

IN THE HIGH COURT FOR THE STATE OF TELANGANA

CRIMINAL PETITION Nos.9062 and 9554 of 2021 and
CRIMINAL PETITION Nos.607, 2633, 2634, 2636, 2639, 2816,
2892, 2900, 4980, 4987, 5035, 5052, 5071, 5075, 5078, 5090,
5804, 5805, 5806, 5811, 5836, 5859, 5867, 5894, 5910, 5953,
5983, 5985, 6034, 6056, 6058 and 6105 of 2022

CRIMINAL PETITION No.9062 of 2021

Between:

Kuru Vijay Kumar,
S/o Ramalingam and another.

... Petitioners

And

The State of Telangana, repled by its

by Public Prosecutor, High court for the

State of Telangana, Hyderabad and another.

...Respondents

JUDGMENT PRONOUNCED ON 14.7.2022
HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether her Lordship wishes to
see the fair copy of the Judgment? : Yes/No

Dr. JUSTICE CHILLAKUR SUMALATHA

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

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< Gist:

> Head Note:

! Counsel for the Petitioners: Mr. Sri Y.Bala Murali,
 Sri Gajanand Chakravarthy, Sri Ravanaboina Prasad,
 Sri Veerjala Praveen Kumar, Sri Balakisti Srinivas Reddy,
 Sri Nanda Kishore Amarchand Yadav, Sri S.Satyanarayana
 Murthy, Sri G.Ravi Chandra Sekhar and Sri M.R.Boggula Raju

^ Counsel for the Respondents: Sri Khaja Vizarath Ali,
 Assistant Public Prosecutor

? Cases Referred:

NIL

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION Nos.9062 and 9554 of 2021 and
CRIMINAL PETITION Nos.607, 2633, 2634, 2636, 2639,
2816, 2892, 2900, 4980, 4987, 5035, 5052, 5071, 5075,
5078, 5090, 5804, 5805, 5806, 5811, 5836, 5859, 5867,
5894, 5910, 5953, 5983, 5985, 6034, 6056, 6058 and
6105 of 2022

COMMON ORDER:

Projecting that the provisions of law under which the
accusation is made against the petitioners does not attract
to the facts of the case and thereby, seeking to quash the
proceedings that are pending against the petitioners, these
Criminal Petitions are filed.

2. Seeking to quash the charge sheets, Criminal Petition
Nos.9554 of 2021, 607, 5910, 5894, 2633, 2636, 2639,
2816, 4980, 4987, 5035, 5052, 5078, 5805, 5806, 5811,
5953, 5859, 5867, 5983, 6056, 6058 and 6105 of 2022 are
filed.

3. Seeking to quash the F.I.Rs, Criminal Petition
Nos.9062 of 2021, 2892, 2900, 5090, 2634, 5071, 5075,
5836, 6034, 5985 and 5804 of 2022 are filed.

4. A meticulous perusal of the material that is available on record in all the Criminal Petitions discloses making of accusation against the petitioners invoking Sections 3(m), 5, 6(b), 7(2), 7(5), 20(2), 24(1) and 23 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as “the COTP Act, 2003”, for brevity). As far as the provisions attracting the Indian Penal Code are concerned, they are Sections 188, 269, 270, 272, 273, 278, 328 read with 511, 336, 409 and 420 IPC.

5. In Criminal Petition No.9554 of 2021, Section 34(a) of Excise Act, 1968 and in Criminal Petition No.9062 of 2021, Section 59(1) of Food Safety and Standards Act, 2006 were also invoked.

6. The sum and substance of the version of the prosecuting agency in all these cases is that the petitioners were in possession of the tobacco products like gutka, pan masala, etc., and they were found involved in activities like selling, storing or transporting the said tobacco products.

7. 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	CrI.P. No.	RELIEF SOUGHT FOR	SECTIONS OF LAW INVOLVED			NATURE OF OFFENCES
			COTP Act	IPC	OTHER LAWS	
1	9554 of 2021	Quash of CC No.457 of 2020 pending on the file of court of Judicial Magistrate of First Class, Huzurnagar.	23, 20(2)	273	34(a) of AP Excise Act, 1968	Selling and transportation of tobacco products. 1)K-9000 gutka-30 packets 2)blue bull tobacco-30 packets 3)mc dowels whisky quarter-46 Royal stag quarter-40
2	2892 OF 2022	Quash of FIR.No.93 of 2022 of Ibrahimpatnam Police Station, Rachakonda. (petitioners A1 &A2)	20(2)	270 and 273	NIL	Selling and transportation of tobacco products. 1)K9000 gutka packets-120 pouches. (2)H-10 cigarettes-35 packets
3	9062 OF 2021	Quash of FIR No.330 of 2021 of Ellanthankunta Police Station, Rajanna Siricilla district. (Petitioner A1 &A2)	NIL	270, 273, 328 R/W 511	59(i) FSSA, 2006	Possession and selling of Tobacco products. Amber gutka packets- 48 Vimal packets-155 V-1 packet-208 Paris cigarette-42
4	607 OF 2022	Quash of CC.No.1138 of 2020 pending on the file of JFCM at Nalgonda (petitioners A2)	7(5), 20(2)	272, 273 and 420	NIL	Selling and transportation of tobacco products. 1)cigarette ESSE light- 5 packets. 2)Paris big size cigarette-10

						packets, 3)Strawberry Mond super slim cigarettes-3 packets, 4)Paris small size cigarette-13 packets.
5	2900 OF 2022	Quash of FIR No.15 of 2022 of Adavidevulapally Police Station(petitioners A2,A3,A7,A8)	20(2)	188, 272, 273, 420	NIL	Transportation and Possession of banned products, viz., tobacco/ /gutka/khaini etc. (1)blue bull - 12 bags. (2)K-9000 Gutka - 5bags
6	5910 OF 2022	Quash of CC.No.2263 of 2022 pending on the file of the Court of VII Additional Chief Metropolitan Magistrate, Hyderabad (sole accused	nil	272, 273, 336	Nil	Selling tobacco products: 1) Paris Cigarettes 239 boxes 2. Win Cigarettes 27 boxes 3.XL-1 Jafrani Tobacco-18 Packets, 4. V-1 Tobacco -25 Packets, 5. RR Gold Tobacco 585 Packets, 6. S.R-1 Tobacco- 265 packets, 7.RR Group Tobacco-45 packets, 8.Maha Baba Zafrani Tobacco- 126 packets, 9.Swagath Gold Tobacco-96 packets, 10.Amber Tobacco-45 packets, 11.Raja Tobacco- 120 packets, 12.Meraj Tobacco- 10ladhis,
7	5894 OF	Quash of CC.No. 398 of 2022	24(1)	420, 273	NIL	Selling and transportation of

	2022	pending on the file of the Court of JFCM at Kodad (petitioners A1-A5)				tobacco products: 1) RR-4440 sachets 2)Amber-7500 sachets, 3) vimal-3000 sachets , 4)V-1-3000 sachets, 5)Swagath-154 sachets, 6)Miraj-225sachets.
8	5090 OF 2022	Quash of FIR No.177 of 2022 of Maheshwaram PS Rachakonda. (Petitioners A1&A2)	6(B)	270, 273	NIL	Transporting tobacco products, for selling, viz., (1) Sagar Pan Masala - 200 packets, (2) SR-1 - 200 packets (3) RR Tobacco - 160 packets, (4) Vimal - 200 packets, (5) Chaini Tobacco -10 packets, (6) Swagath Gold Tobacco - 60 packets.
9	2633 OF 2022	Quash CC 1409 of 2021 pending on the file of the Court of JFCM at Nalgonda. (sole accused)	nil	272, 273	Nil	Transportation of tobacco products. (1) RR tobacco products -5 packets, (2)Swagath gold tobacco products -5 packets (3) Blue bull tobacco product -5 packets (4) Sagar Pan Masala -4packets (5) SR-1 tobacco products -20 packets, (6) K-9000 tobacco product -3 packets, (7) V-1 tobacco products- 20 packets,

						(8) Vimal tobacco products -3 packets.
10	2634 OF 2022	Quash of FIR No.26 of 2022 of Nalgonda I Town police station. (sole accused)	7(5), 20(2)	269	Nil	Illegally procuring of banned gutka and tobacco products. (1)120 baba tobacco products 5 tins, (2) golden zarda one box containing 10 (50) grams boxes, (3)sagarzarda 60 pouches.
11	2636 OF 2022	Quash of CC.No.263 of 2019 pending on the file of the Court of II Additional JFCM at Miryalguda. (petitioner A2)	nil	273, 278 and 420	Nil	Illegally selling and transportation of noxious Gutka. 1. Blue Bull-305 packets, 2. Khaleja-259 Packets, 3. Amber -32 packets, 4. Miraj - 80 packets, 5. V-1Tobacco -243 packets, 6. Vimal Pan Masala -150 packets, 7. Rani (79) consisting 70 pieces.
12	2639 OF 2022	Quash of CC.No. 124 of 2022 pending on the file of the Court of JFCM at Miryalguda. (petitioner A2)	20(2)	328 r/w 511	Nil	Selling gutka packets illegally. (1)K9000 gutka packets -10, (2)Mahababa tobacco pouches-60, (3) V-1 tobacco packets-104, (4)Miraj tobacco -525 pouches.
13	2816 OF 2022	Quash of CC.No.1357 of 2021 pending on	nil	272, 273	Nil	Illegally selling of gutka and other tobacco products.

		the file of the court of Special JFCM (for prohibition and excise offences) at Nalgonda. (petitioner A2)				(1)V-1 gutka -57 packets, (2)SR-1 gutka -107 packets, (3)BANARSI gutka - 30 packets.
14	4980 OF 2022	Quash of CC.No.147 of 2022 pending on the file of the court of Judicial Magistrate of First Class, Adilabad. (petitioner sole accused)	Nil	270, 273	Nil	Illegal possession of tobacco and gutka. (1) RK classic tobacco -8 Bori bags.
15	4987 OF 2022	Quash of CC.No.150 of 2022 pending on the file of the court of Judicial Magistrate of First Class, Adilabad. (sole accused)	Nil	270, 273	Nil	Illegally possession and selling of noxious substances i.e., tobacco (1)RK Classic Tobacco-04 big bags, (2) RK Classic Tobacco-10 plastic covers, (3) JK Tobacco-10Boxes, (4) Hot Tobacco-10 small bags, (5) Action Tobacco-02 boxes, (6)Amber-20 packets, (7) XZ01 Tobacco-01 small bag, (8) SR Tobacco-01 smallbag, (9) Ganesh Tobacco-01 big bag.
16	5035 OF 2022	Quash of CC.No.335 of 2021 pending on the file of the Court of Judicial Magistrate of First Class, at Adilabad. (sole accused)	Nil	270, 273	Nil	Illegal selling of noxious substances. SR-1 tobacco- 10 bags.

17	5052 OF 2022	Quash of CC.No.1418 of 2018 on the file of XIX Metropolitan Magistrate Kukatpally, Cyberabad. (petitioners A2&A3)	20(2)	409, 420, 273,188	Nil	Transporting banned tobacco, panmasala, gutka packets from Karnataka state illegally. (1) Amber 16 bags.
18	5071 OF 2022	Quash of FIR.No.57 of 2022 of Kadthal police station. (petitioners A1 &A2)	NIL	272, 273 r/w 34	Nil	Purchasing and selling banned tobacco items to the public at higher rates without having valid permission from government. (1) K-9000 Gutka- 22 packets, (2) RR Gutka-4bags, (3) SwagathGold-27 packets (4) RR Tobacco-23 packets, (5)RR Gold Chewing Tobacco-14packets, (6) Vimal Tobacco-6 packets (7) Miraj Kayne-17 packets (8) Banarsi perfumed Tobacco- 10packets (9) Chota baba Zafrani Patti-10 packets, (10) Chaini Tobacco - 2 packets (11) Sudhakar Zarda-21 packets (12) Miraj Tobacco - 18 packets, (13) Paris cigarette -5packets.
19	5075 OF 2022	Quash of FIR.No.82 of 2022 of Amangal police station,	20(2)	188, 272, 273	Nil	Selling gutka packets without valid permission. k-9000 gutka

		Cyberabad. (sole accused)				packets-60 big packets.
20	5078 OF 2022	quash of CC.No 268 of 2022 pending on the file of the Court of Judicial Magistrate of First Class Sirpur, Komarambheem Asifabad district (petitioners A1 &A2)	nil	270, 420, 273 r/w 34	Nil	Illegal possession and sale of noxious material containing nicotine. (1)pool chap -5 cartons.
21	5811 of 2022	Quash of CC No.1017 of 2022 pending on the file of the Court of XVII Additional Metropolitan Magistrate, Cyberabad. (petitioner A1)	20(2)	272, 273, 188	Nil	Dumping, transporting and selling of banned tobacco products: (1)R.R. chewing tobacco- 90 packets, (2) Swagath Gold - 47 packets, (3)RR Tobacco 70packets, (4) Raja Tobacco- 102 packets, (5) Miraj Tobacco- 95 packets, (6)Amber Tobacco- 24 packets, (7) V-I Tobacco-225 packets, (8)SR-1 Tobacco- 54 packets.
22	5836 of 2022	Quash of FIR.No.217 of 2022 of Khammam police station. (sole accused)	20(2)	270,273	Nil	Transporting and selling of Khaini, gutka etc.. from state of Karnataka. 10 bags of Amber Gutka (each bag contain 100 packets).
23	5859 of 2022	Quash of CC.No.416 of 2022 pending on the file of the Court of Judicial Magistrate of First Class,	nil	270, 273	Nil	Illegal possession and sale of noxious food. (from A1) (1)bail jodi- 9 packets.

		Sirpur, KomrambheemAsif abad District. (petitioner A1 &A2)				(2)pool chap- 15 packets. (from A2) (1)amber packets- 98 packets. (2)M tobacco-32 boxes. (3)V-1 tobacco-716 packets. (4)V-1 tobacco-48 packets (blue). (5)N1 tobacco-48 packets (6)XL-01 tobacco- 134 packets. (7)XL-01 tobacco small-216 packets (8)bail jodi packets- 4 (9)maza tobacco-2 packets (10)Kashmiri quiwan tobacco-10 packets. (11)DJ tobacco-5 packets (12)janam tobacco- 1packet. (13)pul chap-175 packets 14)janam tobacco small-60 packets (15)baba tobacco-20 packets (16)baba black tobacco-10 packets (17)JK tobacco-18 packets.
24	5867 of 2022	Quash of CC.No.100 of 2022 pending on the file of the Court of Special Judicial Magistrate of First Class, prohibition and Excise, Sangareddy. (petitioners A1-A3)	20(2)	270, 273	Nil	Transportation of prohibited gutka in car from Bidar to Hyderabad. 33 bags of Miraj khaini Zardaeach bag contains 35 packets.

25	5953 of 2022	Quash of SC No.39 of 2022 pending on the file of the Court of Principal Sessions Judge, Medak at Sangareddy. (petitioners A1-A3)	20(2) r/w 7(2)	270, 273	Nil	Illegally transporting prohibited tobacco packets. (1)Onchilalongchipas and 56 boxes. (2)baba 120 chewing tobacco small tins-6 boxes. (3)baba 120 chewing tobacco tins-12 boxes. (4)baba tobacco small packets-130 ladis. (5)miraz tobacco-35 ladis. (6)mahakchaini tobacco-2bags. (7)baba 160 tobacco-67 ladis.
26	5983 of 2022	Quash of CC.No.207 of 2022 pending on the file of the court of Judicial Magistrate of First Class, Manugur. (petitioners A1-A3)	NIL	270, 273	Nil	Transporting and possession of banned tobacco products. (1)Amber big bags-10, (2)Vimal Panmasala gutka- 50 packets
27	6034 of 2022	Quash of FIR.No.227 of 2022 of Balanagar police station. Cyberabad. (petitioners A1 &A2)	6(B)	273,188, 420	NIL	Selling gutka and pan spices. (1). MirajTobacco-35 packets, (2) Vimal Tobacco 22 packets, (3) VimalJardha - 22packets, (4) Sagar Panmasala - 10Packets, (5) SR-1 Jardha-9packets, (6) RR Panmasala-4Packets, (7) RR-Gold 04packets, (8)SwagathGold - 4packets,

						(9) RR-Miraj - 6packets, (10)Bahubali Panmasala- 5packets, (11)BlueJardha- 5Packets, (12) Raj NivasJardha- 3packets, (13) RajnivasPanmasala- 3 Packets, (14)Raj Tobacco - 1Packet
28	5985 of 2022	Quash of FIR No.51 of 2022 of Bellampally I Town police station, Ramagundam. (petitioners A1-A4)	nil	270, 273	Nil	Illegal sale and transportation of banned gutka packets. Amber-350 packets, M-scented tobacco- 45 packets, V1 tobacco-190 packets.
29	6056 of 2022	Quash of CC.No.732 of 2022 pending on the file of the Court of VIII Additional Chief Metropolitan Magistrate, Hyderabad. (sole accused)	5, 20(2)	188, 273, 336	Nil	Purchasing and transporting of banned tobacco products from Bidar to Hyderabad. (1)RR tobacco -13 bags, (2)RR gold tobacco - 13 bags, (3)Miraj Tobacco - 12 bags, (4)Loose Tobacco -7 bags, (5)SR-1 Tobacco 4 bags, (6)Vimal Tobacco - 4 bags, (7)Paris Tobacco - 170 boxes, (8)Easy Light Cigarettes - 40 boxes, (9) Baba 160 (1

						cartoon), (10)Baba 120- 10 boxes, (11) Baba 120-4 boxes(each box 200gms), (12) Baba Black- 24 box, (13) Baba 120- 12 boxes, (14) Baba 120- 5 boxes, (15)Ratna-4 boxes, (16) Chaini -6 bags (17)Milano cigarettes- 2 boxes (18) Mond cigarettes- 1 box (19) Gudang garam- 1 box (20)Swagath Tobacco-4 packets, (21)Amber Tobacco - 4 packets.
30	6058 of 2022	Quash of CC.No.1069 of 2021 pending on the file of the Court of XVI Additional Metropolitan Magistrate Cyberabad at Rajendranagar. (petitioner A1)	3(M), 20(2)	273, 188, 420	Nil	Illegally transporting prohibited gutka packets. (1)R.R gold tobacco - 30 bags (2)Pan Ragheer- 60 bags.
31	5804 of 2022	Quash of Cr.No.188 of 2022 of Chikkadapally police station, Hyderabad. (petitioner A1& A2)	20(2)	273, 272	NIL	Purchasing and selling of banned tobacco products. (1)H-10 Banned Cigarettes -27 Packets, (2)Tobacco-2 bags, (3)Gold Tabacco- 2Bags, (4) KP Double Black Tobacco-4 Bags,

						(5) V-1 Tobacco - 1 Bag, (6) Raja Khaini Tobacco -2 Bags, (7)Swagath Gold Tobacco-4 Bags, (8)Miraj Tobacco-1 Carton, (9) Loose Tobacco - 25 Packets, (10)RR tobacco-packets, (11) Sagar Pan Masala -1 Bag, (12) TO Pan Masala -1 Carton, (13) RR Pan Masala - 1 Bag, (14) Raj Nivas Pan Masala-2 Bags (15) Vimal Pan Masala 8 Bags, (16) 24 Caret Pan Masala -5 Boxes.
32	5805 of 2022	Quash of CC.No.284 of 2022 pending on the file of the Court of judicial magistrate of first class and excise court sangareddy. (Sole accused)	3(M), 24(1)	272, 188	NIL	Illegal transportation of banned tobacco products such as gutka panmasala from Bidar to Hyderabad. 1)RR miraj-1 bag, 2)RR pan masala-3 bags, 3)RR jardha-3 bags, 4)sagar pan masala - 2 bags, 5)sagar jardha-2 bags, 6)swagath-1 bag, 7)vimal pan masal-6 bags, 8)vimal jardha-6 bags.
33	5806 of 2022	Quash of CC.No.105 of 2022 pending on the file of the Court of	20(2)	270, 273	NIL	Selling of gutka and tobacco products. (1) Mirage packets 137,

		Judicial Magistrate of First Class, Medak. (sole accused)				(2) Vimal packets 200+5,(3) SagarPackets 350, (4) SR-1 Packets – 364, (5) V-1 Packets 225, (6) Blue Bull packets 150, (7) SwagatGold-100, (8) Chaini Packets-33, (9) Banarsi Packets 71, (10) Amber packets-100, (11) Zardhapackets-17, (12) Lateef packets 23, (13) Swapna packets 3.
34	6105 of 2022	Quash of CC.No.168 of 2022 pending on the file of the Court of Judicial Magistrate of First Class, Narayankhed, Sangareddy.	20(2)	273	NIL	Purchasing tobacco products at lower price and transporting same from Bidar to Nizamabad. Amber tobacco - 70 big bags.

8. In the light of the said factual scenario, it has to be seen whether the provisions of law mentioned therein attracts the allegations laid. The points thus emerges for consideration are:

(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, 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.

9.Point No.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.

Making their submissions, the learned counsel appearing for the petitioners viz., Sri Y.Bala Murali, Sri Gajanand Chakravarthy, Sri Ravanaboina Prasad, Sri Veerjala Praveen Kumar, Sri Balakisti Srinivas Reddy,

Sri Nanda Kishore Amarchand Yadav, Sri S.Satyanarayana Murthy, Sri G.Ravi Chandra Sekhar and Sri M.R.Boggula Raju, in one voice contended that the average revenue, including GST and Excise duty, from tobacco products stands at about Rs.53,750 crores in the entire country, as told by the Central Finance Minister to Rajya Sabha. Learned counsel also stated that 30% of the revenue to the Government of the State of Telangana is through sale of liquor and tobacco products and indeed, the petitioners have not committed any offence whatsoever either under the COTP Act, 2003 or under the Indian Penal Code. The contention of the learned counsel is that possession of tobacco products like gutkha and chaini is not prohibited in the State of Telangana and further, none of the provisions of COTP Act, 2003 attracts the alleged acts committed by the petitioners even if it is presumed that the story of the prosecution is true and correct and therefore, the proceedings that are initiated against them are unsustainable in the eye of law.

10. Quite contra, the learned Assistant Public Prosecutor submitted that use of tobacco products is injurious to health, and that Rules and Regulations were framed by the Government to restrict the use of tobacco products. Learned Assistant Public Prosecutor also contended that there is a mandatory requirement to exhibit on the overleaf of the tobacco products sold that the said product is injurious to health if consumed and wide publicity is also being given by the Government to restrict the use of tobacco products and thus, possession of huge quantity of tobacco products is a punishable offence. The test of the veracity of the submissions made should be based on the provisions contained in the relevant legislation i.e., COTP Act, 2003. As rightly submitted by learned Assistant Public Prosecutor, it has been accepted universally that the major share of annual deaths in the country is due to use of tobacco products. By the date of introduction of COTP Act, 2003, it was estimated that eight lakhs deaths annually in the country are due to the use of tobacco products directly or indirectly. When the parliamentary committee recommended that there is a need for comprehensive

legislation to prohibit advertisement regarding use of tobacco products and for regulating the production, supply and distribution of tobacco products including cigarettes, the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill was introduced. The said Bill having been passed by both the Houses of Parliament and having received the assent of the President on 18-05-2003, came into force as “Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. The COTP Act, 2003 besides prohibiting smoking in public places, also prohibits advertisement of cigarettes and tobacco products. Further, the COTP Act, 2003 prohibits sale of cigarettes and tobacco products to a person below the age of 18 years and in an area within a radius of 100 yards of any educational institution.

11. Coming to the cases taken up for adjudication, Police made accusation that Sections 3(m), 5, 6(b), 7(2), 7(5),

20(2), 24(1) and 23 of COTP Act, 2003 attracts to the acts committed by the petitioners, though not collectively. Therefore, for proper understanding, the said provisions are extracted as under:-

Section 3(m) of COTP Act, 2003 reads as under:-

“sale”, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale”.

Section 5 of COTP Act, 2003 reads as under:-

“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”.

Section 6(b) of COTP Act, 2003 reads as under :-

“Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area:-

- (b) in an area within a radius of one hundred yards of any educational institution”.

Sections 7(2) and 7(5) of COTP Act, 2003 reads as under:-

“Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products:-

- (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.
- (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”.

Section 20(2) of COTP Act, 2003 reads as under:-

“Punishment for failure to give specified warning and nicotine and tar contents:-

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain 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”.

Section 23 of COTP Act, 2003 reads as under:-

“Forfeiture of advertisement and advertisement material:-Where any person has been convicted under this Act for the contravention of the provision of section 5, the advertisement and the advertisement material for cigarettes and other

tobacco products may be forfeited to the Government and such advertisement and advertisement material shall be disposed of in such manner as may be prescribed by rules made under this Act”.

Section 24(1) of COTP Act, 2003 reads as under:-

“Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years–

(1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees”.

12. The fact that the petitioners were in possession of tobacco products is borne by record. The allegation in some cases is that they were merely in possession, in some cases, they were transporting and in other cases, they kept the tobacco products for sale.

13. A meticulous perusal of the afore-mentioned provisions makes it abundantly clear that the prohibition is not in toto. The COTP Act, 2003 lays down that a person is prohibited from producing, supplying or distributing tobacco products directly or indirectly where the package of

those products does not bear a label giving specified warning in such style and type prescribed. Section 8 lays down the manner in which specific warning shall be made. Likewise, Section 9 gives details of the language in which the said specified warning shall be expressed. In the same manner, the size of letters and figures is prescribed under Section 10. It is not the case of the prosecuting agency that the petitioners were in possession of tobacco products which does not bear such a label in the prescribed manner or in such a language that is prescribed or in such size of letters and figures that is prescribed. Therefore, it can undoubtedly be held that Section 3 (m) which defines the word “sale”, Section 7(2) which imposes restriction on trade and commerce of tobacco products without there being a prescribed label of specified warning, Section 7(5) which prohibits production, supply or distribution of cigarettes or any other tobacco products which does not contain a label regarding the nicotine and tark content, Section 20(2) which prohibits sale or distribution of cigarettes or tobacco products which does not contain the specified warning on the package, attracts to the facts of the case.

14. Coming to the offence punishable under Section 24(1) of COTP Act, 2003, the said provision makes a person who contravenes Section 6 of the COPT Act punishable. Section 6 of the said Act prohibits sale, offer to sell, permit sale of cigarettes or any other tobacco products to a person who is below the age of 18 years or in an area within a radius of 100 yards of any educational institution.

15. In Criminal Petition Nos.5894 and 5090 of 2022, the allegation is that petitioners therein contravened Section 6 of COTP Act, 2003 which is punishable under Section 24(1) thereof. However, the contents of F.I.R. in both the cases does not disclose any mention that the petitioners therein were either found selling or have sold or promoted the sale of the alleged tobacco products or cigarettes to any person who is below the age of 18 years or at an area within a radius of 100 yards of any educational institution. Therefore, the allegation that they have contravened Section 6 of the COTP Act, 2003 and thereby, they are liable to be punished under Section 24(1) thereof is unsustainable. Therefore, this court considers that none of

the provisions of law under the said legislation i.e., COTP Act, 2003 attracts to the alleged acts committed by the petitioners.

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.

18.Point No.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, 273, 278, 328
read with 511, 336, 409 and 420 IPC.***

Apart from the provisions of COTP Act, 2003, the prosecuting agency also alleged that the petitioners committed offences punishable under different provisions of Indian Penal Code, 1860. Though not collectively, there is an allegation that the petitioners in different cases have committed offences attracting Sections 188, 269, 270, 272, 273, 278, 328 read with 511, 336, 409 and 420 IPC.

19. An offence in normal parlance is an act that violates a particular law and requires a particular punishment.

20. As per Section 40 of Indian Penal Code, an “offence” denotes a thing that is punishable under the said Code.

21. The version of the prosecuting agency is that by involving in the acts of transporting, storing, selling and alike the tobacco products in huge quantity, the petitioners have committed offences punishable under the relevant provisions of the Indian Penal Code, 1860. Therefore, it has to be seen whether the version of the prosecution is

genuine and whether there are any justifiable grounds for the prosecuting agency to continue prosecution against the petitioners in respect of those offences.

22. Section 188 IPC makes the person who disobeys the order duly promulgated by public servant punishable. The said provision reads as follows:-

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain 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.—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.”

23. Therefore, by the above provision, it is clear that if an order is promulgated by a public servant who is lawfully empowered to promulgate such an order and when a person knowingly disobeys the said order, he would be guilty of the act of disobeying that order and would be liable for punishment under Section 188 IPC.

24. However, in the case on hand, there is nothing on record to show that any one of the petitioners against whom such accusation is made had done such an act. Also, there is nothing on record to show that there is any order that is promulgated by the public servant in respect of the activities that were found to have been conducted by the petitioners and are restrained or prevented by the public servant. Therefore, this Court is of the view that continuation of proceedings against the petitioners under such a provision is unsustainable in law.

25. In case, any person does an act either unlawfully or negligently which is likely to spread the infection of any disease dangerous to life, he shall be held liable under Section 269 IPC. The said provision reads as follows:-

“Negligent act likely to spread infection of disease dangerous to life. -Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

26. It is not the case of the prosecuting agency that any of the petitioners against whom such accusation is made have done any such act either unlawfully or negligently which is likely to spread the infection of any disease dangerous to life. None of the activities, if any, alleged to have been undertaken by the petitioners like transporting, storing or selling the tobacco products can be termed to be unlawful or negligent acts which are likely to spread the infection of any disease dangerous to life. Therefore, it cannot be held that the petitioners against whom such an accusation is made would be liable for the said offence.

27. It is also the allegation of the prosecuting agency that some of the petitioners have involved in the act of spreading the infection of disease dangerous to life and thereby, committed the offence punishable under Section 270 IPC.

28. Section 270 IPC prescribes punishment for committing malignant acts which are likely to spread infection of disease dangerous to life. The said provision reads as under:-

“Malignant act likely to spread infection of disease dangerous to life.—Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

29. Though use of tobacco products reportedly is said to cause diseases like cancer etc., spread of infection through use of tobacco products or by sale of tobacco products is not reported anywhere. Even the learned Assistant Public Prosecutor failed to state how the acts alleged to have been committed by the petitioners falls within the ambit of

Section 270 IPC. No material whatsoever is on record to show that either possessing or selling or transporting the tobacco products like gutka, etc., would spread the infection of any disease dangerous to life. Therefore, this court is of the view that quoting of the said provision and booking a case with an allegation that the acts committed by the petitioners would fall within the ambit of the said provision of law is unsustainable.

30. It is also alleged that some of the petitioners have involved in the process of adulteration. The process of adulteration would mean making the said article which is subjected to adulteration noxious. Though the word ‘adulteration’ and ‘adulterant’ are not specifically defined in the Indian Penal Code, 1860, we can find the definition of ‘adulterant’ in the Food Safety and Standards Act, 2006. Section 3(a) of Food Safety and Standards Act, 2006 defines what an ‘adulterant’ means. It reads as under:-

“adulterant” means any material which is or could be employed for making the food unsafe or sub-standard or mis-branded or containing extraneous matter.”

31. Therefore, it is to be shown that some article or material is employed in some other article which is intended to be used as food or drink to make the same unsafe and noxious for consumption. Section 272 IPC reads as under:-

“Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

32. There is no material on record to show that the persons against whom such an allegation i.e., that they have committed the offence punishable under Section 272 IPC is made, have used or employed any material in an article which is to be used for consumption as food or drink so as to make the said article unsafe or sub-standard or noxious. Therefore, this court holds that invoking the said provision is bad in law.

33. It is also the allegation that some of the petitioners were involved in selling of noxious food and thereby, committed offence punishable under Section 273 IPC. Section 273 IPC reads as under:-

“Sale of noxious food or drink.—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is 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.”

34. Though the word ‘food’ is not defined in Indian Penal Code, 1860, we can get the definition of ‘food’ from the Food Safety and Standards Act, 2006. Section 3(j) of the Food Safety and Standards Act, 2006 defines the word ‘food’. It is incumbent at least to *prima facie* project that the article which was found in possession of the petitioners was offered for sale or exposed for sale and the said food has become noxious or is in a state unfit to use as food or drink. Admittedly, the articles that were seized from the possession of the petitioners does not fall within the ambit of the definition either ‘food’ or ‘drink’. Therefore, this court

holds that none of the petitioners would become liable for the punishment prescribed under Section 273 IPC. Therefore, initiation of proceedings against the petitioners for the said offence does not hold good.

35. It is not at all the version of the prosecuting agency that the acts of the petitioners had made the atmosphere noxious to health. Without any averment to that effect, the prosecuting agency alleged that some of the petitioners herein have committed the offence punishable under Section 278 IPC, which reads as under:-

“Making atmosphere noxious to health.—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.”

36. No provision in any legislation, rule or regulation is brought to the notice of this court which lays that the storage of articles like gutka or other tobacco products vitiates the atmosphere of the said place so as to make it noxious to the health of persons in general dwelling or

carrying on business in the neighbourhood or for those persons who would pass along a public way. Without there being at least a whisper to that effect, making a mention of the said provision in the F.I.R. and contending that the case fits into that provision cannot be appreciated.

37. It is also the allegation that some of the petitioners have attempted to commit the offence punishable under Section 328 IPC. Section 328 IPC reads as under:-

“Causing hurt by means of poison, etc., with intent to commit and offence.—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.”

38. For bringing the case within the ambit of the said provision, it is incumbent to show that the person/persons with an intention to cause hurt have administered or have caused any person to take the following materials:

poison or

stupefying drug or
intoxicating drug or
unwholesome drug or
other thing.

The above acts must have been done with an intention to cause hurt to such person against whom the said act is committed or with an intention to commit or facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. Mere transportation/possession/sale of tobacco products does not mean that they were intended to be administered to any person or persons with an intention to cause hurt. Therefore, the investigating agency grossly erred in booking a case against the petitioners herein under the said provision. Even a charge for attempting to commit the said offence i.e., the offence under Section 328 read with 511 IPC cannot be appreciated.

39. It is also the case of the prosecuting agency that the petitioners have committed acts endangering life or personal safety of others falling within the ambit of Section 336 IPC. Section 336 IPC reads as under:-

“Act endangering life or personal safety of others.—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.”

40. Which act or acts were done rashly or negligently by the petitioners so as to endanger human life or personal safety of others is not stated anywhere. Rashness is not even remotely shown and negligence is not projected. As earlier discussed, no rule or regulation is brought to the notice of this court regarding the transportation/storage/sale of tobacco products. Therefore, this court holds that the petitioners cannot be held to have committed the offence punishable under Section 336 IPC.

41. It is not the case of the prosecuting agency that the petitioners in the capacity of public servants or in the course of doing the business as bankers, merchants, factors, brokers, attorneys or agents committed the offence of criminal breach of trust, which would fall within the ambit of Section 409 IPC. Section 409 IPC reads as under:-

“Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

42. Thus, only if a person is entrusted with property or with any dominion over the property and such person in his capacity either as

Public servant or

Banker or

Merchant or

Factor or

Broker or

Attorney or

Agent

commits criminal breach of trust in respect of the entrusted property, he would be termed to have committed the offence of criminal breach of trust falling within the

ambit of section 409 IPC. It is not the case with any of the petitioners herein. Therefore, the prosecuting agency went wrong in invoking the said provision of law.

43. Finally, it is also alleged that some of the petitioners have committed the offence punishable under Section 420 IPC which deals with cheating and dishonestly inducing delivery of property. The said provision reads as under:-

“Cheating and dishonestly inducing delivery of property.—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.”

44. The word ‘cheating’ is defined under section 415 IPC. The said provision reads as under:-

“Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or

omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

45. Which person was deceived fraudulently or dishonestly and which person so deceived was ordered to deliver any property or to consent to do so is not stated anywhere. Even an omission in that regard which is prohibited is not projected anywhere. It is not the case of the prosecuting agency that the person so deceived was induced to deliver any property or do any other acts falling within the ambit of Section 420 IPC. For what reason the said provision was invoked is not even stated by the learned Assistant Public Prosecutor. Therefore, the prosecuting agency grossly erred in invoking the said provision of law.

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 amounts 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 amounts to rashly or negligently endangering life or personal safety of others or amounts 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.

47.**Point No.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.

It is also alleged by the prosecuting agency that some of the petitioners contravened section 59(1) of the Food Safety and Standards Act, 2006.

48. The Food Safety and Standards Act, 2006 is a consolidation of laws relating to food in the country which lays down the basic standards for articles of food and to regulate their manufacture, storage, distribution and sale so as to ensure safety and wholesomeness of food for human consumption. Section 59(1) of the Food Safety and Standards Act, 2006 prescribed punishment for manufacture or sale or storage or distribution or import of any article of food for human consumption which is unsafe.

49. The version of the prosecuting agency is that some of the petitioners are liable for punishment under section

59(1) of the Food Safety and Standards Act, 2006. The said provision reads as under:-

“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.”

50. As rightly projected by the learned counsel for the petitioners, to bring the case within the ambit of the said provision i.e., Section 59(1), it has to be established that the articles found in the possession of the petitioners falls within the ambit of the definition “food” as defined in the Food Safety and Standards Act, 2006. Section 3(j) of the Food Safety and Standards Act, 2006 defines what “food” means and reads as under:-

“Food” means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged

drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances: Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality.”

51. Indicating a view that the tobacco products does not fall within the ambit of the term “food”, the High Court of Andhra Pradesh in the case between ***Jaganath Enterprises, Eluru Vasadhi Tripathi Rao Vs. State of A.P. through SHO Pamur P.S., Prakasam District repled by Public Prosecutor, High Court at Amaravathi***¹ at paras 11 to 14 of the order held as under:-

“11. The first and foremost issue to be decided is the applicability of the FSS Act to tobacco/tobacco products and the definition of 'food'. Section 3(j) of the FSS Act, defines 'food' as a substance, which is intended for human consumption containing such ingredients as described in the said definition. The

¹ 2020(1) ALT (CrI) 215 (S.B.)

definition does not include animal feed, live animals etc. It also eliminates the applicability of narcotic and psychotropic substances. Alcohol is an item which is included in the definition of 'food'. The COTPA Act, which is passed in 2003 (Act. No. 34 of 2003) on the other hand defines in section 3(p) of the Act, the tobacco products. The definition states that the products specified in the Schedule are tobacco products and the Schedule lists out 10 items as tobacco products. They are reproduced here under:

THE SCHEDULE

Section 3(p)

1. Cigarettes
2. Cigars
3. Cheroots
4. Beedis
5. Cigarette tobacco, pipe tobacco and hookah tobacco
6. Chewing tobacco
7. Snuff
8. Pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called).
9. gutkha
10. Tooth power containing tobacco.
12. Cigarettes, Chewing tobacco, Pan Masala, Chewing material with tobacco are included in the tobacco products. Therefore, a prima facie reading of these Central enactments makes it clear that

tobacco products are only defined under the COTPA Act and not under the FSS Act. The FSS Act, only talks of 'food', which is intended for human consumption, which includes in it alcoholic drink, but does not include any narcotic or psychotropic substance.

13. The next section that falls for consideration is, Section 56 of the FSS Act, which talks of penalty for unhygienic or unsanitary process for manufacture of 'food'. Section 57 of the FSS Act, provides for the penalty for a person, who mixes an adulterant with the food. Adulterant is described and defined in Section 3(1)(a) of the FSS Act, as 'a material used or could be used for making 'food' unsafe/sub-standard etc. Therefore, this section, in the opinion of this Court, could only come into play when 'food' is adulterated. Section 58 of the FSS Act, is a general provision, which provides penalty for contraventions for which no other penalty is provided. Section 59 of the FSS Act, deals with the penalty for any person who manufactures or sale, store, and distributes any article of 'unsafe food' for human consumption. Section 63 of the FSS Act, deals with the punishment for a person or food business operator, who manufactures, stores any article of 'food' without licence. Therefore, it is clear from a reading of the sections, which are being pressed into service by the prosecution time and again under the FSS Act, that all of them relate to 'food' and 'food articles' only. The sections, which

have been pressed into service, in the opinion of this Court, do not apply to an article which is not meeting the definition of food. Section 89 of the FSS Act, also provides that it shall have a overriding effect from all other food related laws. Apart from a plain grammatical meaning which is supporting the decision taken by this Court on the definition of 'food', the decisions of the Division Bench of the Allahabad High Court in *M/s. Pepsico India Holdings (Pvt.) Ltd., and another v. State of U.P.* {2011(2) Crimes 250} squarely applies to the facts and circumstances of this case. The learned Judges of the Allahabad Court have analysed various sections of law being pressed into service in that case and concluded that the FSS Act applies only to 'food' and food items.

14. A learned single Judge of the Calcutta High Court in the case of *Sanjay Anjay Stores v. Union of India and others* {2017 Manu/WB/0846} also came to the conclusion that tobacco is not a food stuff. Relying upon the provisions of the FSS Act, and the other enactments, the learned Judge of the Calcutta High Court came to the conclusion that these articles are not food for the FSS Act to be pressed into service. In fact, the learned single Judge of this Court in the batch of criminal petitions referred to has also come to the very same conclusion. Thereafter, relying upon Sections 41 and 42 of the FSS Act and after considering the law on the subject, the learned single Judge came to the

conclusion that the Inspector of police or the sub-inspector of police do not have the authority to investigate or to file a charge sheet. He held and rightly so that it is only the Food Safety Officer, who is competent to launch a prosecution for the offence under the FSS Act. Despite this authoritative pronouncement of this Court; the status quo continues.”

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.

53. **Point No.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.

Coming to the power of court to quash and exercise of such a power in deserving cases, the Hon'ble supreme court in the case between ***State of Haryana Vs Bhajanlal***² at paras 108 and 109 of the judgment observed as under:

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused

² 1992 SCC (CrI.) 426

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused
6. 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 redress for the grievance of the aggrieved party

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

54. By all the discussion that went on in the preceding points, it is clear that the prosecuting agency could not fit its case to any of the provisions invoked either under Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 or Indian Penal Code, 1860 or the Food Safety and Standards Act, 2006.

55. The provisions which are enumerated in the preceding points are pressed into service routinely. No provision is shown which prohibits transportation and sale of gutka, pan masala, chaini, etc. Though it is clearly brought to the notice of this court that various types of diseases including cardiac arrest, cancer, etc., are being caused due to consumption of tobacco and tobacco related products and that in the interests of public health, there is every requirement to ban the use of those products, without any legislation to that effect, the court cannot make the persons involved in those activities liable. Though COTP Act was legislated so as to deal with and to regulate the use of tobacco products, except regulating the manner of packing and the label to be present over the packages, sale to minors and near educational institutions, the COTP Act does not envisages the complete ban on use of those products. It is not the case of the prosecuting agency in any of the cases that the specified warning (pictorial or otherwise) is not present over the products that were seized. Malignance in the activities of the petitioners is not projected. Thus, having regard to the settled legal

position on exercise of jurisdiction and power under Section 482 Cr.P.C. and the specific facts of this case, this court is of the considered opinion that exercise of jurisdiction under Section 482 Cr.P.C. is essential to prevent abuse of process of law.

56. Therefore, the ultimate conclusion of this court is that unless and until a comprehensive legislation either regarding the ban or restricted use of the tobacco products and regulating their production, trade and supply is brought into force, though it is universally recognised that use of tobacco products is injurious to health, the persons dealing with those products cannot be booked under law.

57. Resultantly, all the Criminal Petitions are allowed. Thereby, the proceedings initiated against the petitioners in the respective cases are quashed. The property and the vehicles, if any, seized shall be returned to the lawful claimants by the Police concerned, following due procedure.

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

Dr.CHILLAKUR SUMALATHA, J

14.7.2022

Note:

LR Copy to be marked.

B/o

dr