

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 667 OF 2010

WITH

CRIMINAL WRIT PETITION NO. 668 OF 2010

WITH

CRIMINAL WRIT PETITION NO. 3285 OF 2010

WITH

CRIMINAL WRIT PETITION NO. 3425 OF 2011

WITH

CRIMINAL WRIT PETITION NO. 3426 OF 2011

WITH

CRIMINAL WRIT PETITION NO. 3427 OF 2011

WITH

CRIMINAL WRIT PETITION NO. 3428 OF 2011

1. Fresenisu Kabi Oncology Ltd.

Formerly known as Dabur Pharma Ltd.,
a Company Duly registered under the Companies
Act, 1956, having its registered office at B-310,
Som Datt Chabers-I Bhikaji Cama Place
New Delhi – 110 066.

2. Dr. Jayanta Chattopadhyay

Site Head – (Factory Manager) Fresenius
Kabi Oncology Ltd. Formerly Known as
Dabur Pharma Ltd. Kalyani Plant,
West Bengal

.. Petitioners

Versus

1. The State of Maharashtra
Through the Public Prosecutor
High Court (A.S.), Bombay.

2. Conservator of Forests
Kolhapur Wild Life
Kolhapur – 416 003, Maharashtra

.. Respondents

Mr. Subhash Jha, a/w. Venkita Subramaniam, Meena Mishra, M. Sheth, Krunal Jadhav, Ritesh Kesarwani, Shraddha Kataria and Praveena Venkatraman, i/b. Law Global, Advocates for the Petitioners in all Petitions.
Ms. Mahalakshmi Ganpathy, APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 3rd NOVEMBER, 2023.
PRONOUNCED ON : 22nd DECEMBER, 2023.**

JUDGMENT [PER: SHYAM C. CHANDAK, J.]

1) Present Petitions are filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, (Cr.P.C.), seeking to quash and set aside the criminal cases mentioned in the chart hereinbelow, wherein the Petitioners have been made accused. The offences alleged against the Petitioners are same and/or similar. Only distinction is that the theft of the subject matter “Forest Produce” has been committed at different locations of the forest/non-forest land of the Respondents. For the sake of brevity, a chart showing C.R. No.; Case No.; Accused Nos. and Sections of the Acts applied is given hereunder.

1) CWP 667/2010	J.M.F.C. Court, at Shirala. RCC No. 39/2008	Accused Nos. 108 & 109	<u>The Wildlife Protection Act 1972:</u> Secs. 27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26 (1) a, c, d, f, 41 and 42(e)(h) <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A <u>The Bombay Forest Rules, 1942:</u> Rules 66 & 129.
2) CWP 668/2010	J.M.F.C. Court, at Shirala. SCC No. 183/2006	Accused Nos. 42 & 43	<u>The Wildlife Protection Act 1972:</u> Secs. 27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26 (1) a, c, d, f, 41 and 42. <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A. <u>The Bombay Forest Rules, 1942:</u> Rules 66 & 129.
3) CWP 3285/2010	J.M.F.C. Court, at Malkapur, Shahuwadi SCC No. 79/2006	Accused Nos. 49 & 50	<u>The Wildlife Protection Act 1972:</u> Secs. 27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26(1)a, c, f, 41 and 42. <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A. <u>The Bombay Forest Rules, 1942:</u> Rules 66 & 129.
4) CWP 3425/2011	J.M.F.C. Court, at Malkapur, Shahuwadi RCC No. 79/2006	Accused Nos. 43 & 44	<u>The Wildlife Protection Act 1972:</u> Secs. 27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26 (1) a, c, f, 41 and 42. <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A. <u>The Bombay Forest Rules, 1942:</u> Rules 66 & 129.
5) CWP 3426/2011	J.M.F.C. Court, at Malkapur, Shahuwadi RCC No. 46/2007	Accused Nos. 21 & 22	<u>The Wildlife Protection Act 1972:</u> Secs. 27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26(1) a, c, d, f, 41 and 42. <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A. <u>The Bombay Forest Rules, 1942:</u> Rules 66 & 129.

6) CWP 3427/2011	J.M.F.C. Court, at Shirala RCC No. 33/2008	Accused Nos. 62 & 63	<u>The Wildlife Protection Act 1972:</u> Secs.27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26 (1) a, b, c, d, f, 41 and 42. <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A, 120-B. <u>The Bombay Forest Rules, 1942:</u> Rule 129.
7) CWP 3428/2011	J.M.F.C. Court, at Malkapur, Shahuwadi RCC No. 45/07	Accused Nos. 21 & 22	<u>The Wildlife Protection Act 1972:</u> Secs.27, 29,30,31,35,39,50,51 & 52. <u>Indian Forest Act 1927:</u> Secs. 26 (1)a, c, d, f, 41 and 42. <u>The Indian Penal Code:</u> Secs. 107, 117 and 120-A. <u>The Bombay Forest Rules, 1942:</u> Rules. 66 & 129.

2) Heard Shri Subhash Jha, learned counsel for the Petitioners and Ms. Mahalakshmi Ganpathy, learned APP for the Respondents-State. Perused the Petitions, the documents annexed thereto and the affidavit-in-reply by Respondent No.2. All the Petitions have been opposed by Respondent No.2 by its common affidavit-in-reply, filed in W.P. No.668 of 2010.

2.1) In the first six Petitions, Rule was issued on 22nd February, 2013 and in the last petition on 9th July, 2013.

3) The prosecution case giving rise to filing of these Petitions, as can be discerned and briefly stated as under:-

3.1) *Narkya* is a small tree, found in the western *Ghats* of Maharashtra. It is called *Nothapodyts nimmoniana* (formerly known as *Mapia foetida*). On detection of illicit felling of *Narkya* trees in *Chandoli*

National Park in April 2005, preliminary, 27 offences were registered, enquired and total 12 complaints have been filed in the Court of Judicial Magistrate, First Class, at Shahuwadi and Shirala of Kolhapur and Sangli Districts respectively against total 490 offenders (since many of the accused are repeated in various cases, the net numbers of accused is about 223), for the offences punishable under the provisions of the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and the Bombay Forest Rules, 1942.

3.2) The prime accused in all these cases are accused No.1-Jagdish Dhavale and accused No.2-Kasam Chanchal Shaikh. The investigation team successfully discovered the entire chain of accused persons involved in the crimes right from cutting the *Narkya* trees up-to manufacturing the Camptothecin from its chips.

3.3) During investigation of the crimes, various vehicles including animals, weighing machines, mobile phones used in the crimes were seized. Large numbers of bags containing *Narkya* wood chips worth lacs of rupees were seized from *Chandoli* National Park and other places. 1110 Kgs. of *Naykya* extract were seized from Hyderabad and Ahmedabad. 22 Kgs. of Camptothecin valued at Rs.44.00 lacs were seized from the plant of the Petitioners, at West Bengal. It was supplied to them by the accused Coral Drugs Pvt. Ltd. That, 0.250 Kgs. of Camptothecin was seized from Coral

Drugs Pvt. Ltd. About 4.40 Kgs. of crude Camptothecin worth Rs.44,500/- were seized from Ahmedabad. Thus, the seized stolen property comprised of *Narkya* wood chips, Crude Jelly, Crude Camptothecin and final product Camptothecin. In short, all the above products were derived/extracted from the stolen *Narkya* wood.

3.4) To get the Camptothecin, the *Narkya* billets were powdered, then converted to jelly and therefrom drug/alkaloid Camptothecin was derived at Harayana and Delhi and it was sold to Petitioner No.1 in West Bengal. The team from wildlife Department visited the said plant, explored the nexus and seized the said 22 Kgs. of Camptothecin. The materials seized are the subject matter of the criminal proceedings in the Court of J.M.F.C., Shirala, Dist. Sangli and J.M.F.C., Shahuwadi, Dist. Kolhapur. The companies namely Universal Chemical Industries, Hyderabad, Somaiya Farms and Organic Products Pvt. Ltd., Gujarat and Naturite Agro Products, Hyderabad are also accused in the cases.

Submissions:

4) Mr. Jha, learned counsel for the Petitioners submitted that, various processes are adopted for bringing about the requisite chemical change *i.e.* Camptothecin from the original raw material *Mappi Foetida* (*Narkya*), which is a “Forest Produce”. He submitted that, Camptothecin

being the finished product does not retain the original character and properties of the basic “Forest Produce”. Therefore, the Camptothecin is not a “Forest Produce”, as defined in the Forest Act. To accept this argument, Mr. Jha, learned counsel has referred the Order of the Calcutta High Court passed by the learned Single Judge in W.P. No.21014 (W) of 2005. Further, Mr. Jha, learned counsel referred the Order of the Division Bench in FM Appeal No.930 of 2006 which upheld the Order of the Single Judge and pointed us the flow chart as to how Camptothecin is isolated from *Narkya* trees. This chart was discussed in the judgment by the Division Bench. Lastly; the learned counsel submitted that the Order of the Division Bench has not been interfered with by the Apex Court when it was challenged by Respondent No.2 in SLP (Civil) No.21405 of 2012.

4.1) Mr. Jha, learned counsel for the Petitioners submitted that, there are many accused in the said cases. As alleged, Accused Nos.1 and 2 are mainly responsible for arranging labours, causing them to cut the *Narkya* trees, making its chips, transporting it to various places with the help of certain other accused persons and then reaching it to various companies for further processing and to extract from it the medicinal essence and powder Camptothecin. But the Petitioners were not at all involved in this entire process or combinations of the acts for that matter. What is alleged against

the Petitioners is that, they purchased total 22 Kgs. of fine Camptothecin from Coral Drugs Pvt. Ltd., but without verifying as to whether said Camptothecin was extract of the stolen trees or not. However, the invoices produced on record clearly indicate that, said Camptothecin was purchased by the Petitioners for its then market price totaling to Rs.44,00,000/-. That apart, there is no material showing that when the Petitioners purchased said 22 Kgs. of Camptothecin, they knew that it is extracted from the stolen forest produce. Thus, the Petitioners are the bonafide purchasers of Camptothecin and are innocent. Nevertheless, the Petitioners have been made accused and prosecuted, which is illegal. Hence, all the Petitions may be allowed.

4.2) To support his submissions, Mr. Jha, learned counsel has relied upon the following decisions.

1. *Forest Range Officer & Ors. Vs. P. Mohd Ali & Ors.*, [1993 Supp (3) SCC 627],
2. *State of M.P Vs. S.P Sales Agencies & Ors.* [(2004) 4 SCC 448],
3. *Fatesang Gimba Vasava & Ors. Vs. State of Gujarat & Ors.*, [1986 SCC Online Guj 34.],
4. *Suresh Lohiya Vs. State of Maharashtra & Anr.*, [(1996)10 SCC 397],
5. *Tej Bahadur Dube (Dead) By Lrs. Vs. Forest Range Officers (S.W.)*

Hyderabad, [(2003) 3 SCC 122],

6. *Madhavrao Jiwajirao Scindia & Ors. Vs. Sambhajirao Chandrojirao Angre & Ors.*, [(1988) 1 SCC 692],

7. *Manoj Mahavir Prasad Khaitan Vs. Ram Gopal Poddar & Anr.*, [(2010) 10 SCC 673] and

8. *Rajiv Thapar & Ors. Vs. Madanlal Kapoor.*, [(2013) 3 SCC 330]

5) In contrast, Ms. Mahalakshmi Ganpathy, learned APP submitted that, it is not disputed by the Petitioners that, the Camptothecin in question was seized from them and it is extracted from the *Narkya* trees, illegally cut and stolen from the forest areas. Looking at the process of making the Camptothecin, it is apparent that except changing the chips of the stolen trees into the Camptothecin, no other change occurred thereto. Therefore, the seized Camptothecin is falling within the expression “Forest Produce”. Any other interpretation would defeat the very object of the Forest Act. The relevant presumption is against the Petitioners. As such, there is no substance in the submissions put forward for the Petitioners. Hence, all the Petitions may be dismissed.

6) The Petitioners have not disputed that, said 22 Kgs. of Camptothecin was seized kept aside. Respondent No.2 did not offer any comment as to the averment by the Petitioners that they had purchased the

seized Camptothecin for total amount of Rs.44 lacs from the accused M/s. Coral Drugs Pvt. Ltd., under the invoices at pg. Nos.79 and 80 in Cril. W.P. No.3426 of 2011 (one invoice is not produced). Therefore, and looking at the rival arguments, first; it must be seen as to whether the seized Camptothecin is a “Forest Produce” or not. The inclusive definition of “Forest Produce” as mentioned in Section 2, sub-Section (4) of the Indian Forest Act, is as follows:

“Forest-produce” includes—

(a) the following whether found in, or brought from, a forest or not, that is to say— timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, 3 [kuth] and myrabolams, and

(b) the following when found in, or brought from a forest, that is to say—

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

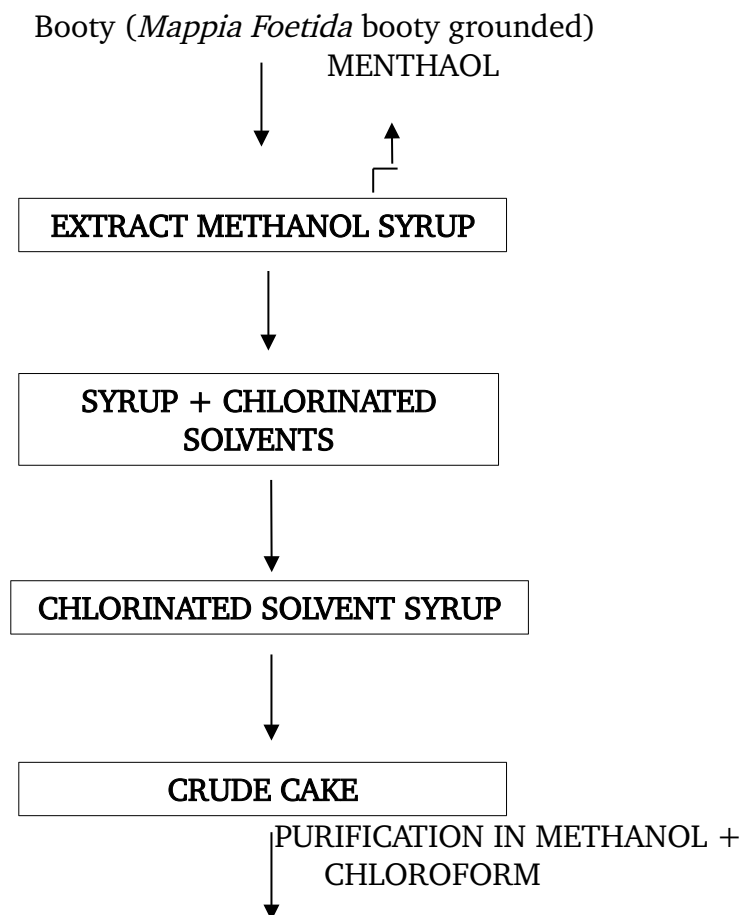
(iv) peat, surface soil, rock and minerals (including lime-stone, laterite,

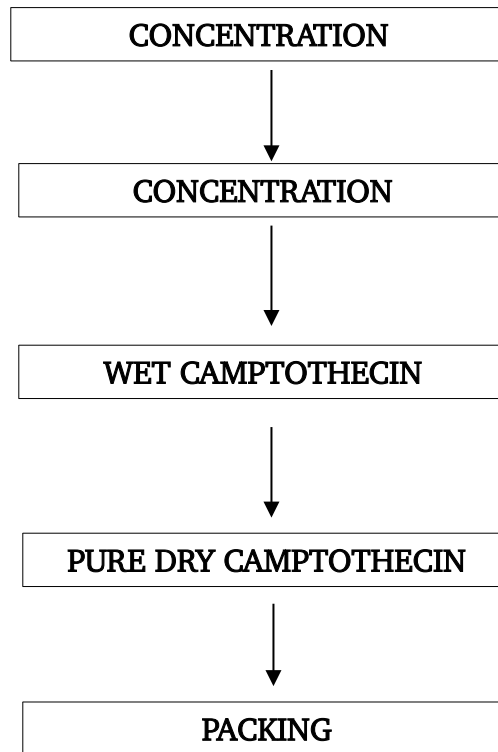
mineral oils, and all products of mines or quarries);

7) In this context it is material to note that, during investigation, Respondent No.2 wrote a letter dated 16th July, 2005 to Petitioner No.1 to dispatch said 22 Kgs. of Camptothecin to the Forest Department, claiming that it is a stolen “Forest Produce”. In turn, Petitioner No.1, through Petitioner No.2, gave a reply dated 19th July, 2005, that it received the said Camptothecin under purchase Order for price. Hence, it is no way connected with the raw material sourcing of its suppliers. That, Camptothecin is highly toxic and hazardous, hence needs special arrangement to carry. Therefore, it was requested to take samples of the same and to allow the Petitioners to keep aside that Camptothecin in their custody. Then, on 19th July, 2005 the Camptothecin was kept aside as per direction of Respondent No.2. On 5th September, 2005, Petitioner No.1 wrote a letter and informed to Respondent No.2 that the subject Camptothecin is an essential raw material for some of its products. It has a definite shelf life. Hence, it was requested to allow the Petitioners to consume the Camptothecin. This letter did not get reply in time from Respondent No. 2. Therefore, Petitioner No.1 filed a W.P. No.21014 (W) of 2005 before the Calcutta High Court, wherein, the learned Single Judge held that Camptothecin is not a “Forest Produce”. The submission on behalf of Petitioner No.1 that, it was bonafide purchase for

value without notice remained unshaken. The Camptothecin was not seized. Hence, said letter dated 19th July, 2005 was quashed. The said Order was challenged by Respondent No.2 in FM Appeal No.930 of 2006, wherein, the Division Bench considered the definition of the “Forest Produce” and as to how Camptothecin is isolated from *Narkya* tree and held that, it cannot be said to be a forest produce within the definition of forest produce. The Division Bench has referred in its Order the following flow chart showing the derivation/isolation of Camptothecin.

FLOW CHART FOR ISOLATION OF CAMPTOTHECIN





8) In view of this chart, the Division Bench observed that,

“12.... said chart depicts that, Mappi Foetida no doubt is used as a raw material. The said raw material is transformed to a finished product with various chemical processes, changing other foreign materials in the manner as follows.

“Mapia Foetida is grounded first with methanol. The extract of methanol with Mapia Foetida is collected. Then the syrup is mixed with chlorinated solvent to make a solution. Thereafter, crude cake is manufactured and/or prepared from this solution. After purification of the crude cake in methanol and chloroform, there is a process of concentration and filtering and then

wet Camptothecin is brought about. The wet Camptothecin is dried and then packed.

***13.** Thus, it is quite clear that, the original forest produce being the raw material has to pass through a change. Science says, when there is a chemical change, the ingredients used in the process lose its character and transformed into a different component altogether, unlike physical changes, e.g. once water is vapourised, until and unless the vapour is cooled, the water remains in gaseous form. But once the cooling process is started, the water can be brought back easily.*

***14.** It is well known, there is a difference between physical change and chemical change. Physical change can be brought about easily and at the same time, the original material can also be brought back easily, but it is not possible in the case chemical change.*

***15.** Hence, it is an unacceptable argument, that Camptothecin retains the original character of *Mapia Foetida*. According to us, *Mapia Foetida* is not Camptothecin and it is a raw material”.*

9) In this regard, the Division bench considered the decision in the case of *Suresh Lohiya vs. State of Maharashtra and anr.*, [(1996) 10 SCC 397], wherein the Hon’ble Supreme Court observed that, “*we may also state that, according to us the view taken by the Gujarat High Court in*

Fatesang case (supra) is correct, because though bamboo as a whole is forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from, forest-produce, having a distinct character’. In view of this observations, that factually Camptothecin is produced through various chemical process and the changes are permanent in character, the Division Bench upheld the Judgment of the learned single Judge and dismissed the FM Appeal No.930 of 2006. Respondent No.2 challenged this dismissal before the Apex Court in SLP (Civil) No.21405 of 2012, wherein, after hearing the parties at length, it is held that “*on the peculiar facts of this case, the judgment of the High Court does not call for any interference*”.

10) Thus, once it is authoritatively held by the Apex Court that Camptothecin is not a forest produce, question of holding otherwise does not arise herein. Hence, we hold that, the subject Camptothecin is not a “Forest Produce”. In this background, prosecution of the Petitioners in impugned criminal cases is unwarranted.

11) No doubt, in the case of *Bharat Bhooshan Aggrawal vs. State of*

Kerala, [2021 SCC Online SC 881], cited by learned APP, it is held that,

“22. It is noteworthy that, in Suresh Lohiya (supra) this Court made no reference and did not advert to Forest Range Officer vs. P. Mohammed Ali, (reported in 1993 Supp (3) SCC 627). In Suresh Lohiya also, we notice this Court sought to interpret the interplay between “forest produce”, “timber” and “tree” and concluded that articles or products created by human toil are not per se forest products. This Court is of the opinion that the distinction sought to be made defeats the purpose of the Act, because illegally procured forest produce, such as sandalwood, rosewood, or other rare species, and then worked upon, resulting in a product - predominantly based on the essential forest produce, would escape the rigors of the Act. Therefore, Suresh Lohiya cannot be considered a binding authority; its dicta should be understood as confined to the facts of that case. For these reasons, it is held that the impugned judgment, so far as it proceeded on the assumption that sandalwood oil is forest produce, is based on a correct appreciation of law”.

12) Nevertheless, in the case in hand, we cannot take a divergent view that, the seized Camptothecin is a “Forest Produce” because in the decision of W.P. No.21014 (W) of 2005, the Calcutta High Court considered the decision in the case of *Mohammed Ali (Supra)* and then passed the Order which remained intact up-to the Apex Court.

13) Be that as it may, admittedly, Petitioner No.1 is engaged in manufacturing pharmaceutical products related to cancer treatment. Petitioner No.2 is Manager of Petitioner No.1. The Petitioners have claimed that they had purchased the subject Camptothecin for total amount of Rs.44,00,000/-. This assertion is not commented against by Respondent No.2. It is not the case of the Respondents that the invoices produced by the Petitioner, are false. On the contrary, the letter dated 16th July, 2005 by Respondent No.2 clearly mentions that the Camptothecin was delivered to Petitioner No.1 by M/s. Coral Durgs Pvt. Ltd. under its said three invoices (dated 09.04.2005 -10Kgs, 28.05.2005-10 Kgs and 09.07.2005- 2 Kgs.). There is no material against the Petitioners showing that before purchasing and till receiving said Camptothecin, they knew that it was derived/extracted from the chips of the stolen *Narkya* trees. Therefore, the learned single Judge of the Calcutta High Court observed that, the submission on behalf of Petitioner No.1 that it was bonafide purchaser for value without notice remained unshaken. That apart, it is highly improbable that Petitioner No.1 company would buy an illegal "Forest Produce" for such a huge price, that too at the risk of its prosecution for serious offences. Hence, in the above background also the prosecution of the Petitioner in the aforesaid cases, is not justifiable in law.

14) In the backdrop of the discussion, we are of the considered view that continuation of the impugned cases registered against the Petitioners at the instance of Respondent No.2 would be abuse of the process of law. Hence, the abovementioned offences in the chart at Page Nos.3 & 4 are liable to be quashed and are accordingly quashed and set aside.

15) All the petitions are allowed in the above terms.

16) Rule is made absolute in all the Petitions.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)