

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL WRIT PETITION NO.1371 OF 2017**

Arjun s/o Maruti Magar,  
aged: 70 years, Occ: Agriculture,  
R/o Magar Wasti, Khandgaon,  
Tq. Pathardi, District Ahmednagar.

PETITIONER

Versus

01 The State of Maharashtra,  
through the Police Station  
Officer,  
Pathardi Police Station,  
District Ahmednagar.

02 Atish Shivaji Sarkale,  
aged: 36 years, Occ: Service,  
as Drugs Inspector in the  
office of Assistant Commissioner,  
Food & Drugs Administration,  
(M.S.), 19C, "Pragati",  
Siddivinayak Colony, Near  
Auxillium School, Savedi,  
Ahmednagar.

RESPONDENTS

Mr.V.D.Sapkal, Advocate for the Petitioner  
Mr.K.S.Patil, A.P.P. for Respondents.

**CORAM : PRASANNA B. VARALE  
AND  
SMT.VIBHA KANKANWADI, JJ.**

**Date of Reserving the Order: 12<sup>th</sup> March, 2018.  
Date of Pronouncing the Order: 12<sup>th</sup> June, 2020.**

**JUDGMENT (Per Prasanna B. Varale, J.):**

1            Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2            The petitioner, by way of present writ petition, prays for quashing and setting aside the F.I.R./ Crime No.0489/2017, registered at Pathardi Police Station, District Ahmednagar on 23.08.2017, for the offences punishable under Sections 18( c), 18(a) (I ), 17(b) & 17-A(b) of the Drugs & Cosmetics Act, 1940 and under Sections 175, 274, 275, 276 and 336 of the Indian Penal Code, in pursuance of the complaint lodged by Respondent No.2 – Arjun Shivaji Sarkale, Drugs Inspector, Food & Drugs Administration, Ahmednagar.

3            The brief facts, giving rise to the petition, can be summarised as follows:

On 09.12.2016, Respondent No.2 -Atish Shivaji Sarkale, Drugs Inspector along with Mr.J.H.Shaikh, Drugs Inspector with other colleagues visited the residential premises of the petitioner found stock of allopathic tablets without any label. Respondent No.2 drawn samples for the purposes of analysis in Form No.17 on 09.12.2016. Respondent No.2 requested for an action by

submitting Complaint in the Court of Chief Judicial Magistrate, Ahmednagar. The Complaint was registered as Misc. Criminal Application No.1193 of 2016. The Form No.17 and alleged panchanama of seizure were submitted before the Court. A communication was issued to the petitioner by Respondent No.2 on 15.12.2016 and the petitioner submitted his clarification to the communication on or about 26.12.2016. On receiving sample result, notice was issued to the petitioner on 18.04.2017 along with copies of chemical analysis report. The petitioner submitted his reply to the notice on or about 03.05.2017 denying the contents of the notice.

4            Respondent No.2 then approached Pathardi Police Station, District Ahmednagar, and lodged a Complaint on 23.08.2017 reiterating the above referred facts and alleging that the petitioner was selling the tablets/drugs without any permission, which is dangerous to human life. On receipt of the Complaint, F.I.R./Crime No.0489/2017 came to be registered against the petitioner at Pathardi Police Station, District Ahmednagar, for the offences punishable under Sections 18( c), 18(a) (i ) and 17-A(b) of the Drugs & Cosmetics Act, 1940 and under Sections 175, 274, 275, 276 and 336 of the Indian Penal Code.

5           It is the case of the petitioner that on the basis of registration of F.I.R., the police authorities took cognizance and are behind the petitioner.

6           In challenge to the above referred F.I.R., Mr.Sapkal, learned Counsel for the petitioner, vehemently submitted before this Court that the entire exercise of registration of the F.I.R. and consequent action of the police authorities, who are behind the petitioner, is unsustainable. Mr.Sapkal, learned Counsel for the petitioner raised a ground that the lodging of the F.I.R. by Respondent No.2 is an act of lack of powers and thus the sum and substance of his submission is that Respondent No.2 exceeded his powers.

7           It is the submission of Mr.Sapkal, learned Counsel for the petitioner, that in view of the provisions of Drugs and Cosmetics Act, 1940, and more particularly, in view of the provisions of Section 32, no prosecution could have been launched/instituted except by –  
(a) an Inspector; or (b) any Gazetted Officer of the Central Government or a State Government authorised 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.

8 Our attention is also invited to sub-section (2) of Section 32 and the same reads thus:

**32 Cognizance of offences:-**

(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.

9 Based on the reading of aforesaid provision, Mr.Sapkal vehemently submitted that there could not have been a direct F.I.R. in the Police Station. He further submitted that no powers are given to the police authorities to arrest, seize and search, under the provisions of Drugs and Cosmetics Act, 1940; and these powers are vested with the Drugs Inspector, or a person authorized, as specified in the Act.

10 It was a submission of Mr.Sapkal, learned Counsel for the petitioner, that on the basis of registration of F.I.R., the police authorities would proceed further for investigation in the matter and on conclusion of the investigation, may submit charge sheet before the Court of Judicial Magistrate, First Class, Pathardi. It is also the submission of Mr.Sapkal that in view of the provisions of Section 198

of the Code of Criminal Procedure, the Court is supposed to take cognizance only on the basis of a Complaint lodged by an aggrieved person; or on the basis of complaint of authorised Government employee or on the basis of complaint of a recognised consumer association.

11 In support of his submissions, Mr.Sapkal, learned Counsel for the petitioner, invited our attention to Sections 21 and 22 of the Drugs and Cosmetics Act, 1940, which deal with the definition of word “Inspectors” and the powers and duties of the Inspector under the Act. It may be useful for our purposes to refer to these provisions:

**21 Inspectors-** (1) The Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or classes of drugs or cosmetics or classes of cosmetics in relation to which and the conditions, limitations or

restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the import, manufacture or sale of drugs or cosmetics shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and shall be officially subordinate to such authority, having the prescribed qualifications, as the Government appointing him may specify in this behalf.

**22 Powers of Inspectors-** (1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,-

(a) inspect,-

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or

cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic,-

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,-

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed, and order in

writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence.

(cc) examine any record, register, document or any other material object found with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c), and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;

(cca) require any person to produce any record, register or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed.

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the said Code.

(2-A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produced the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, having been taken.

(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter or refuses to produce any record, register or other document when so required under clause (cca) of sub-section 1, he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.

12           It may not be out of place to state here that Section 25 refers to the formalities of report of the Government analyst, supplying copies thereof and calling for reply. It is also the submission of Mr.Sapkal, learned Counsel for the petitioner that the Complaint filed by the Drugs Inspector in the Court of Chief Judicial Magistrate, Ahmednagar, though is permissible and on committal the Sessions Court would try the case, the F.I.R. lodged by Respondent No.2 is nothing but misuse of the powers by the said authority. Our attention is invited to the copies of the above referred documents. Perusal of the reply submitted by the petitioner shows that the petitioner flatly denied all the allegations. The petitioner submitted in his reply dated 03.05.2017, that he has not indulged in any act of procuring the alleged tablets or selling of the alleged tablets. It is also submitted in the reply dated 03.05.2017 that the petitioner is in his advanced age and he is subjected to baseless proceedings.

13           Mr.Sapkal, learned Counsel for the petitioner, has placed heavy reliance on certain judgments i.e.:

(1)           Judgment delivered by Patna High Court in the matter of **Hindustain Lever Ltd. Vs. State of Bihar**, LEX (PAT) 1996 984;

(2) Judgment of the Hon'ble Apex Court in the matter of **State of Bihar Vs. Murad Ali Khan and others**, reported in AIR 1989 SC 1;

(3) The judgment of Division Bench of this Court (unreported) in the matter of **Mannu Kaduba Gavane & Sagar Mannu Gavane Vs. State of Maharashtra** (Criminal Writ Petition No.268 of 2015, decided on 14.07.2015).

(4) The judgment of Division Bench of this Court in the matter of **Rajendra Madhav Pate Vs. State of Maharashtra & another**, reported in 2017 All M.R. (Cri.) 999.

14 Mr.Sapkal, learned Counsel for the petitioner, further submitted that in the report lodged against the petitioner, offences under Sections 18(c), 18 (a)(i), 17 (b) and 17-A(b) of the Drugs and Cosmetics Act, 1940, are alleged and even on bare perusal of these provisions, it can safely be said that no act is committed by the petitioner which would attract these provisions. For ready reference, we may quote the relevant provisions of Section 17, 17-A(b), 18(c) and 18(a)(i) of the Drugs and Cosmetics Act, 1940, which read thus:

**17 Misbranded drugs:** For the purposes of this Chapter, a drug shall be deemed to be misbranded,-

(a) if it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is; or

(b) if it is not labelled in the prescribed manner; or

(c) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.

**17-A Adulterated drugs:** For the purposes of this Chapter, a drug shall be deemed to be adulterated

(a) ..... ..

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) ..... ..

(d) ..... .....

(e) ..... .....

**18 Prohibition of manufacture and sale of certain drugs and cosmetics-** From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute-

(i) any drug which is not of a standard quality, or his misbranded, adulterated or spurious;

(ii) ..... .....

(iii) ..... .....

(iv) ..... .....

(v) ..... .....

(vi) ..... .....

(b) ..... .....

(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality.

15            Mr.Sapkal, learned Counsel for the petitioner, vehemently submitted that when there is absolutely no material even *prima facie* to infer that the petitioner is a manufacturer or seller of the drugs, attracting these provisions against the petitioner is nothing but non application of mind.

16 Mr.Sapkal then submitted that similarly, in the F.I.R., the petitioner is alleged to have committed the offence punishable under Sections 175, 274, 275, 276 and 336 of the Indian Penal Code. These provisions read as under:

**175 Omission to produce document or electronic record to public servant by personal legally bound to produce it.-**

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document or electronic record is to be produced or delivered to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**274 Adulteration of drugs-** Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that

it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it has not undergone such adulteration, 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.

**275 Sale of adulterated drugs-**

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, 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.

**276 Sale of drug as a different drug or preparation-**

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, 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.

**336 Act endangering life or personal safety of others** – Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

17           Per *contra*, the learned A.P.P., on the basis of affidavit-in-reply filed on behalf of Respondent No.2 – Mr.Atish Shivaji Sarkale, supported the action challenged in the petition. It is submitted by the learned A.P.P. that Respondent No.2 is an Inspector appointed under Section 21 of the Drugs and Cosmetics Act, 1940 by the Government of Maharashtra. He is a “public servant” as per Section 21 of the Indian Penal Code and no error is committed by him in registering the F.I.R. No.0489/2017 against the petitioner at Pathardi Police Station.

18           It is also the submission of learned A.P.P. that as unlabeled tablets were found in possession of the petitioner, it was necessary for the authorities to know the details of procurement of

these tablets by the petitioner. It is also submitted by the learned A.P.P. that on analytical test, it is revealed that the unlabelled tablet contains allopathic drug combination, namely *Phenylbutazone* and *Betamethasone* as per the Government Analysis report dated 02.03.2017. It is then submitted by the learned A.P.P. that overdose of the said drugs can cause renal failure, liver injury, bone marrow suppression, and gastric ulceration or perforation. Early signs of toxicity include loss of appetite and depression and prolonged use of Betamethasone drug on extensive areas of skin, broken or raw skin, skin folds, or underneath airtight dressings may on rare occasion result in enough corticosteroid being absorbed to have side effects on other parts of the body; for example, by causing a decrease in the production of natural hormones by the adrenal glands.

19           It is then submitted by the learned A.P.P. that in the investigation, it is revealed that the petitioner was distributing unlabelled drugs to the patients suffering from body ache or joint pain and the sale of the said drug was without any written prescription of registered Medical Practitioner, which is a requirement under Rule 65 of the Drugs and Cosmetics Rules, 1945 and the consumption of such drugs would put the life of the patients at high risk.

20           It is the submission of the learned A.P.P. that for the purpose of carrying out investigation, more particularly, in the matter of tablets/drugs, the Drugs Inspector is required to take help of police machinery as the Drugs Inspector does not have powers to arrest the person(s) for further investigation and this can be done by registration of F.I.R. so that the police authorities can investigate the matter as per the provisions of the Code of Criminal Procedure.

21           The learned A.P.P. made available the police report for perusal of this Court. The perusal of police report shows that the F.I.R. is lodged against the petitioner on 09.12.2016. The report was submitted to this Court on 24.10.2017 along with copy of panchanama of seizure of the unlabelled tablets, statement of the petitioner and copy of the analysis report. The sequence of events, referred to above, discloses that though the F.I.R. was lodged on 09.12.2016 and the report is submitted to this Court on 24.10.2017, except a bare reference to the information received that the petitioner is selling unlabelled tablets to the patients suffering from body ache and joint pains, no positive material in the form of statement of any such patient is presented before this Court.

22           Considering the rival submission of the parties, we find considerable merit in the submissions of Mr.Sapkal, learned Counsel

for the petitioner. It is also not in dispute that the Respondent No.2 had already submitted a Complaint to the Court of Chief Judicial Magistrate and on the basis of very material, again a report was lodged in the Police Station Pathardi on 23.08.2017 in respect of occurrence of visiting the residence of the petitioner and seizure of unlabelled tablets on 09.12.2016.

23           It may not be out of place to refer to the judgment of this Court, heavily relied upon by Mr.Sapkal, learned Counsel for the petitioner, in the matter of **Mannu Kaduba Gavane & Sagar Mannu Gavane Vs. State of Maharashtra** (Criminal Writ Petition No.268 of 2015, decided on 14.07.2015. In the said matter, the provisions of Sections 9, 39, 50 and 51 of the Wild Life (Protection) Act, 1972, were attracted while lodging the F.I.R. It was the submission of the learned Counsel for the petitioner in the said matter that there is a specific bar under the provisions of law for lodging report by a Police Constable while attracting the provisions of the Wild Life (Protection) Act, 1972. The Division Bench, in view of the facts and submissions before the Court, was pleased to observe in paragraphs 10 & 11, thus:

“10   In the present case, the charge sheet is already filed and the case is pending before the

Judicial Magistrate, First Class, Paithan. Even if, the Court is not taken cognizance yet, however, considering that there is a bar as prescribed under Section 55 of the said Act, for taking cognizance, continuance of the proceedings against the petitioners would amount to an abuse of the process of the Court. The said proceedings do not deserve to be continued further. The Supreme Court in the case of State of Haryana Vs. Bhajanlal (AIR 1992 SC 604) held that, in following categories the Court would be able to quash the F.I.R.:

1 .....

2 .....

3 .....

4 .....

5 .....

6 Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for

the grievance of the aggrieved party.

7 ..... ..

11 In the present case, category no.6 gets attracted inasmuch as the proceedings initiated by the Head Constable of the concerned Police Station are not by the statutory / authorized Officer, as contemplated under Section 55 of the said Act, and therefore, such initiation of the proceedings would be barred. Petitioners relied on the case of Jaffar @ Noorahmed Jaffarhusein Vs. The State of Karnataka (Criminal Petition No.10695/2012, decided on 27.02.2013: Dharwad Circuit Bench) in which in similar situation while quashing charge-sheet Forest Officers were given liberty to take action in accordance with law. Therefore, petition deserves to be allowed and same is allowed in terms of prayer clause-B. State however is at liberty to rectify defects in the light of above and take suitable steps as per law.”

24 Mr.Sapkal, learned Counsel for the petitioner also placed reliance on the judgment of the Division Bench of this Court in the matter of **Rajendra Madhav Pate Vs. State of Maharashtra & another**, reported in 2017 All M.R. (Cri.) 999. It would be useful for our purposes to refer to paragraphs no.8, 9, 10 and 11, which

read thus:

“8 As per section 18(c) of the Act, no person shall himself or by any other person on his behalf manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under Chapter IV of the Act. Undisputedly, the petitioner has obtained a licence for sale of drugs through his shop namely M/s Suyog Medical and General Stores. The petitioner has produced the copy of the order dated 20<sup>th</sup> June, 2013, passed by the Assistant Commissioner Shri H.Y.Metkar whereby the licence granted to the petitioner for sale and purchase of drugs through his shop was suspended for a period from 1<sup>st</sup> October, 2013 to 15<sup>th</sup> October, 2013 (both days inclusive). The copy of this order is shown to have been given to respondent No.2 also.

9 The FIR lodged by respondent no.2 itself makes it clear that before passing of the said order, a notice to show cause was given to the petitioner and after considering his reply, the said order came to be passed. It is further mentioned in the FIR that respondent No.2 is working as a Drugs Inspector for Chalisgaon Taluka since the year 2012. In the

circumstances, the contention of respondent No.2 that when he himself, the Assistant Commissioner Shri H.Y.Metkar and one more officer visited the shop of the petitioner, the petitioner was not knowing them and that without disclosing their identity, they asked the petitioner to hand over the cough syrup bottle to them, *prima facie*, cannot be accepted. Moreover, the contents of the FIR do not disclose that respondent No.2 expressed his desire to purchase the cough syrup bottle. It is mentioned that respondent No.2 and the other two officers orally asked the petitioner to handover the cough syrup bottle. When respondent No.2 – Drugs Inspector, who was empowered vide section 22 of the Act to inspect the shop of the petitioner, asked for any particular drug bottle for inspection. It was most natural on the part of the petitioner to obey his dictate by handing over the said bottle to him, failing which the petitioner would have been liable to be prosecuted for committing an offence made punishable under sub-section (3) of section 22 of the Act. Respondent No.2 himself states in the FIR that the petitioner politely refused to accept the price thereof. Had the petitioner really intended to sell the cough syrup bottle to unknown persons, as alleged, he would have immediately accepted the price thereof. If the said bottle was handed over by him to those officers on being asked by

them, without receiving any price thereof, then it cannot be assumed that it was sold out by him to them. As such, the alleged sale of the cough syrup bottle by the petitioner, cannot be believed from the contents of the FIR itself.

10           There is absolutely nothing on record to show that the petitioner sold out the drugs to any other persons during the period of suspension of his licence. It was not difficult for respondent No.2 to seize the bill-book containing the receipts or to send a spy witness to purchase the drugs with prescription and then after sale of the drugs by the petitioner, to take necessary action against him. Without doing that exercise, respondent No.2 tried to show that the petitioner sold the drugs during the period of suspension of his licence.

11       Here, it would be necessary to refer to the material portion of the provisions of section 36-AC(1)(a) of the Act, enumerating the offences punishable under certain sections of the Act, which have been made cognizable, which read thus:

“Offences to be cognizable and non-bailable in certain cases -

(1) Notwithstanding anything contained in the

## Code of Criminal Procedure, 1973

(a) every offence, relating to adulterated or spurious drug and punishable under Clauses (a) and (c) of sub-section (1) of section 13, Clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, Clauses (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.”

The offence punishable under section 27(b)(ii) of the Act has not been included in Clause (a) of sub-section (1) of section 36-AC of the Act. In view of the settled legal position that special enactment will prevail over general law, as has been reiterated in the case of (Suresh Nanda Vs. C.B.I.)<sup>1</sup>, 2008(2) Bom.C.R.(Cri.) 514(S.C.): (2008)<sup>3</sup> S.C.C. 174 cited by the learned Counsel for the petitioner, the provisions of section 36-AC of the Act would prevail over the general provisions of the Code of Criminal Procedure, classifying the offences as cognizable or non-cognizable, and the offences those have been enumerated in section 36-AC only would be treated as cognizable. As such, the offence under section 27(b)(ii) of the Act being non-cognizable, the policy machinery was not empowered to take cognizance thereof and

conduct investigation, without the order of the Magistrate vide section 155(2) of the Code of Criminal Procedure. It is not the case of the respondents that the investigation into the present case was carried out after obtaining order from the Magistrate vide section 155(2) of the Code. Thus, the investigation conducted by the police officer in this case is illegal.”

25           Mr.Sapkal, learned Counsel for the petitioner is justified in submitting before this Court that the facts of the present matter and facts in the matter of **Rajendra Madhav Pate Vs. State of Maharashtra & another**, are nearly identical.

26           Mr.Sapkal, learned Counsel for the petitioner, is also justified in submitting before this Court that for not only attracting the offence under the provisions of Sections 18(c), 18(a)(i), 17 (b) and 17-A (b) of the Drugs and Cosmetics Act, 1940 but even for attracting the provisions of Sections 175, 274, 275, 276 and 336 of the Indian Penal Code, there is absolutely no material against the petitioner and lodging of F.I.R. and continuance of the proceedings against the petitioner, with such baseless material, is nothing but an abuse of process of law.

27           In view of the above referred facts, we are of the opinion that Mr.Sapkal, learned Counsel for the petitioner, has made out a case and the petition deserves to be allowed.

28           Resultantly, petition is allowed in terms of prayer clause (B).

29           Rule is made absolute in the aforesaid terms.

**(SMT. VIBHA KANKANWADI, J.)   (PRASANNA B. VARALE, J.)**