
(2020) 05 OHC CK 0006

Orissa High Court

Case No: Criminal Miscellaneous case No. 1631 Of 2019

Santosh Kumar
Senapati

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: May 14, 2020

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 457, 482
- Indian Penal Code, 1860 - Section 109, 273, 328, 420
- Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Distribution) Act, 2003 - Section 20

Citation: (2020) 05 OHC CK 0006

Hon'ble Judges: S.Pujahari , J

Bench: Single Bench

Advocate: Goutam Ku.Acharya, K.M.Patro, D.P.Mishra, D.K.Naikk.M.Patro, D.P.Mishra, D.K.Naik

Final Decision: Disposed Of

Judgement

1. This is an application under Section 482 of Cr.P.C. seeking for quashment of the order dated 15.05.2019 passed by the learned Addl. Sessions

Judge, Kalahandi at Bhawanipatna dismissing the revision petition bearing Criminal Revision No.2 of 2019 and thereby upholding the order passed by

the learned S.D.J.M., Bhawanipatna rejecting the petition under Section 457 of Cr.P.C. filed by the present petitioner in C.T. No.874 of 2018

corresponding to Bhawanipatna Town P.S. Case No.267 of 2018 registered under Sections 273, 420, 109 and 328 of I.P.C. read with Section 20 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 "COPTA Act").

2. Heard the learned counsel appearing for the petitioner and the learned Addl. Standing counsel appearing for the State and perused the impugned

order and other papers on record including the F.I.R. and the relevant seizure list.

3. On 22.11.2018 during course of evening patrolling, Sri Tuna Sethy, S.I. of Police, Town Police Station, Bhawanipatna detected the present

petitioner to have engaged labourers in uploading PAN MASALA and TOBACCO products and since he failed to produce any license or authority in

respect of his possession or business in those articles, the S.I. of Police seized huge quantity of Safal Pan Masala and black label premium chewing

tobacco contained in various cartoons in packed and sacked condition, from the godown of the petitioner as well as the truck parked there for

unloading. On the basis of the report lodged by the S.I. of Police, the case was registered for the offences indicated above.

4. Vide the impugned order the learned Addl.

Sessions Judge, Kalahandi at Bhawanipatna has observed, inter-alia, that although the accused- petitioner claimed to be a licensee to deal in Pan

Masala and Tobacco in the locality, no license or authority could be produced by him. The trial Court below ultimately rejected the prayer of the

petitioner under Section 457 of Cr.P.C. for the reason that the petitioner could not establish his legal possession over the seized articles or his

entitlement to the custody thereof.

5. In course of hearing before this Court, the learned counsel for the petitioner relied, inter-alia, on a retail / tax invoice dated 19.11.2018 purportedly

issued by the Distributor, namely, K.P. Sugandh Ltd., Sambalpur in favour of Sreeyansi Store registered in the name of the petitioner. It is the

submission of the learned counsel for the petitioner that the said invoice is the document of authority of the petitioner over the seized Pan Masala, on

which due tax has been paid to the Government. The learned counsel has also relied on the letter No.27 dated 05.01.2019 of the CDMO, Kalahandi

and the reports of the Food Analyst, Odisha to show that the samples of the seized Madhuban Safal Pan Masala, was in conformity with the

prescribed standard under the Food Safety and Standards Act, 2006, and the Rules and Regulations thereunder.

6. Since the impugned order does not reveal the learned Addl. Sessions Judge, Kalahandi at Bhawanipatna to have dealt with the documents referred

to above or given his opinion thereon, the matter deserves to be remitted to his Court with a direction for disposal of the Criminal Revision No.2 of

2019 afresh in so far as the seized quantity of Safala Pan Masala is concerned, on taking into consideration the documents referred to above in right

perspective, and also on giving opportunity of fresh hearing to both the sides. In so far as the seized quantity of chewing Tobacco is concerned, the

impugned order does not call for any interference by this Court inasmuch as the petitioner has not produced any material to show his entitlement to the

possession of the same. Needless to mention that appropriate steps in that respect shall be taken by the Investigating Agency / Authority concerned as

per the provisions of COPTA Act, 2003.

7. With the aforesaid observation and direction, this CRLMC is disposed of.

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