
(2022) 11 TEL CK 0085

In the Telangana High Court

Case No : Criminal Petition Nos. 6235, 7084, 7174, 7240, 7264, 7269, 7273, 7277, 7289, 7294, 7318, 7333, 7348, 7490, 7508, 7509, 7590, 7676, 7855, 7949, 7996, 8017, 8035, 8088, 8124, 8139, 8140, 8255, 8465, 8467, 8475, 8477, 8501, 8502, 8510, 8511, 8515, 8518, 8519

Somishetty Santosh

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 47

Indian Penal Code, 1860 — Section 188, 269, 270, 272, 273, 278, 328, 336, 409, 420, 411

Food Safety and Standards Act, 2006 — Section 59(1)

Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 — Section 20(1), 20(2)

Citation : (2022) 11 TEL CK 0085

Hon'ble Judges : Dr. Chillakur Sumalatha , J

Bench : Single Bench

Advocate : Bala Murali Y

Final Decision : Allowed

Judgement

1. Challenge in these Criminal Petitions are the charge sheets and the First Information Reports which were registered alleging that the respective petitioners committed offences punishable under Sections 188, 269, 270, 271, 272, 273, 328, 336 and 420 IPC. The allegation is also that the petitioners committed offences under the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter be referred to as "the COTP Act, 2003", for brevity) and that, Section 59 (1) of the Food Safety and Standards Act, 2006, is violated. Though not collectively, for the said offences, different provisions of law were quoted basing on different set of case facts, however, regarding the same subject matter.

2. Heard Sri Y.Bala Murali, Sri Balakisti Srinivas Reddy, Sri Prasad Ravanaboina, Sri S.Chandrasekhar, Ms. C.Sunitha Kumari, Sri M.A.K.Mukheed, Sri Kondadi Ajay Kumar, Sri Gajanand Chakravarthi, Sri Mohd Muzaffer Ullah Khan, Sri Nanda Kishore Amarchand Yadav, Sri P.Padma Rao and Sri B. Balaji, learned counsels appearing for the petitioners, and also the learned Public Prosecutor representing the respondent-State.

3. For proper understanding of the case, the provisions of law invoked, the gist of the allegations and the crux of the matters taken up for adjudication are tabulated as under:

Sl.

No

CRL.P.NO.

RELIEF SOUGHT FOR

SECTIONS OF

LAW INVOLVED

NATURE OF OFFENCES

IPC

COTP

Act

1

6235 of

2022

Quash of FIR.No.168 of 2022 of Nagarkurnool Police Station (petitioner/A1)

1,88,273

20(2)

Illegal selling of

1.RR Tobacco-410 packets

2. V-1 Tobacco-200 packets

3. SR Tobacco-200 packets

4. Swagath Gold Tobacco- packets

5. Sagar Pan Masala-170 packets

6. Vimal Pan Masala-1850 packet

7. Raj Nivas pan Masala- packets

8. Famous Pan Masala -1

packets

2

7084 of

2022

Quash of FIR.No.486 of 2022 of Sanathnagar Police Station (petitioners/A1 & A2)

1,88,273

20(2)

Illegal selling of 1.Vimal-50 packets

2.RR tobacco-65 packets

3.Miraj tobacco-35 packets.

3.

7174 of

2022

Quash of FIR No.140 of 2022 of Kodad(R) Police Station (Petitioner/Accused No.3)

273

24(1)

Illegal transportation of

1.9,975 Mirage super toba sachets - 19 plastic bags.

2. 14,400 Raja tobacco sachets plastic bags.

4.

7240

of 2022

Quash of CC.No.98 of 2021 pending on the file of the Court of Special II Class Judicial Magistrate, Hanamkonda. (petitioner/Accused)

269,

273

NIL

Illegal transportation of 1.Amber packets 52

2. RR zarda packets 42 3.Balaji Baba zarda packets 9

4. J.K.Zarda-57

5.Swagath Gold Packets-12

5.

7264

of 2022

Quash of FIR.No.223 of 2022 of Langar House Police Station. (petitioners/
Accused

1 & 2)

328,

336, 273

20(2)

Illegal storing of two bags containin K9000 (102 packets)

6

7269

of 2022

Quash of CC.No.4368 of 2022

on the file of the Court of VI Addl. Chief Metropolitan Magistrate, Nampally,
Hyderabad.

2,72,273

20(2)

Illegal selling of

1.R.R Gold Tobacco- 4 bags.

2. R.R.Panmasala- 4 bags.

3. Miraj Tobacco- 31 packets.

4. Suraj Tuta Tobacco- 20 packets. 5.SR-1 Tobacco- 1 bag.

6.Sagar panmasala-1 bag.

7. V-1 Tobacco-1 bag. 8.Vimal 7-155 packets. 9.Baba-120 Tobacco-35 Ladis

10. Rajnivas-12 packets 11.Premium XL Tobacco-18 packets

12. Loose Zarda-38 packets 13.KP Tobacco-44 packets
14. RR Tobacco- 18 packets
15. Kamla Pasand Tobacco-4 packets
16. Vimal panmasala- 40 packets
17. Amber Tobacco- 6 packets
18. Sawagth Tobacco- 24 packets
19. Vimal Kesari- 146 packets
20. Paris Cigarettes-4 boxes
21. A-10 Cigarettes-16 boxes.

7

7273

of 2022

Quash of CC.No. 218 of 2022 on the file of the court of Special judicial First Class Magistrate for Excise cases at Nampally, Hyderabad.

328,336,

272,273

r/w 511

20(2)

Illegal storing of

- 1.Maha Baba-15 packets 2.KP double black-40 packets
3. R.R Pan masala-40 packets 4.Baba 160-10 packets
5. Baba 120-22 packets
6. Vimal pan masala-10 pouches
7. Swagath gold-22 packets 8.Maha baba-60 pouches
9. Rajini Gandha-10 boxes
10. Meraj Qani-06 pouches 11.patta Zarda-4kg
12. Rush brand Zafrani pathi-0 small bags.
13. Kamala pasand-07 boxes
14. Baba black-3 tins
15. Sugar-15 packets

16. K-9000-2 packets.

8

7277 of

2022

Quash of CC.No.101 of 2022 on the file of the court of Special Magistrate of first class Prohibition

and Excise offences Court at Sangareddy.

2,73,188

3(M)

Illegal transportation of

ambar tobacco gutka - 19 bags.

9

7289 of

2022

Quash of FIR.No.64 of 2022 of Nizamabad II Town Police station, Nizamabad.

420,270,

273

20(2)

Illegal selling of

1.Gutka Sachets about total 20,885 2.Tobacco sachets about total 66,733

3.Cigarette packets about 7,626

4. Pan masala about total 55,10 sachets

10.

7294 of

2022

Quash of FIR No. 268 of 2022 of Kachiguda police station, Hyderabad.

3,28,273

20(2)

Illegal selling of

1.Paris Cigarette- 560 boxes

2. Black cigarettes-13 boxes 3.ESSE lights cigarette-28 boxes 4.Mond cigarette-19 boxes

5. win cigarettes-12 boxes.

6. ESSE Gold-2 boxes

7.Ruli river cigarettes-2 boxes 8.Gudang garam cigarettes-6 boxes

9. Mirage Tobacco-315 packets

10. Loose tobacco-15 packets

11. Loose tobacco-39 packets 12.RR ICE lip-24 packets

13. XL-01-425 packets

14. SR-1- 51 packets 15.Chaini Tobacco-42 packets

16. Amber Tobacco-30 packets

17. swagath tobacco- 50 packets

11.

7318 of

2022

Quash of CC.No.202 of 2022 on the file of the court of Special judicial First Class Magistrate for excise cases at Nampally, Hyderabad.

188,272,

273,328

r/w 511

20(2)

Illegal selling of

1.Paris cigarettes- 7 packets

2. Meraj tobacco packers-24 sachets 3.SR-1 Tobacco-132 sachets

4. Sagar Pan Masala-69 sachets

5. R.R.Pan masala – 35 sachets

6. R.R. tobacco- 35 sachets

7. Vimal Pan masala- 12 sachets

8. pan Bahar 120 mixed sachets-13

9. 24 pan masala 120 mixed sachet 8.

12.

7333 of

2022

Quash of STC.No. 539 of 2020 on the file of the court of Judicial Magistrate
of First Class Bellampalli

270,273

r/w 34

Nil

Illegal selling of

1.25 vimal packets

2. (51) V-1 packets

3. (24) Vimal 7 packets

4. (24) V1-7 packets 5.(32) Pulchap sachets.

13.

7348 of

2021

Quash of C.C.No.3435 of 2022

on the file of the Court of VIII Addl. Chief Metropolitan Magistrate, Hyderabad

272, 273

r/w 511

20(2)

Illegal selling of

1.RR gold tobacco-37 packets 2.RR tobacco-4 packets 3.Swagath Gold
tobacco-9 packets

4.Baba 120 mini tobacco-986 packet 5.Baba 120 tobacco-986 pouches

7. Baba black tin-1 tin.

7. Ratna tin-1 tin

8.Channi Khaini tobacco-4 packets 9.Black cigarattes-7 boxes

10. Raja Tobacco-1 Packet

11. Loose Zarda Gold Packets -Packets

12. Loose Zarda Gold Packets-1 Packets

13. Loose Zarda Gold Packets -10 Packets

14. VI Tobacco-100 Packets

15. Meraj Tobacco- 42 laddis

16. F-9 Tobacco-2 Bags

17. SR-1 Tobacco -51 Packets

14.

7490 of

2022

Quash of C.C.No.85 of 2021 on the file of the Court of Judicial Magistrate of First Class, Kortula

270, 273

20(1)

Illegal possession of 1.Amber packets-25

2. Sagar pan masala packets-10

3. vimal vimal pan masala-24 packet 4.SR-1- 10 packets

15.

7508 of

2022

Quash of C.C.No.188 of 2021

on the file of the Court of Judicial Magistrate of First Class, Kortula

270, 273

20(2)

Illegal possession of 1.Amber packets-200

2.Sagar pan masala-50 packets 3.Sitara-60 packets

16.

7509 of

2022

Quash of Crime No.189 of 2021 of Dandepalli police

station

270, 273

NIL

Illegally transporting 3 bags banned tobacco

17.

7590 of

2022

Quash of C.C.No.303 of 2022

pending of the file of the Court of Judicial Magistrate

of First Class, Adilabad

270, 273

NIL

Illegal possession/selling of

1.Sri Ganaesh pandarpur-45 pouche 2.Hola tobacco-30 pouches

3.Maaza-108 pouches

18.

7676 of

2022

Quash of C.C.No.478 of 2022

pending on the file of the Court of XXV Metropolitan Magistrate, Cyberabad

270,

272, 273

20(2)

1). Chota Bai Jardha - 20 packets

2. China Khaini 130 packets

3. Swagat Tobacco - 378 packets

4. RR Tobacco Miraj 387 Packets 5.Jumbo Miraj 245 packets 6.Vimal 300 packets

7. Raj Niwas- 100 packets

8. Joda Bai - 144 9. Vimal Jardha 300 packets

10. RR Pan Masala- 65 packets

11. 9000 gutka - 7 packets

12. Sagar bag- 60 packets

13. Amber - 40 packets

14. RK Tobacco 25 packets

19.

7855 of

2022

Quash of CC.No. 265 of 2022 pending on the file of the Court of Judicial Magistrate of First

Class, Narayankhed, Sangareddy.

2,70,272

20(2)

r/w 7(2)

Illegal transporting of

1.3 bags - Jarda ambar

2.5 bags - sagar jarda

20.

7949 of

2022

Quash of CC.No.801

of 2022 pending on the file of the Court of IV Additional Judicial First Class Magistrate at

Warangal.

328 r/w

511 ,

270, 273 r/w 34

NIL

Illegal selling of

1.575 packets of amber tobacco

2. JK Zardha Tobacco - 150packets

3. RR Zardha tobacco- 210 packets

4. Swagath tobacco - 38 packets

21.

7996 of

2022

Quash of CC.No. 1278 of 2022

pending on the file of the Court of Judicial First Class

magistrate(Special Mobile) at Nalgonda.

273 r/w 34

Nil

Illegal selling of

1.RR Tobacco (7) packets

2. Sagar (6) packets (70 pouches) 3.SR-I (5) packets (70 pouches)

4. Raja tobacco (2) packets 5.K-900 (01) packet.

22.

8017 of

2022

Quash of CC.No. 1232 of 2020

pending on the file of the Court of the Judicial First Class Magistrate for
prohibition & Excise offences at Nalgonda

District.

272,273

r/w 34

20(2)

Illegal selling of

1.55 packets of RR Tobacco

2. 90 packets of blue bull tobacco

3. 20 packets of Sagar gutka

4. 20 packets of S.R-1 Gutka packets

5. 45 packets of Vimal Pan masala

6. 25 packets of RR black packets

7. 50 packets of Raja premium tobacco.

23.

8035 of

2022

Quash of CC.No. 55 of 2021 pending on the file of the court of Principal Judicial First Class Magistrate at Shadnagar, Hyderabad district.

2,73,420

59(1)

of food safety and standards Act

Illegal selling of

1.vimal Pan masala-17 packets 2.Sugar Gold-7 packets

3.V-1 tobacco 17 packets 4.Miraj -75 sachets

5.Mahababa Zafrani Zarda 5 packets 6.SR-1 (75) sachets

7.Sagar Pan masala 75 sachets 8.Blu chewing tobacco-50 packets 9.Bahubali pan masala-50 packets

10. Sagar Active one pan masala packets

11.SA-One 6 packets

12.RR Pan masala- 70 sachets

13. RR Chewing Tobacco- 70 sachets

24.

8088 of

2022

Quash of CC.No.255 of F2021 on the file of the court of Judicial First Class Magistrate at

Utnoor, Adilabad District.

2,70,273

Nil

Illegal selling of

1.Cash gold pan masala with C- tobacco (690) packets

2.M- scented tobacco gold VC chewing tobacco (18) packets

3. Raj Niwas (3) packets

25.

8124 of

2022

Quash of PRC.No.6 of 2021 on the file of the court of Addl.

Judicial First Class Magistrate at Ramannapet.

272,273,

328

r/w34

NIL

Illegal selling of

1.RR Tobacco- 25 pouches 2.Miraj tobacco- 705 pouches 3.K-9000 tobacco-3600 pouches 4.Raja tobacco-100 pouches 5.Amber tobacco-75 pouches 6.Black tobacco-2 packets 7.Blue Bull tobacco- 35 pouches

8. Swagath gold-11 9.SR1-5

10.Vimal-10 11.V1 tobacco-180

12.Chaini-15 pouches

13. RR Gold-50 pouches

14. Rani-51 pouches.

26.

8139 of

2022

Quash of Cr.No.252/2022 of Mahabubnagar II town Police Station.

420,188,

273

20(2)

Illegal selling of

1.Paris Special filter cigarette – 3 boxes

2.H-10 Filter cigarette-4 bags 3.A-10 filter cigarette-2 bags.

27.

8140 of

2022

Quash of Cr.No.255 of 2022 of Mahabubnagar II

Town Police Station.

420,188,

273

20(2)

Illegal transportation of

Gai chap tobacco packets- 22 bags.

28.

8255 of

2022

Quash of CC.No. 624 of 2019 pending on the file of the Court of Chief Metropolitan Magistrate, Hyderabad.

272,273,

188

NIL

Illegal selling of 1.Golden Zarda 6 pieces

2.Raza Premium tobacco-3 boxes 3.Baba 1220 premium chewin tobacco 2 pieces

4.Baba 160 premium chewin tobacco 2 pieces

5. Juhi Luxury Zafari Zarda- 2 piece

6. RR Gold chewing tobacco 10 packets

7. Baba 160 premium chewin

tobacco – 8 pieces.

29.

8465 of

2022

Quash of CC.No.13048 of

2021 pending on the file of the Court of Chief Metropolitan Magistrate, Hyderabad at

Nampally.

272,273,

188, 336

20(2)

Illegal selling of

1.baba-120 tobacco 3 boxes

2. Baba 120, 4 small cotton boxes

3. Baba-120 Tobacco 400g

30.

8467 of

2022

Quash of Cr.No. 236 of 2021 of Dandepalli Police Station, Mancherla District.

270 r/w

273 r/w 34

NIL

Illegal selling of

Banned tobacco packets- 5 bags

31.

8475 of

2022

Quash of CC.No. 12429 of 2020 on the file of the the court of XVI Additional Chief Metropolitan Magistrate, at Nampally,

Hyderabad.

1,88,420

20(2)

Illegal selling of

1.(12) cartons of P10 cigarettes 2.(03) cartons of Paris cigarettes, 3.(02) cartons of P10 cigarettes.

4. (486) carton boxes of variou brands of foreign cigarettes

32.

8477 of

2022

Quash of CC.No. 772 of 2022 on the file of the court of I Additional Judicial Magistrate of First class at Jagtial.

279,337,

338,427,

429.

Sec.

(03) of PDPP Act and Sec. 3 r/w

181 of M.V. Act

Illegal selling of 1.Amber bags -15

2. amber packets -540

3. Sitara – 50 packets

4. XL packets -1344

5. V1 packets -1000

33.

8501 of

2022

Quash of CC.No.2726 of 2022

on the file of the court of I Addl. Judicial First Class Magistrate, Khammam

2,70,273

20(2)

Illegal selling of

1.baba Tobacco tins-10

2. lakshmi Tobacco packets-21

3. VIP Tobacco packets-6

4. vijaya Durga tobacco packets-4

5.J.K. tobacco packet-1

6. baba Tobacco packet-6

7. Mirza tobacco packet-110

8. Amber packets-45

9. RMD tobacco packets-140

10. Baba tobacco packets-100

11. V1 Tobacco packets-70

34.

8502 of

2022

Quash of CC.No. 253 of 2022 on the file of the court of Special Judicial First Class Magistrate for excise cases at Nampally, Hyderabad.

188,272,

273,328

r/w 511 IPC

20(2)

Illegal selling of

1.Paris Cigarettes-49 packets

2.Pan Bahar pan masala-14 sachets 3.Rajinigandha-2 packs

4.V-1 Tobacco 148 sachets

5. SR-1 Tobacco 132 sachets

6. Vimal pan masala-102 sachets

7. Sagar Pan masala-163 sachets 8.Maha baba Zarda 1 pack

9. Mirage Tambaku 14 packets

10. RR.Gold 141 sachets

11. RR pan masala 37 sachets.

35.

8510 of

2022

Quash of CC. No.11657 of 2021

on the file of the court of XVI ACMM Court, Hyderabad

336,272,

273

20(2)

Illegal selling of 1.Baba -120 6 boxes

2. Baba-160 -1 box 3.Baba 54- 3 boxes

4. Ratna Tobacco- 3 boxes 5.Shivaji tobacco-3 boxes

6. Raj Ratan Tobacco special-2 boxes

7. Ratna tobacco 30 pieces

8. Loose tobacco packets 6 bi packets

9. Loose Tobacco packets-13 sma
packets

36.

8511 of

2022

Quash of PRC.No. 341 on the file of the court of VIII Additional Chief
Metropolitan Magistrate, Hyderabad.

272,273,

328 r/w 511

20(2)

Illegal selling of

1.RR Gold tobacco- 25 packs 2.SR-1 Gutka-8 packs

3.V-1 Tobacco-5 small size packs 4, Vimal pan masala-3 packs

5. Meraj Tobacco-12 pouches 6.RR Tobacco-14 pouches

7. Baba-120 tobacco 1 box

37.

8515 of

2022

Quash of CC.No. 13954 of 2021 on the file of the court of II Additional Chief
Metropolitan Magistrate,

Hyderabad.

Nil

20(2)

Illegal selling of

1.Miraj Tobacco 20 bags 2.Baba 120 Tobacco 2 bags 3.Amber Tobacco 12 bags

38.

8518 of

2022

Quash of CC.No.1441 of 2022 on the file of the court of Chief Metropolitan Magistrate, Hyderabad

188,273,

272,336 r/w 34

Nil

Illegal transportation of 1.Amber Tobacco-2 bags 2. Miraj Tobacco-20 bags

3. V-1 Tobacco-16 bags And

1.RR.Tobacco-15 bags 2.RR Pan masala-08 bags

3.Vimal Pan masala-16 bags

4. Raja Tobacco-1 bag .

39.

8519 of

2022

Quash of CC.No. 4060 of 2022 on the file of the Chief Metropolitan Magistrate, Hyderabad.

188,272,

273,336

r/w 34

Nil

Illegal transportation of 1.K-9000 -20 packers 2.Sagar-02 bag 3.Sagar Jarda-03 bags 4.Sagar S1 bag

5.RR Pan Masala- 2bags 6.RR Khaini-1 bag

7. Meeraj 1 bag 8.Vimal -3 bags

40.

8526 of

2022

Quash of Crime No. 26 of 2022 of Makloor Police Station, Warangal.

188,272,

273, 328

r/w 34 IPC

20(2)

Illegal transportation of

No.1 Ambar packets – 4 white bags. 2.RR – Tobacco -4 White bags

3. JK – 4 bags

4. Miraj -2 bags

41.

8545 of

2022

Quash of CC.No. 8110 of 2021

pending on the file of the court of VI ACMM Court,

Hyderabad.

188,420,

269

20(2)

Illegal storing and selling of foreign cigarettes

1.Paris cigarettes i.e, 98 boxes

42.

8590 of

2022

Quash of Cr.No.428 of 2022 of Hanumakonda

Police Station.

2,69,273

NIL

Illegal transporting of

Gutka packets and 5 Ambar bags.

43.

8591 of

2022

Quash of Crime No.141 of 2022 of Maddannapet Police Station, Hyderabad,

272,273,

336

20(2)

Illegal selling and illegal storage of 1.RR Gold chewing tobacco-2 packets

2. Paris cigarettes-19 packets 3.Maha Baba Tobacco-22 pouches. 4.V-1 tobacco-38 packets 5.RR.tobacco-22 packets

6.Mirage super tobacco-2 packets 7.Baba 160-2 packets

8.K-9000-4 packets 9.RR.Pan Masala-2 packets

10.S.R-1 Tobacco-34 packets.

44

8596 of

2022

Quash of Crime No. 421 of 2019 on the file of the court of VI Additional Chief Metropolitan Magistrate, Hyderabad.

270,271,

273

20(1)

(2)

Illegal storage of

1.Pouch packing machines(02) 2.Gutka Bags(16)

3.Tobacco Bags(02) 4.Sagar Gutka Bag (01) 5.MDM Gutka Bag(01)

6.Baba 120 tobacco labels rolls(02)

7. A-Zarda Bag (01)

8. Swagath gold Zarda Bag (01)

9. Blue bull zarda bag (01)

10. Rajiganda Label rolls (08)

11. RR Gutka label rolls (20)

12. Empty packing covers (10)

45.

8604 of

2022

Quash of CC.No.3078 of 2022

on the file of the court of Chief Metropolitan Magistrate at Nampally, Hyderabad.

420

20(2)

Illegal storing and selling of 1.Baba 120- 33 mini boxes 2.Baba Black Tobacco-20 boxes 3.Raj Ratan Qiwan- 2 cartoons

4. Ratna Tobacco- 5 cartoons 5.Chaini Khaini- 1 bag

6. Royal 3320 Tobacco- 8 cartoons

7. UK 3300 Tobacco- 1 cartoon

8. Juhi Tobacco 2 star-1 cartoon 9.Juhi Tobacco 3 star -35 boxes 10.Ratna Tobacco- 8 boxes 11.Golden Jarda- 4 Cartoons

12. Mixed tobacco tins- 1 bag

13.Raja Tambaku-1 bag

46.

8611 of

2022

Quash of CC.No. 1169 of 2020 on the file of court of Judicial First Class Magistrate at

Adilabad.

2,70,273

NIL

Illegal transportation of 1.Amber (04) bags.

2.SR-01 Tobacco (06) small bags

3. V1- tobacco (20) small bags. 4.Ganesh Tobacco (01)

5.RK classic tobacco (02) small bags

47.

8612 of

2022

Quash of CC.No.335 of 2022 on the file of court of Judicial First Class Magistrate, Adilabad.

2,70,273

NIL

Illegal selling of

1.vimal Gutka Small -(09) bags 2.H5 Tobacco small- 09 bags.

3. Rajnivas tobacco- 03 small bags.

4. Sagar tobacco- 500 packets

5. Amber tobacco- 34 packets

6. Z black Tobacco-11 packets

7. Sagar Tobacco-80 packets 8.Baba tobacco-10 packets 9.Tota tobacco-01packet

10. Mazza tobacco -01 packet

48.

8613 of

2022

Quash of CC.No. 547 of 2021 on the file of court of Judicial First Class Magistrate,

Adilabad.

2,70,273

NIL

Illegal selling of

1.V1 tobacco-08 small bags 2.Vimal panmasala-02 small bags

49.

8614 of

2022

Quash of CC.No. 258 of 2022 on the file of Court of Judicial First Class Magistrate at Adilabad.

2,70,273

Nil

Illegal selling of

1.V1 tobacco-15 packets. 2.Sagar-2 packets.

3.RK.Classic Tobacco – 02 Packets. 4.H5 Tobacco-4 packets.

5. Big Vimal -02 packets.

6. Small vimal -02 packets.

7. H5 Tobacco-02 packets

50.

8627 of

2022

Quash of CC.No.769 of 2022 on the file of the court of Judicial First Class

Magistrate at

4,20,273

20(2)2

4(1)

Illegal selling of 1.Amber packets -12

2.V1 Tobacco packets -370 3.RR Tobacco -50

4.RR pan Masala -10

Suryapet.

5.Zafrani Zarda- 18

6.JK tobacco -34

7. Blue Bull tobacco -58 8.Banarsi perfumed tobacco -38 9.Sapna Tobacco -25

10.SR-1 Tobacco -70 11.Sagar pan masala -20 12.RR Gold Tobacco -20

13.Swagath gold Tobacco- 18

51.

8639 of

2022

Quash of P.R.C.No.34 of 2021

on the file of the court of Additional Judicial First Class Magistrate at

Mahabubabad.

420,328,

270,273

Nil

Illegal transportation of 50 big amber packets

52.

8680 of

2022

Quash of Crime No. 390/2022 of Saidabad Police Station.

188

5

Illegal transportation of

1. Raja Tobacco – 7 packets

2. Sudhakar tobacco – 8 packet

3. Vimal pan masala 1 bag

4. V-1 tobacco 1 bag

5. Sagar Pan Masala – 1 bag

6. SR-1 Tobacco – 1 bag

53.

8681 of

2022

Quash of Crime No. 197/2022 of Maridepa Police Station.

270, 273

20(2)

Illegal selling of

Khaini Tobacco packets – 20 bags

54.

8682 of

2022

Quash of CC No. 3489/2022 on the file of the court of V Additional Metropolitan

Magistrate, Medchal-Malkajgiri.

188,

270, 272

20(2)

Illegal selling of

1. SR -1 tobacco - 2184 pouches
2. V-1 tobacco -6240 pouches.
3. RR tobacco -2240 pouches
4. Miraz tobacco -1575 pouches
5. Amber tobacco - 500 pouches
6. Chaini Chaini tobacco - 7 pouches
7. Keshav gold tobacco -136 pouches
8. Sagar pan masala -2184 pouches
9. RR pan masala -170 pouches
10. Vimal Pan masala -624 pouches
11. Keshav gold pan masala 1350 pouches.

55.

8694 of

2022

Quash of CC No. 1665/2022 on the file of the Court of Judicial First Class

Magistrate, Zaheerabad.

270, 273

20(2)

r/w 7(2)

Illegal transportation of

1. V1 tobacco - 5 big bags
2. SR 1 tobacco - 2 big bags
3. Swagat tobacco - 2 big bags
4. Raja tobacco - 25 packets
5. Mirage tobacco - 11 packets

4. A common submission was made by the learned counsels for the petitioners that this Court through order dated 14.07.2022 in CrI.P.No.9062 of 2021 and batch, while extensively dealing with the provisions of law applicable, has observed that those provisions of law does not attract to the facts of the said cases and as the allegations against the petitioners in these Criminal Petitions are also similar, a similar order may be passed.

5. Learned Assistant Public Prosecutor also stated the same.

6. This Court while dealing with the subject matter in the above referred batch of cases, comprehensively dealt with the law involved by framing the following points for consideration:-

(1) Whether being in possession and having found involved either in transporting or selling the tobacco products like cigarettes, gutka, chaini, etc., attract the provisions of COTP Act, 2003.

(2) Whether the acts of possessing, transporting or selling tobacco products like cigarettes, gutka, chaini, etc attract the provisions of the Indian Penal Code, 1860 more particularly Sections 188, 269, 270, 272,

14

Dr.CSL, J

CrIPNo.6235 of 2022

And batch

273, 278, 328 read with 511, 336, 409 and

420 IPC.

(3) Whether either transporting or selling or possessing tobacco products like cigarettes, gutka, chaini, etc attracts Section 59(1) of Food Safety and Standards Act, 2006.

(4) Whether there exists any justifiable grounds to invoke the power granted to this Court under Section 482 Cr.P.C. and to quash the proceedings that are pending against the petitioners as prayed for.

7. Answering point No.1, this court in the common order dated 14.07.2022 rendered in Criminal Petition No.9062 of 2021 and batch, gave a clear finding at paras 16 and 17 of the order, which is as follows:-

"16. Though as rightly projected by the learned Assistant Public Prosecutor, the use of cigarettes and allied tobacco products is injurious to health and there is every need to adopt stringent approach for curtailing the said use by the public, to prohibit production, transportation and sale of those products, there is no specific provision in the COTP Act, 2003, which makes such production,

transportation and sale of the tobacco products a prohibited offence. At the same time, this Court is not inclined to accept the submission of the learned counsel on record for the petitioners that as Rs.53,750/- crores of revenue is being generated in the country through the sale of tobacco products, the same has to be taken into consideration for disposal of the present criminal petitions. It is not out of place to mention that for treatment of tobacco related diseases, the victims and their families are laying their lives and there are more than eight lakhs casualties every year in the country due to direct or indirect use of tobacco related products which includes cigarettes, chaini, gutkha, etc. Also, it is estimated that loss of productivity due to use of these products is almost Rs.13,500/- crores annually. That means, the revenue generated through the tobacco industry is worthless in the light of the annual casualties and loss of productivity due to use of those products.

17. Article 47 of the Constitution of India casts a duty upon the State to raise the level of nutrition and the standard of living of its people. It also states that the State should take steps for improvement of public health as the same is its primary duty. It also lays down that the State shall endeavour to bring about prohibition of consumption of intoxicating drinks which are injurious to health. This provision is under Part-IV of the Constitution of India which lays down the Directive principles of State Policy. Basing on the said salutary provision, the legislature by its wisdom ought have framed a stringent legislation which prohibits the transportation, storage and sale of the tobacco products. However, such a legislation has not yet seen the light of the day. The only legislation that is invoked time and again is COTP Act, 2003. The said legislation does not prohibit production, supply and transportation of cigarettes and tobacco products in toto. It says that only when package of the products does not contain the label as prescribed, then the possessors of those products would be held liable for punishment. It further covers the circumstances where the said products are being sold to any person who is below the age of 18 years or that they are sold within a radius of 100 yards from any educational institution. If the possession is otherwise, it does not fall within the ambit of the said legislation. None of the acts alleged to have been committed by the petitioners therefore fit to any of the provisions of the COTP Act, 2003. Therefore, this court holds that the petitioners cannot be held to have committed offences punishable under the provisions of the COTP Act, 2003."

8. Answering point No.2, i.e., in respect of the offences punishable under different provisions of the Indian Penal Code, the findings of this Court in the aforesaid common order at para 46 are as under:-

"46. The entire version of the investigating agency is that the petitioners were involved in the business of possessing/transporting/storing/selling of tobacco products like gutka, chaini, etc. There is no whisper that the said products were banned by the competent authority. No legislation is brought to the notice of this court to show that possession of tobacco products viz., gutka and alike and

involving in the business of selling those products is banned and committing such acts is declared as disobedience to order duly promulgated by a public servant, or that the acts committed would amount to public nuisance or those acts are likely to spread infection of disease dangerous to life, or noxious for consumption as food or drink whose sale is prohibited, or that possession of tobacco products makes the atmosphere noxious to health, or there was an attempt to administer those products to any person with an intention to cause hurt, or that those acts amount to rashly or negligently endangering life or personal safety of others or amount to criminal breach of trust or cheating. Therefore, the provisions invoked viz., Sections 188, 269, 270, 272, 273, 278, 328 read with 511, 336, 409 and 420 IPC does not attract to the bundle of facts that are projected by the investigating agency."

9. Likewise, answering point No.3, with regard to the applicability of Section 59(1) of Food Safety and Standards Act, 2006, this Court discussing the law on the subject at para 52 of the aforesaid common order observed as follows:-

"52. Narcotic and psychotropic substances were kept out of the ambit of the term "food" specifically. It is clearly indicated that they do not fall within the ambit of the term "food". A food item means a substance intended to be used for human consumption either as a primary food or genetically modified or engineered food. Tobacco products in whatever form they may be, does not therefore fall within the ambit of the term "food". Therefore, invoking Section 59(1) of the Food Safety and Standards Act, 2006 against the petitioners is undesirable."

10. Further more, though the Government of Telangana issued notification vide notification No.501/FSS/I/2022, on 07.01.2022, prohibiting manufacturing, storing, distribution, transportation and sale of gutka and pan masala in the entire state of Telangana, the Hon'ble Supreme Court of India in the case between Shri Venkateshwara Traders Vs. State of Telangana and others, vide SLA No.20441 of 2021 with SLP(C).No.1656 of 2022, stayed operation of the said notification.

11. Likewise, a Division Bench of this Court through common order, dated 08.9.2022, rendered in Writ Petition No.20212 of 2022 and batch, at paras 4 to 8 of the order observed as under :-

"4. During pendency of the aforesaid SLP, the impugned notification bearing No.501/FSS-I/2022 dated 07.01.2022 came to be issued. By order dated 31.03.2022, Supreme Court has stayed the impugned notification dated 07.01.2022.

5. Learned counsel for the petitioners have made a grievance that despite the notification being stayed by the Supreme Court, yet the petitioners are being harassed by the local police authorities by interfering with their day-to-day businesses.

6. We make it clear that since the entire matter is before the Supreme Court, it

would not be proper on our part to have a parallel adjudication as the order of the Supreme Court would be binding on all courts and authorities. Since the Supreme Court has stayed the impugned notification vide the order dated 31.03.2022, respondents shall comply with the said order of the Supreme Court in letter and spirit.

7. If any of the petitioners feel that the stay order of the Supreme Court has been violated or breached, they would be at liberty to take appropriate steps in accordance with law.

8. This disposes of the writ petitions.”

12. Ultimately, a circular Memorandum was issued by the Director General of Police, Telangana State, Hyderabad in RC.No.295/R1-NS/2022, wherein and whereby instructions were issued to the Station House Officers not to interfere with the business activities who carry out the business as per the Rules of the Food Safety and Standards Authority of India and also not to take any coercive measures against the petitioners as long as the orders of the Hon’ble Supreme Court are in force. Further more, as earlier indicated, none of the provisions of law indicated in the respective First Information Reports and the charge sheets apply to the case facts.

13. So far as Criminal Petition No.8477 of 2022 is concerned, the allegation against the petitioner, who is arrayed as accused No.2, is only that he committed offences punishable under Sections 188, 270 and 273 IPC, which does not attract to the said transaction. Therefore, this Court is of the view that the proceedings against him are unsustainable 14. The petitioner in Criminal Petition No.8596 of 2022, who challenged the proceedings in C.C.No.421 of 2019 that is pending on the file of the Court of I Additional Chief Metropolitan Magistrate, Hyderabad, was alleged to have committed offences punishable under Sections 270, 271 and 273 IPC and Sections 20(1) and 20(2) of COTP Act and also under the provisions of Prohibition of Trade Act. Learned Assistant Public Prosecutor failed to state how the said legislation i.e., Prohibition of Trade Act, applies to the case facts where the allegations against the petitioner is only that he procured gutka, pan masala and other allied tobacco products and kept for distribution.

15. Therefore, this Court is of the view that continuation of proceedings against the respective petitioners would definitely amount to abuse of process of Court and thus, the proceedings, as prayed for, are liable to be quashed.

16. Resultantly, all the Criminal Petitions are allowed. The proceedings initiated against the petitioners in the respective cases are hereby quashed. The property and vehicles, if any, seized shall be returned to the lawful claimants by Police or the Court concerned in case, no other proceedings are pending against any other suspects/accused in the respective cases.

17. As a sequel, pending miscellaneous applications, if any, shall stand closed.