



Judgment

apl1262.25

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.1262 OF 2025

Bipin Gopaldas Taori,
age 48 years, occupation-business,
r/o Akot, taluka Akot, district Akola. **Applicant.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
P.S.Akot, taluka Akot, district Akola.

2. Manish Vishwasrao Gotmare,
aged about 46 years, occupation service-
Drug Inspector, O/a Food and Drug
Administration, Maharashtra
State, Civil Lines, Akola. **Non-applicants.**

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Shri A.A.Naik, Senior Counsel assisted by Shri Palash Mohta,
Advocate for the applicant.
Shri Nikhil Joshi, APP for the NA No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 29/01/2026

PRONOUNCED ON : 13/02/2026

JUDGMENT

1. Heard learned Senior Counsel Shri A.A.Naik for the
applicant and learned APP Shri Nikhil Joshi for the State.

Admit. Heard finally by consent.

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2. By this application, the applicant is seeking quashing of FIR in connection with Crime No.284/2025 registered for offences under Sections 91, 318(4), and 319(2) of the BNS, 2023 and under Sections 18(c), 18A, and 22 of the Drugs and Cosmetics Act, 1940 (the D.C.Act) and under Section 5 of the Medical Termination of Pregnancy Act, 1971.

3. Brief facts necessary for disposal of the application are as under:

4. The non-applicant No.2, who is working as Drug Inspector in the office of the Food and Drug Administration, lodged report with the non-applicant No.1 police station on 13.8.2025. It is alleged in the said report that on 27.6.2025 the Assistant Commissioner, Food and Drug Administration had written a letter to the office of the Food and Drug Inspector, Maharashtra that they have received a complaint that a medical store namely “M/s.Taori Medical Store, Akot”, run by the applicant as well as his brother, was

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selling drugs, which resulted in termination of pregnancy. Accordingly, on 3.7.2025, his office has conducted a raid on the said premises of “M/s.Taori Medical Store”, along with a dummy patient who had been with notes of particular series and was asked to purchase tablets relating to medical pregnancy from the store run by the applicant. In accordance with the said trap, the said dummy candidate had approached the applicant and had asked for pills for termination of pregnancy. Co-accused namely Pankaj Taori had handed over open pills in paper to the dummy candidate. Thereafter, the dummy candidate paid the amount to the co-accused and, thereafter, she had given signal to the raiding party who then conducted raid and prepared necessary documents. The said pills were sent for analysis to the Government Analyst, Food and Drug Administration at Nagpur. The report was received on 18.7.2025 with a finding that the said pills have presence of

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“Mifepristone and Misoprostol.” Such ingredients are used in pills for termination of pregnancy. Therefore, after conducting necessary enquiry and gathering documents as well as after issuing show cause notice to the accused persons, the non-applicant No.2 lodged a report with the investigating agency.

5. On receipt of the said FIR, the crime came to be registered against the applicant.

6. Learned Senior Counsel for the applicant submitted that as far as allegation against the applicant is concerned, it shows that one Pankaj Taori was present in the shop, who has provided the said pills. As far as the applicant is concerned, there is no specific allegation that the applicant being the proprietor or authorized pharmacist either directly sold or consented for the same. A bare perusal of the FIR, it is crystal clear that no medicine was supplied from the premises of “M/s.Taori Medical Store”. The seizure

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of unidentified items from unknown third person without establishing a nexus with the applicant, question of credibility of the alleged raid makes it doubtful and unreliable. He submitted that the alleged seizure is not as per strict compliance with the mandatory provisions of the D.C.Act. He further submitted that the applicant is not involved either in selling any MTP Kit at “M/s.Taori Medical Store” and, therefore, question of attraction of Sections 18A and 18(c) of the D.C.Act do not arise. Section 22 of the D.C.Act only provides for the powers of inspectors and by no stretch of imagination it is applicable in the present case. The offences are non-cognizable by the police and being it is non-cognizable offence, on that ground itself, the FIR is liable to be quashed and set aside. He further submitted that there is no material whatsoever to show his physical presence or participation in the alleged transaction. There is no nexus between said Pankaj Taori and the applicant in

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respect of the alleged offence. Other co-accused Pankaj Taori has made specific statement in his reply to the Assistant Commissioner, Food and Drug Administration that he is neither partner nor employee nor manager of “M/s.Taori Medical Store”. Thus, no *prima facie* case is made out against present applicant.

Another submission of learned Senior Counsel is that in fact the FIR against the applicant is not maintainable as in view of Scheme of CrPC, mandate of Section 32 of the D.C.Act and on conspectus of powers and duties of the Drug Inspector under the D.C.Act, a police officer has no power to register FIR and investigate the matter under the CrPC with respect to cognizable offences under Chapter-IV of the D.C.Act. However, there is no bar to the police officer to investigate and prosecute the person where he has committed an offence as stated under Section 32(3) of the D.C.Act i.e. in respect of an offence under Chapter-IV. If the

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acts or omissions also constitute an offence under any other law, it may be open to a police officer if he is otherwise empowered under the said law to prosecute the person for the same offence to act as such.

7. In support of his contentions, learned Senior Counsel for the applicant has placed reliance on the decision in the case of **Union of India vs. Ashok Kumar Sharma and ors**, reported in (2021)12 SCC 674.

8. *Per contra*, learned APP for the State has strongly opposed the said contentions and submitted that on receiving the complaint, FIR was lodged and investigation commenced. The complaint given by the Drug Inspector to the non-applicant No.1 indicates that the dummy candidate was sent by the office of the Food and Drug Administration and they received the complaint from the Assistant Commissioner, Food and Drug Administration, which indicates that the accused persons are dealing in the sell of

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pills for the termination of pregnancy. The dummy candidate was handed over notes which were previously recorded by the raiding party. Co-accused Pankaj Taori has given open pills in wrap paper to the dummy candidate. These pills cannot be sold without the prescription of the medical practitioner. Thus, considering the entire allegation against the applicant, the application deserves to be rejected.

9. In the light of the submissions made by learned Senior Counsel for the applicant and learned APP for the State, undisputedly, the FIR came to be lodged on the basis of a report lodged by the Food Inspector. The nature of the allegation against the applicant is that he is proprietor of medical shop namely "M/s.Taori Medical Store". The Assistant Commissioner, Food and Drug Administration received a complaint regarding sell of pills of termination of pregnancy and, therefore, raid was conducted by the

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complainant on 3.7.2025. The recital of the FIR further shows that one Pankaj Taori, by accepting the amount, handed over the said pills to the dummy candidate. During enquiry by the Assistant Commissioner, said Pankaj Taori specifically stated before the Assistant Commissioner that he is not connected with “M/s.Taori Medical Store” as owner, as partner, and as employee. Admittedly, the investigation papers show that it was Pankaj Taori who has handed over the said pills to the dummy candidate. The said pills are also not handed over to the dummy candidate in the premises of the said “M/s.Taori Medical Store”.

10. In the light of the above facts, now, whether the FIR is maintainable or not, is pivotal question which is required to be answered.

11. Section 32 of the D.C.Act, deals with cognizance of offences that; (1) no prosecution under this Chapter shall be instituted except by (a) an Inspector; or (b) any gazetted

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officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or 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, and (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.

12. Thus, coming to Section 32 of the D.C.Act, as already reproduced above, it falls in Chapter-IV. Inspectors are appointed by the Central Government or the State

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Government from persons possessing prescribed qualifications under a notification.

Section 21 of the Act contemplates prescribing under rules the powers which may be exercised by the Inspectors apart from the duties which may be performed by him *inter alia*.

Section 22 of the Act provides for power of search by the Inspectors. They have power to inspect any premise, take samples, powers of search, examine any record, register, material object and seize them. The Legislature has, undoubtedly, applied the provisions of the CrPC in regard to searches under the Act.

Section 23 of the Act elaborately provides for procedure to be adopted by Inspectors.

13. Section 32 falling under section heading 'Cognizance of offences' declares, in specific words that prosecution

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under Chapter-IV can be instituted only by (1) an Inspector (2)any gazetted officer of the Central Government or State Government authorised in writing by the respective Government by a general or special order made in this behalf by the Government (3) the person aggrieved (4) a recognised consumer association whether such person is a member of that association or not. Section 32 further proclaims that unless it is otherwise provided, no court inferior to a court of session shall try an offence punishable under Chapter-IV. Section 32(3) makes it clear that nothing in chapter-IV would stand in the way of the person being prosecuted against under any other law for any act or omission which constitutes an offence against this Chapter. Section 32 was substituted by Act 22 of 2008 and the old Section which reads as follows:

“**32.** Cognizance of offences. — (1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a

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recognised consumer association whether such person is a member of that association or not.

(2) No court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class 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.”

14. Section 190 of the CrPC also has a title ‘Cognizance of Offence by Magistrate’. Cognizance under Section 190 is contemplated in three different modes. They are - (1) complaints of facts constituting such offences, (2) police report of such facts, (3) upon any information received from a person other than a Police Officer or upon a court being possessed of knowledge about the commission of the offence. In other words, where the court takes cognizance *suo motu*. A comparison between Section 32 of the Act and

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190 of the CrPC dealing with cognizance of offences, makes it abundantly clear that the Law Giver has provided for distinct modes in regard to prosecuting of the offences under the general law, viz., the CrPC and the special provision, as contained in Section 32 of the Act.

15. Section 32 of the D.C.Act undoubtedly provides for taking cognizance of the offence by the court only at the instance of the four categories, which are referred above.

16. Thus, it is clear that the Legislature has not included the Police Officer as a person who can move the court. Before the matter reaches the court, under Section 190 of the CrPC, ordinarily starting with the lodging of the first information report leading to the registration of the first information report, investigation is carried out culminating in a report under Section 173. The Police Report, in fact, is the Report submitted under Section 173 of the CrPC to the court. Under Section 190 of the CrPC, the

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court may take cognizance on the basis of the police report. Such a procedure is align to Section 32 of the Act. In other words, it is not open to the Police Officer to submit a report under Section 173 of the CrPC in regard to an offence under Chapter-IV of the D.C.Act under Section 32.

17. The Hon'ble Apex Court in the case of **Union of India vs. Ashok Kumar Sharma and ors** *supra* has extensively dealt with the various provisions i.e. Sections i.e. 21, 22 and 32 of the D.C.Act as well as Sections 157, 173, 190, and 193 of the Code and observed that, "the Inspector under the Act has been conferred with a vast and formidable array of powers, and in an enactment like the Act, the taking of samples, the Report given by the Competent Officer in regard to the same and the right reserved to the concerned person to seek a further report from the Central Laboratory, go a long way in the successful culmination of a complaint under Section 32 of the Act. The Inspector is, undoubtedly,

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endowed with the power of inspection, taking samples of any drug or cosmetic, searching any person, searching any place, searching any vehicle, examining records, registers, documents and other material objects and seizing the same, requiring any person to produce any record, register or other document. These are powers which are expressly conferred on the Inspector. Though, a complaint could be filed by other categories of complainants in Section 32 of the Act, the Inspector is pivot around which the Act moves. Rule 51(4) makes it a duty on the part of the Drug Inspector to investigate any complaint in writing which may be made to him. It is also his duty under Rule 51(5) to institute prosecution in respect of breaches of the Act and the Rules thereunder. He is also duty-bound under Rule 51(7) to make inquiries and inspections as may be necessary to detect sell of drugs in contravention of the Act. Under Rule 52, in regard to manufacture of drugs, it is again the duty to

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institute prosecution for breaches besides making inspections of all premises. This is having regard to both his qualifications and also the powers conferred on him. Section 23 of the Act, undoubtedly, is the procedure to be followed by the Inspector”.

While summoning up, the Hon’ble Apex Court observed that, “it has been brought to our notice that FIRs have been filed in regard to offences under Chapter-IV of the Act. In the view we have taken, no further investigation can be done by the Police Officer. However, it is in the interest of justice that the FIRs are made over by the Police Officers to the concerned Drugs Inspector at the earliest. We are persuaded to issue such directions in the exercise of our powers under Article 142 of the Constitution of India”.

18. Having regard to the provisions of Section 32 of the D.C.Act and in view of Rule 51(4), the only drug inspector is empowered to investigate any complaint in writing which

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may be made to him and in view of Rule 51(5), only drug inspector is empowered to institute prosecution in respect of breaches of the Act and the Rules thereunder. He is also duty-bound under Rule 51(7) to make inquiries and inspections as may be necessary to detect sell of drugs in contravention of the D.C.Act. Thus, the duty to institute prosecution for breaches besides making inspections of all premises is on the drug inspector.

19. In view of the above legal provisions, the FIR requires to be quashed and set aside. Thus, the applicant has made out a case that the police officer has no right to prosecute and investigate the matter. It is only the drug inspector who can prosecute for the breaches of the provisions of the D.C.Act. As such, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed**.

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(2) The FIR in connection with Crime No.284/2025 registered for offences under Sections 91, 318(4), and 319(2) of the BNS, 2023 and under Sections 18(c), 18A, and 22 of the Drugs and Cosmetics Act, 1940 and under Section 5 of the Medical Termination of Pregnancy Act, 1971 is quashed and set aside

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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