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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 218 of 2012
Reserved on: 21.08.2025
Date of Decision: 02.09.2025.

Sanjay K. Maanav ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Petitioner : Mr. N.K. Thakur, Senior Advocate, with Mr. Karanveer Singh Thakur, Advocate.

For the Respondent : Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 12.09.2012 passed by learned Sessions Judge, Kangra at Dharamshala (learned Appellate Court), vide which the judgment of conviction dated 12.06.2007 and order of sentence dated 20.06.2007 passed by learned Chief Judicial Magistrate,

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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Kangra at Dharamshala (learned Trial Court) were upheld. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience*.)

2. Briefly stated, the facts giving rise to the present revision are that Navneet Marwaha (PW5) was posted as Drugs Inspector for Kangra. He inspected the premises of M/s Maanav Health Clinic, Bhagsu Road, Macleodganj, on 15.06.2001 with the assistance of the police. Sanjay K. Maanav (accused) was present in the clinic, and he had displayed a variety of allopathic drugs for sale. The complainant disclosed his identity to the accused and asked him to produce the drug licence or a certificate of a registered Medical Practitioner; however, the accused could not produce any licence or certificate. He produced photocopies of certificates No. 960 of Akhil Bhartiya Ayurvedic Vidyapeeth, Agra and 2486 of N.E.H.M. The complainant associated Raj Kumar (PW2) and Mohammad Rafiq (PW4). He seized the allopathic drugs after making an entry in Form 16 (Ex. PW1/C). The drugs were put in a carton, and the carton was sealed. It was labelled 'MAC-1'. The carton was signed by the witnesses, the complainant and the accused. An application (Ex. PW5/B) was filed for obtaining the custody of the drugs, and the custody was

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handed over to the Drugs Inspector. Letters (Ex.PW5/C to Ex.PW5/E) were written to the Drugs Controlling Authority for seeking prosecution sanction, and the prosecution sanction (Ex.PW5/F) was obtained. Letters (Ex.PW5/G and Ex.PW5/H) were written to the Registrar Board of Ayurvedic and Unani System of medicines for verifying the genuineness of the certificates. A letter (Ex.PW5/J) was written stating that the accused was not authorised to practice in Homoeopathy or any other system of medicine. Electropathy/Electro-Homoeopathy was not recognised by the State Council of Homoeopathy/ State Government, as well as the Central Council of Homoeopathy. The complainant filed the present complaint against the accused after receiving the prosecution sanction.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged for the commission of an offence punishable under Section 27(b)(ii) of the Drugs & Cosmetics Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined five witnesses to prove his case. Bajinder Singh (PW1) and Prakash Chand (PW3)

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accompanied the complainant. Raj Kumar (PW2) and Mohammad Rafiq (PW4) are the independent witnesses. Navneet Marwaha (PW5) is the complainant.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that Navneet Marwaha was posted as Drugs Inspector. He stated that he had never practised in allopathic medicine nor had he kept allopathic medicine for sale. He had kept electropathy/electro-homoeopathy medicine in his clinic. His signatures were obtained on blank paper regarding the raid on his clinic. The witnesses deposed falsely against him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the statements of prosecution witnesses proved that the accused had kept the allopathic medicines on the racks in his clinic. The accused produced the certificates, but these were not recognised by the State Council of Homoeopathy System of Medicine, Himachal Pradesh. He was not authorised to practice homoeopathy or any other system of medicine. The fact that the medicines were kept in the clinic can lead to an inference that these were meant for sale. Since, the accused was found in possession of substantial

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stock of allopathy medicine, an inference could be drawn that these were meant for sale; hence, the accused was convicted of the commission of an offence punishable under Section 27(b)(ii) of Drugs & Cosmetics Act and was sentenced to undergo simple imprisonment for one month, pay a fine of ₹5,000/- and in default of payment of fine to undergo further simple imprisonment for 15 days.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Kangra at Dharamshala (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused was found in possession of allopathic medicines. The fact that these were kept in the clinic justified the inference that these were stocked/ exhibited for sale. The accused produced the certificates (Ex. PW1/A and Ex. PW1/B), but these were not recognised. He was rightly convicted and sentenced by the learned Trial Court. There was no infirmity in the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

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8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in holding the accused guilty of the commission of an offence punishable under Section 27(b)(ii) of the Drugs & Cosmetics Act. The complainant failed to prove that the drugs were meant for sale, which is an essential requirement under Section 27(b)(ii) of the Drugs & Cosmetics Act. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr. N.K. Thakur, learned Senior Counsel assisted by Mr. Karanveer Singh Thakur, learned counsel for the petitioner/accused and Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

10. Mr. N.K. Thakur, learned Senior Counsel for the petitioner/accused, submitted that the learned Courts below erred in holding the accused guilty of the commission of an offence punishable under Section 27(b)(ii) of the Drugs & Cosmetics Act. The complainant was required to prove that the drugs were meant for sale, in the absence of which the accused

could not have been convicted of the commission of an offence punishable under Section 27(b)(ii) of the Drugs & Cosmetics Act. He relied upon the judgment of the Hon'ble Supreme Court in ***Mohammad Shabir vs. State of Maharashtra, 1979 (1)SCC 568.*** He submitted in the alternative that the incident occurred in 2001, and 24 years have elapsed since then. The accused has faced the agony of trial, appeal and revision. He prayed that the sentence awarded by the learned Trial Court be reduced.

11. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the drugs were kept on the rack in the clinic. The learned Courts below had rightly inferred that the drugs were meant for sale. The accused had no licence or degree, still he was possessing a huge quantity of allopathic drugs. He was playing with the lives of the people, and no sympathy should be shown to him. He prayed that the revision be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204:***

(2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that the revisional court does not exercise an appellate jurisdiction and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect

or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where

> the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of a charge is a much-advanced stage in the proceedings under CrPC."

16. This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***], SCC pp. 482-83, para 27)

> "27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be.
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> *27.1.* Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The

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power of quashing criminal proceedings, particularly the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection, and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in a conviction or not at the stage of framing of charge or quashing of charge.

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27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to

> marshal the records with a view to decide admissibility and reliability of the documents or records, but is an opinion formed prima facie."

> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statements of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

15. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **14.** The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***, where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
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appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of a charge is a much-advanced stage in the proceedings under CrPC."

16. This Court in the aforesaid judgment in *Amit Kapoor case* [***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986***] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228CrPC is sought for as under : (***Amit Kapoor case [Amit***

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> "27. Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, it will now be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but inherently impossible to state such principles with precision. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be.
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> 27.1. Though there are no limits to the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
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> 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere.

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> **17.** The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistencies in the statements of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

16. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to

reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

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13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material; the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power of the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

14. In the above case, the conviction of the accused was also recorded, and the High Court set aside [***Dattatray***

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> ***Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its view. This Court set aside the High Court's order, holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

17. This position was reiterated in ***Bir Singh v. Mukesh Kumar*, *(2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> **"16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

18. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. The accused admitted in his statement recorded under Section 313 of Cr.P.C., that he was running a clinic at Macleodganj, and the Drugs Inspector had visited his clinic. He claimed that he had not stored any allopathic medicines but had

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stored the electropathy and homoeopathy medicines. Hence, the only dispute is regarding the possession of the allopathic medicines.

20. Bajinder Singh (PW1) stated that he had accompanied the Drugs Inspector to Macleodganj. The accused was running M/s Maanav Health Clinic. He had kept many allopathic medicines in his clinic. The Drugs Inspector asked the accused to produce the licence or Registered Medical Practitioner Certificate. The accused produced certificates (Ex. PW1/A and Ex. PW1/B). Many people had gathered on the spot. The Drugs Inspector associated Raj Kumar and Mohammad Rafiq as witnesses. The Drugs Inspector seized the drugs after completing the formalities. He identified the carton. He stated in his cross-examination that he was called inside the shop after some time. Drugs inspector and other persons had not given their search before entering the shop. 2-3 people were present in the clinic who had left after seeing them. No medicine was sold in his presence. He denied that no medicines were recovered in his presence.

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21. There is nothing in his cross-examination to show that he had any motive to depose against the accused or that he was making a false statement. Thus, his testimony was rightly accepted by learned Courts below.

22. Raj Kumar (PW2) stated that his shop is located at a distance of 20 feet from the shop of the accused. The Drugs Inspector visited the shop of the accused with the police. He had signed the box and carton, but he was not aware of its contents. He was permitted to be cross-examined. He admitted that the Drugs Inspector had accompanied the police to the shop of the accused. He admitted that many people had gathered on the spot, and he was one of them. He admitted that the Drugs Inspector asked two persons to accompany the witnesses. He denied that drugs were seized in his presence, and he was making a false statement.

23. This witness admitted his signatures on his previous statement, Form-16 and the carton. He could not give a satisfactory answer for putting the signatures. He stated that he was running a shop at a distance of about 20 feet from the shop of the accused; thus, he is not a lay person, and the fact that he

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had put the signatures on the statement, Form-16 and the carton would show that some proceedings were conducted in his presence. Therefore, his testimony that the drugs were not seized in his presence cannot be believed. It was laid down by the Hon'ble Supreme Court in ***Hanif Khan v. Central Bureau of Narcotics, (2020) 16 SCC 709: 2019 SCC OnLine SC 1810*** that where the hostile witnesses admitted their signatures on the seizure memo, the prosecution's case cannot be doubted. It was observed at page 712:

> "**11.** The fact that the independent witnesses may have turned hostile is also not very relevant, so long as they have admitted their signatures on the seizure memo. The seizure memo is also signed by the accused. There has been compliance with Section 50 of the NDPS Act also, as the appellant was duly informed of his legal rights...."

24. Mohammad Rafiq (PW4) stated that he was running a shop on Bhagsu Road at some distance from the shop of the accused. The Drugs Inspector visited the shop of the accused. He admitted his signatures on the Form 16 (Ex. PW1/C) and the carton, but he was not aware of the contents of the carton. He was permitted to be cross-examined. He stated that he did not remember that Drugs Inspector and police officials had gone to the shop of the accused on 15.06.2001. No licence was demanded

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in his presence. He admitted that the drugs were seized in his presence. He admitted that he had put his signature on the statement (Ex.PW1/D). He admitted that he had not put the signatures on any documents without reading them. He volunteered to say that he did not know how to read Hindi.

25. This witness has put his signature in English, which shows that he is a literate person. It is difficult to believe that he would not know how to read Hindi, when he could sign in English, which is not a native language in India. He is running a shop. It is not shown that he had asked any person to read the document before putting the signatures. Thus, his statement that he could not read Hindi will not provide a satisfactory reason for putting the signatures. He did not provide any satisfactory reason for putting the signatures on the document and the carton, and his testimony cannot be used to discard the case of the complainant. Further, he stated that no certificates were produced in his presence. The accused did not dispute that he had produced the certificates at the time of the raid. Hence, this witness has made a statement contrary to the admitted facts, and it is difficult to rely upon his testimony.

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26. Prakash Chand (PW3) stated that he had accompanied the Drugs Inspector and police official to Macleodganj. They went to a clinic where the accused was present. He disclosed that he was the owner of the clinic. The Drugs Inspector demanded the licence for possessing allopathic drugs. The accused produced two certificates. Many people had gathered on the spot. Drugs Inspector associated Raj Kumar and Mohammad Rafiq. Drugs Inspector seized the allopathic drugs after making an entry on form-16 (Ex.PW1/C). The drugs were put in a carton, and the carton was sealed. He stated in his cross-examination that he and the police official went to the shop with the Drugs Inspector. 2-3 people were sitting in the shop, but he could not say whether any medicines were provided to them or not. Those persons left after the arrival of the Drugs Inspector and other persons. His statement was not recorded on the spot. The search was not given to any person.

27. Nothing was suggested to him that he had any motive to depose against the accused. Thus, his testimony cannot be discarded.

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28. Informant Navneet Marwaha (PW5) supported the prosecution's case. He stated that he went to Macleodganj for inspection with the police official. They visited Maanav Health Clinic, where the accused was present, who identified himself as the owner. Many allopathic medicines were kept in the clinic. He demanded the certificate or the licence. The accused produced the certificates (Ex.PW1/A and Ex.PW1/B). Many people had gathered on the spot. Raj Kumar and Mohammad Rafiq were associated. The drugs were seized in their presence after making an entry in form No. 16 (Ex.PW1/C). The drugs were put in a carton, and the carton was sealed. He stated in his cross-examination that two to three persons were sitting in the clinic, and seven to eight persons had gathered on the spot. Prakash Chand, Bajinder Singh and one or two police officials accompanied him. He admitted that the seal was not handed over to any person. He admitted that no witness was associated to establish that the accused had sold allopathic medicines to any person. He admitted that the statements of the persons who were present in the clinic were not recorded. He admitted that no receipt was recovered regarding the sale.

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29. The cross-examination of the Drugs Inspector is directed towards the fact that no sale was effected in his presence and he had not collected any evidence regarding the sale of allopathic medicines. Nothing else was suggested to this witness to show that he had any motive to depose falsely against the accused. Therefore, his testimony cannot be discarded.

30. The statements of Bajinder Singh (PW1), Prakash Chand (PW3) and Navneet Marwaha (PW5) are consistent. Their presence in the clinic was not disputed by the accused. There is nothing in their cross-examination that suggests they were making false statements. Thus, learned Courts below had rightly held that their testimonies were acceptable, and it was proved on record that the accused was found in possession of the allopathic drugs mentioned in the Form 16 (Ex.PW1/C).

31. The accused produced certificates (Ex.PW1/A and Ex.PW1/B). A clarification was sought from the State Council of Homoeopathic System of Medicines, and it was clarified vide letter (Ex.PW5/J) that electro-homoeopathy was not recognised by the State Council of Homoeopathic System of Medicines and the accused was not authorised to practice in homoeopathy or

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any other system of medicine. Thus, these certificates will not assist the accused in showing that he had valid documents to possess the allopathic medicines.

32. It was vehemently submitted that the prosecution was required to prove that the medicines were meant for sale, in the absence of which the accused cannot be held liable. Reliance was placed upon the judgment of ***Mohammad Shabir*** (supra). Karnataka High Court noticed in ***State of Karnataka v. Kannika Stores, 1992 SCC OnLine Kar 347: ILR 1993 Kar 57: (1993) 1 Kant LJ 48: 1994 Cri LJ 743,*** that Section 18(a) was amended in the year 1982, and offer for sale was prohibited under the Act; therefore, keeping the medicines in the racks of the shop amounted to an offer for sale and was prohibited. It was observed at page 58:-

> **2.** Section 18(a) came to be amended in the year 1982, introducing "offer for sale" as also being prohibited under Section 18(a) of the principal Act. Relying on this, it is urged for the appellant that keeping these drugs without a licence in one of the racks of the shop was itself an offer for sale. The defence of the accused was that some person had brought them in a box, kept them and went away and even before he came back to take the box, they were seized by PW-1. Apart from this defence, we have to examine if there is evidence to show as a fact that there was an offer for sale, meaning thereby that they were exhibited in the shop so as to attract the customers and make them know that they were being offered for sale to whosoever intended to purchase them. In the Decision

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> of the Supreme Court, mere possession was held to be not sufficient to attract Section 18(a) of the Act. When that Decision came to be rendered, Section 18 stood without introducing the words "Offer for sale". Similar was the situation when the Decision came to be rendered by the Calcutta High Court. In both these cases, possession came up for consideration, and it was held that mere possession was not sufficient to hold the accused guilty under Section 18(a) of the Act.

33. Madras High Court also noticed the amendment in ***Mohamed Amanullah Dhathani vs. State, 2017 SCC OnLine Mad 32386,*** and held that Section 27 of the Drugs and Medicines Act was substituted by the Act 68 of 1982, w.e.f. 01.02.1983 after the judgment of the Hon'ble Supreme Court in ***Mohammad Shabir*** (supra). Hence, every act of manufacture, sale, distribution, selling, stocking, exhibiting or offering for sale or distribution of spurious drugs is punishable. It was observed:-

> **9.** Probably, in view of the aforesaid judgment that the parliament thought it fit to amend Section 27 through the amendment Act 68 of 1982, whereby the opening phrase came to be amended by inserting the conjunction 'or' after each word in the said phrase, so as to include every act of manufacture, sale, distribution, selling, stocking, exhibiting and offering for sale or distribution of spurious drugs as punishable.
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> **10.** It is the categorical case of the prosecution that the petitioner has handed over the spurious drugs to the first accused, requesting him to keep and stock them to avert seizure from the petitioner, since he was amenable to search and seizure from the CBCID and CCB, who have registered similar cases against him. Moreover, there were

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> ample materials before the prosecution that these spurious drugs were in possession of the petitioner/second accused prior to the handing over of the drugs to the first accused. Therefore, the submission that the seizure made from the first accused's house were not the materials stocked by this petitioner for the purpose of sale, cannot be countenanced. Whether or not the petitioner handed over the drugs to the first accused is a mixed question of fact and needs to be established through trial, and the instant petition under Section 482 of Cr.P.C. will not be an appropriate remedy to be invoked at this stage.

34. Delhi High Court held in ***State v. Puran Lal Ahuja, 1985 SCC OnLine Del 294: 1986 Cri LJ 1715: (1985) 2 FAC 286***, that where a huge quantity was recovered from the shop of the accused, an inference can be drawn that it was meant for sale. It was observed at page 1716:-

> "**2.** We have gone through the evidence and we agree with the learned Magistrate that it has been conclusively proved that the godown from which the goods were recovered was in possession of the respondent. The recovery, therefore, must be attributed to be from the possession of the respondent. Notwithstanding this finding the learned Magistrate has chosen to acquit the respondent. This he has done on the ground that even though goods may have been recovered from the godown belonging to the respondent, it has not been shown that the goods were stocked for sale. According to the learned Magistrate section 27 makes penal stocking of drugs only if they are meant for sale and mere stocking of drugs is not an offence under S. 27 of the Act. Speaking in an abstract way it may be correct to say that stocking by itself of drugs may not be penal. Thus if say half a dozen of vials of drugs are found at a residence of a person, he cannot be

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prosecuted under S. 27 of the Act on the ground that he has stocked drugs if the same have been kept for his personal use. This finding however of the learned Magistrate is, according to us, perverse both on the facts proved on record and also on question of law. P.W. 1, V.P. Gulati, has stated that on inspection of the premises large number of medicines and even articles like implements, labels and packing material were found from the godown. The medicines bore the usual names like Chloramphenicol, Tetracycline, Injections of Pethidine etc. Exhibit PG is the Recovery Memo prepared of the goods found in Godown No. 4981. Ex. PG showed recovery of 9800 capsules of Acistrep, 18300 capsules of Tetracycline, 9000 capsules of Chloramphenicol of 250 mg each, 14300 capsules of Chloramphenicol of 0.250 grams each of Pharmakon Laboratories, Malad, Bombay, another 12000 tablets embossed with the words 'SDZ' stated to be Sulphadiazine, 75 ampules of injection Pethidine, 92 ampules of 3 mil injection Neurobion, one trunk and two wooden cases containing various drugs, hundreds of labels and also various vials showing the injections of various types. It is apparent that the recovery was of such a large quantity that it is impossible to contend that these goods were merely stocked just for fun of it. We can understand if half a dozen of bottles or a half dozen of medicine strips are kept by a person for his personal use so that he does not have to go to the market as and when necessary either because he needs them every day or he has a large family. But the learned Magistrate would have it that unless there was an actual witness who could say that he had purchased the spurious drugs from the respondent, it cannot be said that this large stock was being kept for sale. This conclusion is wholly unacceptable. The observation of the learned Magistrate that manufacturing or stocking of drugs by itself is not an offence may, in abstract, be correct but this has to be determined on the facts of the case which in the present case are that very large stocks of drugs and labels were found in the godown which was in the possession of

respondent accused. Such a large quantity of drugs leaves no doubt that the stock had been kept for sale. It was nobody's case that he was holding this huge stock on behalf of some recognised dealer who was a licensee, nor can it be legitimately urged, as indeed it was not, that this stock was meant for his personal use. The only inevitable conclusion is, as was drawn in ***Sk. Amir v. State of Maharashtra, (1974) 4 SCC 210 : AIR 1974 SC 469 : (1974 Cri LJ 459***), that all this stocking was meant for sale. The Supreme Court has made it clear in that case that no person shall keep for sale a misbranded drug or a drug in respect of which he does not have a valid licence. Admittedly no licence was produced by the respondent. Therefore, this case squarely fell under S. 27 of the Act.

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7. In the present case, we have no manner of doubt that the large stock of drugs which was found in the shop of the accused was stored for the purposes of sale. The order of acquittal passed by the learned Magistrate is, therefore, vitiated. The appeal is, therefore, allowed and the order of acquittal is set aside. Section 27 of the Act, as it then stood, provides for a term of imprisonment which shall not be less than one year but which may extend to ten years, and the accused shall also be liable to a fine. Here large amount of spurious and adulterated drugs have been found, which the respondent had stored for sale. Many of the drugs are life-saving drugs and could make all the difference between life and death if given to a patient at the critical time. Spurious and adulterated medicines, which were recovered from the respondent, if allowed to be used by patients who need them rather critically and who will be damaged by their use them is a horrible thing to contemplate, and the respondent who is guilty of indulging in it can hardly call for any sympathy.

35. Punjab and Haryana High Court also held in ***State of Punjab v. Parveen Bassi, 1991 SCC OnLine P&H 870,*** that where the

accused registered with the Board of Ayurvedic and Unani Systems of Medicine had stocked allopathy drugs, an inference can be drawn that the drugs were stocked for sale which violated Section 18(c) read with Section 27 of the Act. It was observed:

> **9.** A perusal of the above details is enough to show that such a quantity of drugs could not possibly be stocked for personal use. The other circumstance of the case is that the accused is registered with the Board of Ayurvedic and Unani Systems of Medicine and she had in stock some ayurvedic drugs as well. This is not a case in which the accused may have tried to show that because of the peculiar facts and circumstances, she had to keep such quantities of drugs for personal use other than for sale. Not that the burden at any stage shifted on the accused but when the Court is faced with certain facts, it is required to take a commonsense view of the things. In our view, therefore, in the facts and circumstances of the present case, the irresistible conclusion was that the drugs had been stocked for sale and there was thus contravention of section 18(c) read with Section 27 of the Act. It is in addition to the fact that no argument could be raised why the accused should not have been convicted under section 18A read with section 28 of the Act. For these reasons, we set aside the acquittal of the accused and instead convict her under section 18(c) read with section 27 of the Act and section 18A read with section 28 of the Act.

36. Andhra Pradesh High Court also held in ***Ch. Venkateswara Rao v. State of A.P., 2010 SCC OnLine AP 1033: 2010 Cri LJ 4684,*** that when the accused, running a clinic, was found in

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possession of allopathic drugs, an inference can be drawn that the drugs are meant for sale. It was observed at page 4867:-

> **9.** No doubt, in ***Mohd. Shabbir v. State of Maharashtra, (1979) 1 SCC 568: AIR 1979 SC 564***, the Supreme Court had taken the view that mere possession is not an offence, but in my considered view, the facts of the said case have no application to the case on hand. In the said case, basing on a message from the Senior Railway Sub Inspector, Bhusawal, that the appellant therein had been caught at the Bhusawal railway station with 17 plastic containers containing 17,000 white coloured tablets, the Drugs Inspector filed a complaint against the appellant therein. The Apex Court held that possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act and extended the benefit of doubt to the appellant therein. The same is the case with other judgments of this Court relied on by the learned counsel for the petitioner. Herein is a case where the petitioner is an unqualified medical practitioner and he is practising medicine without any authority of law. In fact, in the complaint itself, it is stated that the petitioner is an unqualified medical practitioner doing allopathic medical practice in the name and style of "Vasavi clinic" at Pedavegi, West Godavari District, and he is engaged in the sale and distribution of drugs without possessing a valid drug licence. Further, as per the evidence of P.W. 1, at the relevant point of time, i.e. when he visited the clinic of the petitioner, he saw the petitioner distributing medicines to patients in the clinic. In those circumstances, this Court can presume that the petitioner is in possession of huge stocks of drugs only for the purpose of sale. Section 114 of the Indian Evidence Act may be relevant, and the same is extracted as under:
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> > "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events,

human conduct and public and private business, in their relation to the facts of the particular case."

10. When it is the case of the prosecution that the petitioner is an unqualified medical practitioner practising allopathic and he is found to have been distributing medicines to patients in his clinic, definitely this Court can draw a presumption u/s. 114 of the Indian Evidence Act. Of course, the said presumption under section 114 of the Evidence Act is rebuttable, but the petitioner did not come forward to establish the fact that the medicines are stored for some other purpose, but not for the purpose of distribution or sale. In those circumstances, this Court has no hesitation to come to the conclusion that the petitioner is guilty of the offences for which he was tried. Accordingly, I see no merit in this revision.

37. This position was reiterated by Andhra Pradesh High Court in ***Drugs Inspector Nandyal v. K. Pulliah, 2012 SCC OnLine AP 1120: 2012 FAJ 359: 2012 Cri LJ (NOC 517) 165,*** wherein it was observed at page 361:-

6. In recording the finding of acquittal on this aspect, the Court below has relied upon the judgment reported in ***Mohd. Shabbir v. State of Maharashtra [(1979) 1 SCC 568: AIR 1979 SC 564***.], wherein it was held that the stock of drugs should be for sale and mere possession simpliciter does not appear to be punishable under any of the provisions of the Act. Their Lordships have considered the purport of Section 18(C) and Section 27 of the Act. In this connection, it is useful to note that in an earlier judgment of the Supreme Court reported in ***Sk. Amir v. The State of Maharashtra [(1974) 4 SCC 210: AIR 1974 SC 469***.], the Supreme Court has held that when a large quantity of a drug was found in possession of the accused, it left no room for doubt that he had stocked or kept the drug for

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sale. It could not have been meant for his personal use. In this case, the accused is not claiming that he has stored these drugs for his personal use. He has not given any explanation as to the necessity of keeping so many medicines of different companies, for different diseases, in his house. It is difficult to believe that, except for a sale, those medicines would have been kept in his house and, in fact, in his explanation under Ex. P6, dated 26.2.1998, he claimed that those medicines were purchased by him from Katyayini Medicals and Fancy Stores at Nandyal and that he will produce the receipts within two days. His explanation does not show for what purpose he has purchased so many medicines, and evidently, he has not produced the bills subsequently. It is not his case that they were meant for the use of his family members. Therefore, a valid presumption can be drawn that those medicines were kept for sale in his house, and there being no explanation, it has to be taken as a conclusive presumption which the law cannot ignore in the natural circumstances. It can only be that he was dealing illegally in the sale of the medicines without a licence.

7. The Court below has not considered this particular aspect as to what was the purpose of the accused to store so many drugs and refused to draw the presumption on the ground that in the evidence, the Drug Inspector did not state about the fact that they were meant for sale. It is to be noted that a presumption or fact has to be drawn from the circumstances and the nature of possession. The charge framed by the Court below under Section 27(b)(ii) of the Act itself clearly shows that the accused has stocked or offered for sale 118 different items of drugs without a valid licence. If that being so, the complaint is very clear, and the nature of the charge pointing to the guilt of the accused is not unambiguous, and the refusal of the Court to draw a presumption merely on the evidence of the Drug Inspector is not warranted. When possession is with the accused and when there is no consent, it is for him to say for what purpose he has stored them. A presumption of fact has to be drawn by the Court, and the gist of the

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> evidence and complaint has to be taken together; the accused was not taken by surprise when the charge clearly mentions the purpose of storing for sale only. Therefore, I have no hesitation in holding that the Court can draw a valid presumption, particularly so when there is no proof of purchase of the drugs or need for storing them by the accused. The offence under Section 18(C) read with 27(b)(ii) of the Act has been squarely made out, and the accused has to be convicted.

38. Punjab and Haryana High Court also reiterated the earlier position in ***Mukesh Kumar v. State of Haryana, 2019 SCC OnLine P&H 4719,*** and observed:-

> **15.** On analysis of the facts of the present case, viz-a-viz the facts of the judgment passed in the case of *Mohd. Sabir* (supra), this Court finds that the aforesaid judgment is not applicable to the facts of the present case. In this case, the search and seizure is from the shop/premises occupied by the appellant. He had stocked the drugs in the racks and on the counter fabricated for the purpose of displaying them for sale. The seized quantity clearly proves that the stocked drugs were not for any other purpose. Still further, the accused has not led any evidence to prove that these drugs were stocked for any other purpose and not for sale.
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> **16.** In view of the aforesaid, this Court finds that the conclusion drawn by the learned Additional Sessions Judge with regard to the applicability of Section 27(b)(ii) requires no interference.

39. In the present case, the drugs were found on the rack inside the clinic and learned Trial Court had rightly held that this violated Section 27 of the Drugs and Cosmetics Act.

40. Thus, there is no infirmity in the judgments and order passed by learned Courts below convicting the accused of the commission of an offence punishable under Section 27(b)(ii) of the Drugs & Cosmetics Act.

41. Learned Trial Court sentenced the accused to undergo simple imprisonment for a period of one month, pay a fine of ₹5,000/- and in default of payment of fine to undergo further simple imprisonment for 15 days. The accused was found in possession of allopathic medicines, and he had no certificate/ licence to possess them. Learned Trial Court had rightly noticed that the possession of these drugs adversely affected public health and should be seriously viewed. The Court cannot ignore the impact of the crime while imposing the sentence, and the learned Trial Court was justified in considering the same. Keeping in view the impact on public health, the sentence of one month cannot be said to be excessive. The plea on behalf of the accused to reduce it cannot be accepted because of the lapse of time since the incident. The Court has to impose a deterrent sentence to dissuade people from playing with the lives of others by stocking the allopathic drugs for sale. Therefore, there is no justification for the reduction of the sentence.

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42. No other point was urged.

43. In view of the above, there is no reason to interfere with the judgments and order passed by the learned Courts below. Hence, the present revision fails, and the same is dismissed. Pending application(s), if any, also stand(s) disposed of.

44. Records of the learned Courts below, alongwith copy of the judgment be sent back forthwith.

(Rakesh Kainthla)
Judge

02nd September, 2025
(Anurag)