

(2018) 04 SHI CK 0046
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 137 of 2017

Maman Chand Jain

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Code of Criminal Procedure 1973 — Section 2(r), 2(d), 4, 32, 94, 150(2), 154, 154(1), 154(2), 155, 155(2), 156(3), 157, 157(1), 173, 173(2), 190, 200, 210, 482, 468, 469
Drugs and Cosmetics Act, 1940 — Section 3(e), 9, 9A, 9B, 9C, 9D, 13(1)(a), (b), (c), 17-B, 18(A), 18(C), 18(a)(i), 20, 21, 22, 25, 26, 27, 28, 23, 32, 33G, 36AC, 36AD,
Indian Penal Code, 1860 — Section 34, 120B, 201, 204, 269, 273, 307, 336, 406, 417, 420, 467, 468, 471
Constitution of India — Article 142, 226

Citation : (2018) 4 CriCC 131 : (2018) CriLJ 2914 : (2019) 1 Crimes 227

Hon'ble Judges : VIVEK SINGH THAKUR

Bench : Single Bench

Advocate : Rajnish Maniktala, Shiv Pal Manhans, Raju Ram??Rahi, Amit Kumar Dhumal

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J.

1. Petitioner has approached this Court by means of this petition filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as

â??CrPC), for quashing of FIR No. 22/2016, dated 13.03.2016, under Section 27 (c) read with Section 18(a)(i), 17-B, 36AC of Drugs and Cosmetics

Act, 1940 (for short 'Drugs Act') and Section 420 of the Indian Penal Code (for short â??IPCâ??), registered at Police Station Kala Amb, District

Sirmour, (HP), against him and his wife Smt. Meenakshi Jain, mainly on the ground that only an Inspector or duly authorized gazetted officer of the

Central Government or the State Government, or a person or a recognized consumer association, as provided in Section 32 of the Drugs Act, is

competent to institute a prosecution for the offences committed under the Drugs Act and, as in the present case, the FIR has been registered and

investigation is being carried out by the police officer(s), who are not duly authorized to institute the prosecution under the Drugs Act, FIR as well as

consequential proceedings/investigation being carried out by the police, is liable to be quashed and set aside.

2. It is submitted on behalf of the petitioner that wife of the petitioner was licensee under the Drugs Act for manufacturing drugs and the petitioner

was holder of power of attorney on her behalf, which had been revoked later on. It is also submitted that in a case investigated by a police officer, no

other person except police officer would be competent and entitle to institute the prosecution and, therefore, the present investigation being carried out

in pursuance to FIR No. 22/2016, despite the same being registered at the instance of the Assistant Drugs Controller, shall result into institution of

prosecution in violation of the provisions of Section 32 of the Act and shall be bound to fail.

3. Learned Counsel for the petitioner has relied upon judgment of Patna High Court passed in Hindustan Lever Ltd. Versus State of Bihar, reported in

1997 (1) BLJ 889, wherein FIR and investigation by police was quashed in similar facts and circumstances. It is apt to reproduce the relevant portion

of para-3 of the aforesaid judgment herein:-
The second contention raised on behalf of the petitioner is that the police has no

jurisdiction to investigate into the offences committed under the Act. In view of Section 32 of the Act it appears to have force.
Section 32 of the

Act provides that no prosecution shall be instituted for any offence under the Act except by a Drug Inspector or by the person aggrieved or by

a recognized consumer association whether such person is a member of that association or not. It is evident that prosecution can be instituted by

Drug Inspector or by any person aggrieved by filing complaint before a competent court. The police is not empowered to register any First

Information Report and investigate the case so as to submit charge-sheet under section 173 of the Code of Criminal Procedure. The

learned Counsel for the opposite party No. 2 has contended that sub-section (3) of Section 22 provides for punishment for three years as such the

police shall be competent to investigate the case on the report of the Drug Inspector. It is difficult to accept this contention in view of the

provisions contained in Section 32 of the Act. In my opinion, the prosecution can be instituted by filing complaint by the Drug Inspector and

the police has no jurisdiction to register a First Information Report and investigate into the offence under the Act. The investigation

by police in this case, therefore, is without jurisdiction and is liable to be quashed. In view of the above discussions, the First Information

Report and the investigation by the police on the basis of F I.R. impugned in the present writ application in so far as it relates to the present

petitioner are quashed. Petition allowed.

4. Reliance has been put on another judgment of the Patna High Court passed in a case titled as Manju Kumari and another versus State of Bihar and

others, reported in 2007(1) Crimes 677, wherein relying upon Hindustan Lever Ltd. versus State of Bihar, reported in 1997(1) BLJ 899, FIR,

registered under Sections 307, 467, 468, 471, 420 and 120-B of the IPC, read with Sections 9, 9A, 9B, 9C and 9D, 13(1)(a), (b) and (c), 27(a), (b), (c)

and (d), 27A and 28 B of the Drugs Act, was quashed alongwith charge-sheet. 5. Another case titled as Suresh Prasad versus State of Bihar,

reported in 2009(1) CCR 478, decided by Patna High Court, has been referred by petitioner wherein again relying upon Hindustan Lever's case

supra, FIR registered under various Sections of the IPC read with the provisions of the Drugs Act, holding that the registration of FIR and all

subsequent Acts thereunder, were without jurisdiction in view of the provisions of Section 32 of the Drugs Act.

6. In judgment of Patna High Court, relied upon by petitioner, passed in case titled as M/s Torque Pharmaceuticals Pvt. Ltd. Versus State of Bihar

through Deptt. of Health, Government of Bihar and others, reported in 2013 (2) Crimes 616, by putting reliance on Hindustan Lever's case supra,

FIR registered under Sections 406, 420, 273 read with Section 34 of the IPC and Sections 27(b)(ii) and 27(d) of the Drugs Act has been quashed

holding that when the statute provides for doing something in a certain manner, it must be done in that manner only and all other modes of

performance are forbidden in law.

7. Petitioner has also referred judgment of Punjab and Haryana High Court

passed in a case titled as Surendra versus State of Haryana, reported in 2013(16) R.C.R. (Criminal) 104, wherein FIR has been quashed on the ground that only Drug Inspector would have filed a complaint before the competent authority and FIR could not have been registered by the police with regard to commission of offence punishable under the Drugs Act.

8. Learned counsel for petitioner has also cited a judgment passed by Punjab and Haryana High Court in case titled as Pawan Panchal versus State of Haryana and another, reported in 2013 (24) R.C.R. (Criminal), 800, wherein relying upon the decision of the same Court in Dr. Barinder Singh versus State of Punjab and others, reported in 2009 (4) RCR (Civil), 117, the Court has quashed the FIR registered under Sections 420, 417, 336 of IPC and Sections 18(A) and 18(C) of the Drugs Act on the principal that no other person, as provided under Section 32 of the Drugs Act, is competent to initiate prosecution for the offences committed under the Drugs Act.

9. Similarly, in another judgment, referred by petitioner, Patna High Court in case titled as Shankar Kumar Ghosh versus The State of Bihar, reported in 2014(8) R.C.R (Criminal) 516, has quashed the entire proceedings including the order of taking cognizance.

10. Learned Counsel for the petitioner has placed reliance on the judgment passed by the Bombay High Court, in a case titled as Rajendra versus The State of Maharashtra, reported in 2017(1) Bom.C.R. (Cri.), 174, wherein in para 13 of the said judgment, it has been held as under: “Indisputably, the cognizance of the offence punishable under section 27(b)(ii) of the Act alleged to have been committed by the petitioner has not been taken by the learned Judicial Magistrate, First Class on the basis of the complaint as defined under section 2(d) of the Code of Criminal Procedure, 1973, filed by respondent No. 2-the Drugs Inspector. Consequently, the cognizance of the said offence taken on the basis of the charge-sheet filed by the police officer cannot be said to be legal. The learned Judicial Magistrate First Class had no jurisdiction to take cognizance of the said offence against the petitioner on the basis of the charge-sheet filed by the police officer ignoring the provisions of section 32 of the Act.”

11. Respondent-State has contested the petition on the ground that in the FIR, complainant is the Assistant Drugs Controller, who, as per the

provisions of Section 32 of the Drugs Act, is competent to institute prosecution against the petitioner and the FIR is nothing, but a detailed complaint

filed by the said officer and therefore, it cannot be said that the FIR and the investigation being carried out in pursuance thereto, is in violation of

Section 32 of the Drugs Act. Relying upon the judgment rendered by the Honâ??ble Supreme Court, in a case titled as State of Andhra Pradesh

versus Golconda Linga Swamy and another reported in 2004 (6) SCC 522, it is contended that exercise of power under Section 482 of the Code of

Civil Procedure in a case of this nature is the exception and not the rule and it is not a case, where there is no legal evidence or where there is any

evidence, which is clearly inconsistent with the accusation made, rather it is a case where there is legal evidence, which on appreciation, would

support the accusation and, therefore, this Court should not interfere in the present case. Reliance has also been placed upon the judgment delivered

by the Honâ??ble Apex Court, in case titled as Mosiruddin Munshi versus Mohd. Siraj and others, reported in 2008 (8) SCC 434, for advancing

argument that the case is at initial stage and after lodging the FIR, investigation is in progress and it is not an appropriate stage, where prayer of the

petitioner to quash the FIR and incidental investigation can be acceded to.

12. It is also contended on behalf of State that petition must also fail for want of arraying complainant as party in it.

13. It transpires from the FIR lodged by the Assistant Drug Controller that it has been found by him that the petitioner alongwith co-accused has

committed an offence under Section 17(b) and 18(a)(i) of the Drugs Act, which is punishable under Section 27(c) and (d) of the said Act, as provided

in Chapter IV of the Drugs Act.

14. Section 27(c) of the Drugs Act provides minimum sentence of seven years extendable to imprisonment for life with fine, which shall not be less

than three lakh rupees or three times the value of the drugs confiscated, whichever is the more, whereas Section 27(d) of the said Act provides

punishment of imprisonment for a term not less than one year extendable to two years with fine which shall not be less than twenty thousand rupees.

As per Section 36AC (b) of the Drugs Act, the said offence is non-bailable and no person accused of an offence under Section 27(c) shall be released

on bail or on bond unless the Public Prosecutor has been given an opportunity to

oppose the application for such release and where the Public

Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

15. It is also the case of the Assistant Drug Controller as well as the Police Officer investigating the case that the petitioner has also committed an offence under Section 420 of IPC, which is again a cognizable and non-bailable offence punishable within seven years imprisonment and fine.

16. Undoubtedly, a police officer has power to investigate cognizable and non-bailable offence after registration of FIR. An FIR can be registered on oral or written information of an information under Section 154 of Cr.PC. FIR can also be registered under Section 156(3) of Cr.PC on order of a

Magistrate, as provided in the said Section. Further, under Section 157 CrPC, FIR can also be registered from an information received or otherwise by

Officer-in-Charge of a Police Station, where on such information, he has reason to suspect the commission of an offence, for which, he is empowered under Section 156 Cr.PC to investigate.

17. In any case, after registration of FIR, police has to follow the procedure prescribed under the Cr.PC and on completion of investigation, has to

forward report to the Magistrate either for cancellation or for taking cognizance of the offence on such police report under Section 173 Cr.PC and in

case of taking of cognizance by the Magistrate, prosecution is initiated against the accused on the basis of the said police report.

18. Institution of prosecution under Chapter IV of Drugs Act is governed by Section 32 of the Drugs Act, which reads as under:-
32 Cognizance of offences. 32

(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 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.â??

19. It would also be relevant to reproduce Section 4 of CrPC, which provides as under: Â??4. Trial of offences under the Indian Penal Code and

other laws. â?

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the

provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to

any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such

offences.â??

20. By virtue of provisions of Section 4 of CrPC, provisions of Section 32 of Drugs Act would prevail. It is not the case of the State that a Gazetted

Officer of the police has been authorized, as provided under Section 32 of the Drugs Act, to initiate prosecution under Chapter IV of the said Act

against an accused.

21. Therefore, in the present case, though, offences involved are cognizable and non-bailable, but except offence under Section 420 IPC, all other such

offences fall under Chapter IV of the Drugs Act and, thus, despite police having power to investigate cognizable and non-bailable offence, in view of

bar put under Section 32 of the Drugs Act, to launch prosecution, it is prohibited from investigating an offence under Chapter IV of the Drugs Act.

22. The word â??Inspectorâ?? has been defined in Section 3(e) of the Drugs Act, which reads as under;- â??3(e) â??Inspectorâ?? meansâ?

(i) in relation to 14 [Ayurvedic, Siddha or Unani] drug, an Inspector appointed by the Central Government or a State Government under section 33G;

and

(ii) in relation to any other drug or cosmetic, an Inspector appointed by the

Central Government or a State Government under section 21;]

23. In the present case, FIR has been lodged by Assistant Drug Controller, Nahan. He may have been appointed as an Inspector in consonance with the provisions of the Drugs Act, as required under Section 3(e) of the said Act. There is nothing on record to establish his appointment in consonance with the Drugs Act, however, the issue with regard to competency of Assistant Drug Controller to act as an Inspector is not, in issue, in the present petition. The Assistant Drug Controller may have been appointed as an Inspector initially and thus, having competence to file a complaint and to initiate prosecution under Chapter IV of the Drugs Act. The matter is being adjudicated with the presumption that Assistant Drug Controller must be competent to act as an Inspector.

24. However, plea of the State that as the FIR has been registered on a complaint filed by the Assistant Drug Controller, the prosecution can be said to have been initiated by the Assistant Drug Controller (Inspector), is not tenable for the reason, as discussed above, investigation carried out in pursuance to registration of FIR will culminate into filing of police report by the police before the competent Magistrate and such prosecution initiated on the basis of such report shall not be a prosecution instituted by the Assistant Drug Controller, but by the investigating officer of the police and prosecution by such officer is barred under Section 32 of the Drugs Act for want of authorization. The Assistant Drug Controller, on whose instance, FIR has been registered, cannot be termed as a complainant by any stretch of imagination. He is an informant.

25. So far as a complainant is concerned, it has been defined in Section 2(d) of Cr.PC, which reads as under:- 2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

26. As per Section 2(d) of Cr.PC, a person, who makes any allegation orally or in writing to a Magistrate, is the complainant and on making such

complaint to a Magistrate, there is a provision under Section 200 of Cr.PC for examination of the complainant in a complaint case. As per explanation

to Section 2(d) of Cr.PC, in a report submitted by a police officer, with respect to commission of a non-cognizable offence, such police officer shall be

deemed to be a "complainant".

27. The police officer can be considered as a complainant in a case where he carries out investigation in an alleged cognizable offence, but later on,

the offence falls in the category of "non-cognizable offence", and also police officer can be directed to investigate non-cognizable offence by a

Magistrate under Section 150(2) of Cr.P.C., in such a situation also, he will be filing his report to the Magistrate and as provided in explanation to

Section 2(d) of Cr.P.C., in such eventuality, he will also be treated as a complainant and the report filed by him shall be considered as a complaint.

28. In a non-cognizable offence, the complainant can make a complaint to a Magistrate after approaching the police when he is directed to do so

under Section 155 of Cr.PC. But, even in a non-cognizable offence, where the investigation has been carried out by the police initially in a cognizable

offence or where the investigation is carried out in pursuance to the direction issued under Section 155(2) of Cr.PC., there is no provision of handing

over the report or papers of investigation to the complainant to file the same in the Court, rather, Section 2(d) of Cr.P.C specifically provides that the

police officer filing such report shall be deemed to be a complainant.

29. The Apex Court in case titled as Ganesha versus Sharanappa and another, reported in (2014) 1 SCC 87, had observed a common error creeping in

many of the judgments, whereby no distinction was being made while using the words "informant" and "complainant" and therein it was

considered that in many of the judgments, the person giving the information under Section 154 of Cr.PC, has been described as the "complainant"

or the "de facto complainant" instead of "informant". It has been held that "informant" and "complainant" are not the words of

literature and it has been clarified that in a case registered under Section 154 of Cr.P.C, the State is the prosecutor and the person, on whose

information, a report is lodged, is the informant, as Section 154(1) of Cr.PC clearly prescribes that after reducing the oral information into writing, the

same shall be read over to the informant and also, Section 154(2) of Cr.PC

provides supply of information, as recorded, free of cost to the informant.

30. As per definition in Section 2(r) of Cr.PC, "police report" means a report forwarded by a police officer to a Magistrate under Section 173(2)

of the same. In cognizable and non-bailable offence, normally, a police report is submitted after conclusion of investigation in pursuance of FIR

registered under Sections 154, 156(3) and 157(1) of Cr.PC. Police report in case of non-cognizable offence can also be there when FIR is registered

for a cognizable offence under Section 154, 156(3) and 157 of Cr.PC, but after investigation, case is made out only for non-cognizable offence or in

case where investigation is carried out in a non-cognizable offence in pursuance of the order of a Magistrate under Section 155(2) of Cr.PC. In such

cases, police officer is to be treated as a complainant by treating the report as a complaint, as provided in explanation to Section 2(d) of Cr.PC. Even

in such eventuality, there is no provision to hand over the complaint to the informant or the person reporting the matter to the police or victim to file a

complaint.

31. Though, in cognizable and non-bailable offences, police has the power to investigate into the matter under Cr.PC, but in absence of authorization,

Section 32 of Cr.PC creates a legal impediment upon the police to initiate prosecution with regard to such offences falling in Chapter IV of the Drugs

Act.

32. In view of the aforesaid settled position of law, in the present case also, after registration of FIR, the investigation being carried out by the police

cannot be handed over to the informant for filing the same as a complaint by the said informant in the Court so as to initiate prosecution in consonance

with Section 32 of the Drugs Act, as scheme of CrPC does not permit to do so.

33. From above discussion, it is clear that Assistant Drug Controller can never be termed as "complainant", so as to construe prosecution

instituted on the basis of police report under Section 173 of Cr.P.C, as a complaint instituted by the said Assistant Drug Controller. His role in the

present case is that of an informant.

34. It is a basic principle of criminal jurisprudence that panel statute is to be construed strictly. There is no scope of intention based on general purpose

or object of law in application of provisions of panel statute. Primary function of the court of law, especially in a criminal jurisprudence, is to decide the

cases in accordance with the statutory provisions and not to frame a law. Rewriting of statute is impermissible. The Court is not supposed to read

between the lines. Where an Act is silent, Court can and should give harmonious construction to the statute.

35. To demonstrate that Drugs Act is a complete code in itself providing procedure for an Inspector for carrying out investigation by an Inspector, including the procedure for taking out samples, certain provisions are being referred hereinafter.

36. Powers of an Inspector have been defined in Section 22 of the Drugs Act, which reads as under:- 22. Powers of Inspectors.â?

(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of

the area for which he is appointed,â?" 7[22. Powers of Inspectors.â?"(1) Subject to the provisions of section 23 and of any rules made by the Central

Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,â?" 2[(a) inspect,â?" 1[(a) inspect,â?

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic,â?

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,â?

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this

Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in

respect of which an offence under this Chapter has been, or is being, committed,

and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;] 3[(cc) examine any record, register, document or any other material object found 4[with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c)], and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the Rules made thereunder;] 2[(cc) examine any record, register, document or any other material object found 3[with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c)], and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the Rules made thereunder;] 5[(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;] 4[(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;] (d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder. (2) The provisions of 6[the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under 7 [section 94] of the said Code. 8[(2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or

production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.] 3[(2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.]

(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter 8[or refuses to produce any record, register or other document when so required under clause (cca) of sub-section (1),] he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.]

37. Section 23 of the Drugs Act prescribes procedure to carry out investigation including taking of samples of drugs or cosmetics by an Inspector.

Section 20 of the Drugs Act deals with the provisions related to Government Analyst and Section 25 of the said Act provides provisions with regard to delivery of report of Government Analyst and evidentiary value of the said report. Section 26 of the said Act entitles any person including recognized consumer associations, on application in the prescribed manner and on payment of prescribed fee to submit the purchased drugs or cosmetics for test or analysis to a Government Analyst.

38. Section 36AD of the Drugs Act provides applicability of provisions of Cr.PC to the proceedings before a Special Court under the Drugs Act.

Cr.PC is a general law, whereas Drugs Act is a special law in its field, therefore, Cr.P.C has been made applicable only in those areas where there is no provision under the Drugs Act. It is also the basic principle that provisions of special enactment shall prevail upon the general statute. Therefore, for the purpose of prosecution under Chapter IV of the Drugs Act, only persons prescribed in the manner provided under Section 32 of the Drugs Act are empowered to initiate prosecution.

39. Plea of the State that the FIR has been lodged on the complaint filed by the Assistant Drug Controller, and thus, the police is investigating the matter on behalf of the Assistant Drug Controller is also not sustainable for the reason that there is no provision in the Cr.P.C or in the Drugs Act that

in an FIR lodged at the instance of the Assistant Drugs Controller, police can carry out the investigation and after investigation, the papers will be handed over to the Assistant Drugs Controller to institute the prosecution against the offender. Even otherwise, the Drugs Act is a complete Code, itself, which prescribes a detailed procedure for empowering the Inspectors to give effect to the various provisions of the Drugs Act and to inspect and investigate into the offences committed under the Drugs Act and file a complaint in a competent court of law. Therefore, in any case, the investigation with respect to any offence committed under the Drugs Act has to be carried out as per the provisions of the Drugs Act and not in accordance with the general procedure laid down in the Cr.P.C. as the special enactment to prevail over the general law.

40. Plea of the State that the State should not interfere at the stage of investigation is also not sustainable for the reason that the lodging of FIR and investigation being carried out in pursuant thereto, is not permissible under the law, in view of the provisions of the Drugs Act and continuation of such investigation, will be a futile exercise as any prosecution lodged in contravention of Section 32 of the Drugs Act is bound to fail.

41. An Inspector under the Drugs Act is not authorized to investigate and prosecute for an offence committed under any other law except the Drugs Act and as such, he is not authorized to carry out investigation and to file a complaint for the offence committed under the IPC. On the other hand, for lack of authorization under Section 32 of the Drugs Act, police is not authorized to investigate and prosecute for an offence under Chapter IV of the Drugs Act. I find no express/ specific provision dealing with such a situation.

42. The Apex Court in case titled as Maharashtra Antibiotics & Pharmaceuticals Ltd. Versus Democratic Youth Federation of India and others, reported in (2005) 12 SCC 162, had directed the investigation of a case under the Drugs Act, being conducted by the State police as well as investigation of the case under Prevention of Corruption Act, to be conducted by the CBI under the supervision of the Central Vigilance Commission.

The Apex Court exercising the power under Article 142 of the Constitution of India, was competent to pass such an order, but this Court has to follow the statute.

43. In my opinion, the offence under Chapter IV of the Drugs Act is to be

investigated by the person/officer competent to do so, in consonance with Section 32 of the Drugs Act and in the present case, by the Inspector only, whereas investigation for commission of an offence under IPC or any other statute other than the Drugs Act, is to be investigated by the police. On conclusion of investigation by a police officer as well as by an inspector, when commission of an offence is made out, he has to file report and complaint under Sections 173 and 190 of the Cr.P.C, respectively.

44. I draw support from a judgment delivered by the Apex Court in case titled as State of Maharashtra versus Devahari Devasingh Pawar and others, reported in (2008) 2 SCC 540, wherein police has submitted charge-sheet against the accused under Sections 201, 204 & 269 read with Section 34 of IPC and the Drug Inspector had filed a separate complaint under the Drugs Act for the offences punishable under Sections 18(a) (i), 17-A and 17-C of the Drugs Act. However, later on, on application made by the Drugs Inspector, the complaint filed by him was amalgamated with the earlier police case. The Apex Court has not disapproved the said practice.

45. FIR in question, in the present case, has been lodged at the instance of the Assistant Drug Controller, by referring the offences involved in the case under Chapter IV of the Drugs Act, also. Resultantly, investigation has also been carried out for all the offences including the offences under Chapter IV of the Drugs Act, for which the police was not competent and authorized. Therefore, this FIR is liable to be quashed.

46. Therefore, in case information available with police discloses commission of cognizable offence, under IPC or any other law besides Drugs Act, Police will register fresh FIR and investigate the matter for that offence leading to filing a police report to Magistrate under Section 173 of Cr.P.C.

and for offence made out under Chapter IV of Drugs Act, Drugs Inspector to investigate simultaneously, independent of police investigation and initiate prosecution against petitioner or any person liable to be punished for commission of such offence. Needless to say that Drugs Inspector shall have entitlement for assistance from police or any other agency, in accordance with law, to investigate the matter and to initiate prosecution, if required. Procedure provided under Section 210 CrPC is not applicable in present case as offence involved in police investigation and in complaint case is altogether different and distinct in nature and effect.

47. There is another issue, which requires consideration, is that in case FIR in question is quashed, whether it would be permissible to Drug Inspector and/or to police to register a case, lodge an FIR and investigate the matter afresh or they would be precluded from taking such exercise on account of limitation for taking cognizance of the offences involved?

48. As per Section 468 of the Cr.PC, where the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years, limitation is three years. There is no limitation for taking cognizance of an offence, where the offence is punishable with imprisonment exceeding three years.

49. Section 469 of Cr.P.C. provides that period of limitation in relation to an offence, where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, shall commence from the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier, and where it is not known by whom the offence was committed, the first day on which the identity of offender is known.

50. In the present case, offences involved under the Drugs Act are punishable under Sections 27(c) and 27(d). The offence under Section 27(c) is punishable with imprisonment for a term not less than seven years which may extend to imprisonment for life and fine, whereas, the offence under Section 27(d) is punishable with imprisonment not less than one year, but extendable to two years with fine. It is settled law that limitation is calculated on the basis of the offence punishable with higher sentence.

51. Offence involved under IPC is under Section 420, for which sentence of seven years with fine has been provided.

52. Therefore, in the present case, there would be no period of limitation for taking cognizance the offences involved. Otherwise also, as is evident from the copy of FIR placed on record, the offence came to knowledge on 12.03.2016, when premises of the firm was raided and even if, the offence is found to be punishable under Section 27(d) of the Drugs Act, the limitation for taking cognizance will be three years, which shall expire on 12.03.2019.

53. The Apex Court in a case titled as State of Kerala versus Orison J. Francis and another, reported in (2009) 2 SCC 160, has reiterated the scope

for interference at the threshold by exercising power under Section 482 of the CPC, as stated in case titled as State of Haryana versus Bhajan Lal,

reported in 1992 Supp (1) SCC 335. Relevant portion of Para-11 of the Orisonâ?? s case supra reads as under:- â??11â?|â?|â?|â?|â?|â?| 102â?|â?|.In

the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this

Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the

Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be

exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any

precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases

wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Whether the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the

Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.â??

54. The present case falls in the category of para 102(6) of Bhajan Lal's case supra.

55. Therefore, in view of our discussion, FIR No. 22/2016, dated 13.03.2016, under Section 27 (c) read with Section 18(a)(i), 17-B, 36AC of the

Drugs Act and Section 420 of the IPC, registered at Police Station Kala Amb, District Sirmour, (HP), against the petitioner and his wife Smt.

Meenakshi Jain and consequential proceedings, if any, in pursuance thereto, are quashed and set aside.

56. Needless to say that the Drug Inspector as well as the police, as observed hereinbefore, is at liberty to initiate fresh investigation and/or register

fresh FIR, if required, against the petitioner or his wife or anybody else, liable to be punished for commission of an offence under the Drugs Act or

any other law and to prosecute such persons, without being influenced by the quashing of present FIR and setting aside of the consequential

proceedings carried out in pursuant thereto, as no finding on merit with respect to rival contentions of parties regarding merit of alleged offences

involved in case, has been returned. In such eventuality, investigation shall be completed expeditiously, preferably within four months.

57. Accordingly, the petition stands disposed of in aforesaid terms, so also pending application(s), if any.