

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 839/2022

Reserved on: 09.07.2025
Pronounced on: 17.11.2025
Uploaded on: 18.11.2025

Whether the operative part or full
judgment is pronounced:

1. **Zahoor Ahmad Rada, Aged 63 years**
S/o Abdul Razaq
R/o 15, Radapora, S.R. Gunj,
Khanyar, Srinagar
2. **Bilal Ahmad Seeru, Aged 40 years**
S/o Ab. Razaq Seeru
R/o 50, Khankahi Sokhta, S.R. Gunj,
Safakadal, Srinagar
3. **Ashiq Hussain Dar, Aged 43 years,**
S/o Ghulam Mohd. Dar,
R/o 48, Ward No. 8,
Lakhreshipora, Bandipora

.... Petitioner(s)/Appellant(s)

Through:

Mr. Aatir Javed Kawoosa, Advocate

Vs.

Union Territory of J&K
through Drug Inspector, Kathua

....Respondent(s)

Through:

Mr. Raman Sharma, AAG.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

1. Petitioners have assailed the complaint filed by the respondents against them for alleging commission of offences under Drugs and Cosmetics Act, 1940 (hereinafter referred to as the 'Act'), and also the order dated 26.03.2018, passed by the learned Chief Judicial Magistrate, Kathua, whereby cognizance in the complaint has been taken and process has been issued against the petitioners.

2. The Assessing Authority, Commercial Taxes Check Post, Lakhanpur, on the basis of information received, withheld a drug consignment on 12.04.2017. The respondents seized 17,600 capsules of the drug namely SPASMO-PROXYVON PLUS were seized, which were kept in a briefcase found during the search of a truck. This consignment was recovered from the truck bearing registration No. JK01AB-4741, driven by petitioner No. 3. Petitioners No. 1 and 2 did not furnish the desired details and information i.e. name, address and particulars of person from whom they had acquired the above. The consigner and consignee were alleged to have committed offences punishable under Sections 18-A and 18(c) read with Sections 27(b)(ii) and 28 of the Act. The respondent filed a complaint against the petitioners under Section 18-A, 18(c) read with Sections 27(b)(ii) and 28 before the learned Chief Judicial Magistrate, Kathua, who, vide order dated 26.03.2018, recorded satisfaction that offences under Sections 27(b)(ii) and 28 of the Act were prima facie made out against the petitioners, and took cognizance of the same and issue process against them.
3. The contention of the petitioners is that cognizance order dated 26.03.2018 has been passed by the trial court without any application of mind. The complaint filed before the trial court is under Section 18-A and 18(c) read with Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940. The cognizance of offences under Sections 27(b)(ii) and 28 of the Act can only be taken by the Court of Sessions. The learned Chief Judicial Magistrate had no jurisdiction to take cognizance or to proceed with the complaint.

4. The commission of offences under Sections 27(b)(ii) and 28 of the Act are provided under Chapter IV of the Act. Section 32 of the Act deals with the cognizance of offences in this regard. This Section reads as under: -

32. Cognizance of offences. —

(1) No prosecution under this Chapter shall be instituted except by—

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government 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.

5. From the perusal of the provision, it is clear that it is only the Court of Sessions which can try the offences punishable under this Chapter, in view of the amendment which has come into effect from 10.09.2009. The learned Magistrate thus had no jurisdiction to try the complaint, but the learned Magistrate has not only taken cognizance but also issued process, despite the fact that he had no jurisdiction to try the same, as such, the proceedings against the petitioner are bad and are liable to be set aside.

6. It is next argued that this complaint is also not maintainable for non-compliance with the mandatory provisions of Section 23(4) of the Act.

Therefore, the entire proceedings initiated against the petitioners are required to be quashed.

7. As per Sections 23(4) and 25(2) of the Act, it is mandatory that one sample of the drug, as well as the report, is required to be sent to the manufacturer so that the manufacturer may have an opportunity to get the sample re-tested. Section 23(4) and 25(2) of the Act reads as under:-

23. Procedure of Inspectors.—

(1)

(2).....

(3).....

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug [or cosmetic]; and

(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.....

25. Reports of Government Analysts.

(1).....

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken 4 [and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A], and shall retain the third copy for use in any prosecution in respect of the sample.....

8. Learned counsel for the petitioners submits that neither the sample nor the report has ever been provided to the petitioners. Perusal of the file reveals that no such report has been provided to the petitioners, and in such circumstances, the entire criminal proceedings including cognizance are fit to be quashed. Reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in Laborate

93, wherein in para Nos. 8 and 9, it has been held as under: -

“8. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analysed in the Central Laboratory has been denied by a series of defaults committed by the prosecution: firstly, in not sending to the appellant manufacturer part of the sample as required under Section 23(4)(iii) of the Act, and secondly, on the part of the Court in taking cognizance of the complaint on 4.3.2015 though the same was filed on 28.11.2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for reanalysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug, we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution.

9. Consequently and for the reasons alluded, we are of the view that the present would be a fit case to interdict the criminal trial against the appellant-accused. We order accordingly. Therefore, CC No. 263 of 2015 pending on the file of the XVth Metropolitan Magistrate, George Town, Chennai is hereby quashed. The appeal is allowed and the order of the High Court is set aside.”

9. Reliance is placed on the case of *Medicamen Biotech Limited and another v. Rubina Bose*, (2008) 7 SCC 196, where the appellant have been deprived of a valuable right under Section 25(3) and 25(4). The proceedings are required to be quashed.

10. Since there is a violation of the mandatory provisions of the Act, the entire proceedings are without jurisdiction and are required to be quashed.

11. In view of the aforesaid facts and circumstances, this petition is allowed. The cognizance of the complaint taken is an abuse of process of law and the entire proceedings are bad in law and require to be quashed to secure the ends of justice. The impugned complaint and process issued against the petitioner under Sections 18-A and 18(c) read with Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act,

1940, passed by the learned Chief Judicial Magistrate, Kathua, are quashed.

12.Disposed of.

(SINDHU SHARMA)
JUDGE

Jammu:
17.11.2025
Vishal Khajuria

Whether approved for reporting : Yes/No

