

(2001) 09 BOM CK 0080
In the Bombay High Court
Case No : Criminal W.P. No. 137 of 1998

Ashok Sureshchand Bal and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 179, 180, 201, 245(2), 319
Drugs and Cosmetics Act, 1940 — Section 16(1), 18, 18A, 19(3), 23
Prevention of Food Adulteration Act, 1954 — Section 13(2)

Citation : (2002) 1 BOMLR 483 : (2002) 1 MhLj 211

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : Uday Dastane and Devendra Chauhan, for the Appellant; Neeta S. Jog, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners are being prosecuted for offence u/s 18(a)(I) read with section 16(I)(a) punishable u/s 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter called the said Act) and the Rules thereunder on a complaint filed by Drugs Inspector, Wardha. An application for dismissal of complaint for want of jurisdiction and on other grounds was filed on 5-4-1994. The Magistrate vide order dated 28-6-1995, discharged the petitioners u/s 245(2) of Criminal Procedure Code.

2. This order was challenged by the State in revision before the Sessions Court, Wardha and the Sessions Judge, Wardha, vide order dated 18-5-1998 set aside the order dated 28-6-1995 of the Judicial Magistrate First Class and the parties were directed to appear before the trial Court with further direction to expedite the trial. This order is subject matter of challenge in this writ petition. Learned Advocate for the petitioners took me through the facts of the case and has basically argued on the following points : --

(1) The manufacturing unit of the petitioners is at Nagpur and since no party

from Hinganghat from whom the sample of drug was taken by the Drugs Inspector has been joined as co-accused, the Judicial Magistrate First Class, Hinganghat has no jurisdiction to try the petitioners.

(2) That no sample of the drug in question has been given to the petitioners in accordance with section 23 of the said Act.

(3) The valuable right available u/s 25(4) has been denied to the petitioners.

In view of the above submissions, it is urged that the proceedings be quashed. I shall take up the submissions advanced by the learned Advocate for the petitioners and learned A.P.P. one by one. Nevertheless in order to appreciate the submissions, it is necessary to briefly enumerate the relevant facts.

3. On 6-8-1993, the Drugs Inspector, Wardha drew four samples (each portion of 100 ml.) of Doctor Brand Liquophin Phenyl (Black Disinfectant Fluid) Grade II, Batch No. 74/93 having manufacturing date 5/1993 and expiry date 4/1994 from Suresh Bahadurchand Khatri, Proprietor of M/s Kiran Medical and General Stores at Hinganghat, District Wardha. The said item is manufactured by M/s B. D. N, Pharmaceuticals, W4, M.I.D.C., Nagpur, who is petitioner No. 4. The petitioner Nos. 1 to 3 are the partners of petitioner No. 4. The said firm has licence for manufacture of drugs under the said Act and Rules, which was granted on 18-3-1975 and was valid upto 31-12-1994. The four samples were effectively sealed, out of which one was handed over to proprietor of M/s Kiran Medical and General Stores, Hinganghat. Another sample was sent to Government Analyst, Maharashtra State, Bombay. The Government Analyst vide report dated 1-2-1994 declared that the said sample is not of standard quality as defined in the said Act and Rules. The Drugs Inspector sent a copy of the report to M/s Kiran Medical and General Stores, Hinganghat vide letter dated 10-2-1994. On 11-2-1994, the Drugs Inspector recorded the statement of Suresh Khatri, Proprietor of M/s Kiran Medical and General Stores, Hinganghat. By order, dated 25-2-1994, M/s B. D. N. Pharmaceuticals Limited, Nagpur, petitioner No. 4, was ordered to be prosecuted. On 2-3-1994, the Drugs Inspector sent copy of the report of Government Analyst to petitioner No. 4 and on 5-3-1994 the Drugs Inspector personally handed over the copy of the report of the Government Analyst and one sealed sample to Suresh Desai, partner of M/s Jovial Pharmaceuticals. The Drugs Inspector also recorded the statement of S. P. Desai on 5-3-1994. The prosecution case is that the drug in question was sold by the petitioners to M/s Trinity Marketing Company, Nagpur, who in turn sold the same to M/s Jovial Pharmaceuticals, Gandhibag, Nagpur, who in turn sold it to M/s Kiran Medical and General Stores, Hinganghat, District Wardha from whom the samples were taken. On 7-3-1994, the statement of Nitin Sadashivrao Shende, Salesman of M/s Trinity Marketing Company was recorded. The petitioners were, therefore, prosecuted for the offences referred to above.

4. Coming to the first submission of the learned Advocate for the petitioners relating to jurisdiction of J.M.F.C., Hinganghat to try the offence, it is urged that

M/s Kiran Medical and General Stores at Hinganghat, District Wardha has not been joined as co-accused as a result of which the petitioners cannot be prosecuted at Hinganghat though they may be liable for prosecution in the Court of J.M.F.C., Nagpur. In this respect, learned A.P.P. has urged that the manufacturer of an adulterated drug can be prosecuted wherever the drug is sold irrespective of whether the seller from whom the sample is taken is joined as co-accused or not. She also pointed out that if necessary even the Court can exercise the jurisdiction u/s 319 of Criminal Procedure Code to join a party as a co-accused. She further urged that even if the Court comes to the conclusion that it has no jurisdiction, the accused cannot be discharged, but the Court has to exercise the power u/s 201 of Criminal Procedure Code and to return the complaint to the complainant for presentation to the proper Court. Learned A.P.P. has placed reliance on M/s. Mediscarch Laboratories and others Vs. State of Goa, of Panaji Bench of this Court as also the judgment of Punjab and Haryana High Court in In charge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. Vs. State of Punjab, .

5. Learned Advocate for the petitioners has urged that the said authority in Mediscarch Laboratories and others v. State of Goa (supra) is distinguishable on facts since in the said case M/s Entod Pharmaceuticals, Bombay from whom M/s Goa Pharma, Panaji had purchased the drug in question had been made party along with the manufacturer M/s Mediscarch Laboratories, Thane, Maharashtra. The sample in this case had been taken from M/s Goa Pharma, Panaji who was not joined as accused.

6. In the said case, the drug in question was manufactured by M/s Mediscarch Laboratories, Thane, Maharashtra. The samples, in question, were taken from M/s Goa Pharma, Panaji who had disclosed that the said samples were purchased from M/s Entod Pharmaceuticals, Bombay who was made accused along with the manufacturer even though M/s Goa Pharma, Panaji from whom the samples were taken had not been joined as accused, on the basis of which objection relating to jurisdiction had been raised in respect of trial at Panaji. The said objection was overruled. In this judgment, some judgments on the point were referred including State of Punjab Vs. Nohar Chand, . In this case before the Apex Court manufacturer had been tried along with Marketing Agent at Kapurthala. The sub-standard fertilizer was admittedly, manufactured at Ludhiana by M/s Varinder Agro-Chemicals (India) and it was sold by marketing agent M/s Sachdeva Enterprises at Kapurthala. The question before the Apex Court was whether the Court where the sub-standard fertiliser is marketed would have jurisdiction to try the manufacturer of the sub-standard fertiliser whose manufacturing activity is at a different place. The Apex Court after taking into consideration sections 179 and 180 of the Criminal Procedure Code has laid down --

"Now if manufacturing sub-standard fertiliser is by itself an offence and marketing the sub-standard fertiliser is itself a distinct offence but they are so inter-connected as cause and effect, both can be tried at one or the other place.

If one manufactures the sub-standard fertiliser, wherever it is marketed the inter-relation or causal connection is of cause and effect. The situation will be adequately covered by sections 179 and 180 of the Code of Criminal Procedure. We are in agreement with the later decision of the Division Bench rendered on March 9, 1983 that the Court where the sub-standard fertiliser is being marketed will equally have the jurisdiction to try the manufacturer of sub-standard fertiliser. This is so obvious that any further discussion appears to us to be superfluous."

The Apex Court, therefore, held that the Court where the sub-standard fertilizer is marketed will equally have jurisdiction to try the manufacturer of the sub-standard fertilizer whose manufacturing activity is at a different place. 7. Another judgment which was considered in *Medisearch Laboratories and others v. State of Goa* (supra) is *State Vs. Nathumal Damumal and Others*, . In this case, Nathumal Damumal trading in Deolali Camp in Nasik had purchased 15,000 Ibs of tincture lyricist BP 1891, manufactured by M/s India Drugs Laboratory Private Limited, Calcutta. The goods were transported from Calcutta to Indore and thereafter 5000 Ibs of the said drug was sent to Nasik by rail and 1000 Ibs by truck to Malegaon. Drugs Department got information about the transportation of the said drugs and, as such, the officers intercepted the goods at Nasik and Malegaon and samples were taken, which were sent to Chemical Analyser and it was found that the said samples were not according to the standard specified in the Act. The prosecution was launched at Nasik against the manufacturer, as well as Nathumal Damumal, who had purchased the drugs. In this case, taking into consideration that the word "distribute" is wide enough to include the repose of the goods at Nasik, even after a completed sale at Calcutta, since the manufacturers were aware that the goods were bound for Nasik, it is pertinent to note that it was, held that it is clear "that the ordinary and general meaning of the word "distribute" is sufficient to convey spreading of goods anywhere by whatever means that may be employed and even though the sale was complete at Calcutta, there could be no doubt that they were intended for Nasik. It was further pointed out that taking into consideration that the Act was enacted to control the rampant evil of misnamed drugs or substandard drugs from being sold which may in some cases prove seriously injurious to the purchaser, it was held that it was not possible to give any other meaning to the word "distribute" and to give any other meaning, would be to frustrate the purpose of the Act and enable the manufacturers to manufacture drugs irresponsibly and spread them throughout the length and breadth of the Country and escape the consequences for such manufacture. It was thus held that section 179, Criminal Procedure Code was clearly attracted since one of the ingredients of the offence of distribution was actually reaching of the goods at the place where they were intended. The objections, raised by manufacturers were, therefore, rejected.

8. Another ruling which has material bearing on the matter under question is *Smt. Sunder Ben and another v. State of Maharashtra* (Cri. Rev. Application No. 117/1983), which was referred in *M/s Medisearch Laboratories v. State of Goa*

(supra). In this case, the petitioners were partners of firm "Crystal Chemicals Indore" doing manufacture of different pharmaceutical products, including "Codorin". The said drug was sold by the petitioners to M/s Prima Medical Agency of Indore, who in turn sold the same to M/s Prithlyani Medical Stores, Gondia and the Drugs Inspector had taken sample from M/s Prithlyani Medical Stores, Gondia. The complaint was filed against the petitioners/manufacturers and the proprietor of M/s Prima Medical Agency Indore under the said Act. The firm M/s Prithlyani Medical Stores, Gondia and its proprietor, were not prosecuted in view of section 19(3) of the said Act. The prosecution was launched at Gondia. The manufacturers challenged the jurisdiction of the Court at Gondia, but the said objection was overruled. After taking into consideration section 179 of Criminal Procedure Code, it was observed that the plain reading of section 179, Criminal Procedure Code shows that the offence is triable where act is done or where the consequences has ensued and there could be no doubt that the Court at Indore had jurisdiction to try the offence and the question which fell for consideration as to whether the Court at Gondia had jurisdiction to try the manufacturer. After considering a number of authorities, it was held that the consequences have ensued only at Gondia where the Drugs Inspector had raided the shop of M/s Prithlyani Medical Stores and recovered the misbranded drugs and, as such, the Court at Gondia had jurisdiction to try the manufacturer at Gondia even though M/s Prithlyani Medical Stores, Gondia was not an accused in the said case. It was urged therein that the consequences would be deemed to have ensued only at Indore as soon as the Codorin tablets were sold by the petitioners to M/s Prima Medical Agencies, Indore and not at Gondia, where the misbranded drug was recovered. Rejecting this contention, it was pointed out that if the said interpretation was accepted, then in a given case, it may be possible for the manufacturer to defeat the very object of section 179, Criminal Procedure Code by setting a fictitious person and selling him at the firms' instance and thereafter managing the distribution of the drug at some other places. This ruling is attracted on all fours to the case under consideration.

9. At this stage, I would also like to refer the judgment of Punjab and Haryana High Court in *In charge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. v. State of Punjab* (supra). In this case, point involved for determination was whether manufacturer of substandard fertilizers can be tried within the jurisdiction of the Court where it is manufactured or a place where it is ultimately sold along with the retailer or the wholesale dealer. It was in this context that reference was made to the case *Nohar Chand v. State of Punjab* (supra), which was decided by the Punjab High Court wherein it was held that the manufacturer can only be tried at the place where the sub-standard fertilizer is manufactured. Referring to this view, the Division Bench of the Punjab High Court in *In charge Production, Haryana State Co-operative Supply and Marketing Federation Ltd. v. State of Punjab* (supra), had observed that --

"...It is true that in view of this authority, it has been held that the manufacturer of sub-standard fertilizers can only be tried at the place where the sub-standard

fertilizer is manufactured, but if this view, is upheld, it will lead to disastrous results. The manufacturers of the sub-standard fertilizer in that case would escape prosecution, as the fertilizer manufactured at a place by a manufacturer is sold throughout the country through authorised agents. Each State Government has provided its own enforcement machinery and that machinery has only jurisdiction in its own State. The officers entitled to take sample can only file complaints before the Courts having jurisdiction in their own State and not in the other State where the manufacturing has actually taken place. In fact the manufacturer of sub-standard of sub-standard fertilizer actually sells to the farmers through its authorised dealer or agent and ultimately both are in league with each other to sell the sub-standard fertilizer and the offence thus is related. The manufacturer as well as the dealer can be tried at a place where the consequences of the manufacturing and selling of sub-standard fertilizer had ensued as envisaged in the provisions of sections 179 and 180 of the Criminal Procedure Code, 1973. In the manufacturing of sub-standard fertilizer at one place and its sale through agents at another place, there is a unity of purpose and design and continuity of action between the manufacturer and the seller in respect of the sale of that sub-standard fertilizer. Thus the manufacturer can be tried at a place where the sub-standard fertilizer is sold ultimately."

It may be pointed out that the view taken by the Punjab and Haryana High Court in *Nohar Chand v. State of Punjab* (supra) was overruled by the Apex Court in *State of Punjab v. Nohar Chand* (supra).

10. In *Medisearch Laboratories and others v. State of Goa* (supra) as also in *Smt. Sunder Ben and another v. State of Maharashtra* (supra) even though, the firm falling in the jurisdiction of the Court from where the samples had been taken had not been party yet one of the purchasers who did not fail within the jurisdiction of the Court had been a party along with the manufacturer. In my opinion, taking into account the purpose sought to be achieved by the said Act, the principle has to be expanded and wherever an adulterated drug is manufactured, the manufacturer can be prosecuted at the place where the drug is sold irrespective of whether the seller has been made party or not since the consequences ensue at the place where the goods are sold and purchased. The goods are manufactured for the purpose of distribution throughout the country and the manufacturers cannot be permitted to escape their liability on technical grounds. At any rate, the consequences of manufacturer of adulterated drug ensue wherever the drug is sold and as such manufacturer can be sued at any place of sale of adulterated drug. Of course, the sale within the jurisdiction of the Court taking cognizance against the manufacturer will have to be established.

11. In *Shivraj Tobacco Company and others v. State of Maharashtra*, reported in 1982 (1) FAC 313, the effect of section 179 of Criminal Procedure Code had not been considered which has material bearing on the question of jurisdiction.

12. The ruling in *Harbans Lal Vs. State of Haryana and Another*, upon which reliance was placed by A.P.P. will not be attracted to the facts and circumstances

of the present case.

13. In view of this, the objection relating to jurisdiction is without any merit.

14. The second submission in fact was not pressed in view of the judgment of the Apex Court in *Amery Pharmaceuticals and Another Vs. State of Rajasthan*, .

15. Coming to the last submission of learned Advocate for the petitioners which centers around the valuable right as provided u/s 25(4) of the Act, it has been urged by the learned Advocate for the petitioners that on account of negligence inaction on the part of the prosecution agency, this valuable right of the petitioners was lost due to which the proceedings are required to be quashed. He urged before me that when the samples were taken, the Drugs Inspector was aware that the samples in question had been manufactured by the petitioners and that the date of expiry was 30th April 1994. According to him, since it is a matter of common knowledge that the Government Analyst takes considerable period ranging from six to eight months to give report, the Drugs Inspector in the instant case should have directly sent the sample to Central Drugs Laboratory which is permissible in view of judgment of the Apex Court in *Ram Shankar Misra Vs. State of U.P.*, . He further pointed out that the report of the Public Analyst declaring the sample does not conform to the standard quality is dated 1-2-1994. On 10-2-1994, the Drugs Inspector had sent the copy of said report to Kiran Medical and General Stores and even at this stage the Drugs Inspector should have taken care to inform of the said report of the Government Analyst to the petitioners in case the petitioner as manufacturer was to be prosecuted. He then pointed out that on 25-2-1994, Assistant Commissioner of Drugs had issued the order to prosecute the petitioners and even thereafter the Drugs Inspector informed the petitioners for the first time only on 5-3-1994. It is pointed out by him on 5-3-1994 itself the petitioners sent a telegram making their intentions clear to adduce evidence in connection with the report of Government Analyst and intimation to the effect was given as required u/s 25(3) of the said Act within 28 days. It is also pointed out that the Drugs Inspector filed the complaint in the Court on 23-3-1994 where the sample was deposited but the Drugs Inspector never requested at the time of filing of the complaint that the sample deposited in the Court be sent for analysis to Central Drugs Laboratory, Calcutta as the petitioners have already given intimation, of their intentions on this aspect. Learned Advocate for the petitioners also pointed out that on 24-3-1994 the petitioners had moved Additional Chief Judicial Magistrate, Nagpur for sending the sample to Central Drugs Laboratory. The sample was ultimately sent on 5-4-1994 by the Court to Central Drugs Laboratory, Calcutta, but even the said sample in question was not received by Central Drugs Laboratory, Calcutta and by letter dated 5-5-1994, the Central Drugs Laboratory, Calcutta informed the Court that the sample had not been received till then and that the sample had already expired on 30th April 1994. In view of this, it is urged that the petitioners have been deprived of their valuable right provided u/s 25(4) on account of negligence and inaction of the prosecution and that the

petitioners are in no way responsible as they had exercised their right within the time prescribed. He, therefore, contends that the proceedings in the circumstances would be abuse of process of law and the same be quashed.

16. In this connection, reliance has been placed upon Municipal Corporation of Delhi Vs. Ghisa Ram, ; Ram Shankar Misra Vs. State of U.P., ; Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, ; and State of Haryana Vs. Unique Farmaid P. Ltd. Ors., .

17. Learned A.P.P., on the other hand, urged that the prosecution is not at all responsible in respect of the loss of valuable right of the petitioners u/s 25(4) of the said Act and that even otherwise the petitioners can lead evidence to disprove the report of the Government Analyst in the absence of the report from the Central Drugs Laboratory; that the prosecution agency was always diligent and has filed the complaint within the period of limitation which starts from the date of the receipt of the report of the Government Analyst. She has placed reliance on paragraph 8 of Municipal Corporation of Delhi v. Ghisa Ram (supra) and State of Rajasthan Vs. Sanjay Kumar and Others, .

18. Section 25 of the Act reads as under : --

"25. Reports of Government Analysts. -- (1) The Government Analyst to whom a sample of any drug (or cosmetic) has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form,

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken (and another copy to the person, if any, whose name, address and other particulars have been disclosed u/s 18A), and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken (or the person whose name, address and other particulars have been disclosed u/s 18A) has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug (or cosmetic) produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs

Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."

The Apex Court in *Municipal Corporation of Delhi v. Ghisa Ram* (supra), on which reliance is placed by both the sides, in a case under the Food Adulteration Act, has laid down that when a valuable right is conferred by section 13(2) of the Prevention of Food Adulteration Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that the right will not be denied to him as the right is valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. It is further pointed out that in a case where there is denial of this right on account of the deliberate conduct of the prosecution that is delay in prosecution as a result of which the sample is highly decomposed and could not be analysed, the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein. It was also pointed out that it should not be understood that in every case where the right of the vendor to have a sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst but the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. It is also pointed out that different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible.

19. In *Calcutta Municipal Corporation v. Pawan Kumar Saraf and another* (supra), the Apex Court with reference to the collusiveness of the report of the Central Food Laboratory has laid down that when a statute make certain facts as final and conclusive no party can give evidence to disprove such fact,

20. In *State of Haryana v. Unique Farmaid (P) Ltd. and others* (supra), while dealing with the provisions of Insecticides Act, 1968, the accused within the statutory time limit had notified to the Inspector of his intention to adduce evidence in controversion of the Analyst's report and requested him to get the sample analysed from Central Insecticides Laboratory at the accused's cost, but the Inspector ignored the same on the ground that such request could be made only to the Court. By the time the accused was summoned by the Court to stand trial shelf life of the insecticides expired rendering the sending of the sample to CIL at that stage purposeless. In such circumstances, it was held that the accused was deprived of the valuable right to get the sample tested by CIL and was thereby prejudiced in his defence. Hence, the Apex Court held that High Court, therefore, rightly quashed the complaint as continuance thereof would

amount to abuse of the process of the Court. In this case a number of earlier cases of the Apex Court have been considered in para 11 under the Drugs and Cosmetics Act as also Prevention of Food Adulteration Act.

21. In *State of Rajasthan v. Sanjay Kumar and others* (supra), while dealing with the Drugs and Cosmetics Act, 1940, the Apex Court has laid down that the period of limitation for filing complaint is from the date of receipt of the Government Analyst's report and not from the date of collection of samples.

22. The samples in this case were collected on 6-8-1993 and in the samples themselves the date of expiry had been recorded as 30th April 1994. It is no doubt true that the report of Government Analyst is dated 1st February 1994 and the period of limitation for filing the complaint would start from 1-2-1994 onwards and it appears that the papers for the prosecution of the petitioners were moved immediately thereafter and the Assistant Commissioner, Food and Drugs had ordered prosecution of the petitioners on 25-2-1994. Nevertheless, the Drugs Inspector is bound to be aware that the time for expiry of the drug in question was not very far and as such he should have taken all necessary precautions so that the valuable right provided to the accused u/s 25(4) was not frustrated. Even after the sanction to prosecute the petitioners was granted on 25-2-1994, the Drugs Inspector could have ensured that in view of the request of the petitioners, the sample in question was despatched at the earliest so as to reach the Central Drugs Laboratory before the date of expiry. The petitioners were given copy of the Analyst's report on 5-3-1994. Accordingly, the petitioners vide letter dated 5-3-1994 and also by telegram dated 5-3-1994 informed the Drugs Inspector that they seek to challenge the correctness of the same by getting the samples tested from the Central Drugs Laboratory. These averments are not denied by the respondent and it is submitted by the learned Advocate for the petitioners that these facts were even admitted before the trial Court. Even though the sanction to prosecute the petitioners was granted on 25-2-1994 yet the complaint in the Court had been filed on 23-3-1994 and one sample was deposited by the Drugs Inspector with the court on 23-3-1994. In view of the written request dated 5-3-1994 and also telegram of the same date and keeping in view that the expiry date of the drug was fast approaching, the Drugs Inspector could have either sent the sample in his custody to the Central Drugs Laboratory or at least should have filed the complaint before the Court immediately and should have requested the Court in the circumstances to send the sample for analysis to Central Drugs Laboratory immediately keeping in view that the expiry date was fast approaching. On 24-3-1994, the petitioners filed an application before the Additional Chief Judicial Magistrate, Nagpur for direction to send the sample to Central Drugs Laboratory. Notice of this application was given to Drugs Inspector for 31-3-1994 and the Drugs Inspector informed the Additional Chief Judicial Magistrate that the matter is already fixed before the Court at Hinganghat on 5-4-1994.

23. In *Ram Shankar Misra v. State of U.P.* (supra), the Apex Court has held that

the mode prescribed u/s 25(4) is one method of sending it to the Director of the Central Drugs Laboratory and the other method is by the Drugs Inspector sending it direct as contemplated under the first part of section 25(1). It is pointed out that there is no prohibition under the Act or the Rules barring the Inspector from sending the sample direct to the Director, Central Drugs Laboratory.

24. In the case under consideration the sample has been analysed by the Government Analyst. In view of the intention of the petitioners disclosed on 5-3-1994 and the fact that the expiry date was fast "approaching the Drugs Inspector should have taken positive steps to ensure that not only sample was sent at the earliest but he should have ensured that the sample was received by the Central Drugs Laboratory before the date of its expiry. It was only on 5-4-1994 that the sample in question was sent to Central Drugs Laboratory along with a memo and it appears that a separate memo in respect of the same was sent separately and it was this memo which was received by the Central Drugs Laboratory, but the memo along with which sample was sent had not been received till 5-5-1994 as a result of which the Central Drugs Laboratory informed that the sample has not been received and the date of the sample had already expired on 30-4-1994. In the circumstances, I am of the opinion that on account of inaction and lack of diligence on the part of the Drugs Inspector, the valuable right which is vested in the accused u/s 25(4) had been lost. At any rate, the petitioners are not to be blamed at all in this process. It may also be pointed out even when the sample was sent on 5-4-1994, the Drugs Inspector should have requested the Court that the sample in question be sent by hand delivery so that it was received by the Central Drugs Laboratory prior to the date of its expiry. In these circumstances, I am of the opinion that continuation of the proceedings against the petitioners would amount to abuse of process of law and as such the proceedings are required to be quashed.

25. For the aforesaid reasons, the writ petition is allowed and the rule is made absolute by quashing the proceedings by setting aside the order dated 18-5-1998 of Additional Sessions Judge, Wardha and restoring the order dated 28-6-1995 of Judicial Magistrate First Class, Hinganghat.

26. Writ petition allowed.