

(2021) 08 TEL CK 0018

In the Telangana High Court

Case No : Criminal Petition Nos. 152, 153, 155, 162 Of 2020, 3498, 3500, 3509, 3514, 3768, 3879, 4046, 4070, 4077, 4098, 4099, 4100, 4102, 4110, 4119, 4140, 4141, 4151, 4157, 4178, 4182, 4187, 4194, 4216, 4230, 4247, 4249, 4251, 4258, 4262, 4277, 4361, 4405, 4415,

Mohd. Jameel Ahmed

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 153, 188, 269, 270, 271, 272, 273, 283, 284, 328, 336, 353, 420, 511
Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 — Section 4, 3(p), 5, 6, 7, 7(1), 7(2), 7(3), 7(5), 10, 20, 20(1), 20(2), 26
Food Safety and Standards Act, 2006 — Section 3(1)(a), 3(j), 26, 30, 54, 58, 59, 59(1)
Epidemic Diseases Act, 1897 — Section 3
Disaster Management Act, 2005 — Section 51(b)
Code of Criminal Procedure, 1973 — Section 155(2), 195(1)(a), 482
Police Act, 1861 — Section 30

Citation : (2021) 08 TEL CK 0018

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

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

Sl. Crl.P. No. Accused Number Offences

No. Crime No. allegedly committed Nature of offence

217/20 of PS Manoharabad sole accused 272, 273 IPC & Transportation of Amber tobacco

1. 3768/21 20 (2) r/w 7(2) of COTPA

2. 3879/21 33/21 of PS Kadam sole accused 270 & 273 IPC Sale of banned tobacco products

3. 4046/21 78/21 of PS (T) A1 & 2 -do- Sale of gutka/tobacco

Adilabad illegally in godown

21/21 of PS Easgoan sole accused Possession of gutka

4. 4077/21 -do- /tobacco in pan shop

185/21 of PS (T) 270, 273 IPC & Transportation of prohibited gutka

5. 4098/21 Nirmal A1 to 3 20 (2) of COTPA

6. 4099/21 No.36/21 of PS sole 270 & 273 IPC Possession of tobacco

Koutala accused products in the house

No.38/21 of PS Easgoan sole accused Possession of banned

7. 4100/21 270 & 273 IPC gutka & other tobacco items in pan shop

455/21 of PS Kukatpally sole accused 336, 273 & 188 Transportation and sale of prohibited tobacco

8. 4102/21 IPC & 59 (i) of FSSA products

45/21 of PS Chiragpally 270 & 273 IPC & Transportation of tobacco products

9. 4141/21 A1 to 3 20(2) r/w 7(2) of COTPA

198/21 of PS Choutuppal sole accused 272 & 273 IPC & Storage of tobacco products for sale

10. 4151/21 20 (2) of COTPA

11. 4157/21 134/21 of PS Chityal (NLG) 272, 273 & 328 Purchase and sale of prohibited tobacco

A1 to 4 IPC & 20 (1) & 7 products

(3) of COTPA

12. 4182/21 74/21 of PS Raghunadhpalem A1 & 2 270&273 IPC Transportation of banned tobacco/gutka

13. 4187/21 202/21 of PS (T) sole -do- Possession of banned

Mancherial accused tobacco products

14. 4247/21 61/21 of PS II sole -do- Possession of banned

Town Adilabad accused gutka products

15. 4249/21 101/21 of PS I A1 & 2 -do- Sale of gutka and tobacco products

Town Adilabad

90/21 of PS I Town Adilabad sole accused About to transport noxious gutka and

16. 4251/21 -do- tobacco products

17. 4258/21 91/21 of PS I Town Adilabad sole accused -do- Sale of banned gutka and tobacco products

18. 4262/21 107/21 of PS I A1 & 2 -do- Transportation of gutka

Town Adilabad and tobacco products

19. 4277/21 162/21 of PS Abdullapurmet 188, 272, 273 & Sale of banned tobacco (tambaku) products in

A1 to 3

328 IPC lorry

20. 4405/21 202/21 of PS I sole accused 188, 272 & 273 Transportation of gutka/ tobacco products

Town Nalgonda IPC

21. 4415/21 232/21 of PS II sole -do- Possession of banned

(T) Nalgonda accused gutka /tobacco products

87/21 of PS III A1 & 2 188, 269, 270, Possession of tobacco products in kirana

(T) Kothagudem 273 r/w 34 IPC & shop

22. 4542/21

3 of EDA & 51

(b) of DMA

23. 4615/21 225/21 of PS Nirmal Town A1 & 2 270 & 273 IPC Possession of prohibited

tobacco products for sale

24. 4640/21 89/20 of PS Mamada A1 -do- r/w 34 IPC Transportation of banned tobacco/gutka

pockets

186/21 of PS Peddavoora 328 r/w 511, 272 Possession of banned

25. 4681/21 A2 & 273 IPC gutka & tobacco products in kirana shop

164/21 of PS Adibatla 270, 272 & 273 Transportation of cigarette or other tobacco

26. 4727/21 A2 IPC & 20 (2) of COTPA products without valid
license

27. 4775/21 234/21 of PS I (T) Nalgonda A1 to 4 328, 272, 273 & Sale of gutka
& khaini

188 IPC

245/21 of PS Khammam (R) A1 & 2 328, 270 & 273 Transportation of banned
gutka

28. 4825/21 r/w 511 IPC & 20
(2) of COTPA

29. 5826/21 298/20 of PS Dharmapuri A1 & 2 188, 270 & 273 Transportation of
Amber gutka pockets

IPC" ,,,,,,
,"Sl.
No.",Crl.P. No.,Crime No.,Accused Number,"Offences
allegedly committed",Nature of offence
,1.,3768/21,217/20 of PS Manoharabad,sole accused,"272, 273 IPC &
20 (2) r/w 7(2) of COTPA",Transportation of Amber tobacco
,2.,3879/21,33/21 of PS Kadam,sole accused,270 & 273 IPC,Sale of banned
tobacco products
,3.,4046/21,"78/21 of PS (T)
Adilabad",A1 & 2,-do-,"Sale of gutka/tobacco
illegally in godown
,4.,4077/21,21/21 of PS Easgoan,sole accused,-do-,"Possession of gutka
/tobacco in pan shop
,5.,4098/21,"185/21 of PS (T)
Nirmal",A1 to 3,"270, 273 IPC &
20 (2) of COTPA",Transportation of prohibited gutka
,6.,4099/21,"No.36/21 of PS

Koutala", "sole
accused", 270 & 273 IPC, "Possession of tobacco
products in the house
,7.,4100/21, No.38/21 of PS Easgoan, sole accused, 270 & 273 IPC, "Possession of
banned
gutka & other tobacco items in pan shop
,8.,4102/21,455/21 of PS Kukatpally, sole accused, "336, 273 & 188
IPC & 59 (i) of FSSA", "Transportation and sale of prohibited tobacco
products
,9.,4141/21,45/21 of PS Chiragpally, A1 to 3, "270 & 273 IPC &
20(2) r/w 7(2) of COTPA", "Transportation of tobacco products
,10.,4151/21,198/21 of PS Choutuppal, sole accused, "272 & 273 IPC &
20 (2) of COTPA", "Storage of tobacco products for sale
,11.,4157/21,134/21 of PS Chityal (NLG), A1 to 4, "272, 273 & 328
IPC & 20 (1) & 7
(3) of COTPA", "Purchase and sale of prohibited tobacco
products
,12.,4182/21,74/21 of PS Raghunadhpalem, A1 & 2, 270&273 IPC, "Transportation
of banned tobacco/gutka
,13.,4187/21, "202/21 of PS (T)
Mancherial", "sole
accused", -do-, "Possession of banned
tobacco products
,14.,4247/21, "61/21 of PS II
Town Adilabad", "sole
accused", -do-, "Possession of banned
gutka products
,15.,4249/21, "101/21 of PS I
Town Adilabad", A1 & 2, -do-, "Sale of gutka and tobacco products
,16.,4251/21,90/21 of PS I Town Adilabad, sole accused, -do-, "About to transport
noxious gutka and

tobacco products

,17.,4258/21,91/21 of PS I Town Adilabad,sole accused,-do-,Sale of banned gutka and tobacco products

,18.,4262/21,"107/21 of PS I

Town Adilabad",A1 & 2,-do-,"Transportation of gutka and tobacco products

,19.,4277/21,162/21 of PS Abdullapurmet,A1 to 3,"188, 272, 273 &

328 IPC","Sale of banned tobacco (tambaku) products in

lorry

,20.,4405/21,"202/21 of PS I

Town Nalgonda",sole accused,"188, 272 & 273

IPC",Transportation of gutka/tobacco products

,21.,4415/21,"232/21 of PS II

(T) Nalgonda","sole

accused",-do-,"Possession of banned

gutka /tobacco products

,22.,4542/21,"87/21 of PS III

(T) Kothagudem",A1 & 2,"188, 269, 270,

273 r/w 34 IPC &

3 of EDA & 51

(b) of DMA","Possession of tobacco products in kirana

shop

,23.,4615/21,225/21 of PS Nirmal Town,A1 & 2,270 & 273 IPC,"Possession of prohibited

tobacco products for sale

,24.,4640/21,89/20 of PS Mamada,A1,-do- r/w 34 IPC,"Transportation of banned tobacco/gutka

pockets

,25.,4681/21,186/21 of PS Peddavoora,A2,"328 r/w 511, 272

& 273 IPC","Possession of banned

gutka & tobacco products in kirana shop

,26.,4727/21,164/21 of PS Adibatla,A2,"270, 272 & 273
IPC & 20 (2) of COTPA","Transportation of cigarette or other tobacco
products without valid
license

,27.,4775/21,234/21 of PS I (T) Nalgonda,A1 to 4,"328, 272, 273 &
188 IPC",Sale of gutka & khaini

,28.,4825/21,245/21 of PS Khammam (R),A1 & 2,"328, 270 & 273
r/w 511 IPC & 20

(2) of COTPA",Transportation of banned gutka

,29.,5826/21,298/20 of PS Dharmapuri,A1 & 2,"188, 270 & 273
IPC",Transportation of Amber gutka pockets

CALENDAR CASES

30. 152/20 3515/19 of I-AJMFC, A2 270, 273 & Transportation of banned zarda
products

Warangal 188, 420 IPC

& 58 of FSSA

2724/19 of XVII ACMM, 272 & 273

31. 153/20 Hyd. A2 IPC & 59 of FSSA, 2006 Sale of zarda illegally

32. 155/20 3518/19 of I-AJMFC, A3 420, 270 & Transportation of banned zarda
Warangal 273 IPC & 58
of FSSA

33. 162/20 4737/18 of XI AMM, A2 272, 273, 336 & 420 IPC & 20 Sale of
prohibited gutka and chewing

Sec.bad (2) of tobacco products

COTPA

216/20 of JFCM, 420 & 273 Sale of banned tobacco and gutka

34. 3498/21 Devarkonda A1 & 2 IPC products

963/19 of JFCM, A1 to 4 420 & 273

Transportation of tobacco and gutka

35. 3500/21 Miryalguda IPC & 20 (ii) of COTPA,2003

products

452/20 of XXV MMC, 188, 270 &

Ibrahimpatan 273 IPC, 20 (2) of COTPA, Storage of banned gutka and other

36. 3509/21 A1 & 2

3 of EDA & tobacco products illegally for sale

51 (b) of DMA

632/19 of XXV MMC, A1 to 8 188, 270, 273 & 420 IPC & 20

Supply of gutka and other tobacco

37. 3514/21 Ibrahimpatnam (2) of

products

COTPA

4070/21 547/21 of PJMFC, A1 & 2 272 & 273 Transportation of Amber tobacco

38. Gajwel IPC & 20 (2)

r/w 7 (2) of COTPA

509/20 of Spl.PCR 270 & 273

Transportation of pan masala and

39. 4110/21 Mobile Court-cum- JMFC, A1 to 5 IPC & 20 (2)

banned gutka

Adilabad r/w 7 (2) of COTPA

512/20 of Spl.PCR 270, 271, 272

Transportation of cotton seeds and

40. 4119/21 Mobile Court-cum- JMFC, A1 to 4 & 273 r/w 34 IPC

banned gutka

Adilabad Sec.3 of EDA

STC 272 & 273

No.20/21 of IV AMM- IPC & Sec.20 (1), 20 (2) of Transportation of banned tobacco and

41. 4140/21 A1 & 2

cum-IV AJCJ, COTPA gutka

L.B. Nagar

810/21 of IAJMFC, sole accused 270 & 273 Purchase and sale of banned gutka

42. 4178/21 Khammam IPC & 20 (2) of COPTA

43. 4194/21 6167/21 of XVII ACMM, sole accused 188, 272 & Sale of tobacco products in his shop and

Nampally 273 IPC & 20 disobeying the rules imposed by Govt. in

(2) & 5 of COTPA Not.No.505/FSS-1/21,dt.6.1.21

44. 1298/21 of PJMFC, 270 & 273 Transportation of Amber gutka

4216/21 Khammam A1 & 2 IPC & 20 (2) of COTPA

829/21 of PJMFC, Transportation of gutka/pan masala

45. 4230/21 Khammam A1 & 2 -do-

46. 4361/21 108/21 of AJMFC, A1 & 2 270 & 273 IPC Possession of tobacco products

Asifabad illegally for sale

47. 4612/21 533/20 of AJMFC, Sole accused -do- Purchase and sale of prohibited guka

Nirmal pockets

48. 4622/21 622/19 of AJMFC, A1 & 2 -do- Possession of gutka packets at bus

Nirmal stand for sale illegally

49. 4632/21 413/20 of AJMFC, A3 -do- r/w 34 Transportation of banned tobacco

Â Nirmal IPC & 20 (2) of COTPA products

2. Heard Mr. M.A.K. Mukheed, Mr. Gajanand Chakravarthy, Mr. K. Surender, Mr. Praveen Kumar Veerjala, Ms. P. Radhika, Mr. Srinivas Redd

Balakisti, Ms. C. Sunitha Kumari, Mr. Kondadi Ajay Kumar, Mr. S.M. Subhan, Ms. N. Arthi, Mr. Y. Bala Murali, Mr. Boggula Raju, Mr. S

Chandrasekhar, Mr. V. Yadukrishna Sainath, learned counsel appearing on behalf of respective petitioners and learned Public Prosecutor appearing on

behalf of respondents - State.

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

4. The main allegations against the petitioners - accused are that they were transporting, possessing, storing, selling and purchasing the banned products

viz., tobacco / tambaku / gutka / khaini / zarda / pan masala respectively. The offences alleged against the petitioners are under Sections - 188, 270,

269, 271, 272, 273, 328, 336 & 420 read with 34 and 511 of the Indian Penal Code, 1860 (for short "IPC"); Sections - 20 (1), 20 (2) and 5", CALENDAR CASES,,,,,

,30.,152/20,"3515/19 of I-AJMFC,

Warangal",A2,"270, 273 &

188, 420 IPC

& 58 of FSSA",Transportation of banned zarda products

,31.,153/20,"2724/19 of XVII ACMM,

Hyd.",A2,"272 & 273

IPC & 59 of FSSA, 2006",Sale of zarda illegally

,32.,155/20,"3518/19 of I-AJMFC,

Warangal",A3,"420, 270 &

273 IPC & 58

of FSSA",Transportation of banned zarda

,33.,162/20,"4737/18 of XI AMM,

Sec.bad",A2,"272, 273, 336 & 420 IPC & 20

(2) of

COTPA", "Sale of prohibited gutka and chewing

tobacco products

,34.,3498/21,"216/20 of JFCM,

Devarkonda",A1 & 2,"420 & 273

IPC", "Sale of banned tobacco and gutka

products

,35.,3500/21,"963/19 of JFCM,

Miryalguda",A1 to 4,"420 & 273

IPC & 20 (ii) of COTPA,2003", "Transportation of tobacco and gutka

products

,36.,3509/21,"452/20 of XXV MMC,

Ibrahimpatan",A1 & 2,"188, 270 &

273 IPC, 20 (2)of COTPA,

3 of EDA &
51 (b) of DMA", "Storage of banned gutka and other
tobacco products illegally for sale
,37.,3514/21,"632/19 of XXV MMC,
Ibrahimpattam",A1 to 8,"188, 270, 273 & 420 IPC & 20
(2) of
COTPA", "Supply of gutka and other tobacco
products
,38.,4070/21,"547/21 of PJMFC,
Gajwel",A1 & 2,"272 & 273
IPC & 20 (2)
r/w 7 (2) of COTPA",Transportation of Amber tobacco
,39.,4110/21,"509/20 of Spl.PCR
Mobile Court-cum- JMFC,
Adilabad",A1 to 5,"270 & 273
IPC & 20 (2)
r/w 7 (2) of COTPA", "Transportation of pan masala and
banned gutka
,40.,4119/21,"512/20 of Spl.PCR
Mobile Court-cum- JMFC,
Adilabad",A1 to 4,"270, 271, 272
& 273 r/w 34 IPC
Sec.3 of EDA", "Transportation of cotton seeds and
banned gutka
,41.,4140/21,"STC
No.20/21 of IV AMM-
cum-IV AJCJ,
L.B. Nagar",A1 & 2,"272 & 273
IPC & Sec.20 (1), 20 (2) of
COTPA", "Transportation of banned tobacco and

gutka
 ,42.,4178/21,"810/21 of IAJMFC,
 Khammam",sole accused,"270 & 273
 IPC & 20 (2) of COPTA",Purchase and sale of banned gutka
 ,43.,4194/21,"6167/21 of XVII ACMM,
 Nampally",sole accused,"188, 272 &
 273 IPC & 20
 (2) & 5 of COTPA","Sale of tobacco products in his shop and
 disobeying the rules imposed by Govt. in
 Not.No.505/FSS-1/21,dt.6.1.21
 ,44.,4216/21,"1298/21 of PJMFC,
 Khammam",A1 & 2,"270 & 273
 IPC & 20 (2) of COTPA",Transportation of Amber gutka
 ,45.,4230/21,"829/21 of PJMFC,
 Khammam",A1 & 2,-do-,Transportation of gutka/pan masala
 ,46.,4361/21,"108/21 of AJMFC,
 Asifabad",A1 & 2,270 &273 IPC,"Possession of tobacco products
 illegally for sale
 ,47.,4612/21,"533/20 of AJMFC,
 Nirmal",Sole accused,-do-,"Purchase and sale of prohibited guka
 pockets
 ,48.,4622/21,"622/19 of AJMFC,
 Nirmal",A1 & 2,-do-,"Possession of gutka packets at bus
 stand for sale illegally
 ,49.,4632/21,"413/20 of AJMFC,
 Â Nirmal",A3,"-do- r/w 34
 IPC & 20 (2) of COTPA","Transportation of banned tobacco
 products
 read with 7(2) and 7 (3) of the Cigarettes and Other Tobacco Products
 (Prohibition of Advertisement and Regulation of Trade and Commerce," ,,,,,,

Production, Supply and Distribution) Act, 2003 (for short "COTP Act"); Sections - 58 and 59 of the Food Safety and Standards Act, 2006 (for

short "FSS Act"); Section - 3 of the Epidemic Diseases Act, 1897 (for short "ED Act") and Section - 51 (b) of the Disaster Management

Act, 2005 (for short DS Act) respectively."

5. The respective learned counsel appearing on behalf of the petitioners in the above criminal petitions would submit that the contents of complaint /

charge sheet lacks the ingredients of the offences alleged against the accused. For the offences under the provisions of FSS Act, only Food Safety

Officer is having power to initiate criminal proceedings against accused and the police are not having any power to register a case for the offences under

the provisions of FSS Act. There is no inducement by the petitioners and, therefore, offence under Section - 420 of IPC does not arise. According to

them, the contents of complaint / charge sheet are also lacking the ingredients of the offences under Sections - 269, 270, 271, 272, 273, 328 and 336 of

IPC.

i) According to them, there is no violation of Sections - 20 (1), 20 (2) and 5 read with 7 (2) and 7 (3) of the COTP Act. The Investigating Officers /

Complainants without following the procedure laid down under the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), have registered the

cases for the offence under Section - 188 of IPC and laid charge sheet against the accused. Necessary ingredients to attract the provisions of Section -

3 of the ED Act and Section - 51 (b) of the DM Act are lacking in the complaint / charge sheet.

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

6. On the other hand, learned Public Prosecutor referring to the principle laid down in the State of Maharashtra v. Sayyed Hassan Sayyed Subhan 2018

AIR (SC) 5348 by the Hon'ble Supreme Court and in Ganesh Pandurang Jadhao v. The State of Maharashtra 2016 Cri. L.J. 2401 and Anand

Ramdhani Chaurasia v. The State of Maharashtra 2019 SCC OnLine Bom 1857 by the Bombay High Court would submit that police are having power

to register cases under various provisions of IPC, COTP Act, ED Act and DM Act. There is no irregularity in registering crimes, seizing material

including the vehicles and laying charge sheet against respective accused in the

aforesaid crimes / calendar cases. According to him, the accused were",,,,,,

transporting, possessing, storing, selling and purchasing the banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala respectively.",,,,,,

According to him, the accused have to face either investigation or trial and prove their innocence, and instead of doing so, they have filed the present",,,,,,

criminal petitions under Section - 482 of Cr.P.C. which cannot be considered at this stage.,,,,,,

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

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

as under:,,,,,,

RELEVANT PROVISIONS UNDER IPC,,,,,,

188. Disobedience to order duly promulgated by public servant.â?"Whoever, knowing that, by an order promulgated by a public servant lawfully",,,,,,

empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or",,,,,,

under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of",,,,,,

obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or",,,,,,

with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or 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.â?"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.â?"",,,,,,

â??269. Negligent act likely to spread infection of disease dangerous to life.â?"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.â?" ,,,,,,

â??270. Malignant act likely to spread infection of disease dangerous to life.â?"Whoever maliciously does any act which is, and which he knows or has" ,,,,,,

reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term" ,,,,,,

which may extend to two years, or with fine, or with both.â?" ,,,,,,

â??271. Disobedience to quarantine rule.â?"Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel ,,,,,,

into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the" ,,,,,,

intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term" ,,,,,,

which may extend to six months, or with fine, or with both.â?" ,,,,,,

â??272. Adulteration of food or drink intended for sale.â?" 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.â?" ,,,,,,

â??273. Sale of noxious food or drink.â?"Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has" ,,,,,,

become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished" ,,,,,,

with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with" ,,,,,,

both.â?" ,,,,,,

â??328. Causing hurt by means of poison, etc., with intent to commit an offence.â?"Whoever administers to or causes to be taken by any person any" ,,,,,,

poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to" ,,,,,,

facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description" ,,,,,,

for a term which may extend to ten years, and shall also be liable to fine.â??" ,,,,,,

â??336. Act endangering life or personal safety of others.â?" Whoever does any act so rashly or negligently as to endanger human life or the personal ,,,,,,

safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to" ,,,,,,

two hundred and fifty rupees, or with both.â??" ,,,,,,

â??420. Cheating and dishonestly inducing delivery of property.â?"Whoever cheats and thereby dishonestly induces the person deceived to deliver any ,,,,,,

property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is" ,,,,,,

capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven" ,,,,,,

years, and shall also be liable to fine.â??" ,,,,,,

â??34. Acts done by several persons in furtherance of common intention.â?"When a criminal act is done by several persons in furtherance of the ,,,,,,

common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.â??" ,,,,,,

â??511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.â?"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.â??" ,,,,,,

RELEVANT PROVISIONS UNDER COTP ACT ,,,,,,

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

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

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

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

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

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

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

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

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

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

(a) cigarettes or any other tobacco product; or

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

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

(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the" ,,,,,,

specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to" ,,,,,,

two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a" ,,,,,,

term which may extend to five years and with fine which may extend to ten thousand rupees.,,,,,,

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified" ,,,,,,

warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year," ,,,,,,

or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which" ,,,,,,

may extend to two years and with fine which may extend to three thousand rupees.â??, ,,,,,,

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

(1) No person shall, directly or indirectly, produce, supply or distribute 6 cigarettes or any other tobacco products unless every package of cigarettes or" ,,,,,,

any other tobacco products produced, supplied or distributed by him bears thereon, or on its label such specified warning including a pictorial warning" ,,,,,,

as may be prescribed.,,,,,,

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco, ,,,,,,

products sold, supplied or distributed by him bears thereon, or on its label, the specified warning." ,,,,,,

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless, ,,,,,,

every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning." ,,,,,,

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have, ,,,,,,

been packed for distribution, sale or supply for a valuable consideration." ,,,,,,

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or" ,,,,,,

any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or" ,,,,,,

as the case may be on other tobacco products along with the maximum permissible limits thereof: Provided that the nicotine and tar contents shall not ,,,,,,

exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.â?? ,,,,,,

RELEVANT PROVISIONS UNDER F.S.S. Act: ,,,,,,

â??58. Penalty for contraventions for which no specific penalty is provided.- Whoever contravenes any provisions of this Act or the rules or regulations ,,,,,,

made thereunder, for the contravention of which no penalty has been separately provided in this Chapter, shall be liable to a penalty which may extend" ,,,,,,

to two lakh rupees.â?? ,,,,,,

â??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.â?? ,,,,,,

RELEVANT PROVISION UNDER E.D. ACT: ,,,,,,

3. Penalty. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under,

section 188 of the Indian Penal Code (45 of 1860).

RELEVANT PROVISION UNDER D.M. ACT:

51. Punishment for obstruction, etc.

(1) Whoever, without reasonable cause

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State

Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee,

or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may

extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger

thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to

58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of

relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful

excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.

8. The lis involved in the present petitions is no more res integra. A learned Single Judge of the High Court of Judicature at Hyderabad for the State of

Telangana and the State of Andhra Pradesh in Chidurala Shyamsubder v. State of Telangana Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018

had an occasion to deal with the issues involved in the present criminal petitions. After referring to various provisions of IPC, FSS Act, COTP Act and

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

under:

1) Whether the respondent/ Sub-Inspector of Police, is competent to

investigate into the offence punishable under Sections 54 and 59(1) of FSS" ,,,,,,
Act? ,,,,,,

2) Whether the petitioners in all the petitions are found committing any act with malicious intention, with knowledge and reason to believe that such act" ,,,,,,

likely to spread the infection of any disease dangerous to life? And whether the petitioners selling or offering or exposing for sale as food or drink, any" ,,,,,,

article which has been rendered or has become noxious or is in a state unfit for food or drink or reason to believe that the same is noxious as food or ,,,,,,

drink? If so, are they liable to be proceeded for the offence punishable under Sections 270 and 273 IPC.?â??" ,,,,,,

9. After an elaborate discussion and on consideration of various aspects, the learned Single Judge has held that the police cannot take cognizance of the" ,,,,,,

offence, to investigate into and file charge sheet against the accused therein for the offence punishable under Sections - 54 and 59 (1) of FSS Act, as" ,,,,,,

they were not empowered under the said Act to launch the prosecution, but only Food Safety Officer appointed by the Government alone is competent" ,,,,,,

to launch prosecution for those two offences. With the said findings, the learned Single Judge has quashed the proceedings where the offences are under" ,,,,,,

Sections - 54 and 59 of FSS Act initiated by the police. ,,,,,,

10. In the very same judgment, the learned Single Judge further held that chewing tobacco and khaini are not the â??foodâ?? within the definition of" ,,,,,,

Section - 3(j) of the FSS Act and the manufacture, sale or exposing for sale of tobacco etc., is governed by the provisions of COTP Act, but not by" ,,,,,,

FSS Act and so also the provisions of IPC. The respondents - police are incompetent to investigate the offence punishable under Sections - 54 and 59 ,,,,,,

(1) of the FSS Act and allegations in the charge sheet coupled with the statements do not disclose the commission of the offence punishable under ,,,,,,

Section - 273 of IPC since transportation of noxious food is not included under Section - 273 of IPC. The act done by the accused therein i.e., " ,,,,,,

transportation of khaini and chewing tobacco though dangerous to human life, it would not spread or infect or cause any disease on account of" ,,,,,,

transportation and if those products are consumed by human being, it would certainly cause damage to the health. Therefore, transportation of khaini or" ,,,,,,

chewing tobacco by itself is not an offence under Section - 270 of IPC. Pan Masala is not a tobacco product to fall within the purview of COTP Act. ,,,,,,

Therefore, the provisions of the COTP Act have no application, thereby registration of crime on the ground of violation of Sections - 7 (1) (2) (3) (5)" ,,,,,, and Section - 26 of COTP Act is an illegality. The learned Single Judge further held that registration of cases for the offence under Section - 20 (2) read ,,,,,,

with 7 (2) of COTP Act is illegal. With the said findings, the learned Single Judge has quashed the crimes and calendar cases in the said judgment." ,,,,,,

11. In Sri Jaganath Enterprises Eluru Vasadhi Tripathi Rao v. The State of Andhra Pradesh 2020 (1) ALT (Crl.) 215 (APHC), 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 contentions of the respective ,,,,,,

parties therein, various provisions of IPC, FSS Act, COTP Act and relying on the principle laid down in Anand Ramdhani Chaurasia 2019 SCC" ,,,,,,

OnLine Bom 1857, Joseph Kurian v. State of Kerala 1995 (1) SCJ 277, Sayyed Hassan Sayyed Subhan 2018 AIR (SC) 5348, M/s. Pepsico India" ,,,,,,

Holdings (Pvt) Ltd., v. State of U.P. 2011 (2) Crimes 250, Sanjay Anjay Stores v. Union of India 2017 SCC Online Cal 16323, Boop Singh Tyagi v." ,,,,,,

State 2002 Crl.L.J. 2872, State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 and Chidurala Shyamsubder Crl.P. No.3731 of 2018 & batch," ,,,,,,

decided on 27.08.2018 , the learned Single Judge has quashed the FIRs / Calendar Cases. The learned Single Judge referring to the law laid down in" ,,,,,,

Chidurala Shyamsubder Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 held that despite the said authoritative pronouncement of law, status" ,,,,,,

quo continues. The said judgment attained finality. Even then, the police are registering cases against accused on the very same allegations for the very" ,,,,,,

same offences. ,,,,,,

i) Referring to the provisions of Sections - 153, 188, 269, 270, 271, 272, 273, 284, 328, 353 of IPC, the learned Judge in Sri Jaganath Enterprises" ,,,,,,

2020 (1) ALT (Crl.) 215 (APHC) 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 1992 Supp (1) SCC 335 and M/s. Pepsico India Holdings (Pvt) Ltd.7, the" ,,,,,,

learned Single Judge has quashed the proceedings in various crimes / calendar cases. ,,,,,,

12. Another learned Single Judge of the High Court of Andhra Pradesh at Amaravati in V. Nageswara Rao v. State of Andhra Pradesh 2020 Supreme,,,,,,

(AP) 348 had also an occasion to deal with the said issue and agreed with the principle laid down in Chidurala Shyamsubder Crl.P. No.3731 of 2018 &,,,,,,

batch, decided on 27.08.2018 .",,,,,,

13. In Sayyed Hassan Sayyed Subhan 2018 AIR (SC) 5348, the Apex Court while dealing with legality of the order passed by the Bombay High Court",,,,,,

in a batch of criminal writ petitions and criminal applications, which were filed challenging the registration of FIRs for the offences under Sections - 188,",,,,,

272, 273 and 328 of IPC and Sections - 26 and 30 of the FSS Act where there is an allegation of transportation and sale of Gutka / Pan Masala etc.,",,,,,

held that the judgment of Bombay High Court is contrary to the provisions of the Act and law laid down by it. With the said finding, the Apex Court",,,,,,

remitted the matter to the Bombay High Court for fresh consideration on the issue that whether the aforesaid offences are made out in the FIRs, which",,,,,,

are subject matter of the cases pending before the Bombay High Court.,,,,,,

14. In view of the authoritative pronouncement of law in the aforesaid judgments, as discussed above, coming to the facts of the cases on hand, the",,,,,,

allegations against the accused in respective cases are transportation, possession, storage, sale and purchase of banned products viz., tobacco / tambaku",,,,,,

/ gutka / khaini / zarda / pan masala etc., respectively. In Chidurala Shyamsubder Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 , the",,,,,,

learned Single observed that transportation of chewing tobacco or khaini or pan masala do not constitute an offence punishable under Section - 270 of,,,,,,

IPC and that manufacturing of pan masala is not included in Section - 273 of IPC and, therefore, the same is not an offence since it is not a noxious",,,,,,

food. The learned Single Judge has further observed in the said judgment which is as under:,,,,,,

â??â?|.The act done by the petitioners i.e., transportation of khaini and chewing tobacco though dangerous to human life, it would not spread or infect",,,,,,

or cause any disease on account of transportation and if those products are consumed by human being, it would certainly cause damage to the health.",,,,,,

Therefore, transportation of khaini or chewing tobacco is not by itself is not an offence under Section - 270 of IPC and it would fall within Section 270",,,,,,

of IPC.â??,.....

15. Section - 272 of IPC makes punishable an offence by a person, who adulterates any article of food or drink. Therefore, the said section would only",.....

come into play if food or drink is adulterated. There is no definition of â??adulterationâ?? in IPC. The definition of â??adulterantâ?? is found in the,.....

provisions of the FSS Act. Section - 3 (1) (a) of the FSS Act deals with â??adulterantâ?? which means a material which could make the â??foodâ??,.....

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

Jaganath Enterprises 2020 (1) ALT (Crl.) 215 (APHC) and V. Nageswara Rao 2020 Supreme (AP) 348.,.....

16. In Joseph Kurian⁶, the Honâ??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 â??food or drinkâ??; (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 Honâ??ble Supreme Court clearly held that the offence is completed on the introduction of the,.....

adulterant. â??Adulterantâ?? would mean that a material which is mixed to make the â??foodâ?? 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 â??adulterantâ?? for the,.....

offence under Section - 272 IPC to be pressed into service.,.....

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

10. In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying," ,,,,,,

intoxicating or unwholesome drug etc, that the accused administered the substance to the complainant or caused the complainant to take such substance," ,,,,,,

that he did so with intent to cause hurt or knowing it to be likely 19 that he would thereby cause hurt, or with the intention to commit or facilitate the" ,,,,,,

commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or" ,,,,,,

causing it to be taken by any person, through another" ,,,,,,

Tobacco does not fit into this definition. ,,,,,,

18. Section - 273 of IPC deals with sale of a noxious food or drink, and as per which, whoever sells, or offers or exposes for sale, as food or drink, any" ,,,,,,

article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is" ,,,,,,

noxious as food or drink, shall be punished with imprisonment specified therein. Therefore, if a person offers for sale a "food or drink" any article" ,,,,,,

which has become noxious or is in a state of unfit for "food or drink". Thus, the said section would apply, when an article which has become" ,,,,,,

noxious or which has been rendered noxious. It also applies to food or drink only. As held in Sri Jaganath Enterprises 2020 (1) ALT (CrL.) 215, ,,,,,,

(APHC), the word "noxious" is not defined in IPC or in FSS Act. As per the dictionary meaning, the word "noxious" is harmful," ,,,,,,

deleterious, injurious, poisonous etc. As stated above, the allegation in the entire batch of present criminal petitions is with regard to transportation," ,,,,,,

possession, storage, sale and purchase of banned products viz., tobacco / tambaku / gutka / khaini / zarda / pan masala etc., respectively. Therefore," ,,,,,,

according to this Court, the contents of the complaint/charge sheet lacks the ingredients of Section - 273 of IPC." ,,,,,,

19. As far as section - 188 IPC is concerned , as per the settled law on the subject, before an accused is charged, there must be; an order duly" ,,,,,,

promulgated by the public servant; the public servant must have the lawful authority to promulgate the order; the person flouting the same should have ,,,,,,

knowledge about the order directing him to abstain from the act; he must disobey the said order with the knowledge; and such disobedience of the duly ,,,,,,

promulgated order should cause a danger to the human life etc. In Boop Singh Tyagi 2002 Cri.L.J. 2872 a Division Bench of Allahabad High Court held,,,,,,

that right to promulgate the ordinance/order is also an issue which is being raised, because under the FSS Act, the Commissioner of Food Safety alone" ,,,,,,

has the authority to pass the orders only if the article of "food" can causes danger or is injurious to health. ,,,,,,

20. In N.T. Rama Rao v. The State of A.P., rep. by Public Prosecutor Criminal Petition No.5323 of 2009, decided on 17.09.2009 while dealing with" ,,,,,,

the offences under Sections - 188 and 283 of IPC, the learned Single Judge of the combined High Court of Andhra Pradesh held as under:" ,,,,,,

"5) Even if the allegation that the petitioner conducted public meetings at three road junctions contrary to the permission accorded for conducting of a ,,,,,,

public meeting only at one specified place is true, such a direction under Section 30 of the Police Act, 1861 could have been given only by the" ,,,,,,

Superintendent or the Assistant Superintendent of Police of the District but not by any of their subordinates. If such a permission is granted under ,,,,,,

Section 30 of the Police Act, 1861 and is violated, Section 195 (1) (a) of Code of Criminal Procedure mandates that the complaint in this regard has to" ,,,,,,

be made by the public servant concerned or some other person to whom such a public servant is administratively subordinate to enable any Court to ,,,,,,

take cognizance of an offence under Section 188 of Code of Criminal Procedure. In the present case, the charge sheet was filed by the Sub Inspector of" ,,,,,,

Police, who could not have been the authority to grant permission for the public meeting and therefore, the complaint/charge sheet is in violation of the" ,,,,,,

mandatory provision of Section 195(1)(a) of Code of Criminal Procedure. ,,,,,,

6) That apart, the offence alleged to have been committed under Section 283 of the Indian Penal Code by the petitioners and others is obviously in" ,,,,,,

consequence to the alleged offence under Section 188 of Indian Penal Code and is not an independent of the same. Even otherwise, the conduct of" ,,,,,,

public meeting at three road junctions or obstruction to the traffic could not have been considered as causing any danger or injury to any person. In so ,,,,,,

far as the obstruction in any public way is concerned, which can also be covered by Section 283 of the Indian Penal Code, the charge sheet cites only" ,,,,,,

one witness to speak about the traffic jam caused by the road show. But, when the conduct of the public meeting at least at one place has been" ,,,,,,

permitted and if the gathering for that public meeting resulted in any inconvenience by way of obstructing the traffic, the same cannot be considered to be" ,,,,,,

with necessary guilty mens rea to construe the existence of an offence punishable under Indian Penal Code. Under the circumstances, none of the" ,,,,,,

offences alleged can be said to have any reasonable basis and in any view, the complaint/charge sheet being in violation of Section 195 (1) (a) of Code" ,,,,,,

of Criminal Procedure, has to fail." ,,,,,,

7) As the complaint has failed due to its unsustainability, the proceedings in their entirety have to fail, though the 1st accused alone approached this Court" ,,,,,,

by way of this Criminal Petition.â?? ,,,,,,

21. In Thota Chandra Sekhar v. The State of Andhra Pradesh, through S.H.O., P.S. Eluru Rural, West Godavari District Criminal Petition No.15248 of" ,,,,,,

2016, decided on 26.10.2016, wherein by relying on various judgments including N.T. Rama Rao Criminal Petition No.5323 of 2009, decided on" ,,,,,,

17.09.2009 and also the guidelines laid down by the Apex Court in Bhajan Lal 1992 Supp (1) SCC 335 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 proceeding is ,,,,,,

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing" ,,,,,,

efficacious remedy to redress the grievance of the party, it was held that the proceedings in the said C.C. were quashed by exercising power under" ,,,,,,

Section - 482 of Cr.P.C. It was also further held that the proceedings shall not be continued due to technical defect of obtaining prior permission under ,,,,,,

Section - 155 (2) of Cr.P.C. and taking cognizance on the complaint filed by V.R.O. and it is against the purport of Section - 195 (1) (a) of Cr.P.C. ,,,,,,

22. Vide Notification No.501/FSS-1/2020, dated 06.01.2020, the Commissioner of Food Safety, Telangana Directorate of Institute of Preventive" ,,,,,,

Medicine, Public Health Labs and Food (Health) Administration, Narayanguda, Hyderabad, restricted the manufacture, storage, distribution," ,,,,,,

transportation and sale of gutka / pan masala, which contains tobacco and nicotine, as ingredients and chewing tobacco products, like chap tobacco," ,,,,,,

pure tobacco, khaini, kharra, scented tobacco / flavoured tobacco or by whatever name locally it is called packed in sachets / pouches / package in the" ,,,,,,

entire Stage of Telangana under FSS Act, 2006. It is for one year. Vide Notification No.505/FSS-1/2021, dated 06.01.2021, the same was extended" ,,,,,,

for one more year. As per the information furnished and instructions received, several writ petitions were filed challenging the said Notifications before" ,,,,,,

this Court as well as the Honâ??ble Supreme Court. A Division Bench of this Court declined to entertain some writ petitions on the ground that the ,,,,,,

Honâ??ble Supreme Court seized of the said issue. It is also relevant to note that the Honâ??ble Supreme Court remanded back the matter to this ,,,,,,

Court. Therefore, such a notification can only be issued for emergency situations and for prohibiting the distribution and sale of any article of a food" ,,,,,,

cannot be lost sight of. Therefore, in view of the law laid down in the above judgments including the judgments in Chidurala Shyamsudher CrI.P." ,,,,,,

No.3731 of 2018 & batch, decided on 27.08.2018 , Sri Jaganath Enterprises 2020 (1) ALT (CrI.) 215 (APHC) and V. Nageswara Rao 2020" ,,,,,,

Supreme (AP) 348. According to this Court, Section - 188 of IPC will not attract to the allegations leveled against the petitioners herein in this batch of" ,,,,,,

criminal petitions. ,,,,,,

23. As far as Section - 328 of IPC is concerned, it deals with causing hurt by means of poison, etc., with intent to commit an offence. As per the said" ,,,,,,

provision, whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing" ,,,,,,

with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will" ,,,,,,

thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." ,,,,,,

Therefore, there should be administering poison, intoxicating etc., with intent to cause hurt to such person or with intent to commit or to facilitate the" ,,,,,,

commission of an offence or knowing it to be likely that he will thereby cause hurt. As stated above, the allegations in the entire batch of criminal" ,,,,,,

petitions are lacking. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 328 of IPC." ,,,,,,

24. As far as Section - 336 of IPC is concerned, it deals with an act endangering life or personal safety of others, and as per which, whoever does any" ,,,,,,

act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a" ,,,,,,

term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both. In the complaints / charge sheets," ,,,,,,

there is no such allegation of rash and negligent act which endangers human life or personal safety of others. Therefore, according to this Court, the" ,,,,,,

contents of the complaints / charge sheets lacks the ingredients of Section - 336 of IPC.,,,,,,

25. As far as Section - 420 of IPC is concerned, it deals with Cheating and dishonestly inducing delivery of property. There is no such inducement either" ,,,,,,

at the inception or at a later stage. Thus, the contents of complaints / charge sheet lack the ingredients of Section - 420 of IPC." ,,,,,,

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

whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease" ,,,,,,

dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. But, a" ,,,,,,

perusal of the contents of complaints / charge sheets in the present batch of cases, such ingredients are lacking and, therefore, Section - 269 of IPC" ,,,,,,

does not arise in the present batch of cases.,,,,,,

27. In view of the above said discussion, according to this Court, transportation, possession, storage, sale and purchase of tobacco products are not" ,,,,,,

totally banned in the State of Telangana and also in the Country. Therefore, it cannot be said that Sections - 269, 270, 271, 272 and 273, 328, 336 and" ,,,,,,

420 of IPC are attracted to the cases in this batch.,,,,,,

28. As far as the offences under FSS Act is concerned, as already discussed above, in Chidurala Shyamsubder Crl.P. No.3731 of 2018 & batch," ,,,,,,

decided on 27.08.2018 , the learned Single Judge following the guidelines laid down by the Honâ??ble Supreme Court in Bhajan Lal 1992 Supp (1)" ,,,,,,

SCC 335 held that the police are incompetent to take cognizance of the offences punishable under Sections - 54 and 59 (1) of the FSS Act," ,,,,,,

investigating into the offences along with other offences under the provisions of the IPC. It was further held that filing charge sheet is a grave illegality, as" ,,,,,,

the Food Safety Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections - 41 and 42 of FSS Act.,,,,,,

In the present case, the police have registered the crime for the offences under

Sections - 188, 270 and 273 of IPC. Therefore, in the present batch of" ,,,,,,
cases, entertaining the complaints / filing the charge sheets by the police is
contrary to the principle laid down in Chidurala Shyamsubder CrI.P. No.3731" ,,,,,,
of 2018 & batch, decided on 27.08.2018 ." ,,,,,,

29. With regard to the offences under COTP Act, it is relevant to mention the
objects and the reasons of the said Act itself clearly state that the act is" ,,,,,,

meant to prohibit the advertisement of, and to provide for the regulation of trade
and commerce in, and production, supply and distribution of, cigarettes" ,,,,,,

and other tobacco products and for matters connected therewith or incidental
thereto. A reading of the said objects of the said Act would reveal that a" ,,,,,,

total ban of tobacco products was not envisaged by the said Act. The Parliament
merely felt it expedient to control the advertisement and sale of" ,,,,,,

tobacco products. As noted earlier in the order, Section - 3 (p) of the COTP Act
and the schedule therein define tobacco products. Pan masala, gutkha" ,,,,,,

and chewing tobacco are included in the definition of tobacco products. Section -
5 of the COTP Act deals with prohibition of advertisement of" ,,,,,,

cigarette and other tobacco products only. No person, who is engaged in the
production, supply or distribution of cigarettes or other products shall" ,,,,,,

advertise the same. Similarly, no person having the control over a medium can
advertise cigarettes or tobacco products, and no person shall be a part of" ,,,,,,

any advertisement. ,,,,,,

30. Section - 7 of the COTP Act deals with the imposition of restriction on the
sale, trade, commerce of tobacco products unless every package of" ,,,,,,

cigarette or tobacco product contains a specified warning (pictorial or otherwise).
Section - 4 of the COTP Act, bans smoking in public places. In" ,,,,,,

addition, Section - 6 of the COTP Act, prohibits the sale of cigarettes or other
tobacco products to a person who is under the age of 18 years are in an" ,,,,,,

area within 100 yards of any educational institution. ,,,,,,

31. A reading of this Act, particularly Sections - 4, 5, 6 and 7 clearly shows that
there is no general ban or general prohibition on the manufacture/sale of" ,,,,,,

tobacco products. 22 What is barred is merely the sale of these products to a
person, who is below the age of 18 years and in an area within 100 yards" ,,,,,,

of an educational institution. The other aspects covered by Sections - 5 and 7 of
the COTP Act, deal with the advertisement and the warning, which is" ,,,,,,

to be contained on a package, in which the tobacco product is packed. This is a

regulatory mechanism only. Therefore, according to this Court, the",,,,,,
above said allegations of transportation, possession, storage, sale and purchase
of banned tobacco products will not attract the offence under Section -7",,,,,,
of the COTP Act.,,,,,,

32. As far as Section - 20 (2) of the COTP Act is concerned, as stated above, the
allegations against the petitioner in respective complaints / charge",,,,,,

sheets are that they were transporting, possessing, storing, selling and
purchasing the banned tobacco products to the customers illegally in order to
gain",,,,,,

wrongful profits. In view of the said allegation, it is apt to refer to Section - 20
(2) of the COTP Act for better appreciation of the case and to decide the",,,,,,

issue in question, and the same is as under:",,,,,,

â??20. Punishment for failure to give specified warning and nicotine and tar
contents.â?"",,,,,,

(1) â?!",,,,,,

(2) Any person who sells or distributes cigarettes or tobacco products which do
not contain either on the package or on their label, the specified",,,,,,

warning and the nicotine and tar contents shall in the case of first conviction be
punishable with imprisonment for a term, which may extend to one year,"",,,,,,

or with fine which may extend to one thousand rupees, or with both, and, for the
second or subsequent conviction, with imprisonment for a term which",,,,,,

may extend to two years and with fine which may extend to three thousand
rupees.â??",,,,,,

33. Thus, Section - 20 of COTP Act deals with punishment for failure to give
specified warning and nicotine and tar contents. But, in the complaints /",,,,,,

charge sheets, there is no allegation against the petitioners that they were
carrying on trade or commerce in contraband or any other tobacco products",,,,,,

without label and specified warning on the said products. In view of the same,
the contents of the complaints / charge sheets lack the ingredients of",,,,,,

Section - 20 (2) of the COTP Act. Even, there is no allegation that the seized
products do not contain labels with statutory warning. Thus, registering the",,,,,,

crimes for the said offence against the petitioners is not only contrary to Section
- 20 (2) of COTP Act, but also contrary to the principle laid down in",,,,,,

Chidurala Shyamsubder Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 .
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 Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 , Sri Jaganath Enterprises 2020" ,,,,,,

(1) ALT (Crl.) 215 (APHC) and V. Nageswara Rao 2020 Supreme (AP) 348.,,,,,,

34. For the foregoing discussion and the authoritative principle of law, Criminal Petition Nos. 3768, 3879, 4046, 4077, 4098, 4099, 4100, 4102," ,,,,,,

4141, 4151, 4157, 4182, 4187, 4247, 4249, 4251, 4258, 4262, 4277, 4405, 4415, 4542, 4615, 4640, 4681, 4727, 4775, 4825 and 5826 of 2021" ,,,,,,

are allowed quashing the proceedings against the petitioners therein in the respective crimes mentioned therein. Since the proceedings in the aforesaid,,,,,,

Criminal Petitions are quashed against the respective petitioners, the respective Station House Officers / Investigating Officers are hereby directed to" ,,,,,,

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

35. Further, Criminal Petition Nos. 152, 153, 155 & 162 of 2020, 3498, 3500, 3509, 3514, 4070, 4110, 4119, 4140, 4178, 4194, 4216, 4230," ,,,,,,

4361, 4612, 4622 and 4632 of 2021 are also allowed quashing the proceedings against the petitioners therein in the respective Calendar Cases" ,,,,,,

mentioned therein. Since the proceedings are quashed, the respective petitioners are at liberty to file appropriate applications before the concerned" ,,,,,,

Magistrate for return of the seized property / vehicle and the Magistrate shall consider the same in accordance with law.,,,,,,

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