



IN THE HIGH COURT OF JUDICATURE AT
BOMBAY, NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION (APL) NO.397 OF 2023

1. Shri Lala Mohmed Hanif Mohmed
Umar,
(Expired)
Ex-partner of M/s.Pulse Pharma
Manufacturing Company
Lala Estate Idar Highway Road,
Savgadh Himat Nagar (Gujrat).
and r/o Simnan Street Pologround
Himatnagar, Subarkantha (Gujarat)
(original accused No.1)
through LR Abdul Gani Mohmed Umar Lala
aged about 48 years old,
relation : brother of applicant No.1.

2. Smt.Doi Mehjabin Mohmed Ishak
Manufacturing Chemist of M/s.
Pulse Pharma Manufacturing
Company
SN 553 Lala Estate Idar Highway
Road, Savgadh Himatnagar,
Subarkantha (Gujarat),
(original accused No.2).

3. Smt.Lala Rubinabegam Mohmed
Hanif,
quality Control Chemist of M/s.
Pulse Pharma Manufacturing
Company
553, Lala Estate Idar Highway Road

Savgadh Himatnagar, Subarkantha
(Gujarat),
original accused No.3.

4. M/s.Pulse Pharma Manufacturing
Company
SN 553, Lala Estate Idar Highway
Road, Savgadh Himatnagar
(Gujarat)
(original accused No.4)
through its Partner Abdulgani
Mohmed Umar Lala
aged about 48 years old.

..... Applicants.

:: VERSUS ::

The State of Maharashtra,
through
Drugs Inspector
Foods and Drugs Administration
Chandrapur, district Chandrapur,
(original complainant).

..... Non-applicants.

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Shri S.S.Ghate, Counsel for Applicants.

Ms.Ritu Sharma, Additional Public Prosecutor for the Non-
applicant/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 10/01/2025

PRONOUNCED ON : 21/01/2025

JUDGMENT

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1. Heard learned counsel Shri S.S.Ghate for applicants and learned Additional Public Prosecutor Ms.Ritu Sharma for the non-applicant/State.

2. The criminal application under Section 482 of the Code of Criminal Procedure is directed for quashing and setting aside the prosecution in Special Case Drugs Cosmetic Act No.2/2019 to hold and declare that no prosecution would lie against applicants.

3. Learned counsel for applicants submitted that deceased applicant No.1 was partner of firm M/s.Pulse Pharma Manufacturing Company (the “Partnership Firm”) and applicant No.2 is Manufacturing Chemist and applicant No.3 is Quality Control Chemist. As per averments in the application, on 28.8.2017, the Drugs Inspector visited premises of “M/s.Kanchan Agencies” and drawn regular sampling and also drawn sample of “PEL APS Tablets”, Batch No.6844, manufacturing date

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3/2017 and expiry date 02/2020, ML No.G/1572, manufactured by the Partnership Firm S.No.553, Lala Estate, Savgad, Himatnagar, Gujarat for test and analysis. The Drugs Inspector prepared Form No.18 in triplicate along with one sealed part of the said sample and forwarded it to the Government Analyst, Drug Control Laboratory, Mumbai. The complainant received Analysis Report from the Government Analyst declaring the sample is not of standard quality for reason:

“The contents of SEPRATIOPEPTIDASE in the sample is less (i.e. 14.44 of the labelled amount) than the permissible limits as given in the protocol” (permissible limit: not less than 90% of the labelled amount).”

4. On receipt of the Government Analyst Report, declaring that the drug is not of a standard quality, a notice was issued to applicants. The complainant personally visited the Partnership Firm and confirmed

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that who is the person responsible for day to day activities of the affairs of the company and, thereafter, filed a complaint under Section 18(a)(i) read with Section 34 of the Drugs and Cosmetics Act. It is submitted by learned counsel that on the basis of the Analyst Report, the complainant has observed that the manufactured drug is not upto the standard quality and issued show cause notice. The applicants submitted all documents which were demanded and, thereafter, the complainant sought permission for prosecution. In view of Rule 85(2) of the Drugs and Cosmetics Rules, 1945, empowers the non-applicant to inflict punishment for cancellation of licence or suspension of licence for a period as he thinks fit either wholly or in respect of some of substances. The non-applicant has elected remedy and suspended licence of the applicants for a period of two days. Thereafter, the prosecution has been filed in

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the month of 2019. It is further submitted that the applicants cannot be punished twice for the same offence as the applicants' licence is already suspended for two days. In such a situation, the non-applicant cannot file the prosecution for the same purpose and in view of Article 20(2) of the Constitution of India, the action of the non-applicant amounts to *double jeopardy* and, therefore, requires to be quashed and set aside.

5. The another ground raised was, delay in filing the complaint.

6. The application is strongly opposed by the State on ground that filing of the prosecution and taking disciplinary action are two different things and, therefore, the action of suspending the licence and launching the prosecution do not amount to *double jeopardy*. In view of that, the application deserves to be rejected.

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7. Before advertizing to the submissions, it is necessary to see relevant provisions of the Drugs and Cosmetics Act.

8. The prosecution is launched against the applicants under Section 18(a)(i) of the Drugs and Cosmetics Act, which reads thus:

“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 is misbranded, adulterated or spurious;

(ii) any cosmetic which is not of a standard quality,

(iii) any patent or proprietary medicine,

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(iv) any drug which by means of any statement

(v) any cosmetic containing any ingredient which may render

(vi) any drug or cosmetic in contravention of any of the provisions

9. The penalty for manufacture, sale, etc., of drugs in contravention of this Chapter is given under Section 27 of the Drugs and Cosmetics Act. Section 27(d), reads as follows:

“27(d). any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees].”

Thus, punishment provided is not less than one year but which may extend to two years with fine.

10. In the case in hand, the sample was obtained on 28.8.2017 from "M/s. Kanchan Agencies" and, thereafter, on 7.8.2017 the complainant personally visited the premises of the Partnership Firm and the Analyst Report was received on 2.2.2018 and the prosecution is launched on 16.5.2019.

11. Thus, within a period of three years, Section 468 of the Code of Criminal Procedure (Section 513 of the BNS), which deals with bar to taking cognizance after lapse of period of limitation, which states as under:

"468. Bar to taking cognizance after lapse of the period of limitation. -

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

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(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

12. Thus, in view of clause (c) of sub-section (2) of Section 468 of the Code, the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Therefore, the complaint filed is within limitation.

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13. The decisions in the cases of **State of Karnataka vs. Vedavati**, reported in 1978 Cri.L.J. 1375 and **Arora Pharmaceuticals Pvt.Ltd. and another vs. State of Himachal Pradesh**, reported in 2018 SCC OnLine HP **2211**, on which learned counsel for the applicants placed reliance, are not helpful to the present case.

14. Another limb of submissions of learned counsel for the applicants is that the principle of *double jeopardy* is applicable as the applicants are already punished for contravention of under Section 18(a)(i) read with Section 34 of the Drugs and Cosmetics Act as their licence was suspended by the Commissioner and State Licensing Authority, Food and Drugs Administration, Gujarat State by order dated 7.5.2018. Thus, the action is already taken and the applicants are already penalized for contravention of Section 18(a)(i) read with Section 16(1)(a) punishable under Section

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27(d) read with Section 34 of the Drugs and Cosmetics Act, 1940 and Rules, 1945.

15. Learned counsel for the applicants invited my attention to Rule 85(2) of the Drugs and Cosmetics Rules, 1945 which empowers the non-applicant to inflict punishment for cancellation of licence or suspension of licence for a period as he thinks fit either wholly or in respect of some of substances to which it relates.

16. Rule 85(2) of the Drugs and Cosmetics Rules, 1945 is reproduced for reference:

“Rule 85(2). The licensing authority may, for such licenses granted or renewed by him, after giving the licensee an opportunity to show cause why such an order should not be passed, by an order in writing stating the reasons therefor, cancel a license issued under this part or suspend it for such period as he thinks fit either wholly or in respect of the substances to which it relates [or direct the licensee to stop manufacture, sale or distribution of the said drugs and [thereupon order the destruction of drugs and] the stocks thereof in the presence

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of an Inspector, if in his opinion, the licensee has failed to comply with any of the conditions of the license or with any provisions of the Act or rules made thereunder.”

17. Learned counsel for the applicants submitted that undisputedly the non-applicant has elected this remedy and the applicant have been punished by suspending the licence for a period of two days. The prosecution has been filed in the month of May 2019 and, therefore, in view of Article 20(2) of the Constitution of India, the action comes under the purview of *double jeopardy* and, therefore, liable to be quashed and set aside.

18. As far as factual aspects are concerned, it is not in dispute that the deceased applicant was partner of the Partnership firm and applicant Nos.2 and 3 are Manufacturing Chemist and Quality Control Chemist respectively. The prosecution was launched against them

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for contravention of for contravention of Section 18(a)(i) read with Section 16(1)(a) punishable under Section 27(d) read with Section 34 of the Drugs and Cosmetics Act, 1940 and Rules, 1945. Undisputedly, the sample in question which was sent to the Government Analyst at Mumbai was found to be of sub-standard quality for the reason that the contents of SEPRATIOPEPTIDASE in the sample is less 14.44 of the labelled amount than the permissible limits as given in the protocol. The said sample was collected from “M/s.Kanchan Agencies, Chandrapur”. On enquiry with the same Agency, it was found that the same was purchased from the Partnership Firm of the applicants and, thereafter, on 7.8.2018, the complainant has alleged to have visited in the premises of the applicants at manufacturing premises. During the inspection, all documents were demanded which were provided and, thereafter, the licence for a period of two

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days of the applicants was suspended in view of 85(2) of the Drugs and Cosmetics Rules, 1945.

19. By this petition, the question raised by the applicants is that whether the prosecution would lie when once the punishment is inflicted and submission of learned counsel for the applicants is that the prosecution would not lie in view of Article 20(2) of the Constitution of India as a person cannot be punished more than once for the same offence. Therefore, whether the prosecution is to be quashed in view of Article 20(2) of the Constitution is the moot question.

20. The fundamental right guaranteed under Article 20(2) of the Constitution states the principle of “*double jeopardy*” that a where a person has been convicted by a court of competent the conviction is a bar to alter criminal proceeding for the same offence.

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21. The scope and meaning of the guarantee implied in Article 20(2) of the Constitution, has been indicated in the decision of the Hon'ble Apex Court in the case of **Maqbool Hussain vs. The State of Bombay, reported in (1953)4 SCR 730** wherein it is observed that The roots of the principle, which this clause enacts, are to be found in the well established rule of English law which finds expression in the maxim "*nemo debet bis vexari*" that a man must not be put twice in peril for the same offence. If a man is indicted again for the same offence in an English court, he can plead, as a complete defence, his former acquittal or conviction, or as it is technically expressed, take the plea of "*autrefois acquit*" or "*autrefois convict*". The corresponding provision in the Federal Constitution of the U.S.A. is contained in the Fifth Amendment, which provides inter alia: "Nor shall any person be subjected for the same offence to be put

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twice in jeopardy of life and limb". This principle has been recognised and adopted by the Indian Legislature and is embodied in the provisions of Section 26 of the General Clauses Act and Section 403 of the Criminal Procedure Code.

22. The Hon'ble Apex Court in the case of **S.A.Venkataraman vs. Union of India and ors, reported in AIR 1954 SC 375** observed that although these were the materials which formed the background of the guarantee of the fundamental right given in Article 20(2) of the Constitution, the ambit and contents of the guarantee, as this court pointed out in the case referred to above, are much narrower than those of the common law rule in England or the doctrine of "double jeopardy" in the American Constitution. Article 20(2) of our Constitution, it is to be noted, does not contain the principle of "autrefois acquit" at all. It seems that our Constitution

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makers did not think it necessary to raise one part of the common law rule to the level of a fundamental right and thus make it immune from legislative interference. This has been left to be regulated by the general law of the land. In order to enable a citizen to invoke the protection of clause (2) of Article 20 of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted and punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must co-exist in order that the operation of the clause may be attracted. The position is also different under the American Constitution. There the prohibition is not against a second punishment but against the peril in which a person may be placed by reason of a valid indictment being presented against him, before a competent court, followed by proper arrangement and

plea and a lawful impanelling of the jury. It is not necessary to have a verdict at all.

By referring the judgment of **Maqbool Hussain vs. The State of Bombay** *supra*, it is further further observed that the language of Article 20 and the words actually used in it afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence. In that case the proceedings were taken under the Sea Customs Act before a Customs authority who ordered confiscation of goods. It was held that such proceedings were not "Prosecution", nor the order of confiscation a "punishment" within the meaning

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of Article 20(2) inasmuch as the Customs authority was not a court or a judicial tribunal and merely exercised administrative powers vested in him for revenue purposes.

23. Similar is the observation by the Hon'ble Apex Court in the case of recent decision in **Gopalkrishnan vs. State of Kerala, reported in (2022)14 SCC 323** wherein in paragraph No.26, Article 20 of the Constitution was considered as, "under clause (2) of Article 20, no person shall be prosecuted and punished for the same offence more than once. Article 20(2) of the Constitution of India incorporates within its scope, the plea of *autrefois* convict, meaning, previously convicted as known to British jurisprudence, or the plea of double jeopardy known to the American Constitution. However, the said concepts are circumscribed in Article 20(2) which provides that there should be not only a prosecution but

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also punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence. On a plain reading the of sub clause (2) of Article 20, it is clear that the said provision bars a second prosecution only where the accused has been both prosecuted and punished for the same offence previously vide **S.A.Venkataraman vs. Union of India AIR 1954 SC 375**. But this clause does not bar subsequent trial if the ingredients of the offences in the previous and subsequent trials are distinct. In **Maqbook Hussain vs. State of Bombay AIR 1953 SC 325**, this Court has held that clause (2) is not applicable unless the person has been both prosecuted and punished”.

In paragraph No.27, it has been further observed that There are three conditions for the application of the clause. Firstly, there must have been previous proceeding before a court of law or a judicial tribunal of competent

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jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive. Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts. In other words, the clause has no application when the subsequent proceeding is a mere continuation of the previous proceeding, for example, where an appeal arises out of such acquittal or conviction. In order to sustain a plea of double jeopardy, it must be shown that all the aforesaid conditions of this clause are satisfied, vide **S.A. Venkataraman**.

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24. Applying the aforesaid provisions, if the facts of the present case are considered, it would show that the initial action of suspending the licence is by Commissioner and State Licensing Authority, Food and Drugs Administration, Gujarat State which is not a judicial tribunal and suspending the licence does not constitute judgment or order of court or judicial tribunal necessary for the purpose of supporting a plea of *double jeopardy*. It is not the action either taken before the court of law or any judicial tribunal and, therefore, the contention of learned counsel for the applicants that Article 20(2) of the Constitution is attracted is not sustainable. Though he placed reliance on the decision in the case of **Ram Nath vs. State of Uttar Pradesh and ors, reported in 2024 SCC OnLine SC 177**, the said decision is not helpful as distinguishable on the facts. As far as the present matter is concerned, what is prohibited

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under Article 20(2) of the Constitution is only conviction or sentence. The punishment in this clause means judicial penalty/punishment awarded by the criminal court and would not include other penalties. Such is the action or action taken by the concerned against the applicants and being not judicial penalty contemplated under Article 20(2) of the Constitution.

25. In this view of the matter, the application deserves to be rejected and the same is **rejected**.

26. *Interim* relief, if any, stands vacated.

The Criminal Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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