

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.D-868/2019

Date

Order with signature of Judge

PRESENT: SALAHUDDIN PANHWAR, J
SHAMSUDDIN ABBASI, J.

1. For hearing of CMA No.15399/2019
2. For haring of main case.

03.10.2019

Mr. Muzammil Mumtaz advocate petitioner in person.

Mr. Jan Muhammad Khuhro, AAG alongwith Mr. Shariq Ahmed, Law Secretary

Mr. Siraj Ali Chandio, DPG alongwith DSP Legal Raza Mian, DSP Muhammad Akbar Ali, SIP Raza Muhammad, DSP Rasid Iqbal, Security-I and PS Ibrahim Haideri, PI Ayaz, KPO,

Mr. Faiz H. Shah, P.G. Sindh.

ORDER

SALAHUDDIN PANHWAR, J: By judgment dated 20.10.2017 passed in CP No.D-343 and 1075 of 2017 at Circuit Court at Hyderabad and CP No.D-8733/2018, 2035/2017, Province of Sindh was directed to make legislation with regard to manufacture and sale of hazardous food items like *gutka*, *mawa* and *mainpuri*. Pursuant to order dated 30.09.2019 Secretary Law is present contends that such proposed draft has been approved by the Provincial Cabinet and same will be placed in coming sessions of assembly which is scheduled for Saturday 5th October 2019 and seeks further time for placing the same in the Assembly.

2. At this juncture police officers are present and contend that they have provided security to the petitioner, accordingly their attendance is dispensed with.

3. Learned P.G. Sindh shall ensure that serious crackdown is launched against manufacture and sale of *gutka* mafia and police officials in this illegal business.

4. At this juncture representative of AIGP has placed on record letter dated 25.04.2019 issued by Deputy Inspector General of Police with regard to insertion of section 336-B PPC in FIRs pertaining to manufacture, sale and purchase of *gutka*, *mainpuri* and *mawa*, however he is not in a position to satisfy this court that any FIR in this section has been lodged, whereas learned DPG while referring section 337-J PPC contended same is applicable in these cases.

5. At this juncture petitioner has submitted copy of FIR bearing No.450/2019, PS Zaman Town lodged by Naeem Haider which states that he was not aware about the consequences of use of *gutka* and *mawa* and this had become his habit, resultantly he is suffering from mouth cancer; while referring this FIR contends that *gutka* and *mawa* is the reason of cancer hence lodged aforesaid FIR agent some criminals who are involved in sale of *gutka*.

6. The grave consequence of use of the *gutka* was appreciated in *details* in referred judgments which had concluded in directing the **legislature** for making a **subject** addressing law as well to initiate campaign to curb all such activity. There may have been lodged *number* of FIR (s) but as violation of those **penal offences** which *normally* are bailable hence the *improper* balance between **punishment** and *ill* benefits of business of *gutka* never resulted in operating as a *barrier* in mind of those, involved in such business, or likely to fall in such business. It may well be added that one of the

purpose of fixing '**quantum of punishment**' is always that of creating a sense of *fear/ deterrence*. This has been the reason because of which **legislation** was asked for but *prima facie* such directions, despite lapse of considerable period, have *only* been shown to have been processed. Here, it is important to add here that if gravity of an **issue** requires **immediate** legislation / action then duty of **legislatures** becomes double in *timely* legislation *least* avoid any unnecessary delay. This conduct, we are sorry to add, has not been shown in respect of the **issue** though representation of the State, at no material times, denies gravity of **issue** and consequence of use of *gutka* on people, including young blood.

Without making further comments in not making *timely* compliance of directives of this court but hoping presentation of **law** on next date, we would, *however*, add that administration of justice demands much more from the **law enforcing agency** as well that of **Courts** which, duties, always include referral / application of proper provision of **penal laws** as per circumstances and facts of charge. Here, a *definition* of word '**poison**', being relevant, is made hereunder:-

Wikipedia defines **poison** as:-

“In biology, poisons are **substances** that cause death, **injury or harm to organisms**, usually by chemical reaction or other activity on the molecular scale, when an organism absorbs a sufficient quantity.”

Per **Chambers** (21st Century Dictionary (Revised Edition)):-

“**Any substance** that **damages tissues** or causes death when injected, **absorbed or swallowed** by living organisms, etc....”

From above, it is quite evident that any **substance** would qualify in meaning of '**poison**' if used / absorption thereof could cause damage to tissues or organs of a living body. The effects of continuous use of *gutka*, undeniably, results in satisfying such **definition** therefore, the provision of section 337 J of the *Code (PPC)*, prima facie, fits. Here, a direct referral to section 337 J, being relevant, is made hereunder:-

“ related to the offence of causing hurt by means of a poison. Whoever administers to, or causes to be taken by, any person, any poison or any stupefying, intoxicating or unwholesome drug or such 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 may, in addition to the punishment of arsh or daman provided for the kind of hurt caused, he also punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years”

The above provision, *prima facie*, can well be parted into two parts i.e:-

FIRST PART

“where one “causes hurt to someone either by administering **poison** or such other **thing**; or causing it (**such like substance**) to be taken which may cause **hurt**;

The phrase “**cause to be taken**” needs to be given its due meaning because in such case the active actions of administering are not necessary but circumstances making one to take such **substance** would be sufficient to cover such act as one, falling in the *first* part of the offence.

SECOND PART.

The last part of the said penal section includes :-

“or knowing it to be likely that he will thereby cause hurt”

This, *prima facie*, speaks of those actions which not necessarily results into **‘hurt’** but are likely to cause **hurt** hence, it (*second part*) covers all those acts or omission where doer thereof one deals in such like **substance** with active knowledge that his acts and omission in dealing with such like **substance** are likely to cause **hurt**”. Thus, *prima facie*, for proving a charge within meaning of **second part** it would not be necessary for proving the **‘hurt’** alone but it would be sufficient if it is proved that the doer thereof:-

- i) knowingly dealt in such like **things**;
- ii) knowing that same shall be administered or to be taken by people;
- iii) knowing that his acts of offering or providing circumstances would tempt the people to use such **substance** resulting into causing **hurt’**

Had this not been the intention of the **legislatures** they would have confined the punishment for **‘hurt’** only but the punishment for such acts and omission has been in **‘addition’** to the hurt actually caused. At this juncture, it would be appropriate to refer section 332 PPC which *defines* the term **‘hurt’**, as:-

“Hurt.—(1) Whoever causes pain, harm, **disease**, infirmity or injury to any person or impairs, disables (disfigures and defaces) or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.”

The term '**hurt**' includes '**disease**'. Since, today no one can take plea of ignorance of the consequence of use of *gutka* which is not limited, but includes **harm to organs / tissues** least diseases. Thus, sale of such like substance cannot be taken without an *active* knowledge that it (*gutka, mawa etc.*) shall be used orally which surely will bring its consequence i.e harm / damage to tissues / organs *least* disease. This, appears to be the sole reason because of which the State representation agreed to application of this section in such like FIR (s) till the time proper and subjected **legislation** is made.

7. It is necessary to clarify that direction for crackdown / campaign against all such activities or those, involved in such activities, were meant to be continued till its objective is achieved. The term (*those*) includes those police officials *too* who either facilitate continuity of such ill business or are found to be negligent in taking actions, which, hopefully, shall be included in crack down / campaign from now on. Accordingly additional IGP Karachi, Hyderabad and Sukkur shall ensure serious action and that aforesaid articles are not manufactured or sold in any area of the Province of Sindh. Further learned DAG and AAG undertakes that section 337-J PPC will be inserted in all FIRs registered regarding same crime, being applicable. Accordingly IGP Sindh shall direct all SHOs through their SSPs that that section shall be inserted in the FIRs until new legislation. Since, the status of such like **substance** would be material for determination therefore, the law enforcing agency shall also ensure proper examination of such like substance and report regarding *effects* thereof on human body. Needless to add that application of a section of **penal offences** does not mean conviction but *trial* on such charge which *trial* even, at the end of the

day, may make the Courts of the view of charged offence not proved or *inapplicable*. This order shall be circulated to all the Magistrates for information so as to examine application of relevant provision of ***penal offences*** even in pending cases because the relevant provision, including 337-J PPC, were always available on chest of Code. Needless to add that application of proper section of offence is not limited to stage of the case (s).

8. Office to circulate this order to learned Magistrates through MIT as well circulate to Additional IGP, Karachi, Hyderabad and Sukkur for compliance.

To come up on 09.10.2019 at 9.30 am when Secretary Law shall be in attendance.

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