



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 26TH DAY OF SEPTEMBER, 2025
BEFORE
THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY
CRIMINAL PETITION NO. 103433 OF 2024
(482(Cr.PC)/528(BNSS))

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BETWEEN:

VISHWANATH S/O DODDABASAPPA KADLI,
AGE. 33 YEARS, OCC. BUSINESS,
NOW R/O. DEVAGIRI, TQ. AND DIST. HAVERI,
PROPRIETOR OF M/S. KADLI FARMA,
R/O. CTS NO.3341/1, ASHWINI NAGAR,
2ND CROSS, HAVERI, TQ. AND DIST. HAVERI-581 110.

... PETITIONER

(BY SRI. SUNIL S. DESAI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH DANANJAY HATAPAKI/SANGANNA S. SHEELI,
ASSISTANT DRUGS CONTROLLER,
GADAG CIRCLE, GADAG-582 101,
REP. BY S.P.P., HIGH COURT,
DHARWAD BENCH.

... RESPONDENT

(BY SMT. GIRIJA S. HIREMATH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. (UNDER SECTION 528 OF BNSS), PRAYING TO QUASH THE IMPUGNED PROCEEDINGS IN C.C. NO.369/2023 ARISING OUT OF PC NO.25/2022 ON THE FILE OF LEARNED CIVIL JUDGE AND J.M.F.C. COURT LAXMESHWAR GADAG DISTRICT FOR THE COMMISSION OF THE ALLEGED OFFENCES PUNISHABLE UNDER SECTION 18(A)(VI) AND SECTION 27(D) OF THE DRUGS AND COSMETICS ACT, 1940 AND RULES UNDER IN SO FAR AS THE SAME RELATES TO THE PETITIONER/ACCUSED NO.2 IS CONCERNED.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.09.2025, COMING ON FOR PRONOUNCEMENT, THIS DAY, ORDER IS MADE THEREIN AS UNDER:





CAV ORDER

(PER: THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. Accused No.2 is before this Court under Section 482 of Cr.P.C. read with Section 528 of BNSS, 2023, with a prayer to quash the entire proceedings in CC No.369/2023 pending before the Court of Civil Judge and JMFC, at Laxmeshwar, Gadag District, arising out of PCR No.25/2023, registered for the offences punishable under Section 18(a)(vi) and Section 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act of 1940' for short).

2. Heard the learned counsel for the parties.

3. Facts leading to filing of this petition narrated briefly are, the Assistant Drugs Controller, Gadag Circle had filed a private complaint in PCR No.25/2023 before the Court of Civil Judge at JMFC, Laxmeshwar against accused No.1/Dr.S.C.Nekar @ Sri. Siddappa Channabasappa Nekar and the petitioner herein. The allegation in the complaint is that accused No.1, who was not a registered medical practitioner as provided under the Drugs and Cosmetics Rules, 1945, was running a clinic in the name '*Sanjeevani Clinic*', at Laxmeshwar in Gadag District and though



he did not possess any drug licence to sell the stock or exhibit any drug, he was purchasing allopathy drugs from accused No.2 and was dispensing the same to the patients, who came to his clinic. Accused No.2, who is the proprietor of M/s. Kadli Pharma situated at Ashwini Nagar in Haveri Town, is a holder of Form 20B and Form 21B license issued by the Assistant Drugs Controller, Haveri Circle. As per condition 3(ii) found in Form 20B license and condition 4(ii) found in Form 21B license, no sale of any drug shall be made to a person not holding the requisite license to sell, stock or exhibit for sale or distribute the drug. The allegation against accused No.2 is that in violation of his license conditions, he had supplied allopathic drugs to accused No.1 and therefore, he was liable to be prosecuted for the aforesaid offences. The learned Magistrate after taking cognizance of the alleged offences against accused Nos.1 and 2, had issued summons to them. Being aggrieved by the same, accused No.2 is before this Court.

4. Learned counsel for the petitioner submits that maximum punishment for the alleged offences against petitioner is imprisonment for a period of two years. The complaint filed



against the petitioner is therefore, barred by limitation in view of Section 468 of Cr.P.C. He submits that Gazette Notification as provided under Section 21 of the Act of 1940 appointing the complainant as Inspector is only for Shivamogga Circle. Subsequently, the complainant was transferred to Gadag Circle and Notification as provided under Section 21 of the Act of 1940 appointing the complainant as an Inspector for Gadag Circle, for the purpose of Section 21 of the Act of 1940, is not issued. It is only an Inspector notified as provided under Section 21 (1) of the Act of 1940, can initiate proceedings for the offences punishable under the Act of 1940. In support of his arguments, he has placed reliance on the following judgments:-

- (i) ***State of Maharashtra vs. R. A. Chandawarkar and Others*** reported in **1999(2) Mh.L.J.650**
- (ii) ***Marc laboratories Limited and Others vs. Union of India*** reported in **2019 SCC OnLine HP 2825**
- (iii) *The order passed by this Court in the case of **Sri. S. A. Kishore vs. State by Drug Inspector** in **Crl.P.No.5292/2010** disposed off on 09.04.2013*



(iv) *The judgment of the Hon'ble Supreme Court in the case of **Miteshbhai J. Patel and Another vs. The Drug Inspector and Another in SLP(Crl.) NO.3662-3663/2024.***

5. He further submits that in view of Section 32 of the Act of 1940, only an Inspector as defined under Section 21 of the Act of 1940 could have filed a private complaint and no Court inferior to the Court of Sessions Court can entertain such complaint. Therefore, impugned criminal proceedings based on the complaint filed before the jurisdictional Magistrate is bad in law. Accordingly, he prays to allow the petition.

6. Per contra, learned HCGP submits that the offences alleged against accused No.1 are punishable with imprisonment upto five years. Therefore, complaint filed is not barred by limitation and Section 468 of Cr.P.C. cannot be made applicable to the present case. She submits that the complainant is an Inspector within meaning of Section 21 of the Act of 1940 and Gazette Notification appointing him as an Inspector has been published and therefore, no separate Notification under Section 21 of the Act of 1940, needs to be issued every time the Inspector is



transferred to different areas. Sub-section (2) of Section 21 of the Act of 1940, takes care of this situation. She submits that though Section 32 of the Act of 1940 provides that only the Court of Sessions can try the offences punishable under Chapter IV of the Act, the said provision does not provide for the Sessions Court to take cognizance of the offences under the Act of 1940, without there being an order of committal by the jurisdictional Court of Magistrate as provided under Section 193 of Cr.P.C. The learned Magistrate has now committed the complaint to the jurisdictional Sessions Court and therefore, there is compliance of Section 32 of the Act of 1940 in the present case. She has placed reliance on the judgment of Bombay High Court in the case of ***State of Maharashtra vs. Ghanshyam K. Zaveri and Another*** reported in ***2000 SCC OnLine Bom 748*** and prays to dismiss the petition.

7. The allegation in the private complaint is that petitioner, who is arrayed as accused No.2 in the complaint, was holder of license under Form 20B and 21B and in violation of his license conditions, had supplied drugs to accused No.1, who was not a registered medical practitioner and in turn, accused No.1 was



dispensing the said drugs to his patients in his clinic. Insofar as accused No.1 is concerned, the offences punishable under Section 18(c) and Section 27(b)(ii) of the Act of 1940, have been invoked and the said offences are punishable with imprisonment for a period of five years. Petitioner is the person who had supplied drugs in violation of his licence conditions to accused No.1 and therefore, accused Nos.1 and 2 are being together prosecuted in the impugned proceedings.

8. Perusal of Section 468 of Cr.P.C. would go to show that period of limitation is provided under the said Section only for the offences punishable with imprisonment for a term upto three years. Sub-section (3) of Section 468 of Cr.P.C. specifically provides that, for the purpose of Section 468 of Cr.P.C., the period of limitation in relation to the offences, which may be tried together, shall be determined with reference to the offence, which is punishable with the most severe punishment or as the case may be, the most severe punishment. In the present case, offences alleged against accused No.1, who is also tried along with petitioner (accused No.2) are punishable with imprisonment upto five years. Section 468 of Cr.P.C. is therefore, not



applicable to the present case. Therefore, the judgment in the case of **Miteshbhai's case** (*supra*) cannot be made applicable to the facts of the present case.

9. The complaint in the present case is filed by one Dhananjay Hatapaki, who was the Assistant Drugs Controller, Gadag Circle, Gadag, at the relevant point of time. The said officer was appointed as an Inspector for Shivamogga Circle by a Notification dated 16.07.2011 by the State Government as provided under Section 21 of the Act of 1940, which was published in the Gazette. It appears that the said officer was subsequently transferred to Gadag Circle by a Notification dated 23.06.2022 issued by the Health and Social Welfare Department of the State of Karnataka.

10. Learned counsel for the petitioner has raised a contention that in view of Section 32 of the Act of 1940, only an Inspector as provided under Section 21 (1) of the Act of 1940 is competent to initiate proceedings under the Act of 1940 and in the absence of Notification as provided under Section 21 (1) of the Act of 1940 after the complainant in the present case was transferred to Gadag Circle, he is not competent to initiate proceedings



against the accused for the offences punishable under the provisions of the Act of 1940.

11. In support of this argument of his, he has placed reliance on the judgments of the Bombay High Court in the case of **Chandawarkar** (*supra*), of the Himachal Pradesh High Court in the case of **Marc laboratories** (*supra*) and order passed by this Court in the of **S.A. Kishore** (*supra*).

12. Section 21 of the Act of 1940, reads as under:-

"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 (45 of 1860), and shall be officially subordinate to such authority having the prescribed qualifications, as the Government appointing him may specify in this behalf."

13. Sub-section (1) of Section 21 of the Act of 1940 provides that Central Government or State Government, may by notification in the Official Gazette appoint qualified persons to be Inspectors for such areas as may be assigned to them by the Central Government or State Government. Sub-section (2) of Section 21 of the Act of 1940 provides for powers to be exercised by an Inspector and also duties which are required to be performed and such powers and duties may be exercised or performed as may be prescribed. Therefore, the powers and duties of the Inspector may be prescribed under sub-section (2) of Section 21 of the Act of 1940 and the order of transfer of an Inspector appointed under Section 21(1) of the Act of 1940 would come within the realm of Sub-section (2) of Section 21 of



the Act of 1940. Issuance of notification as provided under sub-section (1) of Section 21 of the Act of 1940, on every occasion when an Inspector is transferred is not at all practicable and if such a narrow interpretation is made, the same would be unreasonable and not in furtherance of the object of the Act.

14. In the case of **Ghanshyam** (*supra*) under identical circumstances, the Bombay High Court after referring to Section 21 of the Act of 1940, in paragraph Nos.9 and 10, has observed as follows:-

"9. A close scrutiny of the wording used above would show that the notification in the official gazette is required for the purpose of the appointment of the person as a Drug Inspector for such areas as may be assigned to him by the respective Governments may be by a separate order. The initial appointment can be said to be valid if it is made by the Government by notification in the official gazette stating that he has been appointed as Inspector for such areas as may be assigned to him by the Government later on by a separate order. That subsequent appointment for a particular area need not be by notification in the official gazette.

10. So far as the areas are concerned in which a Drug Inspector may operate will be covered by sub-section (2) of section 21 under which the powers of such Drug



Inspector can be restricted by putting conditions, limitations or restrictions subject to which he can exercise his powers and perform his duties vested in or imposed on him by the other provisions of the Act. Thus, in my view, it is not imperative to mention the areas of operation of the Drug Inspector by notification in the official gazette under sub-section (1) of section 21 of the Act. In any event, the GR dated 17th October, 1983 transferring him to exercise powers as Drug Inspector in Mumbai would be sufficient compliance with sub-section (1) of section 21 as the said GR is duly notified in the official gazette, about which there is no dispute."

15. The Hon'ble Supreme Court in the case of **Bharat Damodar Kale and Another vs. State of A.P.** reported in **(2003) 8 SCC 559**, in paragraph No.8 has observed as follows:-

"8. We have perused the notification of the Government of A.P. dated 16-9-1963 issued under the Central Act of 1954. As held by the High Court, in our opinion too, the notification in question is issued in furtherance of the 1954 Act and on the directions issued by the Government of India with a view to control the advertisements of drugs in certain cases and to provide for matters connected with the Central Act of 1954. Para 2 of the said notification authorises the officers of the Drugs Control Administration, Drugs Inspectors appointed under Section 21 of the Drugs Act, 1940 and other officers mentioned therein to act under Section 8 of the Central Act of 1954 to seize and detain any document,



article or thing which such officer has reason to believe to contain any advertisement which contravenes the provisions of the Act. The said notification also provides for obtaining the necessary previous sanction under Section 14(1)(d) of the Act, wherever necessary. These provisions of the Act, in our opinion, as also the object of the notification clearly indicate that the Government of A.P. has issued this notification empowering all its Drugs Inspectors appointed under Section 21 of the Drugs Act to exercise the power under Section 8 of the Central Act of 1954 for the purpose mentioned therein throughout the State of A.P. and an inadvertent reference to Telangana area in the preliminary part of the said notification, in our opinion, would not in any manner restrict the operation of this notification in other parts of Andhra Pradesh. Even otherwise, there is no other indication or purpose reflected in the notification why the State of A.P. would want to restrict the operation of the notification which is in furtherance of a Central enactment only to Telangana area of A.P. State, with no stretch of imagination we can conclude that the Government of A.P. intended to confine the operation to Telangana area of A.P. State. We are also of the opinion that giving a narrow interpretation confining the operation of the notification to a part of Andhra Pradesh would defeat the public purpose for which this notification is issued, therefore, such argument which would not subserve the public purpose in the interpretation of a notification, should be avoided, hence, we are in agreement with the finding of the High Court that the notification in question is applicable to the entire



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State of A.P. and the complainant in this case had the necessary authority to seize and detain any material which would indicate the commission of an offence under the Central Act of 1954 as also to file a complaint as has been done in this case."

16. Therefore, the contention urged on behalf of the petitioner that complainant in the present case was not competent to initiate proceedings against the accused since no Notification as provided under Section 21 (1) of the Act of 1940 was issued, after he was transferred to Gadag Circle is liable to be rejected.

17. Learned counsel for the petitioner has raised a contention that the Court of Magistrate is not competent to entertain the complaint and it is only the jurisdictional Court of Sessions which could have entertained the complaint in view of Section 32 of the Act of 1940.

18. Section 32 of the Act of 1940 reads as under:-

"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 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.

(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."

19. The aforesaid contention is no more *res-integra* and this Court in the case of ***M/s. Padma Pharmaceuticals and Another vs. The State through Drug Inspector - 2025 Live Law (Kar) 75*** (Crl.RP.No.200077/2018 - DD 20.05.2025), in paragraph Nos.8 to 15, has observed as follows:-

"8. From a reading of the aforesaid provision of law, it is very clear that prosecution for an offence punishable under Section 27(b)(ii) of the Act, shall be



instituted only by persons as mentioned in clauses (a) to (d) of sub-section (1) of Section 32 of the Act. Sub-section (2) of Section 32 of the Act provides that no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

9. *In the present case, the private complaint has been filed by the Inspector of Drugs who was been duly authorized, and therefore, prosecution has been initiated against the petitioners in compliance of the requirement of sub-section (1) of Section 32 of the Act. Sub-section (2) of Section 32 of the Act provides that no court inferior to that of a Court of Session shall try an offence punishable under Chapter-IV. Section 36AB of the Act provides for Special Courts for conducting the trial of offences under the provisions of the Act. Section 36AD of the Act provides that the Code of Criminal Procedure, 1973, shall be applicable to the proceedings before the Special Court. Section 193 of Cr.PC provides for cognizance of offences by the Sessions Court, which reads as under:*

"193. Cognizance of offences by Courts of Session.- *Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."*



10. *Sub-section (2) of Section 32 of the Act which provides that no court inferior to that of a Court of Session shall try the offence punishable under Chapter-IV, does not provide that the Court of Sessions can directly take cognizance of the complaint without there being an order of committal by the Court of Magistrate.*

11. *In special enactments like Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC/ST Act') and the Prevention of Corruption Act, 1988 (for short, 'P.C.Act'), provision is found where special courts are provided to hold trial for the offences under the said Acts. Section 14 of the SC/ST Act and Section 5 of the P.C.Act provides for the power of such special courts.*

12. *Section 14 of the SC/ST Act reads as under:*

"14. Special Court and Exclusive Special Court.- (1) *For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special court for one or more Districts:*

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the



concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing.

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period



of two months from the date of filing of the charge sheet."

13. *Section 5 of the P.C.Act reads as under:*

"5. Procedure and powers of special Judge.- (1) *A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.*

(2) *A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of subsections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.*



(3) Save as provided in sub-section (1) or subsection (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944)."



14. From a reading of second proviso to sub-section (1) of Section 14 of the SC/ST Act and from a reading of sub-section (1) of Section 5 of the P.C.Act, it is very clear that the court of Special Judge is also provided with the power to take cognizance of the offences under the said Acts without the accused being committed to the said Court for trial, and such a provision is not found in Section 32 of the Drugs and Cosmetics Act, 1940.

15. Under the circumstances, the complaint filed by a competent officer as provided under sub-section (1) of Section 32 of the Act before the Court of jurisdictional Magistrate is required to be committed to the Court of jurisdictional Sessions Judge for trial as provided under sub-section (2) of Section 32 of the Act..."

20. In the present case, learned Magistrate before whom complaint was filed has subsequently by order dated 26.05.2024, in exercise of his powers under Section 209 of Cr.P.C., has committed the case to the jurisdictional Court of Sessions Judge for trial and therefore, there is no illegality or irregularity in the procedure followed by the learned Magistrate before whom complaint was filed by competent authority as provided under Sub-section (1) of Section 32 of the Act of 1940. Therefore, I do



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not find any good ground to entertain this petition. Accordingly,
the petition stands dismissed.

**Sd/-
(S.VISHWAJITH SHETTY)
JUDGE**

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