

MHRG030000502021



Summary Cri. Case No. 151/2021

*(The State through Revdanda police station
Vs. Prakash Mangilal Sharma and Ors.)*

CNR No. MHRG030000502021

:: ORDER BELOW EXH. 29 ::

Perused application and reply given by the accused below Exh. 30. Heard learned A.P.P. and the advocate of the accused.

02. The present application is filed by learned A.P.P. to add section 328 of the Indian Penal Code ('the IPC' in short). The advocate of the accused strongly objected it.

03. Before proceeding further, I would like to reproduce section 328 of the IPC thus :-

328. Causing hurt by means of poison, etc., with intent to commit an offence. — *Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or 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, shall be punished with imprisonment of either description for a term which may extend to ten*

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years, and shall also be liable to fine.

04. It is case of the prosecution that banned articles i.e. tobacco and Gutkha described in panchnama Exh. 16 are found stored in a house by the accused. A plain reading of the said section reveals that administering or causing any person to take any poison or stupefying, intoxicating or unwholesome drugs or other thing, is one of the essential ingredient of the section. In the instant case, *prima facie* there is no material to indicate that the accused had either administered or caused any person to take Gutkha or tobacco. Mere possession of Gutkha and tobacco does not attract section 328 of the IPC.

05. The learned A.P.P. during argument gave oral reference of a judgment of Hon'ble Apex Court stating that storing, supplying or selling tobacco or Gutkha is an offence comes under the purview of section 328 of the IPC, however that judgment not submitted by the learned prosecution.

06. No ingredient in the prosecution case which attracts the offence punishable under section 328 of the IPC, therefore, there is no ground to add this section. Accordingly, I pass the following order.

:: ORDER ::

The application is rejected.

Alibag.
Date : 25/04/2023.

(S.W. Ugale)
Chief Judicial Magistrate,
Raigad Alibag