

THE HON'BLE SMT. JUSTICE TIRUMALA DEVI EADA

CRIMINAL PETITION No.10411 of 2025

ORDER:

This Criminal Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') by the petitioners/accused Nos.1 and 2 seeking to quash the proceedings against them in Crime No.1438 of 2025 on the file of Narsingi Police Station, Ranga Reddy, for the alleged offences punishable under Section 223 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and Section 20(2) of the Cigarettes and Other Tobacco Products Act (for short 'COTPA') 2003.

2. Heard Sri Mahesh Mamindla, learned counsel for the petitioners and Sri Jithender Rao Veeramalla, learned Additional Public Prosecutor appearing for the respondent No.1-State.

3. Learned counsel for the petitioners submitted that the petitioners have not committed any of the alleged offences as stated by the *de-facto* complainant. He submitted that they had obtained the necessary permissions from the Greater Hyderabad Municipal Corporation (GHMC) and the Food Safety

and Standards Authority of India (FSSAI). Furthermore, they had also applied to the Commissioner of Police, requesting a No Objection Certificate (NOC) to operate the hookah lounge. He further submitted that the petitioners have complied with all safety standards and the norms prescribed for operating a hookah centre and that it was only after obtaining the requisite GHMC Trade Licence and other necessary certificates that they commenced operation of the hookah centre. He further submitted that there are no grounds to interfere with the petitioners' business and reiterated that they have not committed any offence. He further submitted that the decision of Co-ordinate Bench of this High Court in W.P.No.8223 of 2013 and batch squarely applies to the present case. Hence, he prayed to quash the proceedings against the petitioners.

4. Learned Additional Public Prosecutor submitted to pass appropriate orders.

5. Perused the record.

6. The petitioners are alleged with offences punishable under Section 223 of the BNS and Section 20(2) of the COTPA.

Sections 20 COTPA is extracted for the sake of reference as under:

20. Punishment for failure to give specified warning and nicotine and tar contents.—(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.

Section 223 of the BNS is extracted for the sake of reference as under:

223. 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,

1. shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand five hundred rupees, or with both;
2. and where such disobedience causes or tends 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 one year, or with fine which may extend to five thousand rupees, or with both.

7. In the present case, the petitioners' contention is that they have not violated any such promulgation. A perusal of the complaint reveals that the only allegation is that the petitioners did not obtain valid permission from the concerned authorities for running the hookah centre. It is also alleged that certain materials used for consuming hookah were seized. It is pertinent to note that hookah is basically a tobacco product. The petitioners obtained the New Trade License on 21.05.2025 from GHMC to sell the tobacco products and also secured a license from the Food Safety and Standards Authority of India (FSSAI), which is valid from 11.04.2025 to 10.04.2026. By obtaining these licenses, the petitioners have been operating the Abundance Café, within which the hookah lounge is run as a part of the café.

8. The petitioners also applied to the Commissioner of Police, Cyberabad Commissionerate, on 09.06.2025, requesting a No Objection Certificate (NOC) to operate the hookah lounge in the Abundance Café. The application bears

the office seal of the Commissioner of Police, Cyberabad, which was received on 11.06.2025. However, the officials neither communicated any rejection nor approval of the said NOC. Subsequently, the petitioners addressed a reminder letter on 05.07.2025 to follow up on the representation.

9. Thus, the petitioners took all necessary steps to start the hookah lounge in Abundance Café. The record reveals that the Police visited the premises on 26.07.2025, after the reminder letter dated 05.07.2025. The case of the petitioners is that instead of responding to the said application, the Police proceeded to visit the premises, seized certain materials, and registered a case against the petitioners

10. In ***Chidurala Shyamsunder vs The State Of Telangana***¹, it was observed that the act of purchase and sale of gutka products is not an offence. Gutka is a tobacco product. Hookah is also one of the tobacco products. Further, to attract Section 223 of the BNS, there should be a promulgation, and there should be a violation of the said promulgation. The ban under Section 20(2) of the COPTA relates to the sale of any

¹ CrI.P.No.3731 of 2018 & batch, decided on 27.08.2018

tobacco product without the prescribed warning or threat on the cover of the tobacco product. It is not the case of the Police that the petitioners have violated the said warning. The Police could have acted upon the representation submitted by the petitioners and examined whether the said Abundance Cafe conforms to standardized operations or not. Instead of doing so, they have resorted to registering an FIR, which is improper.

11. In ***Waheed Uddin Ahmed Ansar v. Principal Secretary Home Dept., and others***² a co-ordinate bench of this High Court has held as under:

23. It is pertinent to state that "public place" as defined under Section 3(l) of COTP Act, includes amusement centres, and the same is defined in "public place of amusement" under Sections 3(g) of City 27 Police Act. As per Chapter III of the City Police Act, the Commissioner of Police is having power to issue rules and regulations for preservation of order. Further, as per Section 32 of the City Police Act, for enforcement of orders under Sections 22, 23 and 24 of the City Police Act, the police officer may arrest any person without warrant. As per Section 84 of the City Police Act, police is having power to specify conditions etc., for obtaining licenses and permits. Since the City Police Act, confers power over the amusement Centres/restaurants, which are defined as "public place" under the COTP Act and as per Rule 4 of the Prohibition of Smoking in Public Places Rules, 2008 permission is required specifying smoking area. In view of the powers being conferred on the Commissioner of Police, under the City Police Act, the police are having power to supervise the business establishments of the petitioners and seize the hookah centres if there is any violation of the provisions of the COTP Act. Therefore, to

² 2023 SCC Online TS 3761

establish hookah centres, permission from the concerned authority has to be obtained under the provisions of City Police Act. The petitioners shall follow rules and regulations issued by the Commissioner of Police from time to time for preservation of the public order.

24. In view of the above discussion, this Court is of the opinion that imposing of certain conditions to run the Hookah Centres would meet the ends of justice.

i) As Charcoal is being used for serving hookah in the Hookah Centres, the petitioners shall obtain licence from the Municipal Corporation as specified under Section 521(1)(b) of Greater Hyderabad Municipal Corporation Act, 1955.

ii) Since the Hyderabad City Police Act, 1348 Fasli confers power over the amusement Centres/restaurants which are defined as "public place" under the COTP Act and as per Rule 4 of the Prohibition of Smoking in Public Places Rules, 2008 permission is required specifying smoking area. Therefore, to establish hookah centres, the petitioners shall obtain necessary permission from the concerned authority under the provisions of the City Police Act.

iii) The Hookah Centres are prohibited from serving any tobacco product to the persons below the age of eighteen years. Pictorial health-warning labels at the entrance must be displayed.

iv) The respondents-police are at liberty to supervise and inspect the Hookah Centres, for any violation of rules and regulations, guidelines or circulars issued under the provisions of the Hyderabad City Police Act, 1348 Fasli.

v) If there is any violation of the provisions of the COTP Act and the Rules made there under, the respondents-police are at liberty to take appropriate action as per the provisions of the COTP Act.

25. Subject to fulfilling the above conditions and also the provisions of COTP Act, the respondents-police are directed not to interfere with the business activity of the petitioners for running Hookah Centres. If the police are found to act in a highhanded manner, the owners of the Hookah Centres are at liberty to bring the same to the notice of the Director General of Police/Commissioner of Police, as directed by this Court in Writ Petition No.3202 of 2014 and batch, in which event the said authority shall forthwith take necessary steps in that regard.

12. Therefore, in light of the above decision, the Police are not supposed to interfere with the business conducted by the petitioners.

13. Therefore, in light of the aforementioned discussion and relying upon the cited decision, the continuation of criminal proceedings against the petitioners amounts to an abuse of the process of law and is liable to be quashed.

14. Accordingly, the Criminal Petition is allowed. The proceedings against the petitioners Nos.1 and 2 herein Crime No.1438 of 2025 on the file of Narsingi Police Station, Ranga Reddy, are hereby quashed.

15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE TIRUMALA DEVI EADA

15.09.2025
GV