



IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.27 OF 2025

Union of India,
Ministry of Health and Family Welfare
O/o Drug Controller General (India).
Directorate General of Health Service represented
By Drugs Inspector,
O/o Asst. Drugs Controller (India)
Sub Zone / Port Office, 3rd Floor, Customs Building,
Customs House, Marmagoa. Goa 403803.
Presently having its office at
Room no. 07 & 08, First Floor,
Air Cargo Terminal Building,
Manohar International Airport, Dadachiwadi Road,
Nagzar, Taluka Pernem,
Mopa, Goa-403 512. ...Petitioner

v/s

1. Serdia Pharmaceuticals (India) Pvt. Ltd.,
Serdia House, Off. Dr. S.S. Road,
Parel, Mumbai-4000 12.

2. Mr. Mahesh S. Bedre, Major of age,
B-3/5, Bhatgatsingh Nagar,
Harsool, Aurangabad, Maharashtra State.

3. Mr. Abhay D Deshmukh, Major of age,
Plot no.40, Shreeniketan Colony,
Behind Hotel Amarpeet,
Aurangabad, Maharashtra State ... Respondents.

Ms. Susan Linhares, Central Government Standing Counsel for the
Petitioner.

Mr. Bhargav Khandeparkar, Advocate for Respondent No. 1.

CORAM:- VALMIKI MENEZES, J.

DATED :- 6th October, 2025

ORAL JUDGMENT:

1. This Writ Petition under Article 227 of the Constitution of India impugns an order dated 28.03.2025 passed by the JMFC at Vasco Da Gama in Criminal Case No.AOA/88/2016/A. By the impugned order, the learned Magistrate has directed return of the complaint, to be presented to the proper Court.

2. The background facts which are required to be considered for disposal of this petition are the following:

a. The Petitioner, who is the Complainant in Criminal Case No.AOA/88/2016/A filed under

Sections 18(a)(i) and 17(b) punishable under section 27(d) of the Drugs & Cosmetics Act, 1940 which was filed initially against 4 accused, Accused No.1 being a Private Limited Company (Respondent No.1 herein). In the original complaint, Dr. Yanick, Mr. Pierre and Dr. Philippe were arrayed as the Accused Nos.2, 3 and 4.

b. On the basis of the original complaint, after verification, process came to be issued against the Respondent No.1 and the aforesaid three Accused, which order was challenged in a petition filed under Section 482 CrPC before this Court; the complaint was directed to be quashed by this Court vide order dated 19.03.2018 in Criminal Writ Petition No. 170 of 2017 in relation to the Accused Nos. 2 to 4 referred above.

c. Subsequent to this event, the complainant was permitted by the Magistrate to amend the complaint to implead two other accused i.e. Mahesh and Abhay, who are Respondent Nos. 2 and 3 herein, pursuant to permission granted to the complainant to amend the complaint and incorporate paragraphs 16a to 16c in

the complaint, which was granted on 04.11.2018; the complaint was further amended on the same date at prayer clauses (c) and (d) in the complaint.

d. The Magistrate then recorded a fresh verification under Section 200 of the CrPC and issued process against the Accused No.1 and the newly impleaded Accused Nos.2 and 3 (Respondent Nos.2 and 3 herein) on 14.08.2019; these accused appeared before the Magistrate pursuant to which after recording the substance of accusation, trial commenced with the complainant being cross-examined partly. It was at this stage that it was pointed out to the Magistrate that the offences of which the Magistrate was in the process of trying i.e. Sections 18(a)(i) and 17(b) r/w. 27(d) of the Drugs & Cosmetics Act, 1940 fell under chapter IV of the Act, which places exclusive jurisdiction to try such offences with the Sessions Court.

e. The Magistrate, on hearing the complainant and the accused passed the impugned order dated 28.03.2025 opining that the complaint would have to be returned for presenting it before the appropriate

Court. It is this order i.e. challenged in the present petition.

3. There is no manner of doubt that a complaint under Sections 18(a)(i) and 17(b) r/w. 27(d) of the Drugs & Cosmetics Act, 1940 filed by a the Drugs Inspector, before the Magistrate under Section 200 of CrPC, would have to be tried, by the Sessions Court. This is specifically set out in sub-section 2 of Section 32 of the Act. For ready reference Section 32 of the Drugs and Cosmetic Acts quoted below

32. Cognizance of offences. -[(1) No prosecution under this Chapter shall be 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.

(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

4. This does not mean that the Act has conferred the jurisdiction on the Sessions Court to directly take cognizance of a complaint, as all that sub-section 2 of Section 32 of the Act confers on the Sessions Court is the power to **try** an offence punishable under Chapter IV of the Act. Obviously therefore the complaint would have to be lodged by any one of the persons referred to in sub-section 1 of Section 32, before the Magistrate having territorial jurisdiction, in terms of Section 200 of CrPC.

5. Section 193 of the CrPC bars the Sessions Court from taking cognizance of any offence as the Court of original jurisdiction. The Sessions Court under Section 193 can take cognizance of an offence exclusively triable by it, on the case being committed, by a Magistrate, under the Code.

6. Section 209 of the Code provides that, when a case is instituted on a police report **or otherwise**, and the Accused appears or is brought before the Magistrate, and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, the Magistrate shall commit, after compliance with the provisions of

Section 207 or Section 208 as the case may be, the case to the Court of Sessions.

7. Considering the mandate of Sub-section 2 of Section 32 of the Drugs and Cosmetics Act, the offence which is subject matter of the complaint is exclusively triable by the Court of Sessions, which means it is only that Court that could take cognizance of the offence when committed to it, and the charge is framed by the Court of Sessions after receiving the complaint on its committal, trial on such complaint could be undertaken by the Court of Sessions.

8. The Advocate for the Petitioner has placed reliance on the following case law:

- i. *Union Of India V/s Ashok Kumar Sharma and Others (2021) 12 SCC 674*
- ii. *M/s Unital Formulation and another v/s Union of India vide judgement dated 21.03.2025 in Criminal Miscellaneous Petition No.321 of 2023 of the High Court of Himachal Pradesh, Shimla*

In *Union Of India V/s Ashok Kumar Sharma*, (supra) the Supreme Court has laid down under what circumstances a Sessions

Court can try a case after being committed to it. The e relevant Paragraphs are quoted below:

50. The learned Amicus Curiae, when queried about the procedure to be adopted when a complaint is lodged by persons falling in Sections 32(c) and (d) viz, the aggrieved person or a voluntary association, it was submitted that the Magistrate can, under Section 202 CrPC. order an investigation by the police officer or any other person. A perusal of section 202 would show that in regard to an offence falling under Chapter IV of the Act, being exclusively triable, by a Court of Session, the proviso to sub-section (1) to Section 202 prohibits the direction for investigation under Section 202. The proviso to sub-section (2) of Section 202 contemplates that when an offence is exclusively triable by the Court of Session, and the Magistrate proceeds under Section 202 CrPC, he is duty-bound to call upon the complainant to produce all its witnesses and examine them on oath. Thus, the effect of the two provisions in sub-sections (1) and (2), respectively, is as follows: a Magistrate proceeding under Section 202 CrPC, is subjected to two conditions:

(a) Unlike in an ordinary case, meaning thereby, an offence which is not exclusively triable by a Court of Session, in a case where it is an offence exclusively triable by a Court of Session, the inquiry can be conducted only by a Magistrate himself. It is not open to him to cause an investigation be it by a police officer or any other person.

(b) In regard to the inquiry so conducted by him, he must call upon the complainant to produce all his witnesses and they must be examined not on the basis of any affidavit, and not without the support of an oath but the examination must be under an oath. It is to be remembered that under the provisions existing under the previous Code, an elaborate preliminary inquiry where even an accused had right of cross-examination of witnesses, was contemplated at the hands of the Magistrate before the committal order was passed. This no longer survives after the amendment.

In *M/s Unital Formulation and another* (supra) the High Court of Himachal Pradesh has, after referring to *Union Of India V/s Ashok Kumar Sharma*, (supra) laid down the procedure to be followed by a magistrate, specifically in cases covered under section 32 of the Drugs and Cosmetics Act, in the following terms:

10 It is undisputed that the complaint was filed before the learned Additional Sessions Judge, Nalagarh, District Solan, H.P. It was submitted that the learned Sessions Judge has the power under Section 32 of the Drugs and Cosmetics Act to try the offence. It was laid down by the Hon'ble Supreme Court in Union of India vs. Ashok Kumar Sharma 2021 (12) SCC 674 that the Court of Sessions can try the offences punishable under Chapter IV of the Drugs and Cosmetics Act after the case is committed to it. It was observed:-

"Being a special enactment, the manner of dealing with the offences under the Act would be governed by the provisions of the Act. It is to be noted that Section 32 declares that no court inferior to the Court of Session shall try an offence punishable under Chapter IV. We have noticed that under Section 193 CrPC, no Court of Session can take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under CrPC. This is, undoubtedly, subject to the law providing expressly that that Court of Session may take cognizance of any offence as the court of original jurisdiction. There is no provision in the Act that expressly authorises the Special Court which is the Court of Session to take cognizance of the offence under Chapter IV. This means that the provisions of Chapters XV and XVI CrPC must be followed in regard to even offences falling under Chapter IV of the Act. Starting with Section 200 of the Act dealing with taking of cognizance by a Magistrate on a complaint, including examination of the witnesses produced by the complainant, the dismissal of an unworthy complaint under Section 203 and following the procedure under Section 202 in the case of postponement of issue of process are all steps to be followed. It is true that when the complaint under Section 32 is filed either by the Inspector or by the authorised Gazetted Officer being public servants under Section 200, the Magistrate is exempted from examining the complainant and witnesses." (Emphasis supplied)

9. In my opinion the course suggested by the High Court of Himachal Pradesh in *M/s Unital Formulation and another* (supra), to be followed when provision of section 32 of the act apply, appears to be the correct position of law, with which I am wholly in agreement. The ratio of the judgement of the Hon'ble Supreme Court in *Union Of India V/s Ashok Kumar Sharma*, (supra) and of the High Court of Himachal Pradesh in *M/s Unital Formulation and another* (supra) would apply to the facts of the present case.

10. What has happened in the present case is that the complaint was lodged before the Magistrate under Section 200 of the Code after which, a verification was recorded by the Magistrate and process issued to the original Accused No.1, 2 to 4; Respondent Nos. 2 to 4 succeeded in having the complaint quashed in relation to them. In the first place, going by the procedure applicable to offences in Chapter IV, the Magistrate ought to have issued summons to the Accused, and thereafter examined the complaint and committed the same to the Court of Sessions. The question of verification of the complaint or even trying the complaint by the Magistrate did not arise.

11. After the complaint was quashed against the original Accused No.2 to 4, the Magistrate permitted the complainant to amend the complaint by an order dated 04.11.2018, after which a fresh

verification was recorded, which was obviously not permissible. A fresh order of issuance of process taking cognizance of this complaint was then issued on 14.08.2019 to the Accused No.1 and the newly joined Accused Nos.2 and 3 (Respondent Nos.2 and 3 herein), which again was not permissible, since the offences were exclusively triable by the Court of Sessions. The order issuing process was obviously without jurisdiction, but nevertheless the Accused appeared and the trial commenced. It is only when the Magistrate realised that his jurisdiction was barred under Section 32 to try such offences, that he passed the impugned order.

12. The impugned order is obviously legally unsustainable, as return of a Complaint under clause (a) of Section 201 of CrPC is contemplated only when it can be presented to a proper Court. In the present case, the Sessions Court is not the proper Court which is empowered under Section 193 CrPC r/w. Section 32 of the Act, since it is barred from taking cognizance of an offence and trying the same without such offence being committed by the Magistrate for trial. Obviously therefore, the Magistrate ought to have, in the first place, issued summons to the accused and then followed the procedure prescribed under Section 209 of the Code on appearance of the Accused.

For these reasons, the impugned order, being erroneous and contrary to provisions of Section 32 r/w. Section 193 CrPC, requires to be quashed and set aside.

13. Consequently, the Magistrate shall follow the procedure prescribed under Section 209 CrPC and shall examine the complaint and exercise powers of committal under Section 209 r/w. Section 208, which is applicable to private complaints, and therefore commit the case to the Court of Sessions to decide whether it takes cognizance and whether it would try the complaint. The case No. AOA/88/2016/A is restored to the file of the JMFC at Vasco Da Gama to follow the committal procedure referred above.

14. Rule is made absolute in the above terms.

15. Needless to state, as submitted by the learned Advocate for the Respondent No.1, the question as to whether the complaint could have been amended to array additional respondents after complaint was quashed by order of this Court 19.03.2018 in Criminal Writ Petition No. 170 of 2017 against the original Accused No.2 to 4, is left open; it is left open for the Sessions Court to decide whether such course taken by the Magistrate in granting amendment to the complaint and whether such complaint at all is maintainable shall be

decided by the Sessions Court at this stage when it decides to taking cognizance of the complaint.

VALMIKI MENEZES, J.