

# POWER OF INSPECTORS

AND

## SAMPLING PROCEDURES

UNDER DRUGS AND COSMETICS ACT 1940 AND RULES THEREUNDER

# CONTEXTUAL MEANINGS

- **POWER** : THE CAPACITY OR ABILITY TO DIRECT OR INFLUENCE THE BEHAVIOUR OF OTHERS OR THE COURSE OF EVENTS BY RESTRICTING OR CHANGING THE MOVEMENT OF PERSON OR MATERIAL IN ACCORD WITH THE PROVISIONS GIVEN UNDER THE APPLICABLE LAW
- **AUTHORITY** : THE POWER OR RIGHT TO GIVE ORDERS, ADJUDICATE MAKE DECISIONS, AND ORDER TO CAUSE ENFORCEMENT AND OBEDIENCE OF THE ORDER PASSED.
- UNDER THE ACT THE LICENSING AUTHORITY IS QUASI JUDICIAL BODY
- **CONTROLLER** : ADMINISTRATIVE AUTHORITY TO REGULATE THE EXERCISE OF POWER TO JUSTICE INTEGRAL
- JUDICIAL POWERS AND AUTHORITY AS PROVIDED UNDER CONSTITUTION OF INDIA WHICH INCLUDES GENERAL LAW CrPC IPC GENERAL CLAUSE ACT 1897, ACTS, SC AND HC MANUAL AND LAW LAID DOWN BY THEM.
- EVERY ORDER PASSED BY SC UNDER ARTICLE IS MANDATORY

# Supreme Court of India

## Union Of India vs Ashok Kumar Sharma on 28 August, 2020

- **148.** It would appear that on an understanding of the provisions, arrests would have been effected by Police Officers in regard to the cognizable offences under Chapter IV of the Act. Having regard to the fact that we are resolving this controversy on a conspectus of the various provisions of the Act and the [CrPC](#), we are inclined to direct that this Judgment, holding that Police Officers do not have power to arrest in regard to cognizable offences under Chapter IV of the Act, is to operate from the date of this Judgement.

# Supreme Court of India

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- THE CONCLUSIONS/DIRECTIONS
- 150 . Thus, we may cull out our conclusions/directions as follows:
  - I. In regard to cognizable offences under Chapter IV of the Act. in view of [Section 32](#) of the Act and also the scheme of the [CrPC](#), the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in [Section 32](#) are entitled to do the same.
  - II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under [Section 32\(3\)](#) of the Act, i.e., if he has committed any cognizable offence under any other law.
  - III. Having regard to the scheme of the [CrPC](#) and also the mandate of [Section 32](#) of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under [Section 154](#) of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the [CrPC](#).

# Supreme Court of India

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- IV. Having regard to the provisions of [Section 22\(1\)\(d\)](#) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in *D.K. Basu (supra)* and to follow the provisions of [CrPC](#).
- V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under [Article 142](#) of the Constitution of India in this regard.

# Supreme Court of India

## Union Of India vs Ashok Kumar Sharma on 28 August, 2020

- VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment. VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in [Section 58](#) of the CrPC, but also immediately report the arrests to their superior Officers.

# POWERS OF INSPECTORS

- THE LAW MAKERS HAVE TAKEN CARE THAT FOR THE PURPOSE OF ACHIEVING OBJECTIVE OF THIS ACT ANY STATUTORY OFFICER IS NOT HANDICAP FOR WANT OF PROVISIONS
- GOVERNMENT REPOSES ITS TRUST WITH APPOINTED OFFICERS BY NOTIFICATION UNDER THE ACT ALL NOTIFICATIONS ARE ENABLING PROVISIONS WITH RESPECT TO INSPECTORS IAs and CONTROLLERS IT PROVIDES TH GOVERNMENT TO WEIGH THE SUITIBILITY BEFORE HANDING OF THE TRUST OF POWERS
- THE POWERS UNDERSTANDABLY ARE TO BE EXERCISED IN JUDICIOUS MANNER WITHOUT TOUCHING THE FUNDAMENTAL RIGHTS OF AN INDIVIDUAL, UNLESS EXPRESSIVELY PROVIDED.
- LOT OF JUDICIOUS FREEDOM IS ALLOWED TO INSPECTORS TO DISCHARGE THEIR DUTIES FAITHFULLY.

# NOTIFICATION UNDER SECTION 21 OF THE ACT

- IT HAS TO BE ISSUED BY GOVERNMENT ; STATE.. OR CENTRE..
- IT MUST INCLUDE INGREDIENTS GIVEN IS SUBCLAUSE (1) & (2) OF SECTION 21. IT IS ALWAYS PROSPECTIVE
- THE NOTIFICATION HAS TO BE GAZETTE NOTIFICATION (P

PURPOSE OF NOTIFICATION IS TO INFORM THE PUBLIC AT LARGE THE NAME OF INSPECTOR WHO HAS BEEN APPOINTED UNDER SECTION 21 AND HAS BEEN AUTHORISED TO EXERCISE POWERS OF INSPECTOR UNDER THE ACT IN THE AREA SPECIFIED AND FROM THE DATE OF NOTIFICATION. THE INSPECTOR WHICH ALSO SPECIFIES THE CLASS OF DRUGS, CONDITIONS, LIMITATIONS OR RESTRICTIONS SUBJECT TO WHICH POWERS ARE EXERCISED

BECOMES AUTHORISED TO ENCROACH UPON THE PROPERTY ( MEDICINE, RMS, PMS, MACHINERY VEHICLE AND ANY OTHER ARTICLES SUSPECTED TO BE USED OR MANUFACTURED OR SOLD OR DISTRIBUTED OR STOCKED IN CONTRAVENTION OF THE ACT

RESULTANTLY THE AFFECTED PERSON KNOWS THE ACT OF INGRESS, SAMPLING SEIZURES HAVE BEEN MADE UNDER LAW BY AUTHORISED OFFICER( NAMED)

HE DOES NOT SUSPECT THE ACTS AS THOSE INVOLVED IN ILLEGAL ACTIVITY THEREBY ASSURING THAT THEY NEED NOT APPROACH ANY LEGAL AGENCY OR FORUM TO PROTECT THEIR LIBERTY AND PROPERTY

THE PROVISION OF OBTAINING CUSTODY ORDERS FOR THE MATERIAL OR ARTICLES OR VEHICLE SEIZED IS TO STAMP THIS ACT OR INSPECTOR TO BE LEGAL UNDER LAW AND NO FUNDAMENTAL RIGHT HAS BEEN



# SEALING OF PREMISES

- **THERE IS NO EXPLICIT PROVISION IN THIS RESPECT**
- BUT POWERS OF INSPECTOR IMPLY AN OBLIGATION ON HIM TO DETECT OFFENCES UNDER THE ACT PREVENT AND BRING TO JUSTICE
- **PREVENT CONTINUATION OF OFFENCES**
- **HAS REASON TO BELIEVE ( CORE REQUIREMENT) UNDER SECTION 22 c) (i), (ii) (iii) and S 22(cc), 22(cca).** Also see S26 IPC.
- USING EXPRESION UNDER SECTION 22(d) it can used such other powers for fulfilling the PURPOSE OF THE ACT, and exercise sealing the premises for period which is necessary to complete seizure or sampling of huge stock or medicine till these are transferred and secured in safe custody. No powers under any other act be presumed. **THIS PRINCIPLE HAS BEEN RELIED UPON BY HON SC IN A MATTER UNDER SEED ACT WHILE ADJUDICATING THE POWER OF SEED INSPECTORS UNDER SEED ACT**

# SEALING OF PREMISES

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6564

2019

(Arising out of SLP(C) No.28245 of 2018)

The State of Maharashtra and Ors ..... ..Appellants

VS

Maharashtra Hybrid Seeds Co. Pvt. Ltd...Respondent

CONCLUSION : WHEN THE INSPECTOR HAS REASON TO BELIEVE THAT TO FULFILL THE PURPOSE OF THE ACT PREMISES SHOULD BE SEALED, ALTHOUGH NO SUCH PROVISION IS PROVIDED IN THE ACT, HE CAN

1. SHOULD MAKE A PUNCHNAMA
2. SHOULD GIVE NOTICE
3. INFORM AREA AMGISTRATE
4. INFORM HIS SUPERIOR AUTHORITY. (3) AND (4) ARE TO PREVENT MISUSE OF POWER

# SEALING OF PREMISES

LAW SETTLED BY THE SUPREME COURT

OF INDIA

- THIS APPEAL IS REFERRED AGAINST THE JUDGMENT DATED 21.02.2018 PASSED BY THE HIGH COURT OF JUDICATURE AT BOMBAY, Nagpur Bench in Writ Petition No.8157 of 2017 in and by which the High Court has allowed the writ petition filed by the respondent- Signature Not Verified Digitally signed by Company **THEREBY ORDERING THE APPELLANT-AUTHORITIES TO DE-SEAL ALL THE GODOWNS OF THE COMPANY AT DHANORA WHICH WAS SEALED BY THE APPELLANT-AUTHORITIES**
- 4. **CASE OF THE APPELLANT IS THAT THE RESPONDENT NOT HAVING A VALID LICENCE** for the processing unit at Dhanora has committed gross violation of the provisions of the mandate of the [Seeds Act](#), 1966, Seeds Rules, 1968, Seeds (Control) Order, 1983 .
- **On 09.12.2017, the Seed Inspector inspected the respondent's godown at Dhanora** and noticed huge quantity of seeds..... **The Seed Inspector therefore issued a notice to the respondent-Company** on 15.12.2017 informing the Plant Manager that the appellant Company does not have the licence for storage or sale of the seeds in Dhanora unit ..... **The appellants claim that respondent did not produce the documents and accordingly, the godown was sealed by executing a panchnama to prevent further violation of the provisions.**
- 5. Aggrieved by the sealing of the Dhanora godown, respondent filed Writ Petition No.8157 of 2017 before the High Court of Judicature at Bombay, Nagpur Bench. The High Court vide interim order dated 22.12.2017 directed the appellant-authorities to open the sealed godown after taking a prima facie view and held that since the requisite sample of the seeds has already been taken and no purpose would be served in keeping the storage sealed..... The High Court further held that the power of sealing was not available to the appellant-authorities, especially to seal the storage and keep it sealed indefinitely or till the report of the samples is received from the laboratory.

# SEALING OF PREMISES LAW SETTLED BY THE SUPREME COURT OF INDIA

- 8. We have carefully considered the submission of both the counsel and perused the impugned judgment and the  
**THIS APPEAL :**
  - (i)
  - (ii) Whether the High Court was right in saying that the power of seizure and sealing the godown is not available to the Seed Inspector?
- 13. Section 14(1)(c) of the Seeds Act, 1966, the Seed Inspectors are empowered to search or inspect the premises any time, where the **SEED INSPECTORS HAVE REASON TO BELIEVE THAT SUCH OFFENCE HAS BEEN COMMITTED**. As per Section 14(1)(d) of the Seeds Act, the Seed Inspector may examine any 26...authorities rightly observed that the respondent has contravened the provisions of clause 3 of the Seeds (Control) Order, 1983
- **MAY BE NECESSARY FOR CARRYING OUT THE PURPOSE OF THE ACT OR ANY RULE MADE THEREUNDER** **VERS AS**
- 24. SECTION 26 OF THE PENAL CODE DEFINES THAT "A PERSON IS SAID TO HAVE "REASON TO BELIEVE" A THING, IF HE HAS SUFFICIENT CAUSE TO BELIEVE THAT THING BUT NOT OTHERWISE.
- **38. IN THE RESULT, THE IMPUGNED JUDGMENT OF THE HIGH COURT IS SET ASIDE AND THE APPEAL IS ALLOWED.**

# SECTION 22

## POWERS OF INSPECTORS

- IT HAS FOUR SUBSECTIONS VIZ; (1), (2), (2A) AND (3)
- SECTION 22(1) Powers only for LOCAL LIMITS JURISDICTION
- CLAUSE (a) subclause(i) & (ii),
- CLAUSE (b) subclause (i) &(ii),
- CLAUSE (c) subclause (i),(ii) & (iii)
- CLAUSE (cc)
- CLAUSE (cca)
- CLAUSE(d) DEFINED BY THE APEX COURT DISPENSING WITH POLICE
- SECTION 22(2) PRECEDURE OF SEIZURE OF MATERIALS
- SECTION 22(2A) PRECEDURE OF DISPOSAL OF SEIZED DOCUMENTS
- SECTION 22(3) OBSTRUCTION MADE OFFENCE AND PUNISHMENT PROVIDED

# POWERS OTHER THAN SECTION 22

- **SECTION 18A: UNLIMITED AREA OF JURISDICTION WITHIN INDIA**
- **SECTION 18B: UNLIMITED AREA OF JURISDICTION BY ONLY FOR MATTERS GIVEN IN THIS PROVISION**
- **RULE 52(5) READ WITH SECTION 32(1)(a) TO INSTITUTE PROSECUTION**
- **SECTION 22(d) DEVOLVED BY THE APEX COURT IN ITS JUDGEMENT dated 28.08.2020**
- **LAYING DOWN POWER OF DRUGS INSPECTOR TO ARREST ACCUSED PERSONS FALLING WITHIN COGNIZABLE OFFENCES UNDER THE ACT AND PROHIBITING POLICE TO REGISTER FIR AND INVESTIGATION UNDER THE ACT**

# POWERS OF INSPECTOR AS IN THE ACT AND AS SETTLED BY THE SUPERIOR COURTS

- 1. **INSPECT** (AND SEND THE SAME TO LA IF PREMISES WAS LICENSED)
- 2. TAKE **SAMPLES**
- 3. ENTER AND **SEARCH**
- 4. **EXAMINE ANY RECORDED**
- 5. REQUIRE A PERSON TO **PRUDUCE ANY RECORD OR DOCUMENT**
- 6. **ARREST, SEAL** A PREMISES
- 7. **PROSECUTE** PERSONS WILLFULLY CAUSING **OBSTRUCTION**
- 8. REQUIRE ANY CONNECTED PERSON **TO DISCLOSE** THE PERSON FROM WHOM ACQUIRED THE DRUG TO ASCERTAIN ITS MANUFACTURER
- 9. REQUIRE TO **PRODUCE RECORD** DOCUMENT OR INFORMATION REQUIRED
- 10. **PROSECUTE OFFENDERS**
- 11. **CONDUCT PROSECUTION IN TRIAL BY JMIC AS COMPLAIANAT**

# EXERCISING POWERS

- PROCEDURE OF CrPC applicable must be clear and followed
- PROCEDURE OF THE ACT SHOULD BE FOLLOWED STRICT AS FAR AS PRACTICABLE IN SITUATION
- SEIZURE IDEALLY SHOULD INCLUDE TWO RESPECTABLES THE LOCALITY, IF NOT POSSIBLE EXPRESS ON FORM 16 INABILITY TO JOIN INDEPENDENT WITNESS BUT DO INCLUDE STOCK NATURAL WITNESS
- SAMPLING DOES NOT REQUIRE INCLUSION OF WITNESS YET ITS GOOD IF PRIMA FACIE PROSECUTION WILL RESULT IN
- PUT TIME PLACR AND NAME OF PERSON(s)
- TAKE ANY ACTION TO FULFILL THE PURPOSE OF THE ACT BUT WITH IN POWERS AND WITHIN LAW OF LAND
- NEVER ENDANGER LIFE LIBERTY ( EXCEPT LAW FULL ARREST) AND PROPERTY EXCEPT AS PER THE ACT
- NEVER BE BIASED . DONOT HAVE PREMONITIONS



# SAMPLING OF DRUGS UNDER THE ACT

- PRE-REQUISITES
- 1. THE INSPECTOR MUST BE NOTIFIED AND SHOULD HAVE LOCAL AREA OF APPOINTMENT
- 2. HAVE AN OFFICIAL HELPER CARRYING ACCESSORIES
- 3. HAVE A COPY STATUTE
- 4. BE DRESSED APPROPRIATELY WITH UNNECESSARY ACCESSORIES
- 5. UNLESS NECESSITATED CARRY OUT IN REASONABLE TIME OF THE DAY
- 6. MUST HAVE RECORD EXPRESSING PREVIOUS SAMPLE NUMBER
- 7. DONOT INVITE FRIENDS OR RELATIVES AT THE SCENE
- 8. USE SMART PHONE TO TAKE PICTURE IF IT IS NECESSAY
- 9.FOLLOW PROCEDURE STRICTLY BUT BE QUICK

# SAMPLING OF DRUG AT DEALER'S SHOP

- FOLLOW SECTION 23 OF THE ACT
- WHILE ENTERING GIVE INTRODUCTION AND ASK NAME AND STATUS OF THE INCHARGE
- INSPECT AND CHOOSE DRUG ITEMS IN SUFFICIENT QUANTITY
- FOLLOW PROVISION S23(2) FOR QUANTITY BUT NO BAR TO TAKE MORE
- PREFERABLY TAKE EVEN NUMBER OF CONTAINERS OR PACK TOTAL DIVISIBLE INTO FOUR PORTIONS

# DEALERS SHOP SAMPLING OF ONE DRUG

- 1. EXAMINE THE CONTAINERS OF A DRUG HAVING SAME BATCH NO. DT OF MFG. DT OF EXP. MRP. MANUFACTURING LICENCE NO . AND THE NAME OF MANUFACTURER AND ITS LABELLED DRUG
- 2. WRITE DETAILS ON FORM 17.
- 3. DIVIDE THE QUANTITY INTO FOUR PORTIONS
- 4. WRITE SAMPLE NO ON FORM 17 AND DETAILS OF THE DRUG
- 5. SUITABLY PACK EACH OF THE FOUR PORTIONS USING TWINE AND HOT LACQUER PERSONAL SEAL. PUT SAMPLE NUMBER.
- 6. ASK DEALR TO PUT HIS SEAL OR MARK ON EACH PORTION IF HE DESIRES SO. TAKE HIS WRITTEN STATEMENT TO THIS EFFECT. PUT SIGNATURE ON EACH PORTION

# SAMPLING AT DEALERS SHOP

- AFTER THE FORM 17 IS COMPLETE AND SIGNED BY ALL i.e. The premises incharge from whom sample has been taken, any witness if included and the Inspector. Other team member are also require to put signature as witness on each portion and Form17
- **HAND OVER ONE COPY OF FORM 17 ALONG WITH ONE SEALED PORTION OF THE SAMPLE TO THE PERSON MENTIONED ABOVE AGAINST ACKNOWLEDGEMENT**
- **CALCULATE FAIR PRICE AND OFFER TO THE DEALER IN CASH OR CREDIT MEMO. CREDIT IS BETTER. IN CASE OF REFUSAL ISSUE HIM FORM 17A SHOWING AMOUNT YOU OFFERED**

# CHARACTERISTIC OF SAMPLE TAKEN

- THERE IS UNIFORMITY OF CONTAINERS WITH RESPECT TO ALL LABEL PRINTED IN EACH CONTAINER OF EACH PORTION
- EXPIRY DATE SHOULD NORMALLY BE 6 MONTH AWAY BUT THERE IS NO SUCH LEGAL REQUIREMENT
- TAKE SAMPLES FROM TRADE STOCK BUT NO BAR FOR ANTHING WHICH IS DRUG
- ALWAYS NOTE MFG LIC NO SINCE IT DISCLOSES THE CONSTIITUTION OF THE MANUFACTURE AND LINK TO PREMISES WHEREIN MANUFACTURED
- PACK AT LEASE ON PORTION IN TRANSPARENT OUTER PACK TO KEEP VISIBILITY OF THE DRUG CONTAINER FOR INVESTIGATION
- LIQUIDS SHOULD BE CAREFULLY PACKED
- LACQUER SHOULD FULLY MELTED AND ONLY THIN LAYER BE APPLIED TO GET GOOD IMPRESSION OF THE SEAL
- READ THE STORAGE CONDITON AND MAINTAIN AFTER SAMPLIN

# SAMPLE FROM A MANUFACTURING UNIT

- TAKE THREE PORTIONS OF FINISHED GOODS MANUFACTURED IN THE PREMISES
- TAKE 4 PORTIONS OF RM OR FPP WHICH HAVE NOT BEEN MANUFACTURED IN THE PREMISES BUT HAVE BEEN PURCHASE.
- REST OF THE PROCEDURES ARE SAME

# DISPOSAL OF SAMPLE PORTIONS

- **FOUR PORTIONS WERE MADE OF THE SAMPLE**
- ONE SEALED PORTION OF THE SAMPLE WAS HANDED OVER TO THE DEALER
- NOW THE INSPECTOR COMES TO OFFICE WITH 3 PORTIONS REMIANING WITH HIM
- **SAMPLE PORTION NO 1.** SEND TO GOVERNMENT ANALYST ACCOMPANIED WITH FORM 18 WITH SEAL IMPRESSION AND SEPARATE FORM 18 WITH SELA IMPRESSION IN ENVELOP AS REGISTERED PARCEL AND REGISTERED POST RESPECTIVELY
- **SAMPLE PORTION NO. 2** BE RETAINED WITH INSPECTOR AND IS TO BE PRODUCED BEFORE THE MAGISTRATE WHILE SUBMITTING COMPLAINT OR THE PORTION CAN BE SUBMITTED WHILE DEPOSING AS WITNESS DURING EVIDENCE RECORDING. THE SAME SAMPLE PORTION IS TO BE SENT TO CDL BY COURT IF REQUIRED UNDER SECCTION 25(4) OF THE ACT.
- **SAMPLE PORTION NO. 3** TO BE SENT TO THE MANUFACTURER WHOSE NAME AND ADRESS HAS BEEN DISCLOSED UNDER S 18A

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**THANKS**

**THE LEARNED AUDIENCE**

**FOR PATIENT LISTENING**