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**(2000) 11 BOM CK 0052**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 214 of 1993

State of Maharashtra

APPELLANT

Vs

Ghanshyam K. Zaveri and Another

RESPONDENT

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**Date of Decision :** 18-11-2000

**Acts Referred:**

Drugs and Cosmetics Act, 1940 — Section 18, 21(1), 21(2), 22, 27  
Prevention of Food Adulteration Act, 1954 — Section 16, 16(1), 7

**Citation :** (2001) ALLMR(Cri) 276 : (2001) CriLJ 1629 : (2001) 2 MhLj 506

**Hon'ble Judges :** S.S. Parkar, J

**Bench :** Single Bench

**Advocate :** A.S. Shitole, for the Appellant; V.P. Sawant, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.S. Parkar, J.—This revision-application is filed by the State against the order of discharge of the respondents-accused passed by the Metropolitan Magistrate's 6th Court, Mazgaon, Bombay in Criminal Case No. 145/S/88 on 29th July, 1993.

2. This revision application arises from the following facts :

The respondents were tried for offence u/s 18(c) read with punishing Section 27 and Section 34 of the Drugs and Cosmetics Act, 1940. On the basis of the information received by the Drug Inspector that M/s. Godama Laboratories, Malad (W), Bombay 400 064 was manufacturing for sale and selling tablets called "Dolmiran" at their factory premises without permission or licence as required under the Drugs and Cosmetics Act, 1940, he visited the premises of M/s. Hermes Travels and Cargo Pvt. Ltd. on 27/6/1985 and made enquiry regarding the sale and purchase of the said tablets and prohibited the sale of 100 boxes of the said drug. Complaint was lodged on 3-7-1985 u/s 8(c) of the Act. The raiding party had visited the premises of manufacturers of the said drug M/s. Godama Laboratories and of M/s. Harmes Travels and Cargo Pvt. Ltd. on 3-7-1985. They also visited the premises of respondents on 4-7-1985 and seized various

incriminating documents pertaining to transaction of Dolmiran Tablets. They found that the respondents had no licence under the Drugs and Cosmetics Act for stocking for sale and selling the drug in question. The record revealed that the tablets in question were purchased by the respondents from M/s. Godama Laboratories and had exported the same to some party in Aden, a Gulf country.

3. In the present case only respondents who are the exporters have been prosecuted as aforesaid. The respondents applied for discharge before the learned Metropolitan Magistrate and they came to be discharged by the impugned order on two grounds. Firstly, that the Drug Inspector was not duly appointed and, therefore, not authorised to exercise powers under the provisions of the Drugs and Cosmetics Act and, therefore, the prosecution was liable to be quashed against the respondents. Secondly, according to the learned Magistrate the drug which was seized from the respondents was not meant for sale in India but only meant for export to another country and, therefore, there was no violation of Section 18(c) of the Act. On behalf of the State, apart from the revision-application filed against the impugned order, an affidavit dated 22nd August, 2000 has been filed by another Drug Inspector annexing copies of the notifications appointing the concerned Drug Inspector by name Shri S.R. Bankar, who had filed complaint against the respondents.

4. Mr. Sawant, the learned counsel appearing on behalf of the respondents, supports the impugned order by reiterating the two grounds on the basis of which the order of discharge was based. He firstly contended that as per Section 21 of the Act the Drug Inspector who has the powers under the provisions of the Act, namely, Section 22 of the Act must be appointed by either the Central Government or the State Government by notification in the official gazette specifying the areas that may be assigned to him for exercise of powers under the provisions of the Act.

5. In this regard the State has annexed a copy of the Government Resolution dated 20th February, 1975 whereby at Sr. No. 12 the concerned Drug Inspector Shri S.R. Bankar was appointed for the Pen area of the then District of Kolaba, presently Raigad. The State has also annexed subsequent Government Resolution dated 17th October, 1983 whereby the said Drug Inspector came to be transferred from his then posting at Satara to Head Quarters (IB), Mumbai with effect from 24th May, 1983. The contention of Mr. Sawant is that in Greater Mumbai there are several Drug Inspectors and each Drug Inspector is operating in a specified area and not exercising his powers all over Greater Mumbai and, therefore, the GR dated 17th October, 1983 transferring the concerned Drug Inspector to Greater Mumbai is not sufficient for the purpose of Section 21 of the Act in the absence of particular area assigned to him for the purpose of exercise of his powers Under the Act by notification in the official gazette itself. In support of his contention he relies on the recent decision of the single Judge of this Court in the case of The State of Maharashtra Vs. Shri R.A. Chandawarkar and other, . It cannot be doubted that similar question had arisen in the said case where it

was held that appointment of Drug Inspector can only be through an official gazette notification which should also indicate area in which a Drug Inspector can operate and exercise his powers in the absence of which the Drug Inspector is not empowered to exercise powers under the provisions of the Act. Though the said Judgment supports the contention of Mr. Sawant, I have my doubts about the said proposition.

6. In the instant case, undoubtedly, Shri S.R. Bankar was initially appointed on temporary basis by Government Resolution dated 20th February, 1975 which is duly notified in the Gazette. In that GR he was appointed for the town of Pen within the District of Kolaba. Subsequently, he was appointed on probation by GR dated 16th October, 1976 for a period of two years. By GR dated 17th October, 1983, he came to be transferred from Satara to Bombay with effect from 24th May, 1983. It is not in dispute that the said GR also is gazetted by notification. In my view, the requirements of Section 21 of the Act were fulfilled when by notification in official gazette the person already appointed as a Drug Inspector is transferred to act in that capacity to some other area. The GR dated 17th October, 1983 would mean that the Drug Inspector was appointed with effect from 24th May, 1983 to act in that capacity in Mumbai. No further notification is necessary to specify the limited or restricted area in Greater Mumbai where he was supposed to operate.

7. Section 21(1) of the Drugs and Cosmetics Act, 1940 is worded as follows :

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.

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.

8. 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 subsection (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.

9. However, I am inclined to uphold and confirm the discharge of the respondents-accused on the second contention which was urged on behalf of the respondent-accused. It is contended that the charge against the accused is not that they were selling the drug in question against which there is absolute ban but that of sale of the drug in question without licence obtained under the provisions of the Act as the offence alleged is u/s 18(c) of the Act which is worded as follows :

18. Prohibition of manufacture and sale of certain drugs and cosmetics.-- For such date as may be fixed by the State Government by notification in the official Gazette in this behalf, no person shall himself or by any other person on his behalf --

(a) to (b)....

(c) manufacture for sale or for distribution, or sell or stock or exhibit or offer for sale or distribute any drug except under, and in accordance with the conditions of, a licence issued for such purpose under this chapter:

10. So far as the respondents-accused are concerned, the wording that is applicable to the provision is, "or sell or stock or exhibit or offer for sale,". It is not in dispute that the goods were seized from Sahar Air Port in Mumbai when they were sought to be exported to some person in Aden which is in Arabian Gulf. The respondents were not offering the drug in question for sale or were stocking or exhibiting it for sale in the country but they were meant for export to a country where there is no ban for the use of the said drug. In this respect reliance is placed on the decision of the Kerala High Court in the case of Food Inspector Vs. Suwert and Dholakia (P.) Ltd., . That was a case arising under the Prevention of Food Adulteration Act and sample was taken of the tea kept in the godown for blending and export. Referring to the earlier judgments of that Court and the decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others, , it was held that the provisions of the Prevention of Food Adulteration Act would not be applicable unless the commodity was made for sale or stored for sale as the storage simpliciter or storage otherwise than for sale is not an offence under the said Act. The use of the words in the Prevention of Food Adulteration Act which attract prosecution are similar to the words used in the Drugs and Cosmetics Act, 1940 which are quoted above. As stated earlier, the reference was made in the said judgment by the Kerala High Court to the decision of the Supreme Court in Tandon's case (supra). In Tandon's case the Supreme Court was also considering the scope of Section 7 and Section 16 of the Prevention of Food Adulteration Act and held that the expression "store" in Section 7 means "storing for sale" and consequently

storing of an adulterated article of food for purposes other than for sale would not constitute an offence u/s 16(1)(a) of Prevention of Food Adulteration Act. As stated earlier, the words used in the Drugs and Cosmetics Act are similar to the words used in the Prevention of Food Adulteration Act.

11. Mr. Sawant has also placed reliance in support of his contention on the decision of the Supreme Court in the case of Mohd. Shabir Vs. State of Maharashtra, While considering the provisions of the Drugs and Cosmetics Act, 1940, the Supreme Court has observed in para 4 of the judgment as follows :

...The words used in Section 27, namely, "Manufacture for sale, sells," have a comma after each clause but there is no "comma after the clause "stocks or exhibits for sale". Thus the section postulates three separate categories of cases and no other.-- (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted. In the present case there is no evidence to show that the appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr. Khanna appearing for the State, however, contended that the word "stock" used in section is wide enough to include the possession of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they were meant for sale or for distribution. In our opinion, the contention is wholly untenable and must be rejected. The interpretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of Section 27. We, therefore, hold that before a person can be liable for prosecution or conviction u/s 27(a)(i)(ii) read with Section 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant.

12. Thus, it is very clear from the judgment of the apex Court that the respondents must be shown to have stocked the drug in question for sale. The question then arises whether the drug meant for exporting and consequently for sale in the foreign country would amount to contravention of the provisions of Section 18(c) of the Act. It cannot be doubted that the provisions of the Act in question are applicable in India. Secondly, the drug seized from the Air Port meant for export to a foreign country cannot be said to have been stored for immediate sale. Thirdly, the sale of that drug was not banned in the foreign country to which it was meant for export. Fourthly, it is not in dispute that the Central Government had given permission for export of that drug abroad as the

Central Government had given NOC to manufacture the said drug for the purpose of export. There is no specific prohibition for manufacture of the drug in question for export abroad, on the contrary the Central Government had given NOC in that behalf and it is not the case of the prosecution that the tablets in question were meant for sale in India. Moreover, it is stated by Mr. Sawant appearing for the respondents that after the said seizure the respondents-accused themselves had closed down their trading and export business.

13. Mr. Sawant also brought to my notice the recent decision of the Supreme Court in the case of *Drug Action Forum v. Union of India*, (1997) 9 SCC 609 . That appears to be a similar case like the instant case where the question was about export of a drug to a foreign country where it was not banned. The drug in question was manufactured prior to the date of the ban against the order from foreign country. The manufacturers sought permission to export drugs so manufactured for due performance of their contracts with the parties abroad. The Government did not oppose the manufacturer's request and on the accused giving undertaking to ensure non-consumption of such drugs within the country the manufacturers were permitted by the Supreme Court to approach the authorities for permission to export the certified stock of the drugs in question. That was the case where there was a ban imposed on the drugs in question, whereas in the instant case it is not the case of the prosecution that the drug in question by name "Dolmiran" was banned but that the same was manufactured without requisite licence under the provisions of the Act. In the aforesaid circumstances I see no reason to interfere in the order of the discharge of the respondents-accused passed by the learned Magistrate.

14. In the result, this revision application is dismissed and rule is discharged.