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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1355 OF 2017

Avadhesh Mukutbihari Sharma
Age 39 years, Occu. Presently Nil
R/o Opp. Railway Station,
Shantinapur, Jaipur,
Rajasthan

...**PETITIONER**

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Food and Drugs Administration,
Mantralaya, Mumbai
2. The State of Maharashtra,
Through the Principal Secretary,
Home Department,
Mantralaya, Mumbai
3. Police Station Officer,
CIDCO, Aurangabad

...**RESPONDENTS**

...
Shri R.R. Mantri, Advocate for petitioner
Shri S.B. Yawalkar, A.P.P. for respondents
...

**CORAM : SS. SHINDE &
R.G. AVACHAT, JJ.**

Date of reserving judgment : 13th February, 2019.
Date of pronouncing judgment : 2nd May, 2019.

JUDGMENT (PER R.G. AVACHAT, J.) :

1. This Criminal Writ Petition filed under Articles 226 and 227 of the Constitution of India seeks quashing of F.I.R.,

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being Crime No.334/2016, registered with CIDCO, Aurangabad Police Station and consequential Charge Sheet (No.301/2017) pending before the Court of Judicial Magistrate, First Class, Aurangabad.

2. The facts necessary for deciding the present Writ Petition are as follows :

The petitioner is a resident of Jaipur (Rajasthan State). On 2.11.2015, the Drug Controlling Authority, Jaipur effected raid on the premises falling within the jurisdiction of Shipra Path Police Station, Jaipur. It was found that the petitioner was residing on the said premises. During the search of the premises, it was noticed that, number of drugs were stored on the ground floor, besides the machinery like Mixer, bottling machine, sealing machine, blister packing machine and packing material etc. It was also found that the drugs were manufactured on the very premises. Labels on the containers of the drugs, however, showed it to have been manufactured by M/s Avya Health Care, Rudrapur, District Mandi. On enquiry with the concerned authority, it was found that, no such firm by name Avya Health Care did exist. The drugs and medicines found during the raid came to be seized. Samples thereof were taken. It was further found that the drugs manufactured there,

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were supplied and sold at Aurangabad, Sangli in the State of Maharashtra and in some other States as well.

On completion of the raid, F.I.R. came to be lodged against the petitioner with Shipra Path Police Station, Jaipur. The petitioner came to be arrested on 3.11.2015. It has been informed that the petitioner has been tried and convicted by the competent Court, at Jaipur. It has further been reported that the petitioner has recently been released on bail by the High Court of Rajasthan.

3. The Controller of Drugs, Rajasthan informed his counterpart in State of Maharashtra about the raid and the supply and sale of drugs to dealers in Maharashtra. The office of Joint Commissioner, Food & Drugs Administration (Aurangabad Division) in turn came to be informed. The Drug Inspector Shri Manoj Ayya (first informant), therefore, visited Richmond Laboratory, Shop No.2, Ganesh Housing Society, CIDCO, Aurangabad on 21.11.2015 and inspected the same. During the inspection, it was found that, some of the drugs manufactured on the premises at Jaipur, were stocked/ stored in the Shop No.2. Samples of the following drugs were obtained for analysis.

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- (1) TFLOX-OZ Tab, B.No.AAH0947
- (2) Coldbee Suspension, B.No.AAH0981

Purchase bills and sale invoices available at the shop came to be seized. The samples of both the drugs have been analysed by the Public Analyst to find that both the drugs did not conform to the standards and thus were spurious. While the F.I.R. was lodged, the Public Analyst's report regarding TFLOX-OZ Tab was available. The report regarding "Coldbee Suspension" was received later on. The Drug Inspector, therefore, lodged the F.I.R. on 14.5.2016, alleging the respondent Richmond Laboratory/ Shop owner Shri Abhijeet Wagdalkar (co-accused) and the petitioner herein, in furtherance of their conspiracy, manufactured, stored and sold spurious drugs. C.R. No.334/2016, therefore, came to be registered for offences punishable under Sections 18(a)(i) read with Section 17-B and Section 27(c) of the Drugs and Cosmetics Act, 1940 (for short the Act) and under Section 420 read with Section 120-B of the Indian Penal Code. The impugned in this petition is this F.I.R. and the charge sheet filed pursuant thereto.

4. We have heard Shri R.R. Mantri, learned counsel appearing for the petitioner and Shri S.B. Yawalkar, learned

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A.P.P. for the State. We have gone through the relevant record.

5. Learned counsel for the petitioner would submit that, the second F.I.R. (impugned herein) for the same offence cannot be entertained and sustained. Perusal of the F.I.Rs., one lodged at Shipra Path Police Station, Jaipur and the one impugned in this Writ Petition, would show that the same are based on the same incidence. Filing of the second F.I.R. and making investigation pursuant thereto would, therefore, be violative of the fundamental rights of the petitioner. Learned counsel would further submit that copies of report of Public Analyst have never been supplied to the petitioner. The same has caused the petitioner prejudice in his right to challenge the report. Learned counsel would further submit that, no ingredients of the offence of cheating, punishable under Section 420 of the Indian Penal Code are made out. The police authorities had no authority to register the F.I.R. and make investigation of any of the offences punishable under the Act, since it is only the Drug Inspector on whose complaint prosecution could be launched.

In support of his contentions, learned counsel has relied on the judgment of the Apex Court in case of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation &**

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anr. reported in **AIR 2013 SC 3794, Venkaiah Chowdary Nannapaneni & ors. Vs. State of Maharashtra** reported in **2003 ALL MR (Cri) 758**, and few more authorities to ultimately urge for quashing of the F.I.R. and the consequential charge sheet (No.301/2017).

6. Learned A.P.P., on the other hand, would submit that the Drug Inspector had every authority to lodge F.I.R. and then launch prosecution on the basis of material collected during the investigation of the F.I.R. lodged by him. Learned A.P.P. would further submit that the report of the Public Analyst was tendered to the petitioner in Jail. The petitioner, however, refused to receive the same. The Public Analyst's report indicate the drugs were spurious. The sale thereof to the customers at Aurangabad and other places, thus, constitute an offence of cheating. The learned A.P.P. would further submit that, the Drug Inspector has also launched the prosecution by filing a complaint before the Judicial Magistrate, First Class at Aurangabad. During inspection of the Richmond Laboratory/ Shop No.2, it was found that an altogether different offence was committed. Learned A.P.P. ultimately urged for dismissal of the petition.

7. Let us first consider the legal aspects raised by the

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petitioner relating to filing of the second F.I.R. The Apex Court in Amit Shah's case (supra), observed :-

“32. This Court has consistently laid down the law on the issue interpreting the Code, that a second F.I.R. in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Anthony (AIR 2001 SC 2637) (supra), this Court has categorically held that registration of second F.I.R. (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusion in paragraph nos.19, 20 and 27 of that judgment are relevant which read as under :

“19. The scheme of Cr.P.C. is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C. on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh F.I.R.; he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence oral or documentary, he is obliged to forward the same with one or

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more further reports; this is the import of sub-section (8) of Section 173, Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the F.I.R. but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173, Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report

or reports to the Magistrate. In Narang case (AIR 1979 SC 1791) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive F.I.Rs. whether before or after filing the final report under Section 173(2), Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156, Cr.P.C., nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive F.I.Rs., not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first F.I.R. either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482, Cr.P.C. or under Articles 226/227 of the Constitution”

The above referred declaration of law by this Court has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

33. In C. Maniappan (supra), this Court explained “consequence test”, i.e., if an offence forming part of the second F.I.R. arises as a consequence of the offence alleged in the first F.I.R. then offences covered by both the F.I.Rs. are the same

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and, accordingly, the second F.I.R. will be impermissible in law. In other words, the offences covered in both the F.I.Rs. shall have to be treated as a part of the first F.I.R.

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36. In Babulal (supra), the Privy Council has held that if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it.

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42. In the case of Babubhai (2010 AIR SCW 5126) (supra), the very same Bench considered the permissibility of more than one F.I.R. and the test of sameness. After explaining F.I.R. under Section 154 of the Code, commencement of the investigation, formation of opinion under Section 169 or 170 of the Code, police report under Section 173 of the Code and statements under Section 162 of the Code, this Court, has held that the Court has to examine the facts and circumstances giving rise to both the F.I.Rs. and the test of sameness is to be applied to find out whether both the F.I.Rs. relate to the same incident in respect of the same occurrence or are in regard to the incidents having two or more parts of the same transaction. This Court further held that if the answer

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is in affirmative, the second F.I.R. is liable to be quashed. It was further held that, in case the contrary is proved, where the version of the second F.I.R. is different and is in respect of the two different incidents/ crimes, the second F.I.R. is permissible. This Court further explained that in case in respect of the same incident the accused in the first F.I.R. comes forward with a different version or counterclaim, investigation on both the F.I.Rs. has to be conducted. It is clear from the decision that if two F.I.Rs. pertain to two different incidents crimes, second F.I.R. is permissible. In the light of the factual position in the case on hand, the ratio in that decision is not helpful to the case of the C.B.I.”

8. The F.I.R. registered at Shipra Path Police Station, Jaipur records that the officials of the Controller of Drugs, Rajasthan searched the premises. It was noticed that, number of drugs were stored on the ground floor, besides the machinery like Mixer, bottling machine, sealing machine, blister packing machine and packing material etc. It was also found that the drugs were manufactured on the very premises. Labels on the containers of the drugs, however, showed it to have been manufactured by M/s Avya Health Care, Rudrapur, District Mandi. On enquiry with the concerned authority, it was found that, no such firm by name Avya Health Care did exist. The drugs and medicines found during the raid came to be seized. Samples thereof were taken. It was further found that

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the drugs manufactured there, were supplied and sold at Aurangabad, Sangli in the State of Maharashtra and in some other States as well.

9. The F.I.R. was lodged by Shri Vachan Singh Meena, Drug Controlling Officer, Sethi Colony, District Jaipur. Based on the said F.I.R., Crime No.718/2015 for offences punishable under Sections 420, 487, 120-B of the Indian Penal Code and 18(a)(i), 27(a), 27(c), 27(d), 18(c) 27(b) (ii), 36-AC of the Drugs and Cosmetics Act, 1940 came to be registered.

The petitioner was arrested immediately i.e. on 3.11.2015 and since then, he remained behind the bars until he has recently been released on bail by the High Court of Rajasthan in Appeal, preferred by the petitioner against his conviction.

10. Admittedly, the Controller of Drugs, Rajasthan informed about the raid to his counterpart in Maharashtra. Consequently, the office of Joint Commissioner, Food & Drugs Administration, Aurangabad Division came to be informed on 9.11.2016. Shri Manoj Ayya, Drug Inspector, therefore, paid visit and inspected visited Richmond Laboratory, Shop No.2, Ganesh Housing Society, CIDCO, Aurangabad on 21.11.2015

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and inspected the same. During the inspection, it was found that, the drugs manufactured on the premises at Jaipur, however, were stocked/ stored in the Shop No.2. Samples of TFLOX-OZ Tab, B.No.AAH0947 and Coldbee Suspension, B.No.AAH0981 were obtained for analysis. Purchase bills and sale invoices available at the shop came to be seized. The samples of both the drugs have been analysed by the Public Analyst to find that both the drugs did not conform to the standards and thus were spurious. While the F.I.R. was lodged, the Public Analyst's report regarding TFLOX-OZ Tab was available. The report regarding "Coldbee Suspension" was received later on. The Drug Inspector, therefore, lodged the F.I.R. on 14.5.2016, alleging the respondent Richmond Laboratory/ Shop owner, Shri Abhijeet Wagdalkar (co-accused) and the petitioner herein, in furtherance of their conspiracy, manufactured, stored and sold spurious drugs.

11. Comparison of the aforesaid both F.I.Rs. would undoubtedly indicate that the petitioner was alleged to have manufactured, stored and sold spurious drugs at his premises at Jaipur. The petitioner came to be arrested immediately after the search was over and the F.I.R. was lodged. He remained behind the bar for over three years. The petitioner, thus, cannot be said to have manufactured, stored and sold the

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spurious drugs post his arrest. It is also not the case of the prosecution. The petitioner is alleged to have sold the spurious drugs to the dealers in Aurangabad and elsewhere. The proprietor of M/s Richmond Laboratory, Aurangabad is one of them. As per the case of the prosecution itself, the two drugs TFLOX-OZ Tab, B.No.AAH0947 and Coldbee Suspension, B.No.AAH0981, seized during the inspection of M/s Richmond Laboratory, were manufactured by the petitioner at his premises in Rajasthan and sold to Richmond Laboratory. Although those drugs were not found at the premises in Rajasthan, the fact that those were sold to Richmond Laboratory, Aurangabad, had been disclosed during the search of the premises at Rajasthan itself. The facts, thus, undoubtedly indicate that, manufacture of spurious TFLOX-OZ Tab and Coldbee Suspension at Jaipur was an undisclosed offence, covered by the F.I.R. registered at Shipra Path Police Station, Jaipur. Although it might be a distinct offence, committed in the course of the same transaction, if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial, for every such offence.

12. Since the offence covered by the second F.I.R. forms

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part of the same transaction of the offence covered by the first F.I.R., the second F.I.R., so far as regards the petitioner is concerned, is unsustainable in law in view of the dictum of the Apex Court in Amit Shah's case (supra). The impugned F.I.R. is, therefore, liable to be quashed so far as regards the petitioner is concerned. The proprietor of Richmond Laboratory is not before us. His case would, therefore, not be governed by this order.

13. The investigation made pursuant to the impugned F.I.R. and the charge sheet filed against the petitioner would be treated as further investigation, and the charge sheet being supplementary charge sheet. The same or its copy need to be sent to Officer Incharge of Shipra Path Police Station, Jaipur to ensure that the same is filed as a supplementary charge sheet before the competent Court, and the petitioner would be accordingly dealt with.

14. The other grounds of attack made by learned counsel Shri R.R. Mantri for the petitioner are now dealt with. By virtue of Section 36-AC of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13,

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clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clause (a) and (c) of section 27, section 28, section 28-A, section 28-B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.

This provision empowers the Officer Incharge of the Police Station to register an F.I.R. relating to the offence covered by Section 36-AC, (1) (a) of the Act and investigate the same.

15. True, by virtue of Section 32 of the Act, no prosecution under Chapter of the Act shall be instituted except by :-

- (a) an Inspector; or
- (b) any Gazetted Officer of the Central Government or a State Government authorized in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or
- (c) the person aggrieved; or
- (d) a recognised consumer association whether such person is a member of that association or not.

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- (2) Save as otherwise provided in this Act, no Court inferior to that of a Court of Session 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.

16. Section 36-AB provides for constitution of Special Courts for trial of certain offences under the Act. Sub-section (2) of Section 36-AB empowers the Special Court to try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

The aforesaid provisions would undoubtedly indicate that the accused committing offence/s punishable under the Act and under any other law, can be tried by the Special Court in a prosecution launched by the Drug Inspector or other competent authority. Be that as it may, the aforesaid provisions would further indicate that when an act or omission constituting an offence under any other law for any act or omission, which constitutes an offence under the Act, could also be dealt with pursuant to investigation made and report filed under Section

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173 of the Code of Criminal Procedure.

17. Learned counsel for the petitioner, therefore, could not be heard to say that, the Officer Incharge of the CIDCO Police Station, Aurangabad has no power to register an F.I.R. relating to the offence punishable under the Indian Penal Code and under the Act as well and make investigation thereof. Officer Incharge of the Police Station can very well file a report under Section 173 of the Code of Criminal Procedure in respect of offence punishable under the Indian Penal Code.

Non-supply of copy of Public Analyst's Report:-

18. This Court, in case of **Venkaiah Chowdary Nannapaneni & ors. Vs. State of Maharashtra**, reported in **2003 ALL MR (Cri) 758**, observed in para 13 that, Sub-section (4) of Section 23 of the Act requires the Inspector to restore one portion of a sample to the person from whom he takes it. One portion has to be forwarded to the Government Analyst for test or analysis. The second portion has to be produced to the Court before which proceedings, if any are instituted in respect of the drug. The third portion has to be sent to the person whose name and address and other particulars have been disclosed u/s 18-A of the Act.

In para 15 of the judgment, this Court further observed that, Section 18-A says that every person not being

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the manufacturer of a drug or cosmetic or agent for the distribution thereof, shall, if so required disclose to the Inspector the name and address and other particulars and the person from whom he acquired the drug or cosmetic. Therefore, if samples are drawn not from the manufacturer or his agent but from some other person, he has to, if required, disclose to the Inspector the name and address and other particulars of the person from whom he acquired the drug. Therefore, Section 18-A does not require that such person should disclose the name of the manufacturer. He has to only give the name of the person from whom he has acquired the drug and if in a given case the drug is not acquired from the manufacturer but from the distributor, the manufacturer's name will never be disclosed. The Act does not require Drug Inspector to send the sample to any one else except to such persons whose names are disclosed to the Inspector as per the provisions of Section 18-A of the Act.

In para 16, this Court observed that, Section 25(1) requires the Government Analyst to whom a sample of any drug (or cosmetic) has been submitted for test or analysis under sub-section (4) of Section 23, to deliver to the Inspector submitting it, a signed report in triplicate in the prescribed form, Sub-section (2) thereof requires the Inspector to deliver one copy of

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the report to the person from whom the sample was taken.

Further, in para 17, this Court observed that, Sub-section (3) of Section 25 says that the report signed by the Government Analyst shall be evidence of the facts stated therein and shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A has within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report. Therefore, this provision enables the person from whom the sample was taken or person whose name is disclosed u/s 18-a to challenge the correctness of this report.

In para 19, this Court observed that, Sub-section (4) of Section 25 requires that unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug produced before the Magistrate under sub-

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section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

In para 19, this Court observed that, therefore, the report of Central Drugs Laboratory is of utmost importance and in fact it supercedes the report of the Government Analyst. This sub-section provides two options. The Court may at the request either of the complainant or the accused forward the sample to the Central Drug Laboratory or it may on its own motion do so. This is obviously to rule out any possibility of any prejudice being caused either to the complainant or the accused and to set at rest any doubt entertained by them as regards the authenticity of the report of the Government Analyst. It is, therefore, necessary that provisions of sub-section (4) of Section 25 are not rendered redundant by any events and this right of the complainant or the accused is in fact made available to them.

20. The Public Analyst's report indicates the two drugs seized from Richmond Laboratory were found to be spurious.

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There is record to prima facie indicate compliance of Section 25(2) of the Act. Copy of the report was sought to be delivered to the petitioner in jail. He, however refused to receive the same. The charge sheet (now supplementary) came to be filed after shelf life of the drugs was over. The petitioner may, therefore, be justified to contend to have suffered prejudice in his right to have the sample tested by Central Laboratory. We do not propose to give any positive finding in view of the fact that the Drug Inspector has launched prosecution against the petitioner and the proprietor of Richmond Laboratory, Aurangabad by filing complaint before the Court of Judicial Magistrate, First Class. The petitioner is at liberty to agitate his grievance since the prosecution launched pursuant to the said complaint is not under challenge in this Writ Petition.

21. It was submitted by the learned counsel for the petitioner that, offence punishable under Section 420 of the Indian Penal Code is not attracted since no person came forward alleging to have been fraudulently or dishonestly induced to buy the two drugs namely TFLOX-OZ Tab, B.No.AAH0947 and Coldbee Suspension, B.No.AAH0981.

We find no substance in the submissions made by learned counsel for the petitioner, for the reason that the

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record indicates the petitioner to have sold/ supplied the spurious drugs to Richmond Laboratory, which in turn sold/ supplied to other dealer and customers as well. There are invoices to indicate the same. This fact prima facie indicates that spurious drugs were sold. Moreover, those drugs were shown to have been manufactured by Avya Health Care, Rudrapur, District Mandi, non existent entity. For the purposes of Chapter IV of the Act, drugs shall be deemed to be spurious :-

- (a)
- (b)
- (c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exit; or
- (d)
- (e) if it purports to be the product of a manufacturer of whom it is not truly a product.

22. For the reasons given hereinabove, we found the impugned F.I.R., being the second F.I.R., lodged against the petitioner, in respect of the same offence, and the same is, therefore, liable to be quashed. The petitioner has, prima facie,

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been found to have committed offence under Sections 420 read with Section 120-B of the Indian Penal Code and offence under Section 17-B of the Drugs and Cosmetics Act, 1940. The petitioner would, therefore, be liable to be prosecuted for newly disclosed offences committed by him in the course of the same transaction. Section 300 of the Code of Criminal Procedure would not come in the way.

23. In the result, the petition partly succeeds in terms of the following order :

ORDER

- (i) The Criminal Writ Petition is partly allowed.
- (ii) F.I.R., being Crime No.334/2016, registered with CIDCO, Aurangabad Police Station is quashed so far as regards the present petitioner is concerned.
- (iii) Charge Sheet No.301/2017 is treated as supplementary charge sheet, lodged pursuant to the further investigation and the same, therefore, be sent to Shipra Path Police Station, for further course of action regarding prosecution of the petitioner for offence punishable under Section 420 read with Section 120-B of the Indian Penal Code and any other offence, but not

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any offence under the Drugs and Cosmetics Act, 1940, since the prosecution has been launched by filing a complaint.

- (iv) We hope that the Police Station Incharge of Shipra Path Police Station, Jaipur would do the needful to ensure that the petitioner is tried for the offence/s disclosed to have been committed by him during the further investigation.

(R. G. AVACHAT)
JUDGE

(S.S. SHINDE)
JUDGE

fmp/