

(2021) 07 TEL CK 0049

In the Telangana High Court

Case No : Criminal Petition No. 5319, 5331 Of 2021

Burra Lingaiah Lingam Sathish

APPELLANT

Vs

State Of Telangana And Another

RESPONDENT

Date of Decision : 14-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 269, 270, 271, 272, 273, 328, 336, 420
Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 — Section 20, 20(2)

Citation : (2021) 07 TEL CK 0049

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : M A K Mukheed

Final Decision : Disposed Of

Judgement

1. This petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 to quash the proceedings in C.C.No.2321 of 2019 pending on the

file of Judicial First Class Magistrate (for Prohibition and Excise Offences) at Nalgonda. The petitioner herein is accused No.2 in the said calendar

case. The offences alleged against him are under Section 273 of I.P.C. 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")

2. Heard Mr.M.A.K. Mukheed, learned counsel for the petitioner, and the learned Assistant Public Prosecutor appearing on behalf of respondent -

State.

3. This Court, by common order dated 05.07.2021 in CrI.P.No.152 of 2020 and

batch, has extensively dealt with the issue covered in the present criminal petition observing that transportation, possession, storage, sale and purchase of tobacco products are not totally banned in the State of Telangana and, therefore, it cannot be said that offences under Sections - 269, 270, 271, 272 and 273, 328, 336 and 420 of IPC are attracted to the petitioners therein.

4. Concerning provisions of Section - 20 of COTP Act, in the said common order, this Court also observed that the said provision deals with punishment for failure to give specified warning and nicotine and tar contents. But, in the complaints / charge sheets therein, there is no allegation against the petitioners therein 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. Observing so, this Court held that registering the crimes for the said offence against the petitioners therein is contrary to Section - 20 (2) of COTP Act,

5. In the present case also, the allegations against the petitioner are that he was selling the prohibited tobacco products and the contents of the complaint do not attract the ingredients of offence under Section - 273 of I.P.C. and Section - 20 (2) of COTP Act and, therefore, the proceedings against the petitioner in the above case are also liable to be quashed.

6. The present Criminal Petition is accordingly allowed in terms of the common order dated 05.07.2021 in CrI.P.No.152 of 2020 and batch and the proceedings in C.C.No.2321 of 2019 pending on the file of Judicial First Class Magistrate (for Prohibition and Excise Offences) at Nalgonda, against the petitioner - accused No.2 are hereby quashed.

7. Since the proceedings are quashed against the petitioner in the above calendar case, the petitioner is at liberty to file an appropriate application before the concerned Magistrate for return of the seized property and the learned Magistrate shall consider the same in accordance with law.

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