

VISHWANATH PASAYAT MEMORIAL NATIONAL MOOT COURT COMPETITION- 2023

UNIVERSITY LAW COLLEGE, UTKAL UNIVERSITY

MOOT PROPOSITION

1. The Erangle is one of the world's largest democracies. The Preamble of the Constitution declares the Erangle as a Sovereign, Socialist, Secular, Democratic, and Republic Nation. And in the Erangle, the Constitution is the supreme law of the land. The State of Vikendi is a State within the Erangle. The nation has a developing legal system with strict punishment for various offences. The laws of Erangle are nascent and developing so far as offences related to narcotics and psychotropic substances are concerned.

2. The Central Bureau of Narcotics (CBN) provides license for cultivation of Marijuana to several farmers who were having land for cultivation in the southern part of the state of Vikendi. One amongst such cultivator who got the license from the Government for cultivation of Marijuana is Kishan Madia who owns around 10 acres of land in the district of Sanhok. Kishan is one of the well-known Tribal leaders of the region and used to be counted amongst the powerful and politically sound individual in the District of Sanhok. Apart from cultivating Marijuana in furtherance to the license owned by Kishan, he runs a chain of restaurants with the name of Hippy-Tribes Pvt. Ltd. which is scattered in the State of Vikendi in including state capital Livik. In addition to Kishan Madia's involvement in the cultivation of Marijuana and his leadership role in the tribal community, it's important to note that Hippy-Tribes Pvt. Ltd. has two directors, Kishan Madia and his sister Devi Madia. These two individuals play a key role in managing and overseeing the operations of the restaurant chain across the State of Vikendi, including its branches in the state capital, Livik. Their joint directorship highlights their shared responsibility and involvement in the business activities of Hippy-Tribes Pvt. Ltd.

3. The license issued by Central Bureau of Narcotics (CBN) for cultivation of the Marijuana is premised upon strict norms and regulations. The licensee is allowed to cultivate the Marijuana only in the allotted areas and the licensee is forbidden from cultivating in different areas other than the allotted one. Furthermore, the license forbids cultivation of the narcotics substances beyond the allotted limit. Non abidance of the terms and conditions will not only lead to termination of license but also the erred licensee will have to face punishment under the criminal laws of the nation. Kishan in furtherance to the terms and conditions of the license issued by the Central Bureau of Narcotics (CBN) is allowed to cultivate Marijuana in 5 acres of the land with maximum capacity of 2 ton. Also, the license was only issued for the purpose of cultivation of Marijuana.

4. Hippy-Tribes Pvt. Ltd. has its branches located in several cities of State of Vikendi including its capital Livik. The branch located at Livik is considered to be the premium one which caters huge crowds from young masses. The popularity of the Hippy-Tribes Pvt. Ltd. (Livik Branch) is so high that the celebrities who visits the State of Vikendi never forget to have their food and beverages there. Also, the restaurant of Hippy-Tribes (Livik Branch) consists of a roof-top licensed bar and lounge for intake of alcoholic beverages and hookahs. Not only people visit the restaurant but also order their food online through a third-party delivery partner Tosato OPC Private Limited (An One Person Company run by Joginder Chaddha). Some of the loyal and regular customers of the restaurant run by Hippy-Tribes Pvt. Ltd. (Livik Branch) used to get special treatments in a premium lounge which requires special access cards.

5. On 2nd January 2022, one of the Senior most officer of Narcotics Department (Phunsukh Wangdo), State of Vikendi knowing the popularity of Hippy-Tribes Pvt. Ltd. (Livik Branch) especially the tribal foods that it serves to its customers made a visit to the restaurant with his wife and daughter. Since the restaurant was heavily crowded,

he decided to use the premium lounge for having their dinner. However, he found that the premium lounge was guarded by four Security personnels who used to check the access cards before allowing anyone to the lounge. Mr. Wangdo while entering into the premium lounge was stopped by security personnels and was enquired by them for the access cards. Mr. Wangdo confused with the words of security personnels and asked them for the need special access cards. Furthermore, he requested them to immediately make a special access card for him to which the security personnel vehemently refused as they were devoid of the authority. As a consequence, to which Mr. Wangdo returned back from the restaurant along with his family member empty stomach.

6. Being shocked with the behavior of restaurant personnel of Hippy-Tribes Pvt. Ltd. (Livik Branch), Mr. Wangdo thought for going through the profile of the restaurant in its website. To his utter surprise he found that the website is silent about the Premium Lounge and Special access card. The non-availability of information ultimately created a suspicion in the mind of Mr. Wangdo about some wrongful activity is going inside the Hippy-Tribes Pvt. Ltd. (Livik Branch).

7. On 5th January 2022, the Central Bureau of Narcotics (CBN) received an information from an individual with undisclosed identity regarding delivery of Marijuana (Ganja) by Hippy-Tribes Pvt. Ltd. (Livik Branch) through online delivery partner (Tosato) with a code name "**Extra-Greens**" as an add on with the other items. It was further informed to Central Bureau of Narcotics (CBN) that this particular extra item is made available to those who mentions their special access card number along with the order. This information was further circulated to Mr. Wangdo which further strengthen his suspicion about the wrongful activity that is going on at Hippy-Tribes Pvt. Ltd. (Livik Branch).

8. Upon receiving the information from the anonymous person, on 6th January 2023 Central Bureau of Narcotics (CBN) made a surprise visit to Hippy-Tribes Pvt. Ltd. (Livik Branch) to enquired into the matter. Rather than a surprise visit, it was more of a raid that was conducted by Central Bureau of Narcotics (CBN) under the leadership of Mr. Wangdo. Being aware of the whereabouts of the restaurant Mr. Wangdo directed the team to move directly to the Premium Lounge.

9. The restaurant was asked by the Central Bureau of Narcotics (CBN) as to whether they have possession of contraband substance. The Restaurant staffs admitted that they have possession of Marijuana (Ganja). On apprehending the restaurant staffs, they were informed by the police personnel that they have a legal right to be searched in presence of a Gazetted officer or a Magistrate to which the Restaurant staffs replied that they have a faith on the raiding police party and consented to be searched by them.

10. The raiding party accordingly obtained their consent in writing to be searched by the raiding police party. The raiding police party then searched the restaurant which resulted in seizure of Ganja weighing around 400 grams in quantity from their premium lounge. After completion of the raid, while leaving the restaurant premises the team found a black colour SUV was parked in the parking area of the restaurant. A sticker of Hippy-Tribes Pvt. Ltd. was affixed on the windshield of the SUV. Upon searching the vehicle, the team found 19.7KG of a pack of Marijuana (Ganja) was lying on the boot of SUV and the packet is marked with the license number of the license that was issued to Kisan Madia for cultivating Marijuana. Upon further enquiry it was found that the vehicle belongs to the Kisan Madia.

11. The incident described above led to initiation of criminal prosecution against the appellants (referred to as the Accused) for the alleged violation of Section 8(c) r/w 19, 20(b), 38 of the NDPS Act in the Special Sessions Trial No.298/2022 before the Additional Sessions

Judge/ Fast Track Court II, Livik. Following a thorough investigation, the prosecution has formally submitted the charge sheet against the Appellants. In order to substantiate the allegations made against the appellant, the prosecution has presented the testimonies of five witnesses.

12. During the investigation process, the CNB found that, the several individuals with anonymous identity were provided with the access cards for having access to premium lounge. The server of the Restaurant fails to have any significant information or details of the card holders. Furthermore, the Accused No. 1 (Hippy-Tribes Pvt. Ltd.) is a private company registered under Companies Act, 2013 for providing hospitality services. The Accused No. 2 (Devi Madia) and Accused No. 3 (Kisan Madia) were the directors of the company. The investigation also revealed that Accused No. 3 is a licensee for the cultivation of Marijuana (Ganja) for 5-acres Land with a target of 2 ton per every year to be deposited with the Government.

13. The CNB also took a note of the complaint made by the anonymous person pertaining to delivery of small packets (20 Grams) of Marijuana (Ganja) to holders of access cards through the food delivery services run by Tosato OPC Private Limited. It was further alleged in the complain that the Marijuana (Ganja) was used to be delivered in the code name of **"Extra Greens"** as an add-on to the ordered food from the Hippy-Tribes Restaurant (Livik Branch). Upon investigation the CNB verified the delivery details available with Tosato Server and found that certain users of Tosato application have ordered food from Hippy-Tribes Restaurant (Livik Branch) with an add-on of "Extra Greens" suffixed with the access card no. in the add-on details. The CNB seized the records and initiated a case against Tosato OPC Private Limited (Accused No. 4) and its director Joginder Chaddah (Accused No. 5). In furtherance to the investigation Tosato OPC Private Limited and its director Joginder Chaddah added as Accused No. 4 & 5 respectively in the Special Sessions Trial No.298/2022 before the

Additional Sessions Judge/ Fast Track Court II, Livik. After completion of investigation the CNB submitted the chargesheet showing commission of offences by Accused No. 4 & 5 under Section 8(c) r/w Section 20(b) of NDPS Act, 1985.

14. During the process of trial before the Additional Sessions Judge/ Fast Track Court II, Livik, the Accused no. 2 & 3 vehemently rejected the accusation against them stating that the Marijuana (Ganja) that was seized from restaurant by CNB was not of commercial quantity and also the search and seizure was done in the absence of a Magistrate under section 50 of NDPS Act which makes the entire procedure illegal. Furthermore, the Packet of Marijuana which was recovered from the vehicle of Accused No. 3 was supposed to be delivered at the Govt. Depot as Accused No. 3 has licensed for cultivation of the same. Furthermore, Accused No. 2 & 3 appraised to the court that the raid was done upon the instigation of Mr. Phunsukh Wangdo premising upon a mala fide intent to disrobe the good will of the restaurant ran by Accused No. 2 & 3.

15. Tosato OPC Private Limited represented by its director Joginder Chaddah defended the charges framed against them stating that neither the contraband substances were in its conscious possession nor it was aware about the nature of substances that is being delivered through its delivery agents. Furthermore, Tosato OPC Private Limited highlighted before the learned trial court that it is merely a delivery partner who has no liability towards the delivered food or beverages.

16. In a court order dated September 11, 2022, the Additional Sessions Judge/ Fast Track Court II, Livik concluded that the prosecution successfully established the guilt of the appellant beyond a reasonable doubt. Consequently, the company Hippy-Tribes Pvt. Ltd. was held liable for the commission of offences under section 38 of NDPS Act, 1985 which ultimately made Kisan Madia and Devi Madia

liable for the offences under Section 38 and 20(b)(iii) of NDPS Act, 1985. Furthermore, in addition to the preceding conviction, Kisan Madia was also held liable under section 19 of NDPS Act.

17. Both Devi Madia and Kisan Madia was sentenced to serve a term of rigorous imprisonment for 20 years, in addition to a fine of Rs.2,00,000/- each.

18. In addition to the punishment imposed by the court, Kisan Madia was also sentenced to a rigorous imprisonment of 20 years for the offence under Section 19 of NDPS Act, 1985 along with a fine of Rs.2,00,000/-. The court held that the sentence shall run concurrently.

19. Furthermore, the learned trial court premising upon the chargesheet filed found Tosato liable for the aiding in trading and consumption of Marijuana (Ganja). Thereby the director of the company Joginder Chaddah was imposed with an imprisonment of 10 years, in addition to a fine of Rs.1,00,000/- under section 20(b)(ii) of NDPS Act, 1985.

20. Devi Madia and Kisan Madia challenged the conviction before the Hon'ble High court of Vikendi on the ground that the learned trial court failed to appraised the evidences adduced before it in their defence in a proper manner. And their conviction was secured by trial court premising upon series of doubts. Thus, requesting the Hon'ble High Court to set aside the decision of the learned trial court. The High Court dismissed the appeal on the ground that there is absence of any error in the decision of trial court which calls for the interference of High Court.

21. Tosato also preferred an appeal before the High Court of Vikendi challenging the decision of lower court on the ground that being a middle man or intermediary it devoid of any liability pertaining to the allegation cropped up against it. However, the High Court dismissed the appeal.

22. Aggrieved by the decision of High Court of Vikendi; Kisan Madia, Devi Madia and Joginder Chaddah preferred distinct special leave petitions before the Hon'ble Supreme Court of Erangle. The Supreme Court of India premising upon the similarity and relativeness of the matter preferred before it by three different petitioners decided to clubbed together all the SLPs into a single one. The Hon'ble Supreme Court of Erangle prepared following issues for the purpose of final hearing of the matter.

- *ISSUE 1 : Whether the petitioners have a locus standi before the Hon'ble Supreme Court of Erangle?*
- *ISSUE 2 : Whether the unfettered discretion vested upon the Central Govt. pertaining to ascertainment of commercial quantity leads arbitrary exercise of its power?*
- *ISSUE 3 : Whether conviction imposed upon Devi Madia and Kisan Madia is liable to be set aside?*
- *ISSUE 4 : Whether Tosato being an intermediary be held liable for transportation of contraband substances?*

23. The Hon'ble Supreme Court of Erangle listed the matter on 7th October, 2023 for the purpose of final hearing. The parties are requested to present on the prescribed date with their memorandum of submission for the purpose of final hearing.

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NOTE:

- 1. All of the people, places, and things that are mentioned in this hypothetical scenario are fictitious, and any resemblances to actual people, places, or things in real life are purely coincidental.**
- 2. Prepare memorial for both the sides.**
- 3. The laws of Erangle are pari materia to the laws of India.**
- 4. The counsels from both the sides have liberty to frame issues on their own. however, the issues must be relevant to the facts that have been given in the moot proposition.**

*****The moot proposition has been drafted by Abhinash Mohanta, Himanshu Sekhar Muduli and Sneha [Faculties of ULC, Utkal University]. Kindly refrain yourself from contacting the authors in any case. Any contacts will lead to immediate disqualification of the team.**

The logo of Utkal University is a circular emblem. It features a central figure of a ship on the sea, with a sun rising behind it. The ship is flanked by two figures, one on the left and one on the right, who appear to be holding or supporting the ship. The entire emblem is set within a circular border. Below the emblem, the words "UTKAL UNIVERSITY" are written in a bold, sans-serif font, enclosed within a rectangular border.

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