

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**WEDNESDAY, THE TWENTIETH DAY OF MARCH  
TWO THOUSAND AND TWENTY FOUR**

**PRESENT**

**THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY**



**CRIMINAL PETITION NO: 1914 OF 2024**

**Between:**

1. Lagisetty Nagaraju, S/o L Rama subbaiah, age about 59 years R/o House No. 35/81, Kammari Street, Kurnool city, Kurnool District.
2. Shik Jainullahbuddin, s/o Shik Abdul Munaf, age 30 years R/o 53/133, Near King Market, Kurnool city, Kurnool District.
3. K. Guru Brahmam, S/o K. Kasaiah, age 36 years R/o House No. 27/95, Pulla Reddy Gate, Chinna Market Kurnool city, Kurnool District.

**...Petitioners/Accused 1 to 13**

**AND**

The State of Andhra Pradesh, Through the SHO of Kurnool Taluka UPS Kurnool District. Rep, by its Public prosecutor, High Court of Andhra Pradesh At Amaravathi.

**...Respondent/Complainant**

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the proceedings in Charge sheet in C.C. No. 69/2021 on the file of Special Judicial Magistrate of first Class for Mobile Court at Kurnool, Kurnool District against the petitioner/accused 1 to 3 concern.

**I.A. NO: 2 OF 2024**

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay the proceedings in charge sheet in C.C. No. 69/2021 On the file of Special Judicial Magistrate of first Class for Mobile Court at Kurnool, against the petitioners concern.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri D KASI RAO ,Advocate for the Petitioner and of the Additional Public Prosecutor on behalf of the Respondent.

**The Court made the following: ORDER**

**HON'BLE SRI JUSTICE K. SREENIVASA REDDY**

**Criminal Petition No.1914 of 2024**

**Order:**

This Criminal Petition, under Section 482 Cr.P.C., has been filed on behalf of the Petitioners/A-1 to A-3, to quash the proceedings in CC No.69 of 2021 on the file of the learned Special Judicial Magistrate of First Class for Mobile Court, Kurnool, registered for the offences punishable under Sections 188, 273, 328 IPC and Section 59(1) of the Food Safety and Standards Act, 2006.

2. When the matter is taken up for hearing, it is submitted by the learned counsel for the petitioners and acceded to, by the learned Assistant Public Prosecutor that the subject matter of this Criminal Petition is squarely covered by the common order passed by this Court in Criminal Petition No.2966 of 2021 and batch, dated 28.12.2021, wherein this Court held thus.

"Criminal Petition Nos.3555, 3671, 3725, 4062 and 4064 of 2021 are partly allowed quashing the FIRs (shown in Table-III) registered for the offences punishable under the provisions of the IPC, FSS Act and COTPA alone. The Investigating officers shall proceed with the investigation in relation to the offences

punishable under the provisions of NDPS Act relating to the FIRs shown in Table-III."

3. Hence, following the said order passed by this Court in Criminal Petition No.2966 of 2021 and batch, dated 28.12.2021 and for the reasons mentioned therein, this Criminal Petition is allowed quashing the proceedings in CC No.69 of 2021 on the file of the learned Special Judicial Magistrate of First Class for Mobile Court, Kurnool, against the petitioners herein/A-1 to A-3 insofar as the offences punishable under the provisions of the IPC and FSS Act.

As a sequel thereto, the miscellaneous applications, if any, pending in this Criminal Petition shall stand closed.

**SD/- U SRIDEVI**  
**ASSISTANT REGISTRAR**

//TRUE COPY//

*ch*  
**SECTION OFFICER**

To,

1. The Special Judicial Magistrate of First Class for Mobile Court, Kurnool, Kurnool District.
  2. One CC to Sri. D Kasi Rao, Advocate [OPUC]
  3. Two CCs to the Public Prosecutor, High Court of A.P. at Amaravati.[OUT]
  4. Three CD Copies.
- VNA

\*Along with the copy of Order in CRLP 2966/21 & Batch dt.28.12.2021

*P. J. S. S.*

HIGH COURT

DATED:20/03/2024

ORDER

CRLP.No.1914 of 2024



*7/10/24*  
*SP*  
*1/5/24*

ALLOWING THE CRLP



**HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**Criminal Petition Nos.2966, 3555, 3636, 3649, 3660, 3661, 3665, 3670, 3671, 3675, 3678, 3680, 3682, 3687, 3690, 3693, 3694, 3703, 3706, 3709, 3711, 3721, 3722, 3724, 3725, 3726, 3727, 3747, 3749, 3752, 3755, 3792, 3793, 3794, 3795, 3822, 3823, 3824, 3825, 3842, 3850, 3852, 3858, 3859, 3861, 3864, 3890, 3892, 3896, 3897, 3898, 3904, 3907, 3924, 3926, 3946, 3947, 3989, 4008, 4012, 4013, 4017, 4022, 4023, 4024, 4028, 4034, 4053, 4062, 4064, 4070, 4071, 4072, 4081, 4105, 4110, 4117, 4121, 4149, 4167, 4169, 4199, 4230, 4249, 4274, 4276, 4280, 4293, 4296, 4302, 4303, 4413, 4434, 4462, 4467, 4473, 4493, 4498, 4515, 4539, 4570, 4575, 4608, 4610, 4613, 4643, 4644, 4645, 4667, 4737, 4756, 4762, 4830, 4892, 4899, 4928, 4939, 4980, 4981, 5011, 5024, 5046, 5158, 5201, 5226, 5298, 5301, 5346, 5713 and 5925 of 2021**

**COMMON ORDER:**

This batch of Criminal Petitions under Section 482 Cr.P.C. are filed seeking quash of F.I.Rs. registered for the offences punishable under Sections 188, 269, 272, 273, 328, 420 r/w.34 of IPC; Sections 5(1), 6(a), 6(b), 7, 20, 22, 24(1) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, (for short, the "COTPA"); Sections 55, 57, 57(2), 58 and 59 of the Food Safety and Standards Act, 2006, (for short, the "FSS Act"); Sections 34(1)(i), 34(a) of the A.P. Excise Act and Sections 7(A) r/w.8(E) of the A.P. Prohibition Act; and under Sections 8(a), 8(c) r/w. 20(b)(ii),(B) of the Narcotic Drugs and Psychotropic Substances Act, (for short, the "NDPS Act").

2. For the sake of convenience, the F.I.Rs. registered only for the offences under the I.P.C., FSS Act and COTPA are shown in the following Table-I. The F.I.Rs. registered for the offences under IPC, FSS Act and COTPA, along with A.P. Excise Act and A.P.Prohibition Act are shown in Table II and the F.I.Rs. registered for the offences under IPC, FSS Act and COTPA alongwith NDPS Act are shown in Table-III.

**TABLE-I**  
**(Cases under IPC, COTPA Act and FSS Act)**

Sl. No.	Cr. Petition No.	Crime No. & Name of P.S.	Array of accused	Offences allegedly committed	Nature of offence
1)	2966 of 2021	Cr.No.63 of 2021 of Halahurvi P.S., Kurnool Dt.	A1 & A2	U/Secs.188, 273 r/w. 34 of IPC	Transportation of banned gutka, pan masala packets
2)	3636 of 2021	Cr.No.163 of 2021 of Guduwada 1 Town P.S., Krishna District	Sole accused	U/Secs.269, 270, 273 and 328 of IPC	Transportation of Khaini and Gutka packets.
3)	3649 of 2021	Cr.No.439 of 2021 of Kancharapalem P.S., Visakhapatnam District.	Sole accused	U/Ss.188, 269 of IPC; Sec.6(a), 6(b) r/w. 24(1) of COTPA Act	Sale and transportation of Gutka and other banned tobacco products.
4)	3663 of 2021	Cr.No.128 of 2021 of Gurazala Town P.S., Guntur Dt.	Sole accused	U/Ss.188, 273 of IPC; Sec.57(2), 58 of FSS Act; and Sec.25(1),5(1) of COTPA Act.	Sale of Gutka and other banned tobacco products.
5)	3678 of 2021	Cr.No.75 of 2021 of Naidupet P.S., SPSR Nellore District.	A1 & A2	U/Ss.272, 273 of IPC; Secs.20(1), 22 r/w.5(1) of COTPA Act.	Sale of Gutka and other banned tobacco products
6)	3680 of 2021	Cr.No.380 of 2020 of Naidupet P.S., SPSR Nellore District.	Sole accused	U/Ss.272, 273 of IPC; Sec.20(1), 22 r/w.5(1) of COTPA Act.	Sale of Gutka and other banned tobacco products.
7)	3682 of 2021	Cr.No.128 of 2021 of Naidupet P.S., SPSR Nellore District.	A 1	U/Ss.272, 273 of IPC; Sec 20(1), 22 r/w.5(1) of COTPA Act.	Possession of banned tobacco products.
8)	3687 of	Cr.No.137 of	A1 to A4	U/Ss.188,	Transportation

	2021	2021 of Mydukur P.S., YSR Kadapa District.		273 r/w.34 of IPC; Sec.20(2) of COTP Act.	of Gutka packets.
9)	3690 of 2021	Cr.No.189 of 2021 of Martur P.S., Prakasam District.	A1 to A3	U/S.20(2) of COTP Act.	Possession and sale of banned tobacco products.
10)	3694 of 2021	Cr.No.186 of 2021 of Badvel U/G P.S., YSR Kadapa District.	A1 to A3	U/Ss.188, 272, 273 r/w.34 of IPC; Secs.7 and 20 of COTP Act.	Manufacture and transportation of tobacco products without any label.
11)	3703 of 2021	Cr.No.465 of 2020 of Pedakakani P.S., Guntur Urban	A2	U/Ss.286, 420 of IPC; Secs.20(1) r/w.7(2) of COTP Act.	Sale of prohibited tobacco products and possession of crackers without any license.
12)	3709 of 2021	Cr.No.6 of 2021 of Varikuntapadu P.S., SPSR Nellore District.	Sole accused	U/Ss.272, 273 of IPC; Secs.20(2), 22 r/w.5(1) of COTP Act.	Possession, distribution and sale of Gutka packets.
13)	3711 of 2021	Cr.No.197 of 2021 of Narasaraopet Rural P.S., Guntur District.	A1 to A4	U/Ss.188, 272, 273, 328, 420 of IPC; Secs.7(1), 7(3) and 20(1) of COTP Act.	Sale of Gutka and Khani packets.
14)	3721 of 2021	Cr.No.101 of 2021 of Durgi Police Station, Guntur District.	Sole accused.	U/Ss.188, 272, 273, 328, 420 of IPC; Secs. 57(1), 63 of FSS Act.	Possession and sale of Khaini and pan masala tobacco banned products.
15)	3722 of 2021	Cr.No.89 of 2021 of Korisapadu P.S., Prakasam District.	A1 to A3	U/Ss.188 and 273 of IPC; Secs. 58, 59, 63 of FSS Act.	Purchase and sale of banned tobacco products.
16)	3726 of 2021	Cr.No.256 of 2021 of Panyam P.S., Kurnool District.	A1 to A4	U/Ss.188, 273 r/w.34 of IPC; Sec.59(i) of FSS Act.	Possession and transportation of banned tobacco products.
17)	3727 of 2021	Cr.No.302 of 2021 of Bhimunipatnam Police Station, Visakhapatnam District.	Sole accused	U/Ss.188, 269 of IPC; Secs. 6(a), 6(b) of COTP Act.	Possession and sale of Khani packets to below 18 years old near Schools.
18)	3747 of 2021	Cr.No.188 of 2021 of Tenali Town P.S., Guntur District.	Sole accused	U/Ss.188, 272, 273, 420 of IPC; Secs.56,	Purchase, possession and sale of banned tobacco



				57(1), 63 of FSS Act	products.
19)	3749 of 2021	Cr.No.211 of 2021 of Hindupur Rural U.P.S., Anantapur District.	A1 to A3	U/Ss.273, 328 r/w.34 of IPC; Secs.5(1) r/w. 22 of COTP Act;	Manufacture, possession and sale of Gutka and other banned tobacco products.
20)	3755 of 2021	Cr.No.151 of 2021 of Guntakal Rural P.S., Anantapur District.	A-2	U/Ss.270, 272, 273, 328 r/w.34 of IPC	Possession and sale of banned tobacco products.
21)	3792 of 2021	Cr.No.273 of 2021 of Annakur (Kur) P.S., Kurnool District.	A1 & A2	U/Ss.188, 273 r/w.34 of IPC; Secs.55, 59(i) of FSS Act.	Possession of banned tobacco products.
22)	3794 of 2021	Cr.No.150 of 2021 of Badvel U/G 1, YSR Kadapa District.	Sole accused.	U/Ss.188, 272, 273 r/w.34 of IPC; and Secs.7 and 20 of COTP Act.	Possession of banned tobacco products.
23)	3822 of 2021	Cr.No.352 of 2020 of Palakol Town P.S., West Godavari District.	A1 to A4	U/Ss.269, 273 r/w.34 of IPC; Sec.22 of COTP Act.	Possession of tobacco and other banned products.
24)	3824 of 2021	Cr.No.221 of 2020 of R.B.Puram P.S., Vizianagaram Dt.	Sole accused	U/Ss.188, 270, 273 IPC and Section 3 of the Epidemic Diseases Act	Possession of banned tobacco products.
25)	3825 of 2021	Cr.No.06 of 2021 of Palakollu Town P.S., West Godavari Dt.	A 1 to A 3	U/Ss.273, 336 r/w 34 IPC	Transportation and sale of banned tobacco products
26)	3850 of 2021	Cr.No.77 of 2020 of Kandaleru P.S., SPSR Nellore Dt.	Sole accused	U/Ss.272, 273 IPC, and Sec.59(i) of FSS Act	Possession and sale of Gutka products
27)	3858 of 2021	Cr.No.90 of 2021 of Pendlimarri P.S., YSR Kadapa Dt.	A-1 to A-5	U/S.273 IPC and Sec. 5(1) of COTP Act	Transportation and possession of Gutka and other banned tobacco products.
28)	3859 of 2021	Cr.No.431 of 2020 of Narasannapeta P.S., Srikakulam Dt.	A-1 and A-2	U/Ss.270, 273 IPC and Sec.20(2) of COTP Act	Possession of banned tobacco products
29)	3861 of 2021	Cr.No.54 of 2021 of Indukurpeta P.S., SPSR	Sole accused	U/Ss.272, 273 IPC; and Secs.22, 23 r/w 5(1) of	Possession of banned tobacco products

		Nellore Dt.		COTP Act	
30)	3864 of 2021	Cr.Nn. 41 of 2019 of Gangavaram P.S., Chittoor Dt.	A-1 and A-2	U/S.273 IPC; and Sec.59(i) of FSS Act	Possession and transportation of tobacco products
31)	3890 of 2021	Cr.No.89 of 2021 of Kakinada III Town P.S., East Godavari Dt.	Sole accused	U/Ss.269, 271, 272, 273 IPC; and Sec. 5(1) of COTP Act	Possession and sale of banned tobacco products
32)	3892 of 2021	Cr.No.381 of 2021 of III Town P.S., Visakhapatnam Dt.	A-1 in A-3	U/Ss.188, 269, 270, 273 IPC; and Sec.6(a) of COTP Act	Possession and sale of banned tobacco products
33)	3897 of 2021	Cr.No.292 of 2021 of Nellore Rural P.S, SPSR Nellore Dt.	A-1 and A-2	U/Ss.272, 273 IPC; and Sec.22 r/w 5(1) of COTP Act	Possession of tobacco products
34)	3904 of 2021	Cr.No.111 of 2021 Krosuru P.S., Guntur Dt.	A-1 and A-2	U/Ss.188, 272, 273 r/w 34 IPC; and Secs.58, 59, 63 of FSS Act	Possession and sale of Gutka
35)	3907 of 2021	Cr.No.155 of 2021 Nadendla P.S, Guntur Dt.	Sole accused	U/Ss.188, 273 IPC and Secs.7(1),7(3), 20(2) of COTP Act	Possession and sale of banned tobacco products
36)	3924 of 2021	Cr.No.290 of 2021 of Nellore Rural P.S, SPSR Nellore Dt.	A-1 to A-3	U/Ss.272, 273 IPC; and Secs.22 r/w 5(1) of COTP Act	Possession of banned tobacco products
37)	3926 of 2021	Cr.No.273 of 2021 of Atmakur(Kur) P.S, Kurnool Dt.	A-1 and A-2	U/Ss.188, 273 r/w 34 IPC; and Secs. 55, 59(i) of FSS Act	Possession and transportation of banned tobacco products
38)	3946 of 2021	Cr.No.236 of 2021 of Prathipadu P.S, Guntur Urban Dt.	A-1 and A-2	U/Ss.188, 272, 273, 420 r/w 34 of IPC	Possession and transportation of banned tobacco products
39)	3947 of 2021	Cr.No.150 of 2021 Velgodu P.S, Kurnool Dt.	A-1 to A-3	U/Ss.188, 273 r/w 34 IPC; and Sec. 59(i) of FSS Act	Possession of Gutka products
40)	3989 of 2021	Cr.No.208 of 2021 of Mydukur U/G P.S, YSR Kadapa Dt.	A-1 to A-3	U/Ss.188, 273 r/w 34 of IPC; Secs.7, 20(2) of COTP Act	Possession and transportation of banned tobacco products
41)	4012 of 2021	Cr.No.78 of 2021 Nagaram P.S, Guntur Dt.	A-1 and A-2	U/Ss.120-B, 188, 272, 273, 420 r/w 34 of IPC; Secs.7(2),7(3),	Possession and sale of Gutka and Tobacco products

				20(2) COTP Act	
42)	4013 of 2021	Cr.No.20 of 2021 of Nallapadu P.S, Guntur Dt.	A-1 and A-2	U/Ss.188, 273, 420 r/w 34 of IPC; Secs.58, 63 of FSS Act.	Possession and sale of Gutka and Tobacco products
43)	4017 of 2021	Cr.No.118 of 2021 of Duggirala P.S, Guntur Dt.	A-1 and A-2	U/Ss.270, 272, 273 of IPC	Possession and sale of Gutka and Tobacco products
44)	4022 of 2021	Cr.No.117 of 2021 of Duggirala P.S, Guntur Dt.	A-1 and A-2	U/Ss.272, 273 of IPC	Possession and sale of Gutka and Tobacco products
45)	4023 of 2021	Cr.No.239 of 2021 of Gudivada I Town P.S, Krishna Dt.	Sole accused	U/Ss.269, 270, 273, 328 of IPC	Transportation of Gutka and Tobacco products
46)	4024 of 2021	Cr.No.745 of 2020 of Nandigama P.S, Krishna District	A-1 and A-2	U/Ss.269, 270, 271, 273 r/w 34 IPC; and Secs.5(1), 22 of COTP Act.	Possession and sale of Gutka and Tobacco products
47)	4028 of 2021	Cr.No.181 of 2021 of Sattenapalli Rural P.S, Guntur Dt.	A-1 to A-3	U/Ss.188, 272, 273, 420 r/w 34 IPC; and Secs.58, 59, 63 of FSS Act.	Possession and sale of Gutka products
48)	4034 of 2021	Cr.No.49 of 2021 of Irula P.S, Chittoor Dt.	A-1 to A-4	U/Ss.24(1) of COTP Act	Possession and sale of Gutka and Tobacco products
49)	4053 of 2021	Cr.No.284 of 2021 of II Town P.S, Visakhapatnam City	A-1 to A-3	U/Ss.188, 269, 273 IPC; and Sec.6(a) of COTP Act	Possession of Gutka and Tobacco products
50)	4070 of 2021	Cr.No.564/2021 of Tadepalli P.S, Guntur Urban Dt.	A-1 and A-2	U/Ss.188, 272, 273, 284 r/w 34 IPC	Possession of Tobacco products
51)	4071 of 2021	Cr.No.204/2021 of Tadepalli P.S, Guntur Dt.	Sole accused	U/Ss.188, 272, 273, 284 IPC; and 21(1) COTP Act	Possession of Tobacco products
52)	4081 of 2021	Cr.No.187 of 2021 of Yerragonda Palem P.S, Prakasam Dt.	A1 & A2	U/Sec.20(2) of COTP Act	Possession of banned tobacco products.
53)	4105 of 2021	Cr.No.239 of 2021 of Tenali III Town P.S, Guntur District.	A1 & A2	U/Ss.188, 272, 273 and 420 r/w 34 of IPC; Sec.20(2) of COTP Act	Transportation of banned tobacco products.
54)	4110 of	Cr.No.52 of	Sole	U/Ss.272,	Sale of gutka



	2021	2021 of accused Muttukur P.S., SPSR Nellore District.		273 IPC; Sec.22 r/w.5(1) of COTP Act.	and other banned tobacco products.
55)	4117 of 2021	Cr.No.331 of 2021 of Nawabpet P.S., SPSR Nellore District.	A 1	U/Ss.271, 273, 328 IPC; Sec.22, 23 r/w.5(1) of COTP Act.	Possession, transportation and sale of banned tobacco products.
56)	4121 of 2021	Cr.No.105 of 2021 of Kothuru P.S., Srikakulam District.	A1, A2 and A4	U/Ss.272, 273 of IPC; Secs.20(2), 22(b) of COTP Act.	Possession and transportation of banned tobacco products.
57)	4167 of 2021	Cr.No.119 of 2021 of Thalur P.S., Prakasam Dt.	Sole accused.	U/Ss.188, 273 of IPC and Sec.20(2) of COTP Act.	Sale and storing of banned gutka packets.
58)	4169 of 2021	Cr.No.106 of 2021 of Badvel U/G P.S., Kadapa District.	Sole accused	U/Ss.188, 272, 273 of IPC; Secs.7 and 20 of COTP Act.	Sale of gutka and banned tobacco products.
59)	4199 of 2021	Cr.No.166 of 2021 of Pusapatirega P.S., Vizianagaram District.	A1 & A2	U/Ss.188, 269 of IPC; Sec.5(1) r/w.22 of COTP Act.	Transportation of banned tobacco products.
60)	4230 of 2021	Cr.No.330 of 2020 of Kodavahur P.S., SPSR Nellore Dist.	Sole accused	U/Ss.272, 273 of IPC; Sec.22, 23 r/w.7(1) of COTP Act.	Possession of gutka and banned tobacco products.
61)	4249 of 2021	Cr.No.216 of 2021 of Tenali I Town I, Guntur District.	A1 & A2	U/Ss.188, 272, 273 r/w.34 of IPC; Sec.20(2) of COTP Act.	Possession of gutka and banned tobacco products.
62)	4274 of 2021	Cr.No.239 of 2020 Kodavahur P.S., SPSR Nellore Dist.	Sole accused	U/Ss.272, 273, 328 of IPC	Sale of banned tobacco products.
63)	4276 of 2021	Cr.No.386 of 2021 of Old Guntur P.S., Guntur Urban.	Sole accused	U/Ss.272 and 273 of IPC	Sale and possession of banned tobacco products.
64)	4280 of 2021	Cr.No.238 of 2020 of Kodavahur I, SPSR Nellore District.	Sole accused	U/Ss.272, 273 and 328 of IPC	Sale of Gutka and banned tobacco products.
65)	4293 of 2021	Cr.No.208 of 2021 of Tenali Rural P.S., Guntur District.	A1 to A4	U/Ss.188, 272, 273 r/w.34 of IPC.	Sale of banned tobacco products.
66)	4296 of 2021	Cr.No.192 of 2021 of Tenali Rural I, Guntur	A1 & A2	U/Ss.188, 272 and 273 r/w.34 of IPC	Sale of banned tobacco products.



		District.			
67)	4413 of 2021	Cr.No.107 of 2021 of Vemuru P.S., Guntur Dist.	A-2	U/Ss.188, 272, 273, 420 of IPC; and Sec.20(2) of COTP Act.	Sale of banned tobacco products.
68)	4434 of 2021	Cr.No.123 of 2021 of R.Mattam P.S., YSR Kadapa District.	Sole accused	U/Ss.188, 273 of IPC	Sale and despatch of banned tobacco products.
69)	4462 of 2021	Cr.No.253 of 2021 of Narasaraopet Rural P.S., Guntur District	Sole accused	U/Ss.7(1), 7(3) and 20(1) of COTP Act	Sale of Gutka and other banned tobacco products.
70)	4467 of 2021	Cr.No.210 of 2021 of Vinukonda Town P.S., Guntur District.	Sole accused	U/Ss.188, 272, 273, 328 and 420 of IPC	Possession of Gutka packets.
71)	4473 of 2021	Cr.No.215 of 2021 of Vinukonda Town P.S., Guntur District.	A-2	U/Ss.188, 272, 273, 328 and 420 r/w.34 of IPC	Sale of Gutka and other banned tobacco products.
72)	4515 of 2021	Cr.No.254 of 2021 of Badvel U/G Police Station, YSR Kadapa District.	A1 to A3	U/Ss.188, 272, 273 r/w.34 of IPC; Secs.7 & 20 of COTP Act.	Possession and sale of banned tobacco products.
73)	4539 of 2021	Cr.No.225 of 2021 of Inkolli P.S., Prakasam District.	A1 to A3	U/Ss.188, 273 of IPC; Secs.24(1) of COTP Act.	Sale of tobacco products without license.
74)	4570 of 2021	Cr.No.141 of 2021 of Khajipet P.S., YSR Kadapa District.	A1 to A3	U/Ss.188, 273 r/w.34 of IPC; Secs.7(1) and 20(2) of COTP Act	Purchase and sale of Gutka, Khaini and Pan Masala packets.
75)	4575 of 2021	Cr.No.412 of 2021 of Chilakaluripeta Town Police Station, Guntur District.	A1 and A2	U/Ss.270, 273, 420 of IPC; Secs.56, 57(1), 63 of FSS Act.	Transportation and sale of banned tobacco products.
76)	4608 of 2021	Cr.No.178 of 2021 of Tenali 1 Town P.S., Guntur District.	Sole accused	U/Ss.188, 272, 273, 420 of IPC; Secs.56, 57(1), 63 of FSS Act.	Purchase and sale of banned tobacco products
77)	4610 of 2021	Cr.No.338 of 2021 of Nellore Rural P.S., SPSR Nellore District.	A1 & A2	U/Ss.272, 273 of IPC; Secs.22 r/w.5(1) of COTP Act.	Possession of banned tobacco products.
78)	4613 of 2021	Cr.No.113 of 2021 of Marripadu (D.C. Pali) P.S., SPSR	Sole accused	U/Ss.272, 273 of IPC; Secs.20(2), 22 r/w.5(1) of	Sale of banned tobacco products.

		Nellore District.		COTP Act.	
79)	4643 of 2021	Cr.No.259 of 2021 of Halaharvi P.S., Kurnool District.	A1 & A2	U/Ss.188, 273 r/w.34 of IPC.	Possession and sale of banned tobacco products.
80)	4644 of 2021	Cr.No.82 of 2021 of Kaluvoy Police Station, SPSR Nellore District.	Sole accused	U/Ss.272, 273 of IPC; Secs. 20(1), 22 r/w.5(1) of COTP Act	Sale of banned tobacco products.
81)	4645 of 2021	Cr.No.331 of 2021 of Nawabpet P.S., SPSR Nellore District.	A2	U/Ss.271, 273, 328 of IPC; Secs.22, 23 r/w.5(1) of COTP Act.	Possession, transportation and sale of banned tobacco products.
82)	4667 of 2021	Cr.No.196 of 2021 of Holagunda P.S., Kurnool District.	Sole accused	U/Ss.188, 273 of IPC; Sec.55 of FSS Act.	Manufacture, possession and sale of Gutka, Pan masala and other banned tobacco products.
83)	4737 of 2021	Cr.No.200 of 2021 of Repalle Town P.S., Guntur District.	A1 and A2	U/Ss.272, 273, 420 of IPC; Secs.7(1), 7(3), 20(2) of COTP Act.	Cheating and adulteration of noxious food intended for sale and sale of banned tobacco products.
84)	4756 of 2021	Cr.No.405 of 2021 of Lalapet P.S., Guntur District.	Sole accused	U/Ss 269, 272, 273 of IPC; Ss.5(1), 22 of COTP Act.	Possession of banned Gutka and khairi packets.
85)	4762 of 2021	Cr.No.3 of 2021 of Krosuru P.S., Guntur District.	A-1	U/Ss.188, 273, 420 r/w.34 of IPC; Secs.58, 59, 63 of FSS Act.	Possession of banned tobacco products.
86)	4830 of 2021	Cr.No.161 of 2021 of Parigi P.S., Anantapur District.	A1 & A2	U/Ss.188, 273, 328 of IPC; and Sec.5(1) of COTP Act.	Transportation and possession of banned tobacco products.
87)	4892 of 2021	Cr.No.284 of 2021 of Mydukur U/G P.S., YSR Kadapa District.	A1 to A5	U/Ss.188 & 273 r/w.34 of IPC; Ss.7 r/w.20 of COTP Act.	Possession and distribution of banned tobacco products.
88)	4899 of 2021	Cr.No.32 of 2020 of Battiprolu P.S., Guntur District.	Sole accused	U/Ss.188, 270, 273, 420 of IPC; Ss.56, 57(1), 63 of FSS Act	Sale of banned tobacco products.
89)	4928 of 2021	Cr.No.3 of 2021 of Chittannuru	A 2	U/Ss.272, 273 of IPC;	Transportation and possession

		Police Station, SPSR Nellore District.		U/Ss.20(2), 22 r/w.5(1) of COTP Act.	of banned tobacco products.
90)	4939 of 2021	Cr.No.162 of 2021 of Salur Town P.S., Vizianagaram District.	Sole accused	U/S.271 of IPC; and U/Ss.5(1) r/w.22 of COTP Act.	Possession and sale of banned tobacco products.
91)	4980 of 2021	Cr.No.430 of 2020 of Lalapet P.S., Guntur District.	One of the suspect	U/Ss.188, 269, 272, 273 of IPC; Sec.51(A) of Disaster Management Act, 2005; Secs.58, 59, 63 of FSS Act and Sec.3 of Epidemic Diseases Act, 1987.	Possession of prohibited tobacco products.
92)	4981 of 2021	Cr.No.414 of 2020 of Lalapet P.S., Guntur District.	One of the suspect.	U/Ss.188, 269, 272, 273 of IPC; Sec.51(a) of Disaster Management Act, 2005; Secs.58, 59, 63 of FSS Act and Sec.3 of Epidemic Diseases Act, 1987.	Possession of prohibited tobacco products.
93)	5011 of 2021	Cr.No.246 of 2020 of Gudur P.S., SPSR Nellore District.	A1 & A2	U/Ss.188, 272, 273 of IPC; Sec.59(i) of FSS Act.	Transportation, possession and sale of banned tobacco products.
94)	5024 of 2021	Cr.No.4 of 2021 of B.Kodur P.S., YSR Kadapa District.	Sole accused	U/Ss.188, 272, 273 of IPC; Ss.7, 20 of CTP Act.	Sale of banned tobacco products.
95)	5046 of 2021	Cr.No.227 of 2021 of Vatticherukuru P.S., Guntur Urban.	A1 & A2	U/Ss.272, 273 of IPC; Sec.22(a) of COTP Act.	Sale of banned tobacco products.
96)	5158 of 2021	Cr.No.127 of 2021 of Nadendla P.S., Guntur District.	Sole accused	U/Ss.7(1), 7(3) and 20(2) of COTP Act	Sale of banned tobacco products.
97)	5201 of 2021	Cr.No.87 of 2021 of Chittamuru P.S., SPSR Nellore District.	Sole accused	U/Ss.272, 273 of IPC, Ss.20(2), 22 r/w.5(1) of COTP Act.	Possession and transportation of banned tobacco products.
98)	5226 of 2021	Cr.No.837 of 2020 of Tadepalli P.S., Guntur District.	A1 & A2	U/Ss.188, 272, 273, 284 r/w.34 of IPC and Section 21(1) of COTP	Possession of banned tobacco products



				Act.	
99)	5298 of 2021	Cr.No.15 of 2021 of Tsundur P.S., Guntur District.	Sole accused	U/Ss.188, 272, 273, 420 of IPC; Ss.57(1), 58, 59, 63 of FSS Act.	Possession of banned tobacco products.
100)	5301 of 2021	Cr.No.189 of 2020 of Chintamuru P.S., SPSR Nellore District.	A 1	U/Secs.272, 273, 328 of IPC; Ss.22, 23 r/w 5(1) of COTP Act.	Possession of banned tobacco products.
101)	5346 of 2021	Cr.No.516 of 2021 of Pattabhipuram P.S., Guntur District.	A1 & A2	U/Sec.420 of IPC; and Sec.20(2) of COTP Act.	Possession of banned tobacco products.
102)	5713 of 2021	Cr.No.664 of 2020 of Vijayawada I Town P.S., Krishna District.	Sole accused	U/Secs.270, 273 of IPC and Secs.5(1) r/w.22 of COTP Act.	Possession of banned tobacco products.
103)	5925 of 2021	Cr.No.313 of 2020 of Sullurpet P.S., SPSR Nellore District.	Sole accused	U/Secs.188, 272, 273 IPC; Sec.59(i) of FSS Act.	Possession of banned tobacco products.

**TABLE-II**  
**(Cases under I.P.C, COTP Act, FSS Act, A.P. Excise Act and A.P. Prohibition Act)**

Sl. No.	Crl. Pediton No.	Crime No. & Name of P.S.	Array of accused	Offences allegedly committed	Nature of offence
1)	3660 of 2021	Cr.No.117 of 2021 of Aduni I Town P.S., Kurnool District.	Sole accused	U/Ss.188, 273 of IPC; Sec.55 of FSS Act; and Sec.34(a) of A.P. Excise Act.	Possession of banned tobacco packets and Karnataka State liquor.
2)	3661 of 2021	Cr.No.145 of 2021 of Banaganapalli P.S., Kurnool District.	Sole accused	U/Ss.188, 273 of IPC; Sec.59(1) of FSS Act; and Sec. 34(a) of A.P. Excise Act.	Sale of banned noxious and tobacco products and Karnataka State liquor.
3)	3670 of 2021	Cr.No.164 of 2021 of Vuyyuru Town P.S., Vijayawada City, Krishna Dist.	Sole accused	U/Ss.188, 369, 270, 273 of IPC; Sec.51(b) of DMA, 2003; Sec.5(1) r/w.22, 6(b) r/w.24(1) of COTP Act and Sec.34(a) of A.P. Excise	Sale of banned tobacco products and illegal sale of liquor.



				Act.	
4)	3675 of 2021	Cr.No.83 of 2021 of Srikakulam I Town P.S., Srikakulam District.	Sole accused	U/Ss.188, 272, 273 of IPC; and Sec.34(1)(i) of A.P. Excise Act.	Possession of banned pan masala packets and liquor.
5)	3693 of 2021	Cr.No.292 of 2021 of Kanchikacherla P.S., Krishna District	Sole accused	U/Ss.188, 269, 328 of IPC; Sec.6(b) r/w.24(1) of COTP Act; and Sec.34(a) of A.P. Excise Act.	Sale and possession of Khaini and Gutka packets and liquor.
6)	3706 of 2021	Cr.No.322 of 2021 of Kanchikacherla P.S., Krishna District.	Sole accused	U/Ss.269, 328 of IPC; Secs.6(b) r/w.24(1) of COTP Act; Sec.34(a) of A.P. Excise Act.	Sale and possession of Khaini and gutka packets and liquor.
7)	3724 of 2021	Cr.No.65 of 2021 of Pathapatnam P.S., Srikakulam District.	A1 to A3	U/Ss.188, 272, 273 of IPC; Sec.34(1)(i) of A.P. Excise Act.	Possession and transportation of Khainee, Gutka packets and liquor bottles.
8)	3752 of 2021	Cr.No.88 of 2021 of Srikakulam I Town P.S., Srikakulam Dt.	A1 to A3	U/Ss.188, 272, 273 of IPC; and Sec.34(1)(i) of A.P. Excise Act.	Possession of Gutka and other banned tobacco products and liquor.
9)	3793 of 2021	Cr.No.273 of 2021 Markapur Town P.S., Prakasam District.	A-1	U/S.34(a) of A.P. Excise Act and Sec.20(2) of COTP Act.	Purchase, possession and sale of Gutka and other banned tobacco products and liquor.
10)	3795 of 2021	Cr.No.62 of 2021 of Itchapuram Town P.S., Srikakulam District.	A1 to A3	U/Ss.270, 272, 273 r/w.34 of IPC; Sec.20(2) of COTP Act; and Sec.34(1)(i) of A.P. Excise Act.	Transportation of banned tobacco products and sale of liquor.
11)	3823 of 2021	Cr.No.532 of 2021 of J.R. Gudem P.S., West Godavari Dt.	Sole accused	U/Secs.188, 269, 270, 273 IPC, Sec.34(a) of A.P. Excise Act.	Possession and sale of banned tobacco products and liquor.
12)	3842 of 2021	Cr.No.223 of 2021 of Kurnool II Town P.S.,	A-2	U/Ss.188, 273 r/w 34 IPC, Secs. 7(A)	Sale of banned tobacco products and

		Kurnool Dt.		r/w 8(E) of A.P. Prohibition Act.	I.D. arrack
13)	3852 of 2021	Cr.No.250 of 2021 of Kurnool II Town P.S.,	A-7	U/Ss.188, 273 r/w 34 IPC; and Secs. 7A r/w 8E A.P. Prohibition Act.	Transportation and possession of Gutka products and liquor.
14)	3896 of 2021	Cr.No.146 of 2021, Cumbum P.S., Prakasam Dt.	Sole accused	Secs.20(2), 24(1) r/w 6(a) of COTP Act; and Sec.34(a) of A.P.Excise Act.	Possession and sale of banned tobacco and liquor
15)	3898 of 2021	Cr.No.156 of 2021 of Yerragonda Palem P.S., Prakasam Dt.	A-1 to A-5	U/S.20(2) of COTP Act and Sec.34(A)(i) of A.P. Excise Act.	Possession of Gutka and liquor
16)	4008 of 2021	Cr.No.366 of 2021 of Gannavaram P.S., Krishna Dt.	A-1 and A-2	U/Ss.270, 273 r/w 34 IPC and Sec. 34(a) of A.P. Excise Act.	Possession of Tobacco and liquor
17)	4072 of 2021	Cr.No.366 of 2021 of Guntakal I Town P.S., Anantapuramu District.	A1 to A7	U/Ss.270, 272, 273, 328 r/w.34 of IPC; Secs.16, 24, 59(1) of FSS Act; and Sec.34(a) of A.P. Excise Act.	Transportation of banned tobacco products and also transporting Karnataka State liquor
18)	4149 of 2021	Cr.No.417 of 2021 of Kurnool IV Town P.S., Kurnool Dt.	Sole accused	U/Ss.188, 273 of IPC; Sec.59(i) of FSS Act; and Sec.7(A) r/w.8(E) of A.P. Prohibition Act.	Sale and possession of banned tobacco products and I.D. liquor.
19)	4302 of 2021	Cr.No.147 of 2021 of Cumbum P.S., Prakasam District.	A-2	U/Ss.20(2), 24(1) r/w. 6(a) of COTP Act and Sec.34(a) of A.P. Excise Act.	Distribution and sale of banned tobacco products and liquor
20)	4303 of 2021	Cr.No.147 of 2021 of Cumbum P.S., Prakasam District.	A-1	U/Ss.20(2), 24(1) r/w. 6(a) of COTP Act and Sec.34(a) of A.P. Excise Act.	Distribution and sale of banned tobacco products and liquor.
21)	4493 of 2021	Cr.No.234 of 2021 of Kukunoor P.S., West Godavari District.	A1 & A2	U/S.273 of IPC and Sec.34(a) of A.P. Excise Act.	Possession and transportation of banned tobacco products and

22)	4498 of 2021	Cr.No.114 of 2021 of Kothuru Police Station, Srikakulam District.	A-1	U/Ss.272, 273 of IPC and Sec.34(1)(i) of A.P. Excise Act.	liquor. Possession and transportation of banned tobacco products and liquor.
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**TABLE-III**  
**[Cases under IPC, COTP Act, FSS Act and NDPS Act]**

Sl. No.	Cril. Petition No.	Crime No. & Name of P.S.	Array of accused	Offences allegedly committed	Nature of offence
1)	3555 of 2021	Cr.No.137 of 2021 of Vetapalem P.S., Prakasam District.	Sole accused	U/Secs.188, 273 of IPC; Secs.58, 59, 63 of FSS Act; Sec.20(2) of COTP Act; and Sec.8(c) r/w.20(b),(ii),(B) of NDPS Act.	Possession of prohibited tobacco products and Ganja etc.
2)	3671 of 2021	Cr.No.97 of 2021 of Tekkali P.S., Srikakulam District.	A-2	U/Ss.188, 272, 273 of IPC; Sec.20(b) r/w.8(a) of NDPS Act	Possession of banned tobacco products and Ganja.
3)	3725 of 2021	Cr.No.236 of 2021 of Hanuman Junction P.S., Krishna District.	A-2	U/Ss.270, 273, 328 r/w.34 of IPC; Secs.5(1), 22 of COTP Act; and Secs.8(c), 20(b) of NDPS Act.	Possession and sale of banned tobacco products and ganja
4)	4062 of 2021	Cr.No.28 of 2020 of Nagarjunasagar P.S, Guntur Dt.	A-9 to A-13	U/Ss.188, 273, 328, 420 r/w 34 IPC; and Secs.20(b) r/w 8(c) of NDPS Act, 57, 58, 63 of FSS Act	Possession and transportation of Gutka, Tobacco and Ganja
5)	4064 of 2021	Cr.No.203 of 2021 of Denduluru P.S, West Godavari Dt.	A1 to A4	U/Ss.270, 273 IPC;Secs.8(c) r/w.20(b)(ii)(C) of NDPS Act	Possession and sale of Gutka, banned tobacco products and Ganja

3. Heard learned counsel for the petitioners and learned Public Prosecutor for the respondents State.



4. All the above crimes shown in Table-I to Table-III were registered primarily on the ground that the products like Gutka, Pan Masala and tobacco are either being transported, sold or stored by the petitioners contrary to the provisions of the COTPA and FSS Act.

5. When the legal validity of registration of such sort of crimes under the provisions of IPC, COTPA and FSS Act was questioned before this Court in batch of cases, two co-ordinate Benches of this Court in Crl.P.No.3731 of 2018 and batch, as per judgment, dated 27.08.2018, and again in Crl.P.No.5421 of 2019 and batch, as per judgment, dated 18.12.2019 (Sri Jaganath Enterprises Eluru v. The State of A.P.), have held that 'chewing tobacco' is not a 'food' falling within the definition of 'food' as defined in Section 3(1)(j) of the FSS Act and as such, the provisions of the FSS Act are not attracted and thereby quashed the F.I.Rs. registered for the said offences. However, in Crl.P.No.5421 of 2019 and batch, learned Judge held that prosecution for the offences punishable under Sections 5, 6, 7 and 10 of the COTPA can be launched, if it is found that the provisions of Sections 5, 6, 7 and 10 of the COTPA are not complied with.

6. Therefore, on the basis of the said judgments of the two coordinate benches of this Court whereby F.I.Rs. registered for the similar offences based on identical facts are quashed, the petitioners herein sought quash of all the F.I.Rs. in this batch of



cases on the ground that these are covered matters, in view of the aforesaid orders of the two co-ordinate benches of this Court which became final and that the petitioners, who are similarly placed, are also entitled for quash of the F.I.Rs.

7. Learned Public Prosecutor vehemently opposed for quash of the F.I.Rs for the offences registered under the FSS Act. He would submit that Section 3(1)(j) of the FSS Act defines 'food' and as per the said definition, any substance, which is used as food, shall be construed as a food. He contends that since chewing tobacco would be chewed by the people and as the said chewing tobacco contains nicotine and other injurious substance and the juice produced on account of chewing the said tobacco which contain nicotine and other injurious substances mixes with the saliva and the person who chews the tobacco would swallow the said saliva containing the said nicotine and other injurious substances and it goes into his digestive system in the said process and as such, chewing tobacco shall also be construed as a substance of food. In support of his contention, he placed strong reliance on the Division Bench judgment of the Bombay High Court rendered in the case of **Mohammad Yamin Naeem Mohammad v. State of Maharashtra**<sup>1</sup>. So, he would submit that the earlier two benches of this Court did not take into consideration that the juice produced on account of chewing tobacco, which contains nicotine etc. would be swallowed by the person who is chewing

<sup>1</sup> 2021 SCC (Online) Bom 26 = 2021 Cri LJ 1811

it, and it will be taken into the digestive system. Therefore, he would submit that the two benches of this Court have held that chewing tobacco is not a food. He vehemently contended that it is to be held that chewing tobacco is also a food. Learned Public Prosecutor made a very strenuous effort to convince the Court that chewing tobacco clearly comes within the definition of 'food' as defined under Section 3(1)(j) of the FSS Act. So, taking support from the view expressed by the Division Bench of the Bombay High Court in **Mohammad Yamin Naeem Mohammad**<sup>1</sup>, learned Public Prosecutor would submit that chewing tobacco would also fall within the definition of food as defined under Section 3(1)(j) of the FSS Act and the offences registered under the FSS Act cannot be quashed.

8. Learned Public Prosecutor opposed these Criminal Petitions only respect of the offences registered under the FSS Act stating that the said F.I.Rs. registered under the FSS Act cannot be quashed. He did not dispute with regard to correctness of the findings recorded by the two coordinate Benches of this Court that the facts of the case do not constitute any offences punishable under the provisions of the IPC and the COTPA, for which the F.I.Rs. are registered.

9. Therefore, the only controversy involved in this batch of Criminal Petitions is relating to the offences registered under the FSS Act and main controversy revolves round the issue

whether 'chewing tobacco' falls within the definition of 'food' as defined under Section 3(1)(j) of the FSS Act or not.

10. At the time of hearing these Criminal Petitions and when the matters are reserved for orders, only the said two judgments of the coordinate benches of this Court are prevailing. Subsequently, another learned single Judge of this Court in W.P.No.7336 of 2021 and batch, dated 21.09.2021, has taken a view that 'chewing tobacco' falls within the definition of 'food' under Section 3(1)(j) of the FSS Act. In arriving at the said conclusion, learned Judge relied on the ratio laid down by the Apex Court in the case of **Pyarali K. Tejani v. Mahadeo Ramchandra Dange**<sup>2</sup> and **Godawat Pan Masala Products I.P. Ltd. v. Union of India**<sup>3</sup>, wherein it is held that 'supari' and 'pan masala' etc. would come within the definition of 'food' under the Food Adulteration Act. Although the said judgments are not rendered defining 'food' as defined under Section 3(1)(j) of the FSS Act, learned Judge, while holding that the definition of 'food' under the Food Adulteration Act and the definition of food under the FSS Act are almost similar, held that the ratio laid down in the aforesaid two judgments rendered under the Food Adulteration Act can be taken into consideration to hold that chewing tobacco also comes under the definition of food under the FSS Act.

<sup>2</sup> (1974) 1 SCC 167 = 1994 SCC (Cr) 87

<sup>3</sup> (2004) 7 SCC 68



11. Thus, two coordinate benches of this Court held that chewing tobacco is not a food as defined under Section 3(1)(j) of the FSS Act and another coordinate Bench of this Court has recently taken a different view and held that chewing tobacco also comes within the definition of 'food' under the FSS Act. However, the learned Judge, in view of the earlier view taken by the two coordinate benches of this Court, has referred the matter to the Division Bench of this Court.

12. Therefore, the only question that now arises for determination in this batch of Criminal Petitions before this Court is whether 'chewing tobacco' falls within the definition of food as defined under Section 3(1)(j) of the FSS Act or not.

13. In order to resolve the said controversy and to appreciate the rival contentions of both the parties, it is expedient to extract the definition of food as contemplated under Section 3(1)(j) of the FSS Act. It reads thus:

" '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.”

14. A meticulous reading of the aforesaid definition makes it manifest that the said provision is in three parts. The first part says that any substance, whether processed or partially processed or unprocessed, which is intended for human consumption, comes within the definition of food. The second part deals with inclusive definition and it says that primary food, as defined under 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 in the food during its manufacture and preparation would come within the definition of food. The third part deals with exclusion of certain substances. It excludes 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, narcotics or psychotropic substances etc.

15. Now, a careful reading of the aforesaid definition further makes it manifest that the predominant requirement to test whether a particular substance is food or not is to ascertain and see whether the substance is intended for human consumption or not. Therefore, the emphasis and stress is on the expression **“which is intended for human consumption”** used in the above definition. As per the said definition, and more particularly in view of the said expression ‘which is intended for

human consumption', every substance cannot be construed as food. It is only a substance 'which is intended for human consumption' alone can be considered and construed as a substance of food. The expression "food" is defined in Lexicon as "a substance taken into the body to maintain life and growth". Therefore, the expression "intended for human consumption" in relation to food, in its general terms and in its popular sense is to be understood as a substance which is meant to be taken into the body to maintain life and growth or for sustenance of a human being.

16. Now, the paramount question to be ascertained is whether chewing tobacco is intended for human consumption or not. It is axiomatic that tobacco is not meant for human consumption as a food. It is not used as food. It is self evident and needs no evidence to hold that tobacco is not used as food and that it is also not intended for human consumption as food. Indubitably, therefore, tobacco cannot be considered as a substance of food. People do not eat tobacco either for their sustenance or for any other purpose of like nature. It is only a substance which is used as a stimulant to have a sort of thrill by a person chewing it. Therefore, chewing tobacco cannot be construed as a food as defined under Section 3(1)(j) of the FSS Act.

17. It is significant to note that even though the Parliament has included chewing gum within the inclusive definition of food under Section 3(1)(j) of the FSS Act, Parliament consciously and



deliberately did not include chewing tobacco within the inclusive definition of Section 3(1)(j) of the FSS Act. Chewing gum will be used as food or treated as a food by a person using the same, albeit it will be discarded after chewing it without taking into the digestive system. Therefore, as it is used as a food, it is defined as food under the aforesaid Section. As tobacco is not used as a food usually and even if it is chewed as it is only chewed as a stimulant and as it is not intended as a food by a person chewing the same, the Parliament did not choose to include it in the definition of food. That is the reason why the Parliament has very consciously used the expression "which is intended for human consumption" as a predominant requirement in the aforesaid definition. Tobacco can never be intended for human consumption as a food.

18. Even the user test can profitably be applied to ascertain whether tobacco is intended for human consumption or not. As tobacco is intended only to be chewed as a stimulant, it cannot be said under any stretch of reasoning or imagination that it is intended for human consumption as a food. Consumption means in the present context to eat and to take it within the digestive system as a food. The justification for considering the user test can also be seen from the proviso to Section 3(1)(j) of the FSS Act. The proviso says that the Central Government may by notification in the Official Gazette declare any other article as food having regard to **its use**, nature etc. So, user test is permissible under the aforesaid definition to ascertain

whether a particular substance is intended for human consumption or not.

19. Therefore, when the Parliament did not in express words include either tobacco or even the chewing tobacco within the definition of food, it is not permissible under law to add in the section or read into the section any extraneous substance to construe it as a food for the purpose of the FSS Act. It is well settled law that in interpreting a provision in the statute and more particularly, a provision relating to the definition, the object of the enactment shall always be borne in mind and interpretation must be in consonance with the object and intention of the legislature. No attempt, in the process, shall be made to dilute the legislative intent and nothing can be added to the definition. More particularly, when the definition is a wider definition, with inclusive definition and exclusive definition, no attempt should be made to widen its scope by including some other substances, articles or commodities, into the definition contrary to the intention of the Parliament. As already noticed supra, had it been the intention of the legislation to include tobacco or its products or even the chewing tobacco within the definition of food under Section 3(1)(j) of the FSS Act, the Parliament would have specifically included it in the said definition. As the same is not included in it, it cannot be held that chewing tobacco is a food within the definition of Section 3(1)(j) of the FSS Act.

20. It has been contended before this Court that as chewing gum is included in Section 3(1)(j) of the FSS Act, that nothing precludes the Court from including chewing tobacco also as food within the said definition as it stands on the same footing with that of chewing gum. The said contention is devoid of merit. Chewing gum is totally different from chewing tobacco. Chewing gum is basically treated as a food. It is intended for the said purpose, whereas chewing tobacco is not intended for human consumption as food and it is not used as food. Therefore, there is no merit in the contention of the learned Public Prosecutor that as chewing gum is included in the definition of food that chewing tobacco is also to be considered as food under the aforesaid definition.

21. In this context, it is apt to consider the ratio laid down by the Constitutional Bench of the Apex Court in the case of **Sakhawat Ali v. State of Orissa**<sup>4</sup>. It provides a complete answer to the said contention. It is held as follows:

"The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution."

22. Thus, it is clear from the aforesaid ratio laid down by the Constitutional Bench, it is for the Legislature to decide as to

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<sup>4</sup> AIR 1955 SC 166



which substance/article/commodity is to be included within the definition and it need not be all embracing. Further, it is clear that merely that some substance or commodity, which stands on the same footing, is included in the definition that the other product which may stand on the same footing need not be included in the definition. Simply because it is not included in the definition, it cannot be held that by way of interpretation of the definition that other substance can be included in the said definition. As observed supra, it would be nothing but adding something to the definition which is not intended by the Parliament. Probably, as the Parliament found that chewing tobacco is not intended for human consumption as food and that it is not used as food or meant to be used as food, the Parliament has deliberately eliminated it and did not include it in the definition.

23. Now, it is relevant to consider the judgment of the Calcutta High Court rendered in the case of **Sanjay Anjay Stores v. The Union of India**<sup>5</sup>. It is a direct judgment on the FSS Act. It is also a direct judgment on the question whether tobacco and its products comes within the definition of food under the FSS Act or not. While considering the question whether the definition of food under the FSS Act includes tobacco and tobacco products, the Calcutta High Court held that they do not fall within the definition of food. At para.40 of the judgment, it is held as follows:

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<sup>5</sup> 2017 SCC OnLine Cal 16323

"Although the definition of 'food' in FSSA is very wide and apparently includes any product that can be consumed by human beings, tobacco products, in my opinion, cannot be understood to be covered by the definition. Food as we have always understood means edibles including liquid food that is drunk rather than eaten, which has nutritional value. Food is a source of energy to human beings and indeed to all living creatures, to sustain life. Food cannot be meant to include **stimulant** like zarda or other tobacco products which temporarily stimulate the human body without infusing any nutrient. Such tobacco products appear to provide stimulant which is more psychological in my opinion rather than real. People who are used to taking such tobacco products experience a sudden surge of energy which is more psychological than real. Nobody in his right senses would say that cigarette or other tobacco products are food."

24. Incidentally held that in **ITC Ltd. v. Agricultural Produce Market Committee**<sup>6</sup>, the Apex Court, in the context of levy of taxes, observed that tobacco is not a food stuff.

25. Then at para.46, the Calcutta High Court held as follows:

"FSSA is a regulatory statute. It empowers the authority to regulate the manufacture, storage, distribution, sale and import of food products for human consumption. Such regulatory power does not authorize the authorities to prohibit the manufacture, etc. of tobacco or tobacco products even if the same can be called 'food'. Trade in tobacco is not impermissible in India. In **Godawat Pan Masala** (supra) the Apex Court held that tobacco or tobacco products are not *res extra commercium*. If consumption of tobacco or products containing tobacco or nicotine was considered to be so inherently dangerous for human health, the Parliament could have banned altogether trade and commerce in tobacco and tobacco products even in the face of Article 19(1)(g) of the Constitution of India. But the Parliament did not do so. It has instead chosen to regulate rather than prohibit trade and commerce in tobacco and tobacco products by promulgating COTPA. Hence, on the strength of a delegated legislation in the form of FSS Regulations framed under the FSSA, the authorities cannot seek to prohibit trade and

<sup>6</sup> (2002) 4 SCC 232.

commerce in the said products. That would be an exercise of a power that they do not have."

26. Following the aforesaid judgment, a single Judge of this Court in Crl.P.No.3731 of 2018 and batch held that chewing tobacco is not a food within the definition of Section 3(1)(j) of the FSS Act.

27. Thus, the view taken by two coordinate Benches of this Court and the view taken by the Calcutta High Court that chewing tobacco cannot be construed as a food within the definition of food under Section 3(1)(j) of the FSS Act, in my considered view, is more consistent and consonance with the intention of the Parliament in defining food under Section 3(1)(j) of the FSS Act. Holding that chewing tobacco is also a food would be nothing but reading something into the definition contrary to the intention of the Parliament and it would also be adding extraneous product or the substance to the definition.

28. A learned Judge of another single Bench, who differed with the earlier view taken by two coordinate Benches of this Court, solely relied on the interpretation given by the Apex Court in the case of **Pyarali K. Tejani**<sup>2</sup> and **Godawat Pan Masala Products I.P. Ltd.**<sup>3</sup> of the Apex Court in arriving at the conclusion that chewing tobacco would also come within the definition of food under Section 3(1)(j) of the FSS Act. The judgment of the Constitutional Bench in **Pyarali K. Tejani**<sup>2</sup> is not directly on the issue under FSS Act. It could not be also, as the said judgment was rendered in the year 1973 and by that



time, the FSS Act was not brought into existence. FSS Act came into existence in the year 2006. So, the judgment in **Pyarali K. Tejani**<sup>2</sup> case was rendered while interpreting the provisions of the Prevention Food Adulteration Act. It is significant to note that the question before the Constitutional Bench was not whether chewing tobacco is a food within the definition of the Prevention of Food Adulteration Act or not. The commodity involved in the said case before the Constitutional Bench was 'supari'. As 'supari' is used as a food, the Constitutional Bench of the Apex Court held that it is a 'food'. It is relevant to note the observation of the Constitutional Bench made in para.14 of the judgment. It is held as follows:

"...We are dealing with a commodity which is consumed by the ordinary man in houses, hotels, marriage parties and even routinely..."

29. Then, it is further held as follows:

"...The meaning of common words relating to common articles consumed by the common people, available commonly and contained in a statute intended to protect the community generally, must be gathered from the commonsense understanding of the word. The Act defines food very widely as covering any article used as food and every component which enters into it, and even flavoring matter and condiments. It is commonplace knowledge that the word 'food' is a very general term and applies to all that is eaten by man for nourishment and takes in subsidiaries. Is supari eaten with relish by man for taste and nourishment? It is. And so it is food. Without carrying further on this unusual argument we hold that supari is food within the meaning of Section 2(v) of the Act."

30. Thus, it is clear from the above judgment that the question before the Constitutional Bench was whether supari is

a food or not under the Prevention of Food Adulteration Act. As it is eaten as food by a man for nourishment and as the same is consumed by every ordinary man in houses, hotels, marriage parties and even routinely, it is construed as a food under the Prevention of Food Adulteration Act. The ratio laid down in the aforesaid judgment cannot be the basis for arriving at a conclusion as to whether chewing tobacco is also food or not. The reason is chewing tobacco is not used as a food by an ordinary man. It is not used as food by any person in houses, hotels, marriage parties and even routinely and generally. It is also not eaten by any man or woman for nourishment. Therefore, the ratio laid down in the aforesaid judgment cannot be made applicable to the present facts of the case to construe chewing tobacco also as a food. The facts of the case in the above judgment are very much distinguishable.

31. Even in the other case **Godawat Pan Masala Products I.P. Ltd.**<sup>3</sup> also, that was also a case where the Court was dealing with the question whether pan masala and gutka are food or not. Whether tobacco or chewing tobacco is a food or not is not directly the issue fallen before the Apex Court. In arriving at a conclusion that pan masala and gutka are food, the Apex Court in **Godawat Pan Masala Products I.P. Ltd.**<sup>3</sup> case solely relied on the ratio laid down in the above **Pyarali K. Tejani**<sup>2</sup> case and held that since pan masala is eaten and as it is used for human consumption that it is a food. Incidentally, it is only held that the gutka contains tobacco as an ingredient.

So, the said judgment is not an authority to hold that chewing tobacco is a food under the FSS Act.

32. Therefore, as these two judgments arise out of the Prevention of Food Adulteration Act and as the Apex Court held that since supari and pan masala are intended for human consumption that they are food, in my considered view, the ratio laid down in the above two judgments cannot be applied to the present facts of the case to hold that chewing tobacco is also food as it is not intended for human consumption as food and as it is not eaten as a food.

33. Even though the inclusive definition under Section 3(1)(j) of the FSS Act shows that food containing such ingredients like primary food defined under clause (ZK) is also to be construed as food, it must be seen here that the said ingredients must be of a primary food and the substance in which the said ingredients are used must also be a food. Nicotine etc. which are available in tobacco are not primary food or genetically modified food or engineered food as defined in clause (ZK). Ingredients like primary food as defined in clause (ZK) will not be used in chewing tobacco. So, it does not fall even within the inclusive definition also.

34. Learned Public Prosecutor has taken me to Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 and contends that the product should not contain any substance which is injurious to



health like tobacco and nicotine and the same shall not be used as ingredients in any food products. Therefore, he would submit that as nicotine would be available in chewing tobacco that it is to be considered as a food. There is absolutely no merit in the said contention. Regulation 2.3.4 of the Regulations, 2011 reads thus:

"2.3.4: Product not to contain any substance which may be injurious to health: Tobacco and nicotine shall not be used as ingredients in any food products."

35. In fact, this Regulation is in favour of the view taken by this Court. The Regulation says that tobacco and nicotine shall not be used as an ingredient in any food product. So, it clearly indicates that the Food Safety and Standards Authority of India which framed the said Regulations also did not consider tobacco as a food as it is stated that tobacco shall not be used as an ingredient in any food product. So, it is clear that they have considered tobacco as a separate entity different from a food product. They did not consider tobacco as a food product.

36. It is also relevant to note here that Section 59 of the FSS Act deals with punishment for sale, storage etc. of unsafe food. It reads thus:

"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) ...
- (ii) ...
- (iii) ...
- (iv) ...."

37. Here also the emphasis is on the article of food for human consumption. Therefore, the very expression used in all the relevant provisions "intended for human consumption" makes it abundantly clear that the intention of the Parliament is to only treat that substance or commodity which is intended for human consumption as food and not any other commodity or substance.

38. Therefore, for the foregoing reasons, while concurring with the view taken by the two coordinate benches of this Court, which held that chewing tobacco is not a food as defined under Section 3(1)(j) of the FSS Act, this Court holds that chewing tobacco is not a food within the definition of Section 3(1)(j) of the FSS Act.

39. As regards the view taken by another learned single Judge of this Court that chewing tobacco is food under Section 3(1)(j) of the FSS Act, I regret to express my inability to persuade myself to agree with the said view that chewing tobacco is a food within the definition of Section 3(1)(j) of the FSS Act.

40. Therefore, when the facts of the case do not constitute any offence under the provisions of the FSS Act, launching of criminal proceedings by way of registering F.I.Rs. relating to manufacture, sale, storage or transportation of the said chewing tobacco amounts to abuse of process of Court. Therefore, the F.I.Rs. registered for the said offences are liable to be quashed.

41. Resultantly, Criminal Petition Nos.2966, 3636, 3649, 3665, 3678, 3680, 3682, 3687, 3690, 3694, 3703, 3709, 3711, 3721, 3722, 3726, 3727, 3747, 3749, 3755, 3792, 3794, 3822, 3824, 3825, 3850, 3858, 3859, 3861, 3864, 3890, 3892, 3897, 3904, 3907, 3924, 3926, 3946, 3947, 3989, 4012, 4013, 4017, 4022, 4023, 4024, 4028, 4034, 4053, 4070, 4071, 4081, 4105, 4110, 4117, 4121, 4167, 4169, 4199, 4230, 4249, 4274, 4276, 4280, 4293, 4296, 4413, 4434, 4462, 4467, 4473, 4515, 4539, 4570, 4575, 4608, 4610, 4613, 4643, 4644, 4645, 4667, 4737, 4756, 4762, 4830, 4892, 4899, 4928, 4939, 4980, 4981, 5011, 5024, 5046, 5158, 5201, 5226, 5298, 5301, 5346, 5713 and 5925 of 2021 are allowed quashing the F.I.Rs. (shown in Table-I) registered for the offences under the provisions of IPC, FSS Act and COTPA.

42. Criminal Petition Nos.3660, 3661, 3670, 3675, 3693, 3706, 3724, 3752, 3793, 3795, 3823, 3842, 3852, 3896, 3898, 4008, 4072, 4149, 4302, 4303, 4493 and 4498 of 2021 are partly allowed quashing the F.I.Rs. (shown in Table-II) registered for the offences punishable under the provisions of the IPC, FSS Act and COTPA alone. The Investigating Officers shall proceed with the investigation in relation to the offences punishable under the provisions of A.P. Excise Act and A.P. Prohibition Act relating to the F.I.Rs. shown in Table-II.

43. Criminal Petition Nos.3555, 3671, 3725, 4062 and 4064 of 2021 are partly allowed quashing the F.I.Rs. (shown in Table-III)

registered for the offences punishable under the provisions of the IPC, FSS Act and COPTA alone. The Investigating Officers shall proceed with the investigation in relation to the offences punishable under the provisions of NDPS Act relating to the F.I.Rs. shown in Table-III.

The miscellaneous petitions pending, if any, shall stand closed.

**JUSTICE CHEEKATI MANAVENDRANATH ROY**

Date:28.12.2021.

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