



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 501 OF 2024

Sunil Ishwardas Sabu

...Applicant

**Versus**

The State of Maharashtra & Ors

...Respondents

...

Mr. K. H. Surve, Advocate for the Applicant

Mr. S. P. Joshi, APP for the Respondents – State

...

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| CORAM         | : R.M. JOSHI, J    |
| RESERVED ON   | : OCTOBER 08, 2026 |
| PRONOUNCED ON | : OCTOBER 13, 2026 |

**ORDER :**

1. This Application filed under Section 482 of the Code of Criminal Procedure seeks quashment of the first information report, charge-sheet and order of issuance of process against Applicant for the offense punishable under Sections 328, 464, 465, 468, 470, 471 of the Indian Penal Code and Sections 18(c), 18(b)(ii) and 27(D) of the Drugs and Cosmetic Act (for short '**the Act**').

2. First information report indicates that pursuant to the secret information received, a raid was conducted on a place where from the possession of co-accused psychotropic substance was seized. According to co-accused, the said substance was obtained from online medical store, New Delhi. He named another co-accused to be the person from whom he having

obtained the said substance. During the course of investigation, it was further revealed from the statement of co-accused that on earlier occasion, he has obtained psychotropic substance from medical store of the present Applicant. During the course of investigation, on 09.11.2017, raid was conducted on the medical shop of the Applicant and seizure was made of medicines including psychotropic substance. It was also found therein that the Applicant is selling the contents of codeine in plain bottles. On the basis of the said investigation, charge-sheet came to be filed against the Applicant, which culminated into issuance of process against him.

3. Learned Counsel for the Applicant submits that the Applicant is a license holder of the sale of medicines, which also includes psychotropic substance codeine. In this regard, he drew attention of the court to the license issued under the provisions of Drugs and Cosmetics Act, which according to him indicates that license in form numbers 20, 20C and 21 in his favor is valid up to October, 2026. He also pointed out to the Court the said forms indicating that the Applicant has license to purchase, store and sell codeine. According to him, there is no nexus between seizure of the contraband from co-accused as admittedly or as per the case of the co-accused, the said substance was not purchased from the present Applicant but from another co-accused. It is his submission by referring to following judgments having regard to the provisions of Section 32 of

the Drugs and Cosmetics Act, it is not open for the police to register crime and the procedure as contemplated by the said Act needs to be followed at the hands of the Drug Inspector. To support these submissions, he made reference to the paragraphs 30 to 37 of the judgment in case of *Union of India vs. Ashok Kumar Sharma and Others, MANU/SC/0648/2020*. He also made reference to judgment of the Division Bench of this Court in case of *Rajendra Madhav Pate vs. State of Maharashtra and Anr, Criminal Writ Petition No. 846/2016, decided on 10.10.2016*, by referring to the observations made in paragraph 13 thereof. Similarly, reliance is placed on another judgment of Division Bench of this Court in case of *Rupesh Pradip Bharuka vs. The State of Maharashtra and Another, Criminal Writ Petition No. 570 of 2024*, decided on 12.06.2025. According to him, since the offenses other than the offense under the Drugs and Cosmetics Act are not applicable to the applicant/present case, FIR deserves to be set aside and consequent charge-sheet and order of issuance of process also cannot sustain.

4. Learned APP opposed the Application by submitting that the first information report has been lodged by Drug Inspector, which is consistent with provisions of the Act. According to him, raid was conducted in which Applicant was found selling substance of codeine in loose bottles. It is his submission that these allegations against the Applicant gets support

from the report of the Joint Commissioner (Medicines), FDA, Aurangabad. He placed reliance on the judgment of Hon'ble Supreme Court in case of *State of Maharashtra and Another versus Sayyed Hassan Sayyed Subhan and Others, (2019) 19 SCC 145*. He referred to the paragraphs 5 and 6 thereof. It is further contention of the learned APP that the issues sought to be raised by the applicant are subject matter of decision of the trial Court and as such, while exercising extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, the proceedings are not required to be quashed.

5. *Prima facie* perusal of the record indicates that the first information report came to be lodged pursuant to the information received against the co-accused. Seizure of contraband has been done from co-accused. As far as said articles are concerned, as per the case of prosecution they are not purchased or brought from the present Applicant. On the basis of statement of co-accused Avez, who is said to have given the psychotropic substance to the co-accused, who was apprehended at the spot, raid was conducted on the medical shop of the Applicant. Thus, the person who was apprehended does not claim obtainment of the substance from Applicant. Moreover, there is no evidence on record much less admissible evidence to connect the recovery done from the medical shop of the applicant to the crime in question. There is no investigation with regard to the substance

seized from the Accused No.1 being sold by the applicant. Mere arguments of learned APP about the same would be of no relevance *sans* evidence collected during investigation.

6. Perusal of the charge-sheet further indicates that the present Applicant is having license under form nos. 20, 20C and 21 for purchase, stock and sale of the psychotropic substance including the codeine. The validity of the said license is up to October, 2026. It is thus clear that as on date on which raid was conducted, the Applicant was holding a valid license for stocking the said substance.

7. Now question arises as to whether there is offense committed by the Applicant under the provisions of Indian Penal Code or Bharatiya Nyaya Sanhita in order to cover the same under Section 32(3), which provides that nothing contained in this chapter shall be deemed to prevent any person having prosecuted under any other law for any act which constitutes an offense under this chapter. It is thus clear that only in such eventuality the Applicant could have been prosecuted. It would be relevant to take note of the judgment of Hon'ble Supreme Court in case of ***Ashok Kumar Sharma*** (supra), wherein in paragraph numbers 30 to 37 following observations are made:

*30. Coming to Section 32 of the Act, as already noted by us it falls in chapter IV. Inspectors are appointed by the Central Government or the State Government from persons*

*possessing prescribed qualifications under a notification. Section 21 contemplates prescribing Under Rules the powers which may be exercised by the Inspectors apart from the duties which may be performed by him inter alia. Section 22 of the Act provides for power of search by the Inspectors. They have power to inspect any premise, take samples, powers of search, examine any record, register, material object and seize them. The Legislature has undoubtedly applied the provisions of the Code of Criminal Procedure in regard to searches under the Act. Section 23 elaborately provides for procedure to be adopted by Inspectors.*

*31. Section 32 falling Under Section heading 'Cognizance of offences' declares, in unambiguous words, that prosecution, under Chapter IV, can be instituted only by (1) an Inspector (2) any gazetted officer of the Central Government or State Government authorised in writing by the respective Government by a general or special order made in this behalf by that Government (3) the person aggrieved (4) a recognised consumer association whether such person is a member of that association or not. Section 32 further proclaims that unless it is otherwise provided, no court inferior to a court of session shall try an offence punishable under Chapter IV. Section 32(3) makes it clear that nothing in chapter IV would stand in the way of the person being prosecuted against under any other law for any act or omission which constitutes an offence against this Chapter. Section 32 was substituted by Act 22 of 2008. Prior to the substitution it read as follows:*

*32. Cognizance of offences. -- (1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a recognised consumer association whether such person is a member of that association or not.*

*(2) No court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this Chapter.*

*(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence*

*against this Chapter.*

*32. It will be noticed at once that Section 190 of the Code of Criminal Procedure also has a title 'Cognizance of Offence by Magistrate'. Cognizance Under Section 190 is contemplated in three different modes. They are - (1) complaints of facts constituting such offences, (2) police report of such facts, (3) upon any information received from a person other than a Police Officer or upon a court being possessed of knowledge about the commission of the offence. In other words, where the court takes cognizance suo motu. A comparison between Section 32 of the Act and 190 of the Code of Criminal Procedure dealing with cognizance of offences, makes it abundantly clear that the Law Giver has provided for distinct modes in regard to prosecuting of the offences under the general law, viz., the Code of Criminal Procedure and the special provision, as contained in Section 32 of the Act.*

*33. Section 193 of the Code of Criminal Procedure reads as follows:*

*193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.*

*34. Section 195 prohibits the Court from taking any cognizance of the offences mentioned therein except on the complaint in writing by the persons named therein.*

*35. Section 198A and Section 199 likewise permit the courts to take cognizance only upon the complaint made by the persons mentioned therein. Similarly, Section 199 taboos cognizance of offence of defamation except on the complaint made by some aggrieved person.*

*36. Section 36AD of the Act applies the provisions of the Code of Criminal Procedure except where it is otherwise provided in the Act in regard to the proceedings before the Special Court and the Special Court is deemed to be the Court of Sessions and the person conducting the*

*prosecution is deemed to be the Public Prosecutor. No doubt, the proviso empowers the Central Government or the State Government to appoint for any case or class or group of cases, a Special Public Prosecutor.*

*37. The Scheme of the Act must be borne in mind when Section 32, which provides, inter alia, that an Inspector can set the ball rolling, is considered. The Inspectors, under the Act, are to possess the prescribed qualifications. The qualifications bear a nexus with the performance of the specialised duties which are to be performed under the Act. Apparently, knowledge about the drugs and cosmetics goes a long way in equipping them to perform their multifarious functions. Section 22 clothing the Inspector with powers must also be viewed thus in the context of the legislative value judgment that a complaint is to be moved by the Inspector under the Act and not by a Police Officer under the Code of Criminal Procedure. The Inspector is expected to inspect premises where drugs and cosmetics are being manufactured, sold, stocked, exhibited, offered for sale or distributed. Samples are to be taken at the points of manufacturing, selling, stocking and the points of delivery. He is expected also, where he has reason to believe that an offence under the Act has been committed, to search any person, enter any place, stop and search any vehicle, examine records, and documents and seize the same. Last but not the least, Section 22(1)(d) declares that he may exercise other powers as may be necessary for carrying the purposes of Chapter IV or any Rules made thereunder. The elaborate procedure to be followed by the Inspectors is also provided by the law.*

8. It would be relevant to take note of the directions issued and conclusions drawn by the Hon'ble Supreme Court in paragraph number 150 which reads thus:

*150. Thus, we may cull out our conclusions/directions as follows:*

*I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the Code of Criminal Procedure, the Police*

*Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.*

*II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated Under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.*

*III. Having regard to the scheme of the Code of Criminal Procedure and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR Under Section 154 of the Code of Criminal Procedure, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the Code of Criminal Procedure.*

*IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of Code of Criminal Procedure.*

*V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power Under Article 142 of the Constitution of India in this regard.*

*VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in*

*regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.*

*VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the Code of Criminal Procedure, but also immediately report the arrests to their superior Officers.*

9. It would also be relevant to take note of the judgment of the Division Bench of this Court, which takes into account the provisions of the Act, more particularly Section 32 and other provisions to hold that cognizance of the offense punishable under Section 27(B)(ii) of the Act, alleged to have been committed by the Petitioner, has not been taken by the Judicial Magistrate First Class on the basis of complaint as defined by Section 2(d) of the Code of Criminal Procedure by Drug Inspector. Consequently, the proceedings were held to be not maintainable.

10. In so far as the allegation with regard to the seizure of codeine substance in unlabeled bottles is concerned, in any event, the same would be an offence under the Act not under Penal Code. Thus, the embargo created by Section 32, in view of position of law settled by Hon'ble Supreme Court with regard to institution of proceeding by Drug Inspector, would certainly apply to the case in hand.

11. As observed herein above, there is no nexus between act of

seizure of the contraband from co-accused who was apprehended at the spot. Hence, what remains is the offense punishable under Drugs and Cosmetics Act. The position of law is settled by now by the Hon'ble Supreme Court with regard to the procedure to be followed in respect of offense under the said Act. This could be done on the complaint of Drug Inspector. Admittedly, the present proceedings is not in the nature of complaint and as such, by following the settled position of law, the proceedings based upon FIR cannot be allowed to be continued and hence, application deserves to be allowed.

12. In view of above, Application stands allowed in terms of prayer clauses 'B' and 'B-1'.

**(R. M. JOSHI, J.)**

Malani