

In the court of the Additional District Judge/Presiding Officer,
Special Court Under Essential Commodities Act, Thanjavur.

Present:-Thiru. G. Sundararajan, B.Sc., B.L.,

Additional District Judge/Presiding Officer,
Special Court under Essential Commodities Act, Thanjavur.

Wednesday, the 11th day of March 2026

2057 Thiruvalluvarandu Visuvavasu Year Masi Thingal 27th day

Criminal Miscellaneous Petition No.2803/2025

in S.C.No.185/2025

(CNR No.TNTJ010045382025)

Saiyadu Mohammed, 47/2025,

S/o.Kadhar Mohaideen,

... -- Petitioner/accused

..vs..

State rep. By

The Inspector of police,

Ayyampettai police station,

Cr.No.21/2024.

... -- Respondent/Complainant

This Petition has come up before me for final hearing on 27.02.2026 in the presence of Thiru.D.Anandaprabu, Advocate for the petitioner/accused and Thiru.N.Ranjith, Special Public Prosecutor appearing for the respondent/complainant and upon perusing the available records, this Court passed the following.

ORDER

This Petition filed by the petitioner/accused u/s 250 of BNSS to discharge him from this case.

2) Brief averments of the petition, are as follows:

The respondent police registered a case against the petitioner/accused in Cr.No.21/2024 under section 273 328 IPC and sec.5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003 as he had prohibited goods of Hans, Cool lip, Vimal betel, Suldan Tobacco in his house without any permission or license from the government for selling and filed the charge sheet against the petitioner/accused. In the charge sheet, the respondent police has not averred that the seized Tobacco products are found without warning simple or warning pictorial and further, there is no averment that the petitioner/accused had his selling point within the 100 yards of education institutions or sold the persons below the age of 18 years. Further, the respondent police has not examined any witness to show as he affected the consumption of Tobacco products. Therefore, the alleged charges for the offence u/s.273 328 IPC and sec.5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003

would not be attracted as against the petitioner/accused and prayed to discharge the accused from this case.

3) The respondent police in his counter stated that the petition for discharge the accused from the case is not maintainable in law and on facts. The petitioner has stated that there is no Tobacco products possessed by him in his house and there is no allegation of warning simple not exist in the Tobacco products and no averment in the charge sheet as the petitioner had selling point within 100 yards of education institutions and not sold to the person aged below 18 years and no one injured by consuming the Tobacco products and hence, the charged offences would not be attracted is not correct. Further allegation that there is no offence made out as against the petitioner under the cigarette and Tobacco products Act is also not correct. The petitioner has been roped in this case as an accused on the basis of materials and statements collected during the investigation and there is enough material submitted by the prosecution to frame charge against the petitioner in this case. The prosecution has already submitted all the records and witnesses statement and other documents against the petitioner/accused and the final report is also laid before the court of law and the case has been taken on file. This defense of the accused is prematured and it cannot be maintainable at this

stage. The respondent is made out the prima facie case against the petitioner and he filed this application to delay the trial of the case and prayed to dismiss the petition.

4) Whether the petitioner/accused is entitled to be discharged from this case as per sec.250 of BNSS.

5) Point for consideration:

Heard both sides, records perused. The petitioner is arrayed as an accused for the offences committed u/s. 5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003 and sec.273, 328 of IPC. It is contention of the petitioner that the offences charged u/s. 5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003 and sec.273, 328 of IPC would not attract against him on the available material submitted before this court and prayed to discharge them from this case. On the other hand, the learned Special Public Prosecutor contended that there are sufficient material available in this case for framing of charge and prima facie case made out against the petitioner and prayed to dismiss the petition.

6) It is seen that the Inspector of police, Ayyampettai police station who laid the final report against the petitioner/accused alleging that on 09.01.2024 at 6.00 A.M., the accused was having the prohibited Tobacco

products of 1) 93.100 kgs of Hans in 6 gunny bags, 2) 28.920 kgs of Cool lip in 3 gunny bags, 3) 69.77 kgs of Vimal betel (big size) in 12 gunny bags, 4) 15.640 kgs of Vimal betel (small size) in 12 gunny bags 5) 26.820 kgs of Suldan Tobaccos in 2 gunny bags without having any licence or permission from the government for selling. The accused person possessed the Tobacco products knowing that the use of the Tobacco products would cause injuries to the human life. Therefore, the accused is appeared to have committed the offences punishable u/s.5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003 and sec.273, 328 of IPC. The inspector of police seized the aforesaid Tobacco products and produced before this court in SCP.No.9/2026.

7) Before going into discussion, it is appropriate to incorporate the provisions of sec. 5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003.

5. Prohibition of advertisement of cigarettes and other tobacco

products.—(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products

through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall—

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing

advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to—

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of—

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.—(1)

No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label 1[such specified warning including a pictorial warning as may be prescribed.]

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years.—(1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

(2) All offences under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974)

8) From the reading of sec.5, 7(1), 7(2) of Cigarette and other Tobacco products it is clear that sec.5 of the act prohibits advertisement cigarette and other Tobacco products either directly or indirectly promotes or suggests the use or consumption of cigarettes or any other Tobacco products. In this case, it is not the charge on the petitioners/accused as he involved in any advertisement of cigarettes or Tobacco products, it is the allegation that he possessed 1) 93.100 kgs of Hans in 6 gunny bags, 2) 28.920 kgs of Cool lip in 3 gunny bags, 3)

69.77 kgs of Vimal betel (big size) in 12 gunny bags, 4) 15.640 kgs of Vimal betel (small size) in 12 gunny bags 5) 26.820 kgs of Suldan Tobaccos in 2 gunny bags in his house for selling.

9) On reading of sec.7(1) of the act, which is disclosed that no person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label 1[such specified warning including a pictorial warning as may be prescribed.]

10) In this case, the respondent police produced the seized Tobacco products and its packing materials in SCP.No.9/2026. On perusal of the packing materials which inscribed a mouth cancer picture. Which is a pictorial warning. So, the pictorial warning also found in the packing materials of the Tobacco products seized from the petitioner. So, the offence u/s.7(1) also would not attract.

11) Further, on reading of provision u/s.24(1) of Cigarette and other Tobacco products Act provides punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years. In this case, there is no allegation against the

petitioners/accused as he sold any Tobacco products to the persons below the age of 18 years and further, it is not the case of the prosecution that the accused persons sold, supplied or distributed the Tobacco products to any prohibited place and further, no complaint was received by the respondent police from the public as the persons below 18 years suffered health hazard due to the consumption of Tobacco products sold, supplied or distributed by the accused persons. So, the offence u/s.24(1) of cigarette and other Tobacco products Act would not be attracted from the materials submitted by the prosecution.

12) Sec.328 IPC 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 years and shall also be liable to fine.

13) In this case, there is no averment against the petitioner/accused as he administers the aforesaid Tobacco products to anyone or causes to

be taken by anyone and thereby caused hurt to such person. So, the offence u/s.328 IPC would not be attracted.

14) **Sec.273. Sale of noxious food or drink.**-- Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

15) In this case, there is no averment against the petitioner/accused as he sells or offers or exposes for sale of the Tobacco products and no one examined to show as the petitioner sells or exposes the Tobacco products for sale. So, the offence u/s.273 IPC would not be attracted.

16) In Tamil Nadu, the sale of gutka and similar chewable Tobacco products is prohibited under Food Safety Regulations, because they are harmful to health. Since, Gutka and Panmasala contain Tobacco/Nicotine, they fall under this restriction and hence, Tamil Nadu Government banned Gutka in the year 2013 using powers under the Food Safety Law. The ban was extended periodically through Government Notification.

17) In the case of **Designated officer Vs. Jayavilas Tabacco**, where the **Hon'ble High Court of Madras** (Writ appeal No.2093 of 2018, dated 20.01.2023) quashed the Tamil Nadu Government Notification banning Gutka and Panmasala. But as against the Judgment of Hon'ble High Court of Madras, the Tamil Nadu Government prepared an appeal before the Hon'ble Apex court. The Hon'ble Apex court stayed the Judgment of Hon'ble High Court of Madras. Because of this stay, the ban on Gutka continued in Tamil Nadu.

18) In the case of **Rathinam enterprises Vs.. State of Tamil Nadu**, where our **Hon'ble High Court of Madras** (reported in 2025 MHC 1580) Held that until the Hon'ble Supreme court gives a final decision, the state can continue to restrict or seize Gutka and Panmasala containing Tobacco. So, from these judgments, it is clear that the State Government can enforce the ban on Gutka and Panmasala products is valid pending decision Hon'ble Supreme court of India.

19) In the case of **Inspector of police ..Vs.. A.Arumugam**, our **Hon'ble High Court 2016(2) MWN (Criminal) 241** held that mere possession of Gutka is not an offence unless, it is proved that the accused was selling or distributing it. Simple recovery of Gutka products is not

sufficient for conviction. The proper prosecution must be under the Food Safety and Standards Act. The police cannot prosecute Gutka offences without complaint by competent Food Safety Authority.

20) Under the Food Safety Standards Act 2006, only the Food Safety officer is the competent authority to initiate proceedings and filed complaint before the court as per sec.38 of Food Safety and Standards Act before the Magistrate and not as a police FIR. The police cannot independently prosecute the offence under the Food Safety Act as held by the **Hon'ble High Court of Madras in the case of S.Muthuraman .Vs. State**

21) So, in view of the above discussions, there is no material submitted by the prosecution to attract the offences u/s.5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003 and sec.328 of IPC and thus, the charges for the offences u/s. 5, 7(1), 24(1) of cigarette and other Tobacco products Act 2003 and sec.328 of IPC would not be attracted. Admittedly, Under the Food Safety Standards Act 2006, only the Food Safety officer is the competent authority to initiate proceedings and filed complaint before the court for the offence under sec.38 of Food Safety and Standards Act before the Magistrate and not as a police FIR and thus,

the petitioner is entitled to be discharged, accordingly, this petition is allowed.

22) In the result, this petition is allowed by discharging the accused from this case.

The order was dictated to the Steno-typist, who directly typed into computer and printed out by her, corrected and pronounced by me in the open court, today, that is, **11th** day of **March 2026**.

Additional District Judge/Presiding Officer,
Special Court under E.C. Act, Thanjavur.

Witness and Exhibits on both side : Nil

ADJ.

