in a tobacco product does not, by itself, establish the ingredients of Section 284 IPC.

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Even assuming that the substance in question is poisonous, the prosecution must still disclose the particular act or omission attributable to the accused and the manner in which such conduct was rash or negligent so as to endanger human life or be likely to cause hurt or injury.

13.4. The provision cannot be interpreted as though the manufacture, possession or sale of every product containing nicotine or tobacco would, by that very circumstance, constitute an offence under Section 284 IPC. If such an interpretation were accepted, the ordinary manufacture and sale of cigarettes, beedies, cigars and other tobacco products would also attract the penal provision merely on account of the presence of nicotine or other potentially harmful substances. Such a construction would extend the scope of Section 284 IPC beyond the conduct contemplated by the legislature. The provision does not create a general prohibition against dealing in products containing substances potentially harmful to health; it penalises the particular rash or negligent conduct, or omission to take sufficient

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precautions, which gives rise to the danger specified therein.

13.5. Therefore, the prosecution must establish more than the presence of nicotine or the possibility of adverse health consequences from the use of the product. It must disclose the specific conduct of the accused which satisfies the statutory requirements of rashness or negligence and the requisite danger to human life or likelihood of hurt or injury. In the absence of such allegations, the mere possession or sale of hookah products or e-cigarettes cannot attract Section 284 IPC.

13.6. In the present case, the charge sheet, as placed before this Court, makes a general allegation that the petitioners were in possession of and selling hookah products and e-cigarettes without taking adequate fire-safety measures. It does not identify the particular poisonous substance in respect of which any petitioner is alleged to have acted; the specific act or omission attributable to each petitioner; or the manner in which such conduct was rash

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or negligent within the meaning of Section 284 IPC.

13.7. Further, the allegation that the products may have adverse consequences for the health of persons using them cannot, without more, substitute the statutory requirement of rash or negligent conduct involving a poisonous substance. The prosecution must disclose a nexus between the substance, the conduct attributed to the accused and the danger contemplated by the provision. Such particulars are not discernible from the allegations presently placed before this Court. The proceedings under Section 284 IPC are, therefore, unsustainable.

13.8. Section 285 IPC deals with negligent conduct with respect to fire or combustible matter. It applies where a person does an act involving fire or combustible matter in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury, or knowingly or negligently omits to take such precautions against the probable danger from such fire or

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combustible matter as are sufficient to guard against such danger.

13.9. The provision is concerned not merely with the existence of fire or combustible material, but with the manner in which the accused handles or deals with it, or the failure to take precautions against the danger arising therefrom. The prosecution must, therefore, disclose the fire or combustible matter involved, the act or omission attributable to the accused, and the circumstances which render that conduct rash or negligent and dangerous to human life or likely to cause hurt or injury.

13.10. In the present case, the charge sheet alleges that the petitioners were carrying on the activity without taking adequate fire-safety measures. However, the allegation, as summarised in the material placed before this Court, does not identify the particular fire or combustible matter involved, the specific act or omission attributable to each petitioner, or the manner in which such conduct endangered human life or was likely to cause hurt or injury.

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13.11. It is true that the use of a hookah may involve the use of charcoal or another source of heat or ignition. If the prosecution had alleged, with supporting material, that a particular petitioner handled or stored such combustible material in a rash or negligent manner, or omitted to take precautions against a specific and probable fire hazard, the ingredients of Section 285 IPC would require examination on that basis. However, the mere presence of hookah apparatus or e-cigarettes at the premises, coupled with a general allegation of absence of fire-safety measures, does not by itself establish the offence. The prosecution must disclose the requisite act or omission and its connection with the danger contemplated by the provision.

13.12. In the absence of such particulars in the allegations presently placed before this Court, the proceedings under Section 285 IPC cannot be sustained.

13.13. The charge sheet also invokes Section 328 IPC. The said provision deals with administering to, or causing to be taken by, any person, any

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poison or any stupefying, intoxicating or unwholesome drug or other thing, with the intention of causing hurt, or of committing or facilitating the commission of an offence, or with the knowledge that it is likely to cause hurt.

13.14. The scope of Section 328 IPC is not confined to substances which are technically classified as poison. The provision also covers a stupefying, intoxicating or unwholesome drug or other thing. Consequently, the question whether a substance falls within the provision cannot be determined merely by describing it as tobacco, a hookah preparation or an e-cigarette product. Its nature and effect may be relevant. Nevertheless, the nature of the substance alone is insufficient to attract the provision. The prosecution must also disclose that the accused administered or caused the substance to be taken by another person, accompanied by the intention or knowledge specified in the section.

13.15. In the present case, the prosecution relies upon the allegation that the petitioners were in possession of hookah products and e-cigarettes

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and were making them available to customers. Even assuming that a particular substance used in those products could fall within the description of a substance contemplated under Section 328 IPC, the charge sheet must disclose the act by which the petitioners administered or caused that substance to be taken by another person. It must further disclose circumstances from which the requisite intention or knowledge can reasonably be inferred.

13.16. The mere possession or storage of such products, or their availability for sale at the premises, does not, without more, establish that the petitioners administered or caused any person to take the substance with the intention or knowledge contemplated by Section 328 IPC. Equally, the mere assertion that the products are harmful to health does not automatically establish that the petitioners possessed the requisite intention or knowledge to cause hurt.

13.17. The charge sheet does not contain specific allegations that a particular petitioner supplied a substance to identified customers, caused

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them to inhale or consume it, and did so in circumstances disclosing the requisite intention or knowledge. It does not identify any person to whom the substance was administered or caused to be taken, the act attributable to each petitioner in that regard, or the circumstances establishing the requisite mental element. The essential ingredients of Section 328 IPC are, therefore, not disclosed, and the proceedings under that provision are liable to be quashed.

13.18. Section 511 IPC provides punishment for an attempt to commit an offence punishable with imprisonment for life or other imprisonment, where no express provision is made by the IPC for the punishment of such an attempt. It is not an independent substantive offence. Its invocation necessarily presupposes the identification of the substantive offence alleged to have been attempted and the existence of an act towards the commission of that offence.

13.19. The distinction between preparation and attempt is material. Mere intention or preparation to commit an offence is not sufficient. The prosecution must allege an act

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which goes beyond mere preparation and which constitutes a step towards the commission of the particular offence, accompanied by the requisite intention. The applicability of Section 511 must, therefore, be examined with reference to the substantive offence allegedly attempted and the specific act attributed to the accused.

13.20. In the present case, the charge sheet does not identify any distinct act constituting an attempt to commit an offence punishable under the IPC. The allegation of possession and sale of hookah products and e-cigarettes, without particulars disclosing an act beyond preparation towards the commission of an identified IPC offence, is insufficient to attract Section 511 IPC. Further, the charge sheet does not disclose any independent factual foundation for alleging an attempt to commit the offences under Sections 284, 285 or 328 IPC. The invocation of Section 511 IPC, on the allegations as presently placed before this Court, is therefore unsustainable.

13.21. For the foregoing reasons, the allegations in the charge sheet do not disclose the essential

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ingredients of the offences punishable under Sections 284, 285, 328 and 511 IPC. Continuation of the proceedings against the petitioners under the said provisions would, in the circumstances of the present case, amount to an abuse of the process of law. Accordingly, Point No. (ii) is answered in the affirmative in favour of the petitioners.

14. **<u>Answer to Point No. (iii):</u> Whether the proceedings under Sections 7 and 20(2) of COTPA, 2003 can be quashed insofar as the petitioners are concerned?**

14.1. Insofar as the proceedings under COTPA, 2003 are concerned, Section 3(p) defines 'tobacco products' with reference to the products specified in the Schedule to the Act. The Schedule is reproduced hereunder for ready reference:

THE SCHEDULE

(i) Cigarettes

(ii) Cigars

(iii) Cheroots

(iv) Beedis

(v) Cigarette tobacco, pipe tobacco, and hookah tobacco

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(vi) *Chewing tobacco*

(vii) *Snuff*

(viii) *Pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called)*

(ix) *Gutka*

(x) *Toothpowder containing tobacco*

14.2. A perusal of the Schedule indicates that hookah tobacco is expressly included within the definition of tobacco products. However, the inclusion of hookah tobacco does not result in every hookah apparatus, accessory or equipment being treated as a tobacco product. The statutory definition is product-specific. The prosecution must, therefore, establish that the articles in respect of which the alleged contravention is made are cigarettes or other tobacco products falling within the definition under Section 3(p), read with the Schedule.

14.3. The distinction between hookah tobacco and the apparatus used for smoking it is material. A hookah, its pipes, bowls, hoses and other accessories do not become tobacco products merely because they are used in connection with hookah tobacco. Similarly, the fact that a

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commercial establishment provides hookah facilities does not, by itself, establish that every article found at the premises is a tobacco product within the meaning of the Act. The nature of the particular article and the activity alleged in relation to it must be examined.

14.4. It is also necessary to distinguish e-cigarettes from cigarettes and other tobacco products covered by COTPA, 2003. Electronic cigarettes are separately defined and regulated under the Prohibition of Electronic Cigarettes Act, 2019. The said enactment includes electronic nicotine delivery systems and e-hookah within its definition of electronic cigarettes and prohibits specified activities concerning such products.

14.5. However, the present charge sheet does not invoke offences under the 2019 Act. This Court is, therefore, not called upon to examine the petitioners' liability under that enactment. Nor can an offence under the 2019 Act be read into the present prosecution merely because e-cigarettes or e-hookah products are referred to in the charge sheet. The prosecution under COTPA, 2003 must independently satisfy the

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ingredients of the provisions invoked thereunder. The fact that hookah tobacco is included in the Schedule to COTPA does not automatically bring electronic devices or every product associated with their use within that definition.

14.6. The requirement of displaying the specified warning on packages of cigarettes and other tobacco products is not a mere procedural formality or a technical labelling requirement. It serves an important public health purpose by informing consumers, at the point of purchase and before use, of the health hazards associated with tobacco consumption. The warning is intended to ensure that a consumer is not deprived of material information concerning the risks of the product and is enabled to make an informed choice. The prescribed pictorial warning assumes particular significance because it communicates the health consequences in a direct and readily comprehensible manner, irrespective of the consumer's level of literacy. The statutory mandate under COTPA, 2003, therefore, seeks to prevent the concealment or dilution of

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information concerning the harmful effects of tobacco products and to discourage their consumption in the interest of public health. Compliance with the warning requirement is consequently an essential statutory obligation, and its breach cannot be regarded as an inconsequential irregularity. It is in this context that the prohibition under Section 7 and the penal consequences under Section 20 of the Act must be understood.

14.7. Section 7 of COTPA, 2003 deals with restrictions on trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products. Sub-sections (1) and (2) prohibit the production, supply, distribution or carrying on of trade or commerce in such products unless every package bears the specified warning, including the prescribed pictorial warning, on the package or its label. Section 7(5) separately requires the indication of nicotine and tar contents on the package or label in the circumstances specified therein.

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14.8. The statutory scheme, therefore, prescribes requirements concerning both the specified health warning and the indication of nicotine and tar contents. These requirements must be kept distinct while examining the ingredients of the respective offences. In particular, an allegation concerning absence of the specified warning is relevant to Sections 7(1) and 7(2), whereas the requirement concerning the indication of nicotine and tar contents is separately dealt with under Section 7(5).

14.9. In the present case, the prosecution alleges that tobacco products were seized from the premises of 'Smoker's Zone' without the prescribed warnings. The charge sheet further alleges that accused Nos.1 to 3 were in possession of the products and were selling them to customers. The seizure mahazar, the description of the seized products and the material relating to their packages are relevant to determining whether the products fall within the Schedule and whether the prescribed warning was absent.

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14.10. The allegation is not confined to the mere presence of hookah apparatus or e-cigarettes at the premises. The prosecution also alleges that tobacco products were being made available and sold to customers. If the material collected during investigation discloses that the products sold or distributed were hookah tobacco or other tobacco products falling within the Schedule and that their packages did not bear the specified warning, the ingredients of the prohibition under Section 7(2) would prima facie be attracted.

14.11. The question whether the products actually seized and dealt with by the petitioners answer the statutory description, and whether the prescribed warning was absent, would have to be determined on the basis of the evidence.

14.12. The petitioners contend that petitioner Nos.1 and 2 were only employees of the establishment and that the owner alone was responsible for ensuring compliance with the statutory requirements. This contention cannot be accepted as an absolute proposition. Section 7 does not confine the prohibition exclusively to

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the owner of the establishment. Its language extends to a person who directly or indirectly produces, supplies or distributes tobacco products and to a person who carries on trade or commerce in such products.

14.13. Consequently, the fact that petitioner Nos.1 and 2 were employees does not, by itself, exclude the possibility of their liability. If the prosecution material discloses that they actively participated in the sale, supply or distribution of tobacco products in contravention of Section 7, their status as employees would not furnish a ground to quash the proceedings at the threshold. At the same time, mere employment at the establishment, without material indicating participation in the prohibited activity, would not be sufficient to fasten criminal liability upon them.

14.14. The fact that the owner of the establishment has not been arrayed as an accused also does not, by itself, absolve persons against whom specific allegations of participation in the sale, supply or distribution of the products are made. The liability of each accused has to be

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examined with reference to the acts attributed to that person and the material collected during investigation.

14.15. In the present case, the charge sheet alleges that petitioner Nos.1 and 2 were in possession of the tobacco products and were selling them to customers. At this stage, the Court cannot undertake an evaluation of the truth or otherwise of those allegations or determine the precise extent of their participation. If the seized articles are established to be tobacco products within the meaning of the Act and the allegation regarding absence of the prescribed warning is supported by the material collected, the proceedings under Section 7, insofar as petitioner Nos.1 and 2 are concerned, cannot be quashed. The question of their actual participation and culpability is left open for determination during trial.

14.16. Insofar as Section 20(2) of COTPA, 2003 is concerned, the provision prescribes punishment for a person who sells or distributes cigarettes or tobacco products which do not contain, either on the package or on the label, the

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specified warning and the nicotine and tar contents. The provision must be read along with the requirements prescribed under Section 7 of the Act. It is intended to ensure that tobacco products made available for sale or distribution carry the statutory health warning and the prescribed particulars concerning nicotine and tar contents.

14.17. In the present case, the prosecution alleges that tobacco products were seized from the premises of 'Smoker's Zone' without the prescribed warnings and that accused Nos.1 to 3 were in possession of the products and were selling them to customers. The seizure mahazar and the description of the seized products, together with the material concerning their packages and labels, would be relevant in determining whether the statutory requirements were complied with.

14.18. The absence of a specific recital in the charge-sheet summary that the packages also lacked the prescribed indication of nicotine and tar contents cannot, by itself, be treated as conclusive at this stage, particularly when the

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prosecution alleges sale or distribution of tobacco products without the prescribed statutory particulars. Whether the packages in fact contained the required warning and the indication of nicotine and tar contents is a matter capable of being established through the seized articles, their labels and the other evidence produced during trial. The Court, at the stage of considering a petition for quashing, cannot undertake a detailed examination of that evidence or record a finding on the actual compliance or non-compliance with the packaging requirements.

14.19. The allegation that the petitioners were selling or distributing tobacco products without the prescribed warning, read with the seizure and other material collected during investigation, discloses a matter requiring examination at trial. The question whether the products fall within the definition of tobacco products under Section 3(p), read with the Schedule, and whether the requirements concerning the specified warning and nicotine and tar contents were complied with, shall be determined by the trial Court on the basis of the evidence.

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Accordingly, the proceedings under Section 20(2) of COTPA, 2003 cannot be quashed at this stage insofar as petitioner Nos.1 and 2 are concerned.

14.20. Insofar as petitioner No.3 is concerned, the material placed before this Court does not disclose any specific act of participation by her in the business carried on under the name and style of 'Smoker's Zone'. It is contended that she was neither working at the shop nor involved in its activities and that she has been arrayed as an accused only on account of being the wife of petitioner No.1.

14.21. Mere relationship with petitioner No.1 cannot, by itself, fasten criminal liability upon petitioner No.3. COTPA, 2003 does not impose criminal liability upon a person merely by reason of his or her relationship with the owner or employee of an establishment. The prosecution must disclose some material indicating that the person concerned participated in, or was otherwise responsible for, the activity prohibited by the relevant provision.

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14.22. In the present case, no specific allegation or material has been brought to the notice of this Court indicating that petitioner No.3 was involved in the sale, supply or distribution of tobacco products or that she carried on trade or commerce in such products. In the absence of any such material, continuation of the proceedings against petitioner No.3 under Sections 7 and 20(2) of COTPA, 2003 would amount to an abuse of the process of law.

14.23. Accordingly, the proceedings under Sections 7 and 20(2) of COTPA, 2003 are liable to be quashed insofar as petitioner No.3 is concerned. However, the proceedings under the said provisions shall continue insofar as petitioner Nos.1 and 2 are concerned. The question whether petitioner Nos.1 and 2 have committed the offences alleged against them shall be determined by the trial Court on the basis of the evidence adduced, uninfluenced by the observations made herein.

15. **Answer to Point No. (iv):** What Order?

15.1. In view of the answers to the above points this court passes the following:

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HC-KAR
CNR: KAHC010190572025

ORDER

i. The criminal petition is ***partly allowed***.

ii. The proceedings in C.C. No.23673/2024, insofar as the offences punishable under Sections 52, 59 and 63 of the Food Safety and Standards Act, 2006 are concerned, are hereby quashed.

iii. The proceedings insofar as the offences punishable under Sections 284, 285, 328 and 511 of the Indian Penal Code, 1860 are concerned, are hereby quashed.

iv. The proceedings for the offence punishable under Section 7 and Section 20 (2) of COTPA, 2003 shall continue insofar as petitioner Nos.1 and 2 are concerned.

v. The proceedings for the offence punishable under Section 7 and Section 20 (2) of COTPA, 2003 are quashed insofar as petitioner No.3 is concerned.

vi. The observations made herein are confined to consideration of the allegations and offences forming the subject matter of the present proceedings and shall not influence any other proceedings, if initiated in accordance with law.

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(SURAJ GOVINDARAJ)
JUDGE

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List No.: 1 Sl No.: 29