



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.34 OF 2020

1. Mukut Bihari Goyal
Age : 64 years, Occu : Business
Proprietor of M/s Smilax Pharmaceuticals
11 K.M. Stone, Tonk Road,
Sanganer, Jaipur, Rajasthan.

2. Manohar Lal Sharma,
Age : 60 years, Occu : Service as
Production Chemist and Authorized Signatory
of M/s Smilax Pharmaceuticals
11 K.M. Stone, Tonk Road,
Sanganer, Jaipur, Rajasthan.

3. M/s Smilax Pharmaceuticals
Through its Proprietor
Mukut Bihari Goyal
Age : 64 years, Occu : Business
M/s Smilax Pharmaceuticals
11 K.M. Stone, Tonk Road,
Sanganer, Jaipur, Rajasthan.

...PETITIONERS
(Original Accused)

-VERSUS-

The State of Maharashtra.
Through Drug Inspector,
Office of Assistant Commissioner,
Food and Drug Administration,
Pangri Road, Shahu Nagar,
Beed, District Beed.

...RESPONDENT

...
Mrs. Rani Bharuka-Bora, Advocate h/f Shri Satyajit S. Bora,
Advocate for the petitioners.
Mrs. Uma S. Bhosle, APP for the respondent/ State.
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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 15 December 2025

Pronounced on : 19 December 2025

JUDGMENT :-

1. Heard.
2. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
3. The petitioners are challenging the order dated 16.10.2019 passed by the learned Judicial Magistrate First Class, Majalgaon, District Beed, on applications below exhibits 1 and 16 in RCC No.41/2005 thereby, allowing the applications filed by the respondent/ prosecution and committing the case to the Sessions Court.
4. While issuing notice to the respondent on 22.01.2020, this Court has granted interim relief thereby implementation of the impugned order has been stayed.
5. According to the petitioners, they are having valid license issued by the Drugs Controller, Jaipur, Rajasthan for manufacturing the drug Lupizyme 200 ml. On 04.03.2005, the

respondent filed the complaint before the learned Judicial Magistrate First Class, Majalgaon alleging therein that, he is appointed as a Drug Inspector under the provisions of Drugs and Cosmetic Act, 1940 and is authorized to institute the prosecution u/sec.32 of the Drugs and Cosmetics Act, 1940 (for short, 'the Act'). It was alleged in the complaint that, on 29.07.2003 the complainant visited the premises of M/s Shriklrushna Distributors, Majalgaon and drew the sample of Lupizyme manufactured by petitioner No.3 company. After sending the drugs for analysis, the report was received from the Government Analysis, Drug Control Lab, Mumbai on 16.10.2003 wherein it was reported that, drug is not of standard quality. It is, therefore, alleged that, the present petitioners / accused have committed the offence u/sec. 18 (a) (i) r/w section 16 and 34 of the Drugs and Cosmetic Act, 1940 which is punishable u/sec.27 (d) of the said Act. Accordingly, complaint bearing RCC No.41/2005 came to be filed.

6. The petitioners further contended that on the basis of the said complaint, the learned Judicial Magistrate First Class, Majalgaon issued process by order dated 04.03.2005 against the

accused petitioners. However, the respondent prosecution filed an application below Exhibit 16 for committing the case to the Sessions Court, Majalgaon alleging therein that, as per the amendment to the Drugs and Cosmetic Act, 1940, in the year 2009 i.e. on 10.08.2009, the case will have to be committed to the learned Sessions Court at Majalgaon as per section 32 (2) of the Act.

7. The petitioners contended that the petitioners opposed said application below Exh. 16 contending that, in view of the fact that the case was filed in the year 2005, the amended Act and the provisions would not be applicable retrospectively. It was further contended that, in view of section 36 (A), the offence will have to be tried in a summary manner as the punishment provided u/sec.27 (d) is up to two years. However, the learned Judicial Magistrate First Class, Majalgaon by the impugned order dated 16.10.2019 was pleased to allow the application below Exh. 16 holding that, Amendment Act 26 of 2008 will have retrospective effect and that section 32 (2) clearly mandates that, offences are triable by Sessions Court and hence, the case was committed to the Sessions Judge, Majalgaon. Hence, the

petitioners are before this Court.

8. The learned advocate for the petitioners submitted that the learned JMFC has committed an error while passing the impugned order. Learned advocate specifically contended that the learned Magistrate has only considered the provisions of Section 32(2) without reading Section 36-A, when the legislature has amended Section 32 and Section 36-A on the very same day. Therefore, the learned Magistrate has committed manifest error of law while passing the impugned order. As such, the impugned order needs to be set aside. In support of these submissions, the learned advocate has relied upon the judgments of Kerala High Court in *C.P. Duyadivakaran vs. State of Kerala, 2012 (3) KHC 708* and in *Zest Pharma, M.P. and others vs. Drug Inspector, Thrissur and others, 2013 (4) KHC 223*.

9. On the other hand, the learned APP has supported the impugned order by relying upon the judgments of the Hon'ble Supreme Court in *Securities and Exchange Board of India vs. Ajay Agarwal, (2010) 3 SCC 765* and in *Ramesh Kumar Soni vs. State of Madhya Pradesh, (2013) 14 SCC 696*. The learned APP, therefore, prayed for dismissal of this petition.

10. After hearing the learned advocates for the respective sides, it is pertinent that while passing the impugned order, the learned Magistrate in this case has relied upon the amended provisions of Section 32(2) of the Act. Therefore, for properly appreciating the contentions of the parties, it is necessary to reproduce Section 32 and Section 36-A, which are amended on 10.08.2009, as under:-

“32. Cognizance of offences—[(1) No prosecution under this Chapter shall be instituted except by

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- (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 or 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.”*

“36A. Certain offences to be tried summarily.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

all offences (except the offences triable by the Special Court under section 36AB or Court of Session under this Act] punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial :

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.”

11. The conjoint reading of Sections 32(2) and 36A of the Act makes it abundantly clear that though Section 32(2) provides that no court inferior to that of Court of Session shall try an offence punishable under the Chapter, the same is

expressly qualified by the words “save as otherwise provided in this Act”. Section 36A is one such provision which saves the jurisdiction of the Magistrate and mandates summary trial of offences punishable with imprisonment not exceeding three years, except those specifically triable by the Special Court or the Court of Session. Therefore, the jurisdiction of the Magistrate to try offences under Section 18(a)(i) read with Section 27(d) of the Act remains intact even after the amendment.

12. The learned counsel for the petitioners is justified in placing reliance upon the judgment of the Kerala High Court in *C.P. Duyadivakaran vs. State of Kerala (supra)*, wherein it is held that any change of forum at such a belated stage would cause unnecessary and unavoidable hardship to the accused, particularly when the prosecution was already pending before the Magistrate prior to the amendment. It was observed therein that committing such cases to the Sessions Court mechanically, without examining the saving clause and the nature of the offence, would amount to a vague and erroneous exercise of jurisdiction. However, in the said judgment, when the amendment Act came into force, no case was pending before the

Magistrate against the accused therein. In the present case, admittedly, the complaint came to be filed before the learned Magistrate on 04.03.2005 and the amendment Act came into force on 10.08.2009, i.e. much subsequent to the institution of the complaint.

13. It is to be noted that the offences registered against the petitioners are under Sections 18(a)(i) read with Sections 16 and 34 of the Drugs and Cosmetics Act, punishable under Section 27(d) thereof. It is pertinent to note that the said offences are not brought within the purview of Section 36AB of the Act, which confers jurisdiction upon the Special Court / Sessions Court. Consequently, the trial of offences punishable under Section 27(d), which provide for punishment upto two years, continues to remain with the Magistrate's Court. The legislative intent is explicit in excluding such offences from the jurisdiction of the Sessions Court, even after the amendment.

14. The reliance placed by the learned APP on the judgments of the Hon'ble Supreme Court in *Securities and Exchange Board of India vs. Ajay Agarwal* (supra) and *Ramesh Kumar Soni vs. State of Madhya Pradesh* (supra) is misplaced in

the facts of the present case. The said judgments deal with the general principle that change in procedural law, including forum, is ordinarily retrospective. However, the said principle cannot be applied mechanically ignoring the express saving clause incorporated in the statute itself. In the present case, the Drugs and Cosmetics Act, by virtue of Section 36A read with the saving words in Section 32(2), expressly preserves the jurisdiction of the Magistrate for certain categories of offences. Therefore, the ratio of the aforesaid judgments is clearly distinguishable and does not advance the case of the prosecution.

15. It is also required to be noted that before commencement of Amendment Act 26 of 2008, all offences under the Act were triable by the Magistrate. Even after the amendment, only specified offences have been carved out and made triable by the Sessions Court or Special Court. The offences alleged against the present petitioners do not fall in that category. Thus, the power of the Magistrate to try such offences continues unaffected. The words “save as otherwise provided” occurring in Section 32(2) assume significance and operate as a statutory safeguard preserving the jurisdiction of the Magistrate.

16. In view of the above discussion, this Court is of the considered view that the learned Judicial Magistrate First Class, Majalgaon committed a manifest error of law in committing the case to the Sessions Court. The impugned order is contrary to the scheme of the Act and ignores the express statutory provisions governing the forum of trial. As such, interference of this Court is warranted. Accordingly, the Writ Petition succeeds and is allowed. The impugned order dated 16.10.2019 passed by the learned Judicial Magistrate First Class, Majalgaon on application below Exhibit 16 in RCC No.41/2005 is quashed and set aside. The said case shall be tried by the learned Judicial Magistrate First Class, Majalgaon, in accordance with law, as if no order of committal has been passed.

17. Rule is made absolute in the above terms.

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(SUSHIL M. GHODESWAR, J.)