

completely unwarranted under the law. On the contrary same is in negation of Division Bench's decision of this Court in CP. No.D- 343 of 2017 and this is complete disobedience as judgments of this Court as well apex Court are binding under Articles 189 and 201 of Constitution of Pakistan respectively.

4. The perusal of order shows that while dealing with an FIR No.10/2018 of PS Makli for offences u/s 269 & 270 PPC on charge of recovery of '**GUTKAS**', he (*Mr. Amjad Ali Kazi*) observed as:-

"S.269 PPC. *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*

8. The very wording of the section would itself show that this section is applicable to the persons who are carrying infection disease such of leprosy, smallpox, T.B., Hepatitis C or AIDS and are mixed up with general public thereby it would be likely that such infection disease the person is carrying may spread it general public. This section also applicable to the persons not taking pre-caution in order to save the people from out break of such disease. God forbids in Pakistan no such outbreak of infection disease is existing. It would be pertinent to mention here that bettle nut, Katha and Chuna are not itself cause of out break of the infection disease as such I am afraid this section is not applicable on manufacturing , transporting and sale of Gutka nor this section has any nexus with the ban imposed by the Government on Gutka.

9. Now I come to the section 270 PPC which reads as under:

"S.270 PPC. *Malignant act likely to spread....*

10. The wording of section would itself show that this section is applicable to the persons who are carrying infection disease but neither the said disease is diagnosed nor the persons are willing in diagnosis and treatment such disease but are mixed with general public by posing themselves healthy. I am afraid this section is also not applicable to the persons who are manufacturing, transporting and sale of Gutka nor section has any nexus with the ban imposed on the Gutka by the government. Further more, those sections are distinct offence and can not be applied on same persons at the same time.

15. It therefore would be proper that copy of this order be circulated to **all criminal courts of this district with direction that if any FIR, case and proceeding by misapplication u/s 269 & 270 PPC are pending, all such cases will be disposed-of under intimation to this court within one month at whatever stage they are** and if any one is

convicted and **appeal is pending before any criminal court** it will also be disposed-of within one month.

From above it *prima facie* appears that through said order, learned Sessions Judge, (Mr. Amjad Kazi) has given a *license* for sale of '**Gutka**' in District Thatta while *quietly* surprisingly interpreting the section 269 PPC & 270 PPC.

The section 269 PPC has been made applicable only if:

"persons, carrying infection disease such of leprosy, smallpox, T.B., Hepatitis C or AIDS, mix up with general public thereby likely to spread such infection disease in general public"

while section 270 PPC has been declared to be not *applicable* in cases of

GUTKA because:

"since persons, carrying infection disease, are willing in diagnosis and treatment of such disease but are mixed with general public by posing themselves healthy"

Despite every possible efforts to swallow such *interpretation*, which *otherwise* amounts giving a license for sale & use of '**GUTKA**', but failed. The section 269 PPC was / is always clear in its intention as it used *phrase*:

*"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...."*

5. Thus, it was never permissible for the learned Sessions Judge to confine the term to *certain disease* when provision itself contained **any disease**. The term '**act**' cannot be interpreted to ***wondering of persons carrying certain diseases*** only. If so, the *legislature* would have made it clear and would never have used the word '**act**' which ordinarily means "**take action; do something**". I would insist that the act of a '*used blade*' by a barber since likely to cause *infection* hence such act would also fall within meaning of this provision. Similarly, an act of *remaining* silence or deliberating towards such '**action**' which may cause infection would also fall within meaning of this section. Similarly, if one acts or *even* omits transportation of

something which may or *likely* to cause infection would also be an '**unlawful act**' falling within meaning of such provisions. For meaning of *infection*, so concluded by learned Sessions Judge, Thatta, it would suffice to refer the case of *Adeel-ur-Rehman & Ors v. Federation of Pakistan & others* 2005 SCMR 1, wherein while dealing with issue of release of *betel-nuts* imported for use in "***Nisar Allaichi Saunf Supari***", it has been observed as:

21. It is significant to note that the petitioners have not come to the Court with clean hands. They had done whatever possibly they could do to get the consignments released, irrespective of the fact that if released, it could cause "candida albicans", serious infectious disease and moulds, which is another name of allergies caused by fungus and liver cancer (See "Foundations in Microbiology" by Kathleep Talaro and Artur Talalro, Second Edition, William C Brown Publishers, London, pages 146, 535 and 698). Besides, medical studies have shown that chewing of Pan containing betel nuts and other sweeteners causes sub-mucous fibrosis, which cause oral cancer (See "Tobacco Role in the Aetiology of Oral Cancer, Periodontal Disease and other Oral Leisons" by Doctor Heddie O. Sedano published by Periodontics Information Centre, University of California , Los Angeles, page 5).The petitioners have not even hesitated to submit fake reports for achieving their purpose.

6. The learned Sessions Judge, Thatta also seems to have ignored that use of the '**GUTKAS**' have been resulting in serious diseases, including ***fatal***. There have been numbers of *studies* by ***experts*** indicating serious ***effects*** of use of '**GUTKAS**'. Even otherwise, Sessions Judge, Thatta, being not an '**expert in medicine, foods etc**' was never competent to make such observation thereby confining term ***infection dangerous to life*** to certain diseases only.

7. The order of the learned Sessions Judge, Thatta also contains a direction to ***dispose of*** all cases , registered under section 269/270 PPC, in District Thatta in view of his observations. I am unable to find any provision in the ***code*** which could allow a ***Sessions Judge*** to pass a *general* direction to all ***criminal courts*** of his ***judicial district***, including appellate Court (Additional Sessions Judges), for following his ***view*** which, *otherwise* per law, has no *binding effect* upon such judiciary on ***independent*** criminal matter(s). Needless to add that an '**Additional Sessions Judge**' enjoys equal ***judicial***

powers to that of a '**Sessions Judge**' when question to deal with a criminal matter, stood entrusted to him, comes under discussion. The **administrative jurisdiction** shall never authorize issuance of such *directions*, particularly when same amounts to infringe jurisdiction. In addition to these, such *observation* , prima facie, have been in complete negation to what was discussed in referred CP as well honourable Apex Court on such issues although, it was never within competence of learned Sessions Judge, Thatta (*Mr. Amjad Ali Kazi*) to have done so.

8. Accordingly, such *approach* of the learned Sessions Judge, Thatta (*Mr. Amjad Ali Kazi*) cannot be approved particularly when the same is *likely* to allow a license for sell of '**GUTKAS**' in whole District Thatta which *otherwise* was / is '**injurious to health**' and even studies have proven that it even targets *small children* and *women*. Further, it also surfaced that learned Sessions Judge, Thatta (*Mr. Amjad Ali Kazi*) also attempted to bind district police as well district administration from taking *lawful* measures for an *unlawful* act and omission. This, I have no hesitation in saying, was never within competence of learned Sessions Judge, Thatta (*Mr. Amjad Ali Kazi*). Hence, operation of impugned order in respect to the paras 12 to 15 is suspended;

9. Accordingly, Home Secretary, Government of Sindh, IGP Sindh, Deputy Commissioner(s) and SSP(s) of all over Sindh shall start a campaign, lodge FIR(s) against all the culprits who are selling *mainpuri*, *Ghutka* under any title; their factories shall be ceased, action shall be taken against them.

10. At this juncture, it would be conducive to refer paragraph No. 18 of judgment passed by the Division Bench of this Court, which is that:

"18. Accordingly, in view of above discussion and undeniable situation, it is hereby ordered that:

a) The Secretary, Local Government shall ensure:

- i) true enforcement of Section 11 of the Pure Food Ordinance, 1960 which insists for a license for preparation / manufacturing; processing; blending; preserving, refrigerating, canning or bottling of any food canning or bottling as well to deal as wholesale dealer;
 - ii) true enforcement of Section 15 of the Pure Food Ordinance, 1960;
 - iii) appointment of required number of Inspector (s), as per Section 16(1) of Pure Food Ordinance, 1960 but strictly following the rules and procedure for such recruitment;
 - iv) establishing of Lab, specifically meant for analysis of foods;
- b) The I.G. Police shall continue with campaign against manufacturing / preparation and sale of GUTKA / MAINPURI and similar items under any title:
- c) The Chief Secretary/Law Secretary shall:
- (i) follow-up process of proper enactment for permanent ban of GUTKA / MAINPURI or same product with any other title; and
 - (ii) process of enactment like **Food Safety and Standards (Food Products Standards and Food additives) Regulations, 2011** so as to bring everything likely for human consumption under some safety and standard criterion;
 - (iii) write to Tobacco Board for clarification whether sale of TOBACCO PAN MASLA is permissible under Tobacco and Vend Act or Ordinance. If so, mechanism be detailed too.
 - (iv) direct all Commissioners and Deputy Commissioners to ensure that GUTKA / MAINPURI and similar items are not sold or manufactured in their respective areas. They would be competent to take action against manufacturers, wholesalers and retailers, under the relevant laws.

11. It is also emphasized over the letter written by the Deputy Commissioner, Thatta, which is that:

To,

The Secretary of Government of Sindh,
Home Department,
Karachi.

Through: The Commissioner, Hyderabad Division,
Hyderabad.

Subject: IMPOSITION OF BAN U/S. 144 CR.PC UPON SALE,
PURCHASE AND USE OF GUTKAI N DISTRICT THATTA.

It is submitted that due to illegal and unlawful sale of Gutka in district Thatta, the general public of district Thatta is suffering from many diseases of Mouth, Throat, Lungs, Stomach and GIT as shown below:

1. Mouth: Mouth Cancer Submucous Fibroses (Pre-Cancerous Condition), Periodontics etc.
2. Throat: Throat Cancer, Tonsillitis Abscess etc.
3. Lungs: Lung Cancer, Pulmonary Koches, Asthma & COPD
4. Stomach: Stomach Cancer, Ulcer, H-Pylori & GERD etc.
5. GIT: GIT Cancer, Chronic Diarrhea, Duodenal Ulcer, Amiobiases

It is further submitted that early action against the factory owners, wholesalers and Retailer of Gutka is necessary to prevent further deterioration.

In the light of above, it is requested that Section 144 Cr.PC may kindly be imposed against factory owners, wholesalers, retailer and users of Gutka in District Thatta to avoid from further loss of health of the Community.

SD:
(Muhammad Nawaz Sohoo) PAS
Deputy Commissioner
Thatta

- Copy in advance submitted to the Secretary to Government of Sindh, Home Department, Karachi.
- The Senior Superintendent of Police, Thatta.

SD:
Deputy Commissioner
Thatta

Perusal of same shows the concern on part of the *District Administration* in assuring a lawful action against sale / use of **'GUTKAS'** which *now* has turned into a *plague* for *generation*. Same is worth appreciating particularly when such *ill persons* have said order of learned Sessions Judge, Thatta to avoid lawful action. Compliance report shall be submitted before this Court on fortnightly basis.

12. Chief Secretary, Sindh, Secretary Local Government, I.G.P Sindh shall also submit compliance report in pursuance para-18 of D.B. which is reproduced above and this order.

13. Issue notice to respondents as well A.G. Sindh for 12.10.2018; learned MIT shall call complete record of cases disposed of by District Courts Thatta in pursuance of order of District Judge and ensure that this order is circulated to all the judges of sub-ordinate Courts including Special Courts.

JUDGE

Sajid