

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.263 OF 2003**

State of Maharashtra

At the instance of

... Appellant

Shri D.C.Shaikh,

Drug Inspector, Thane office of

The Jt. Commissioner, (Konkan Divn.)

Food and Drug Admn. (M.S.), 4th floor,

E.S.I.S.Hospital Bldg., Wagle Estate,

Rd.No.33, Thane 400604

Vs

1 Shri Vithoba Maruti Ghadge,

Prop. M/s. Santoshimata Medical

& Gen. Stores, House No.219,

Meenanjali shop No.2,

Bombay-Pune road, Kalwa,

Dst. Thane.

2 Suresh Eknath Yeole,

R/o House No.755, Galli No.6,

Krishna Nagar, Section 25,

Ashele Village, Tal: Kalyan,

Dist. Thane.

... Respondents

...

Smt. J.S.Lohokare, APP for the Appellant/State.

Ms. Ameeta Kuttikrishnan for N.V.Pradhan for the Respondent
No.1.

CORAM :SANDEEP K. SHINDE J.
DATE : 29TH OCTOER, 2018

ORAL JUDGMENT :

The State of Maharashtra has preferred this Appeal under Section 36AB of the Drugs and Cosmetics Act, 1940 read with Section 378(1) of the Code of Criminal Procedure, 1973 against the order of acquittal recorded by the learned Chief Judicial Magistrate, Thane in Regular Criminal Case No.190 of 1994.

2 Heard the learned APP for the State and the learned counsel for the Respondents.

3 The only point which needs to be answered is as to whether P.W.1-State Drug Inspector was competent to search on 9.4.1993 the premises of Accused No.1 and institute the prosecution under Section 32 of the Drugs & Cosmetics Act, 1940.

4 The Drugs and Cosmetics Act, 1940 (hereinafter referred to as '**Said Act**') defines expression 'Inspector' in Section 3(3)(e)(ii) thus,

“3(3)(e)(ii) in relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under Section 21;”

5 Section 21 of the said Act empowers the Central or a State Government to appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by issuing notification in the Official Gazette.

6 Under Section 32 of the Said Act, Inspector is authorised to institute prosecution against the person having committed the offence under the said Act.

7 From the aforesaid provisions, a drug inspector is empowered to discharge his official duties under the said Act once his appointment is notified in the Official Gazette. In other words, even if his appointment is prior to the date of Notification, he is not empowered to discharge his duties, much less, alleged prosecution. In the case in hand, P.W.1 Shri Shaikh was appointed as Drug Inspector on 1.8.1992 for the Thane area; however, his appointment was notified in terms of Section 21 of the said Act in the Official Gazette on 7.10.1993. It is not in dispute that Mr. Shaikh had conducted searched the premises of Accused No.1 in April, 1993, a date on which his appointment was not notified in the Official Gazette. Besides, record shows that he had collected samples from the shop premises of Respondent No.1 on 12.4.1992 and 19.4.1992, a date much prior to the date on which his appointment was notified in the Official Gazette. Thus, in sum and substance, date on which he had conducted raid and searched the

premises of the accused no.1, he was not 'Inspector' within the meaning of Section 21 of the said Act.

8 Thus, in view of the facts aforesaid, I have no manner of doubt to hold that prosecution instituted by P.W.1 on the basis of which cognizance was taken by the learned Magistrate was obviously without jurisdiction. Though the prosecution was instituted on 29.3.1994, it would relate back to the date on which offence allegedly committed by the accused herein. In view of this, it is to be held that complaint was without any authority and, therefore, bad in law.

9 This Court in the case of **State of Maharashtra v. R.A.Chandawarkar and Others 1999 Drug Cases 94** has held in paragraphs 40 and 42 as under:

“40. It is to be noted here that the provision of [section 21](#) of the Drugs and [Cosmetics Act](#), 1940, makes it abundantly clear that the post of Drug Inspector is a very vital public post with wide range of powers to take samples and seize the samples and prosecute the

persons for selling the adulterous, suprious and sub-standard quality drugs. In view of such vital powers conferred by [section 21](#) of the Drugs and [Cosmetics Act](#), 1940 on such Drug Inspectors, the said section clearly, mandates that the Central Government or the State Government, may issue notification in Official Gazatte so as to appoint such Drug Inspectors for such areas as assigned to them. The intention of the legislature is very clear from the said [section 21](#) of the Drugs and [Cosmetics Act](#), 1940 that the appointment of such a person holding such an important post as a Drug Inspector, especially in the interest of public heath, obviously will have to be notified in the Official Gazette and that the said notification should indicate the area in which the said Drug Inspector can exercise his powers. In fact, [section 21](#) does not say that the publication of notification in Official Gazette is discretionary. If one were to look at the wording of the said section carefully, the Central Government or the State Government may appoint such qualified persons as the Drug Inspectors as it thinks fit. In fact, the wording of the said [section 21](#) shows that there is coma after the word may and not before the said word so as to construe that the issuance of the notification in the Official Gazette is discretionary.

42. In the instant case, admittedly, there is no Official Gazette Notification appointing Mr. V.D. Patil as a Drug Inspector for Greater Bombay area and as such, Mr. V.D. Patil cannot claim to be a Drug Inspector for Greater Bombay area atleast up to 21st April, 1988 on which date the said notification was published. In the instant case, as observed earlier, the sample was taken on 29th September, 1987, was sent for analysis on 6th October, 1987 and the complaint was filed on 22nd March, 1988. Till such time there was no Official Gazette Notification notifying Mr. V.D. Patil as a Drug Inspector for Greater Bombay area. In view of the aforesaid very serious infirmity which goes to the root of the matter, I hold that the said Drug Inspector Mr. V.D. Patil had no authority whatsoever to seize the said samples of Drug Vanmycetin Opticops and forward the same for analysis to the Government Analyst and that he had no jurisdiction whatsoever to

launch the said prosecution and file the criminal complaint against the accused on 22nd March, 1988.”

10 Facts of the case in hand and the narration in two paragraphs of the reported case are almost similar. In view of these facts, I do not see any reason to interfere with the finding of the learned Chief Judicial Magistrate. Finding is neither perverse nor contrary to the evidence on record.

11 In the result, Appeal fails and dismissed accordingly.

(SANDEEP K. SHINDE, J.)