



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

CRIMINAL APPLICATION (APL) NO. 638 OF 2023

Dr. Prashant S/o. Gokul Tipale,
Aged : 52 yrs, Occ: Medical Practitioner
Isha Mind Care, Shopt No.3, K.R,
Complex, Near Sunny Point, Bhadrawati,
Tah. Bhadrawati, Distt. Chandrapur
(Original accused.)

... APPLICANT

// V E R S U S //

State of Maharashtra,
Through Shri C. K. Dange,
Drugs Inspector, Food & Drugs
Administration, 2nd Floor, Room
Nos. 20 & 21, New Administrative
Building, Chandrapur, Tq. & Distt.
Chandrapur.

... RESPONDENT

Mr M. P. Khajanchi, Advocate for applicant
Ms S. V. Kolhe, APP for the respondent/State

CORAM : G. A. SANAP, J.
DATE: 22/07/2024

ORAL JUDGMENT :

1 **Heard.**

2 **Admit.** Taken up for final disposal with the
consent of learned Advocates for the parties.

3 In this application, filed under Section 482 of the
Code of Criminal Procedure, 1973, the petitioner has prayed
for quashing the Special (Drugs & Cosmetics) Criminal Case
No. 25 of 2022 dated 02.08.2022 filed for the commission of
an offence under Section 18(c) punishable under Section 27
(b) (ii) of the Drugs and Cosmetics Act, 1940 (hereinafter
referred to as 'the Act of 1940') and the Rules thereunder.

4 The complaint was filed against the applicant by
the drug inspector on the allegation that the drug inspector
had received information that the applicant was indulging in a
sale of medicine to the patient without any licence. The
applicant is a medical practitioner. He is a psychiatrist.
Therefore, a dummy patient was sent to the clinic. The said
patient was examined by the applicant. The applicant then
prescribed the medicines and provided/sold him the medicines
available with him under the bill. In short, it is the case of the
respondent that the stock and sale of the medicines by the

applicant to the patient was in contravention of provisions of Section 18(c) of the Act of 1940. The complaint was filed before the learned Special Court. Accordingly, the learned Sessions Judge issued the notice against the present applicant.

5 In this application, it is the case of the applicant that he is a registered medical practitioner. Section 18(c) is a part of Chapter IV of the Act of 1940. As per the Drug Rules, 1945, more particularly Rule 123, the drugs specified in Schedule K are exempted from the operation of Chapter IV of the Act of 1940. It is stated that the case of the applicant is governed by Schedule K, Clause (5) read with Rule 123 of the Drugs Rules, 1945 (hereinafter referred to as 'the Rules of 1945'). According to the applicant, the entire stock was duly accounted for at the time of the inspection itself. The report of the analyst shows that the drug was of standard quality. In other words it was not a spurious drug. The applicant has contended that his case squarely falls under Rule 123 of the

Rules of 1945 read with Schedule K, clause 5.

6 The state has opposed the application. It is contended that the drug was stocked for the purpose of sale. The provisions of Rule 123 of the Rules of 1945 read with Schedule K, Clause 5 are not applicable to the case of the applicant. It is contended that the applicant was not supposed to maintain the stock and sell drugs out of the stock to his patient.

7 Learned Advocate for the applicant has relied upon the following two decisions to make good his submission that the case of the applicant is covered under Rule 123 read with Schedule K and therefore, the prosecution lodged against him was without any basis.

a. Dr. Ritesh S/o. Nandkishor Dixit .v/s. State of Maharashtra, Criminal Application No. 139 of 2021, decided on 15.07.2021

b. S. Athilakshmi .v/s. State Rep. By the Drugs Inspector, reported in 2023 SCC OnLine SC 269

8 In these decisions it is held that the exemption provided by Rule 123 is to the registered medical practitioner. If the drug is provided by the medical practitioner, which is exempted under Rule 123 read with Schedule K, then the offence under Section 18(c) of the Act of 1940 will not get attracted.

9 Undisputedly, the applicant is a registered practitioner. He is a psychiatrist. The drug inspector had sent a dummy patient to the applicant for examination so as to get confirmation of the information that the applicant was selling the drug to the patients without any licence. The patient was examined by the applicant. The prescription is part of the record. The medicine prescribed was provided by the doctor to the patient under the bill. The inspector, after the raid, called upon the applicant to produce the documents to account for the stock of medicines maintained by him. The applicant produced the necessary bills for the purchase of medicine

from Suganchand Medical Stores. It is not the case of the respondent that this purchase of a medicine was illegal or unauthorized. It is also not the case of respondent that Suganchand Medical Stores had no authority to maintain the stock and sell the medicine. The only allegation is that, being a registered medical practitioner, he was not supposed to provide or sell the medicines to the patient.

10 Learned APP conceded that under the Act and the Rules there is no provision which provides for maintaining a particular quantity of a drug by the registered medical practitioner. In other words, it is not the case of the respondent that the quantity of the drug maintained was beyond the permissible limit. It is undisputed that the entire stock of medicines found with the applicant was duly accounted for. It is not the case of the respondent that, out of this stock, a particular quantity was sold or provided without maintaining the record.

11 It is the case of the respondent that the applicant was carrying out his practice at Isha Mind Care, Shop No.3, Ground Floor, Kishor Rangari Complex, Near Sunday Point Hotel, Bus Stand Bhadrawati, District Chandrapur. It is not the case of the respondent that he was running a pharmacy shop without any licence. It is not their case that he was selling the medicine from the counter to patients or to the public. In the background of the above stated facts and the interpretation of these provisions by the Coordinate Bench of this Court and by the Hon'ble Apex Court in the decisions cited supra, it is necessary to consider whether the case of the applicant falls within the exemption provided under Rule 123 read with Schedule K of the Rules of 1945.

12 Perusal of Section 27(b)(ii) of the Act of 1940 would show that in a case of contravention of Section 18(c), a sentence of imprisonment not less than three years and extending up to five years has been provided. Similarly, for

contravention of Section 18(b) of the Act of 1940, a sentence up to one year alongwith a fine has been provided. Undisputedly, Rule 123 of the Rules of 1945 specifically provides for exemption from the application of provisions of Chapter IV of the Act of 1940. Schedule K, Clause 5 exempts the application of Chapter IV of the Act of 1940 to the drugs supplied by registered medical practitioner to his own patient. The person sent to the medical practitioner was duly examined by the applicant. He diagnosed his ailment and accordingly prescribed the medicines. In my view, the case of the applicant would squarely fall within Rule 123 of the Rules of 1945 and Schedule K, clause 5. The stock with him was duly accounted for. There is no evidence to show that he was selling the drugs from the counter to patients or to the public. It is not the case of the prosecution that he is running a pharmacy shop without any license. He is, therefore, authorized by virtue of this exemption to supply the medicines to his patients. In my

view, therefore, Rule 123 of the Rules of 1945 and Schedule K, clause 5 would be squarely applicable to the case of the applicant. On the basis of the averments made in the complaint, it is not possible to conclude that the provisions of Rule 123 of the Rules of 1945 and Schedule K, clause 5 are not applicable to the case of the applicant.

13 Learned APP submitted that he did not maintain the register of the stock and the supply of the medicines to his patients. I have already stated that it is not the case of the respondent that, out of this stock, any medicine was sold or supplied by him to his patient and it was not accounted for. The only evidence placed on record is the bill of supply of a medicine to the patients. In my view, therefore, this submission also cannot be accepted.

14 One more aspect, which is apparent on the face of the record and which, in fact, has been made a bone of

contention is that the learned Judge, without recording reasons, has issued the summons/process. Learned Judge was required to examine the complaint and on being *prima facie* satisfied with the disclosure of the offence by recording reasons, he was required to issue process. Learned Special Judge has taken cognizance without recording the reasons. The copy of the order passed by the learned Judge is at Annexure-2. The order is as follows:

“Issue notice to accused.”

15 Perusal of the order would show that this one line order passed by the learned Additional Sessions Judge clearly shows that it is bad in law *inasmuch* as it does not reflect the application of mind. Learned Judge, as can be seen from this order, has not recorded any reason for issuing the process against the accused. The criminal prosecution is a serious matter. The Court has to be very careful while passing such an order. Such an order, as and when challenged, has to be

examined on the touch stone of the law. In my view, as far as this issue is concerned, a useful reference can be made to the decision of the Hon'ble Apex Court in the Case of ***Lalankumar Singh and others .v/s. State of Maharashtra***¹, wherein the Hon'ble Apex Court has held that the words “sufficient ground for proceeding” appearing in Section 204 of the Code of Criminal Procedure are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and the formation of such an opinion is to be stated in the order itself. It is held that if the order is passed mechanically, then such an order cannot be sustained. The Apex Court has held that the Court may not be required to record the detailed reasons, but the reasons recorded must be sufficient to indicate the application of mind by the Court before passing the order.

1 2022 SCC OnLine SC 1383

16 On consideration of the entire material placed on
record as well as the cryptic order passed by the learned Special
Judge I am of the view that this prosecution against this
applicant is not sustainable. Accordingly, the application is
allowed in terms of the prayer clause (a) and (b).

17 The criminal application stands disposed of,
accordingly. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)