IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CRIMINAL PETITION NO: 14961 OF 2024

Between:

1. Abdul Saleem, S/o Abdul Raheem, Age. 43 years, Occupation. Business, R/o H No.3-111/2, Dharur Village And Mandal, Vikarabad District, Telangana.
2. Mohd Abdul Kareem, S/o Mohd Khaja Miya, Age. 54 years, Occupation. Business, R/o Plot No.22, Sy No.3 and 4, Golden City, Suleman Nagar, Rajendra Nagar, Ranga Reddy District, Telangana.
3. Mohd Azam, S/o Mohd Yousuf, Age. 45 years, Occ. Business, R/o. 19-4-279/C/170, N S Kunta, Charminar, Hyderabad District, Telangana.
4. Chand Pasha Abdul Reheman, S/o. Abdul Rehaman, Age. 39 years, Occ. Business, R/o.H.No.5/4/44, Partapur TQ, Basavakalyan, Bidar, Karnataka.

...PETITIONERS/ACCUSED

AND

1. The State of Telangana, Rep. by its Public Prosecutor, High Court for the State of Telangana, Hyderabad.
2. The Assistant Sub-Inspector of Police, Marpally Police Station, Vikarabad Dist.

...RESPONDENT/COMPLAINANT

3. The Sub-Inspector of Police, Marpally Police Station, Vikarabad Dist.

...RESPONDENTS

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the FIR.No. 99/2024 dated 13/09/2024 of PS Marpally, Vikarabad District for the alleged offences punishable U/s 318 (4), 274, 275, 223 BNS against the Petitioners/Accused.

I.A. NO: 1 OF 2024

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant interim stay of all further proceedings including arrest of the Petitioners/Accused pursuant to FIR.No. 99/2024 dated 13/09/2024 of PS Marpally, Vikarabad District for the alleged offences punishable U/s 318 (4), 274, 275, 223 BNS pending disposal of main Criminal Petition.

I.A. NO: 2 OF 2024

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to direct the Respondents No. 2 and 3, PS Marpally, Vikarabad District to release the Vehicles (1) Quails with registration number AP10AM2015 and (2) DCM with registration number KA 56 7316 and Goods (1) 1000 packets of Goa Gutka found in the vehicles, (2) each bag containing 25,200 pouches X 131 bags equals to 3,301,200 pouches of gutka, (3) 12 banned Goa Gutka manufacturing machines, (4) 14 white colored ingredient packets, (5) 32 Tobaco Bags, (6) 48 bags of Betel Nuts (Pokalu) (7) 102 Goa Hand bags (8) 180 units of rapper rolls of 50% extra Goa totaling to 1000 rappers, (9) 20 bags consisting of Goa gutka packing covers (10) 80 Gutka packets ready to sell, (11) 1 electric weighing machine, (12) 2 small weighing machines, (13) 50 blue-colored printed bags worth Rs 3,00,000/- and any other goods or machinery seized in FIR.No. 99 /2024 dated 13/09/2024 of PS Marpally, Vikarabad District in favor of the Petitioners.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri S. Lakshmi Kanth, Advocate for the Petitioner, Additional Public Prosecutor on behalf of the Respondent No. 1 and none appeared for the Respondent Nos. 2 & 3.

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION No.14961 of 2024

ORDER:

This Criminal Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') to quash the proceedings against the petitioners/accused in Crime No.99 of 2024 on the file of Marpally Police Station, Vikarabad District, registered for the offences punishable under Section318(4), 274, 275, 223 of Bharatiya Nyaya Sanhita (for short 'BNS').

2. Heard Sri S.Lakshmikanth, learned counsel for the petitioner as well as learned Additional Public Prosecutor for respondent No.1-State. Perused the record.

3. Learned counsel for the petitioner submitted that the matter is squarely covered by the order dated 15.04.2024 in Criminal Petition No.2309 of 2024.

4. Learned Additional Public Prosecutor also submitted that the issue in the present criminal petition is covered by the earlier order in the above criminal petition.

5. In view of the said representation and as the matter is squarely covered by the order in the above criminal petition,

this criminal petition is allowed in terms of the above said order, adopting the reasoning contained therein. The proceedings against the petitioners/accused in Crime No.99 of 2024 on the file of Marpally Police Station, Vikarabad District, are hereby quashed. Further, the Station House Officer/Investigating Officer is hereby directed to return the seized property on proper identification and verification under due acknowledgment.

Pending miscellaneous petitions, if any, in this Criminal Petition shall also stand closed.

Sd/- P. CH. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Judicial First Class Magistrate, Vikarabad District
2. The Station House Officer, Marpally Police Station, Vikarabad District
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
4. One CC to Sri S. Lakshmi Kanth Advocate [OPUC]
5. Two CD Copies

VH/gh

HIGH COURT

DATED: 10/12/2024

ORDER

CRLP.No.14961 of 2024

ALLOWING THE
CRIMINAL PETITION

(B) Copies
19/12/24

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION No.2309 OF 2024

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against the petitioners/accused Nos.1 and 2 in S.C.No.24 of 2021, on the file of the learned VIII Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offences punishable under Sections 188, 269, 270, 272, 273 of the Indian Penal Code, 1860 (for short 'the IPC'), Section 8 (c) read with Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and Section 20 (2) of the Cigarettes and Other Tobacco Products Act, 2003 (for short 'the COTP Act').

2. Brief facts of the case of the petitioners is that on 27.03.2020 while police were in patrolling, they found the petitioners possessing, selling and purchasing the banned products viz., gutka and ganja respectively, for which, the Police registered a case against the petitioners for the offences alleged against the petitioners are that Sections 188, 269, 270, 272 and 273 of the IPC, Section 8 (c) read with Section 20 (b) (ii) (B) of the NDPS Act and Section 20 (2) of the COTP Act, respectively. Basing on the said complaint the Police registered the case in Crime No.53 of

2020 and after completion of investigation, they filed charge sheet and the same was numbered as S.C.No.24 of 2021 on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad.

3. Heard Sri Y. Bala Murali, learned counsel appearing on behalf of the petitioners as well as Sri S. Ganesh, learned Assistant Public Prosecutor appearing on behalf of the respondents.

4. Learned counsel for the petitioners submitted that the allegations levelled against the petitioners are vague and did not attract any of the offence. Making his submission, he relied on the judgment of this Court vide order dated 05.07.2021 in Criminal Petition No.152 of 2020, wherein this Court quashed the proceedings against the petitioners and he further submitted that the present matter is also covered by that order. As such, he prayed the Court to allow the Criminal Petition.

5. *Per contra*, learned Assistant Public Prosecutor submitted that he has no objection with regard to Sections 188, 269, 270, 272, 273 of IPC and Section 20 (2) of the COTP Act. The petitioners were also charged for the offence under Section Section 8 (c) read with Section 20 (b) (ii) (B) of the NDPS Act and he has prayed the Court that the trial has to be conducted for the offence punishable under NDPS Act.

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 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 trends 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 malignantly 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."*

***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 nonxious 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."*

RELEVANT PROVISIONS UNDER COTP ACT:

***20**. Punishment for failure to give specified warning and nicotine and tar contents.-*

***(2)** Any person who sells or distributes cigarettes or tobacco products which do not contain wither on the package or on their label, the specified warning and the nicotine and tar contents shall in 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."*

6. The *lis* involved in the present petition 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 vs. State of Telangana***[1] had an occasion to deal with the issues involved in the present criminal petition. After referring to various provisions of IPC, 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] Crl.P.No.3731 of 2018 & batch, decided on 27.08.2018

"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.?"

7. 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.

8. In ***Sri Jaganath Enterprises Eluru Vasandhi Tripati Rao vs. The State of Andhra Pradesh***[2], a learned Single Judge of the High Court of Andhra Pradesh at Amaravati had also an occasion to deal with the said issue. After referring to the contention 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 vs. State of Kerala***[4], ***Sayyed Hassan Sayyed Subhan***[5], ***M/s. Pepsico India Holdings (Pvt)***

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[2] 2020 (1) ALT (Crl.) 215 (APHC)
[3] 2019 SCC OnLine Bom 1857
[4] 1995 (1) SCJ 277
[5] 2018 AIR (SC) 5348

Ltd., vs. State of U.P.[6], ***Sanjay Anjay Stores vs. Union of India***[7], ***Boop Singh Tyagi vs. State***[8], ***State of Haryana vs. Bhajan Lal***[9] and ***Chidurala Shyamsubder*** (Supra 1), the learned Single Judge has quashed the FIRs/Calendar Cases. The learned Single Judge referring to the law laid down in ***Chidurala Shyamsubder*** (Supra 1) 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.

9. Referring to the provisions of Sections - 188, 269, 270, 272 and 273 of IPC, the learned Judge in Sri Jaganath Enterprises 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 laid down by the Apex Court in Bhajan Lal and M/s. Pepsico India Holdings (Pvt) Ltd., the learned Single Judge has quashed the proceedings in various crimes/calendar cases.

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[6] 2011 (2) Crimes 250
[7] 2017 SCC OnLine Cal 16323
[8] 2002 Crl.L.J. 2872
[9] 1992 Supp (1) SCC 335

10. Another learned Single Judge of the High Court of Andhra Pradesh at Amaravati in ***V.Nageswara Rao vs. State of Andhra Pradesh***[10] had also an occasion to deal with the said issue and agreed with the principle laid down in ***Chidurala Shyamsubder*** (Supra 1).

11. In ***Sayyed Hassan Sayyed Subhan*** (Supra 5), 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 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 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.

12. 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

[10] 2020 Supreme (AP) 348

cases are transportation, possession, storage, sale and purchase of banned products viz., respectively. In ***Chidurala Shyamsubder*** (Supra 1), the learned Single Judge 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 of human life, it would not spread or infect or casue 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."*

13. 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 or drink is adulterated. There is no definition of 'adulteration' in IPC. The definition '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 Shyamsubder*** (Supra 1), ***Sri Jaganath Enterprises*** (Supra 2) and ***V.Nageswara Rao*** (Supra 10).

14. In ***Joseph Kurian*** (Supra 4), 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 of IPC to be pressed into service.

15. 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 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, 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 criminal petition 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.

16. As far as Section – 188 of 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 Tyagi 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.

17. In ***N.T. Rama Rao vs. The State of A.P., rep by Public Prosecutor***[11] 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*

[11] Criminal Petition No.5323 of 2009, decided on 17.09.2009

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 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) 9a) 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 conduce 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 entirely have to fail, though the 1st accused alone approached this Court by way of this Criminal Petition."

18. In ***Thota Chandra Sekhar vs. The state of Andhra Pradesh, through S.H.O., P.S. Eluru Rural, West Godavari***

District[12], wherein by relying on various judgment including ***N.T. Rama Rao*** (Supra 11) and also the guidelines laid down by the Apex Court in ***Bhajan Lal*** (Supra 9) more particularly, guideline No.6, which says that where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings 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.

19. 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

[12] Criminal Petition No.15248 of 2016, decided on 26.10.2016

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 part of any advertisement.

20. 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***. 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, Sri Jaganath Enterprises and V. Nageswara Rao.

21. 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 – 188, 269, 270, 272 and 273 of the IPC and Section 20 (2) of COTP Act are attracted to the present case. Insofar as the offence under Section 8 (c) read with Section 20 (b) (ii) (B) of the NDPS Act, the petitioner is liable to be prosecuted.

22. In the result, the Criminal Petition is allowed in Part and the proceedings against the petitioners/accused Nos.1 and 2 in S.C.No.24 of 2021, on the file of the learned VIII Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offences punishable under Sections 188, 269, 270, 272 and 273 of the IPC and Section 20 (2) of the COTP Act only are hereby quashed while permitting the prosecution to

proceed further against the petitioners/ accused Nos.1 and 2 for the offence punishable under Section 8 (c) read with Section 20 (b) (ii) (B) of the NDPS Act.

Miscellaneous applications, if any pending, shall also stand closed.

K. SUJANA, J

Date:15.04.2024
SAI