

**INOX Air Products Limited now known as INOX
Air Products Private Limited and Another**

v.

The State of Andhra Pradesh

(Criminal Appeal no. 486 of 2025)

30 January 2025

[B.R. Gavai* and Augustine George Masih, JJ.]

Issue for Consideration

Whether selling of Nitrous Oxide I.P. by the appellant no. 1 company to the unlicensed accused No.3 firm which does not possess license under Form 20B of the Drugs and Cosmetics Act, 1940, was in contravention of s.18(a)(vi) read with r.65(5)(1)(b) of the Rules, punishable u/s.27(d) of the said Act.

Headnotes[†]

**Drugs and Cosmetics Act, 1940 – ss.3(f), 18(a)(vi), 27(d) –
Drugs and Cosmetics Rules, 1945 – rr.65(5)(1)(b), 70, Form
20B, 25, 26 – Manufacture and sale of drugs – Condition of
licences – Meaning of term “manufacture” – Appellant no. 1,
company engaged in the manufacture and sale of industrial
and medical gases in India – Complaint lodged by Drugs
Inspector that appellant no. 1 sold Nitrous Oxide I.P. to the
accused No.3 firm which did not have license for sale and
was in contravention of s.18(a)(vi) read with r.65(5)(1)(b) of
the Rules, punishable u/s.27(d) of the said Act – Trial court
took the complaint on its file and issued summons to accused
persons including the appellants – Appellants filed petition
before the High Court praying for calling of the records on
the file of the trial court and to quash the same against the
appellants – High Court dismissed the petition – Correctness:**

Held: Both appellant no.1 and accused no.3 possessed licence under Form 25 – Submission that the licence under Form 25 is subject to Form 20B and since accused no.3 did not have licence under Form 20B, sale to accused no.3 was in contravention of s.18(a)(vi) is totally fallacious in nature – ‘Manufacture’ includes any process or part of a process for making, altering, ornamenting,

* Author

Supreme Court Reports

finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution – Accused no.3, holding licence under Form 25, entitled to sell and distribute the product received from appellant no.1 after altering, breaking it up and packing it in smaller containers – Even if the allegations made in the complaint are taken at its face value, no case made out for offence punishable u/s. 18(a)(vi) rw s.27(d) – Furthermore, in the order passed by the Magistrate while issuing the process, except recording the submissions of the complainant, no reasons recorded for issuing the process against accused persons – Order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto – No application of mind even for the namesake by Magistrate while issuing process – Also, the High Court totally misdirected itself – Interpretation by High Court that since accused no.3 was given licence to manufacture, he was not authorized to purchase it from appellant no.1, is without considering the plain nature of s.3(f) and is totally unsustainable in law – Impugned judgment quashed and set aside – Summoning order also quashed and set aside – Code of Criminal Procedure, 1973 – s.482. [Paras 21-33, 35, 38-41]

Case Law Cited

Lalankumar Singh and Others v. State of Maharashtra, 2022 INSC 1059 : [2022] 14 SCR 573 : 2022 SCC OnLine SC 1383; Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others, 1997 INSC 714 : [1997] Supp. 5 SCR 12 : (1998) 5 SCC 749; Sunil Bharti Mittal v. Central Bureau of Investigation, 2015 INSC 18 : [2015] 1 SCR 377 : (2015) 4 SCC 609; Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others, 2015 INSC 983 : [2015] 4 SCR 841 : (2015) 12 SCC 420; Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another, 2021 INSC 160 : [2021] 2 SCR 550 : (2021) 5 SCC 435 – referred to.

Books and Periodicals Cited

Black Law's Dictionary, 5th Edition – **referred to.**

List of Acts

Drugs and Cosmetics Act, 1940; Drugs and Cosmetics Rules, 1945; Code of Criminal Procedure, 1973.

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh**List of Keywords**

Nitrous Oxide I.P.; Industrial and medical gases; License for manufacture of Nitrous Oxide I.P.; License for sale of Nitrous Oxide I.P.; License under Form 20B of the Drugs and Cosmetics Act, 1940; Meaning of term “manufacture”.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 486 of 2025

From the Judgment and Order dated 12.01.2024 of the High Court of Andhra Pradesh at Amravati in CRLP No. 4148 of 2018

Appearances for Parties*Advs. for the Appellants:*

Dr. Abhishek Manu Singhvi, S. Niranjan Reddy, Sr. Advs., R. Bhatnagar, Ishan Khanna, Ishan Khanna, Agni Sen, Ms. Priyanka Sharma, Ms. Akhila, Tejas Anand, M/s. Khaitan & Co.

Advs. for the Respondent:

Ms. Prerna Singh, Guntur Pramod Kumar, Dhruv Yadav.

Judgment / Order of the Supreme Court**Judgment****B.R. Gavai, J.**

1. Leave granted.
2. The present appeal challenges the judgment and order dated 12th January 2024 passed by the High Court of Judicature of Andhra Pradesh at Amravati, whereby the High Court dismissed the Criminal Petition No. 4148 of 2018 filed by the appellants herein under Section 482 of the Code of Criminal Procedure, 1973¹ thereby praying for calling of the records pertaining to C.C. No. 71 of 2018 on the file of the First Additional Judicial Magistrate of First Class, Kadapa² and

¹ “CrPC.” hereinafter

² “Trial Court” hereinafter

Supreme Court Reports

to quash the same against the appellants herein, who are arraigned as Accused Nos. 5 and 6.

3. Shorn of details, the facts leading up to the present appeal are:

- 3.1. The first appellant herein - INOX Air Products Limited (Now known as M/s. INOX Air Products Private Limited) is a company incorporated in India having its registered office in Navi Mumbai, Maharashtra and is engaged in the manufacture and sale of industrial and medical gases in India. The second appellant - Pavan Kumar Jain, is the Managing Director of the first appellant company.
- 3.2. A complaint came to filed on 22nd December 2017 by the Drugs Inspector, Kadapa before the Trial Court wherein the appellants were made Accused Nos. 5 and 6. It was alleged in the complaint that based on information received by the complainant, on 3rd May 2016, the complainant along with 2 *panch* witnesses went to the RIMS General Hospital, Kadapa at around 02:00 P.M. and met the Superintendent of the Hospital. He was asked for the purchase bills and the person from whom they had procured Oxygen I.P. and Nitrous Oxide I.P. The Superintendent informed that they had purchased drugs from M/s. Varasi Oxygen firm (Accused No. 1). On verification of the purchase bills, it was discovered that the Accused No. 1 firm had the licenses for Oxygen I.P. only and not for Nitrous Oxide I.P. The complainant asked for the purchase agreement between the Hospital and the Accused No. 1 firm, and it was revealed that the agreement had existed since 2009. The complainant then seized the 72 purchase bills of the Nitrous Oxide I.P. from the Superintendent and on verification it was found that there was no physical stock of Nitrous Oxide I.P. gas cylinders in the RIMS General Hospital.
- 3.3. The complainant addressed a letter to the Superintendent on 5th January for the name and address of the Accused No. 1 firm and to produce the agreement between them. This was duly submitted. Another letter was issued thereafter to Accused No. 1 firm on 6th January 2017 to produce the drug licenses for the purchase and sale of the Nitrous Oxide I.P. and to produce the purchase bills, sale bills, sale drugs and constitution particulars. Accused No. 1 replied through its representative G. Raghunadha

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

Reddy (Accused No. 2) that the Nitrous Oxide I.P. was purchased from another firm - M/s. R.S. Gas Products (Accused No. 3) and the purchase bills for the same were submitted.

- 3.4. The complainant issued a letter seeking similar submission of licenses and purchase bills relating to Nitrous Oxide I.P. to Accused No. 3 firm. Accused No. 3 firm submitted in its reply that they had purchased the Nitrous Oxide I.P. from M/s INOX Air Products (Accused No. 5), i.e. Appellant No. 1 herein. However, no license for the purchase of Nitrous Oxide I.P. was submitted by Accused No. 3 firm.
- 3.5. A similar letter was issued by the complainant to Appellant No. 1 firm on 19th May 2017 to produce and submit the drug license to manufacture the drug Nitrous Oxide I.P. and to produce the sale bills. A reply was received on 7th June 2017 from Appellant No. 2 herein representing Appellant No.1. The drug licenses for manufacturing and selling the drug Nitrous Oxide I.P were submitted.
- 3.6. It was thus concluded by the Drug Inspector while submitting the complaint that Appellant No. 1 firm (Accused No. 5) represented by Appellant No. 2 (Accused No. 6) sold the drug Nitrous Oxide I.P. to the unlicensed Accused No. 3 firm in contravention of Section 18(a)(vi) of the Drugs and Cosmetics Act, 1940³ read with condition of the license in Form 26, point No. 03 read with Rule 65(5)(1)(b) of the Drugs and Cosmetics Rules, 1945⁴, punishable under Section 27(d) of the said Act.
- 3.7. Based on the complaint, the Trial Court vide order dated 20th January 2018 took the complaint on its file and issued summons to all the Accused persons including the appellants herein.
- 3.8. The appellants filed the Criminal Petition No. 4148 of 2018 before the High Court of Judicature of Andhra Pradesh at Amravati under Section 482 of the CrPC praying for calling of the records pertaining to C.C. No. 71 of 2018 on the file of the Trial Court and to quash the same against the appellants herein, who are arraigned as Accused Nos. 5 and 6.

3 "The said Act" hereinafter

4 "The said Rules" hereinafter

Supreme Court Reports

- 3.9. The High Court, vide the impugned judgment and final order dated 12th January 2024 dismissed the criminal petition filed by the appellants under Section 482 of the CrPC.
- 3.10. Being aggrieved thereby, the present appeal was filed.
4. We have heard Dr. A.M. Singhvi and Shri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the Appellants, and Smt. Prerna Singh, learned counsel appearing on behalf of the Respondent-State.
5. Dr. Singhvi, learned Senior Counsel for the appellants submitted that the term ‘manufacture’ as defined in Section 3(f) of the said Act is wide enough and includes *inter alia* “making, altering, ornamenting, finishing, packing, labelling etc.” It is submitted that the process of manufacture adopted by accused No.3 was outlined in the application form filed by accused No.3 with the Director General, Drugs Control Administration, Andhra Pradesh for the grant of a manufacturing license, as follows:
- a. A3 would purchase NOIP in big cylinders from a licensed manufacturer, which would be tested as per I.P. standards and thereafter used for filling small cylinders.
 - b. A small sample of gas in the small cylinder is taken and tested for its purity in the lab by lab methods.
6. Dr. Singhvi submitted that as such the procedure undertaken by accused No.3 would come within the definition of ‘manufacture’ as defined under Section 3(f) of the said Act.
7. Dr. Singhvi further submitted that Form 20B and Rule 65(5) of the said Rules are applicable to sale by way of wholesale. Rule 2(g) of the said Rules defines “sale by way of wholesale dealing” to mean “sale to a person for the purpose of selling again”. It is submitted that wholesale dealing would not cover manufacture within its scope and any drugs purchased in furtherance of a license under Form 20B must be sold as it is, without any change and on as is basis. It is submitted that the sale of Nitrous Oxide I.P. from the first appellant – accused No.5 to accused No.3 is sale from one manufacturer to another for further manufacturing. It is further submitted that accused No.3 was granted a license to manufacture in Form 25 by the Drugs Control Administration without requiring

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

it to first obtain a license under Form 20B and/or any other Form under the said Rules. It is therefore submitted that the prosecution is totally untenable in law.

8. Dr. Singhvi further submitted that the order passed by the learned Magistrate dated 20th January 2018 taking cognizance of the complaint filed by the respondent and issuing process against all the accused persons does not record any reasons and is a non-speaking one. Relying on the judgment of this Court in the case of **Lalankumar Singh and Others v. State of Maharashtra**⁵, it is submitted that the order of the Magistrate issuing process/summons is liable to be set aside on the said short ground.
9. Without prejudice to the aforesaid contention, it is submitted that appellant No.1 had already nominated Mr. E.S.K. Sastry, who has filed an affidavit undertaking that he was in charge of day-to-day affairs and responsible for the business of appellant No.1 under Section 34 of the said Act. It is submitted that appellant No.2 is a 73 years old person who resides in Mumbai and has no concern in day-do-day affairs of the appellant No.1 Company. It is submitted that there are no specific averments in the complaint with regard to the role played by appellant No.2 and as such, in view of the law laid down by this Court in the case of **Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others**⁶, the complaint is liable to be quashed and set aside.
10. Ms. Prerna Singh, on the contrary, submitted that the license under Form 25 is subject to the conditions as laid down in Form 20B. She therefore submitted that since neither accused No.3 nor accused No.5 possess a license under Form 20B, there was a contravention of provisions of Section 18(c) of the said Act constituting an offence punishable under Section 27(d) of the said Act.
11. Since in the present complaint, we are only concerned with the appellants who are accused Nos. 5 and 6, we will refer to the averments in the complaint insofar as the present appellants are concerned. The only averment in the complaint pertaining to the present appellants is as follows:

5 2022 SCC OnLine SC 1383 : 2022 INSC 1059

6 (1998) 5 SCC 749 : 1997 INSC 714

Supreme Court Reports

“A5 represented by A6 sold the drug Nitrous Oxide I.P. to the unlicensed A3 firm there by contravention of the Sec 18(a)(vi) r/w condition of the license in Form 26 point No.:03 r/w 65(5)(1)(b) of the Act, punishable under Section 27(d) of the Drugs & Cosmetics Act, 1940.”

12. It is thus clear that the only allegation against the present appellants is that the appellants sold Nitrous Oxide I.P. to accused No.3 firm which did not have license for sale and as such, there was a violation of Rule 65(5)(1)(b) of the said Rules which is punishable under Section 27(d) of the said Act.
13. For considering the rival submissions, it would be relevant to refer to certain provisions of the said Act.
14. Section 3 of the said Act is a ‘Definitions’ section. Clause (f) thereof reads thus:

“(f) “manufacture” in relation to any drug or cosmetic includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution but does not include the compounding or dispensing of any drug, or the packing of any drug or cosmetic, in the ordinary course of retail business; and “to manufacture” shall be construed accordingly;”

15. It could be seen that the term ‘manufacture’ as defined in the said Act is firstly inclusive and secondly wide enough to include any process or part of process from making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution. What is excluded from the definition is the compounding or dispensing of any drug, or the packing of any drug or cosmetic, in the ordinary course of retail business.
16. It will also be apposite to refer to the relevant part of Section 18 of the said Act which reads thus:

“18. Prohibition of manufacture and sale of certain drugs and cosmetics.—From such date as may be fixed by the State Government by notification in the Official

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

Gazette in this behalf, no person shall himself or by any other person on this behalf—

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute—

(i)

(ii)

(iii)

(iv)

(v)

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;

.....”

17. It will be relevant to refer to the relevant part of Section 27 of the said Act which reads thus:

“27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—

(a)

(b)

(c)

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than twenty thousand rupees:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.”

Supreme Court Reports

18. It could be seen that for constituting an offence, what is necessary to establish is that the accused manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes any drug without a valid license required under clause (a)(vi) of Section 18 of the said Act. As such, what the prosecution will have to establish is that the appellants sold the drug to accused No.3 without accused No.3 having the valid license for the further sale of the same. It will be relevant to refer to the relevant part of Rule 65 of the said Rules which reads thus:

"65. Condition of licences.—Licences in Forms 20, 20-A, 20-B, 20-F, 20-G, 21 and 21-B shall be subject to the conditions stated therein and to the following general conditions—

1.
2.
3.
4.

(5)(1) Subject to the other provisions of these rules the supply of a drug by wholesale shall be made against a cash or credit memo bearing the name and address of the licensee and his licence number under the Drugs and Cosmetics Act in which the following particulars shall be entered—

(a),

(b) the name, address of the licensee to whom sold and his sale licence number. In case of sale to an authority purchasing on behalf of Government, or to a hospital, medical, educational or research institution or to a Registered Medical Practitioner for the purpose of supply to his patients the name and address of the authority, institution or the Registered Medical Practitioner as the case may be,

....."

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

19. Rule 65 of the said Rules deals with conditions of licences and Forms 20, 20A, 20B, 20F, 20G, 21 and 21B whereas Rule 70 thereof deals with "Form of licence to repack or manufacture drugs other than those specified in Schedules C and C(1)".
20. It will be relevant to refer to Forms 20B and 25 of the said Rules, which read thus:

"Form 20B

[See rule 61(1)]

Licence to sell, stock or exhibit or offer for sale, or distribute by wholesale, drugs other than those specified in Schedules C, C(1) and X

- 1,.....
.....is hereby licensed to sell, stock or exhibit or offer for sale, or distribute by wholesale drugs other than those specified in Schedules C, C(1) and X on the premises situated at..... subject to the conditions specified below and to the provisions of the Drugs and Cosmetics Act, 1940, and the rules thereunder.
2. The licence unless sooner suspended or cancelled, shall remain valid perpetually. However, the compliance with the conditions of licence and the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Drugs and Cosmetics Rules, 1945 shall be assessed not less than once in three years or as needed as per risk based approach.
3. The sale shall be made under the personal supervision of a competent person.

(Name of the competent person).]

4. Categories of drugs.....

*Date Licence No.
..... Licensing Authority*

Conditions of Licence

1. This licence shall be displayed in a prominent place in a part of the premises open to the public.

Supreme Court Reports

2. The licensee shall comply with the provisions of the Drugs and Cosmetics Act, 1940 and the Rules thereunder for the time being in force.

3. (i) No drug shall be sold unless such drug is purchased under a cash or credit memo from a duly licensed dealer or a duly licensed manufacturer.

(ii) No sale of any drug shall be made to a person not holding the requisite licence to sell, stock or exhibit for sale or distribute the drug. Provided that the condition shall not apply to the sale of any drug to —

(a) an officer or authority purchasing on behalf of Government, or

(b) a hospital, medical, educational or research institution or a registered medical practitioner for the purpose of supply to his patients, or

(c) a manufacturer of beverages, confectionary biscuits and other non-medicinal products, where such drugs are required for processing these products.]

4. * * *

5. The licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the licence. Where any change in the constitution of the firm takes place, the current licence shall be deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh licence has been taken from the Licensing Authority in the name of the firm with the changed constitution."

Form 25

[See Rule 70]

*Licence of manufacture for sale or for
distribution of drugs other than those specified
in Schedules C, C(1) and X*

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

Number of licence and date of issue

1. is hereby licensed to manufacture the following categories of drugs being drugs other than those specified in Schedules C, C(1), and X to the Drugs and Cosmetics Rules, 1945, on the premises situated at under the direction and supervision of the following competent technical staff:

(a) Competent technical staff (Names).....

(b) Names of Drugs (each item to be separately specified)
.....

2. The licence authorises the sale by way of wholesale dealing and storage for sale by the licensee of the drugs manufactured under the licence, subject to the conditions applicable to licence for sale.

3. The licence unless sooner suspended or cancelled shall remain valid perpetually. However, the compliance with the conditions of licence and the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Drugs and Cosmetics Rules, 1945 shall be assessed not less than once in three years or as needed as per risk based approach.

4. The licence is subject to the conditions stated below and to such other conditions as may be specified in the rules for the time being in force under the Drugs and Cosmetics Act, 1940.

Date......

Signature

Designation

*Licensing Authority

*Central Licence Approving Authority

*Delete whichever is not applicable.]

Conditions of Licence

Supreme Court Reports

1. This licence shall be kept on the approved premises and shall be produced at the request of an Inspector appointed under the Drugs and Cosmetics Act, 1940.
2. Any change in the competent technical staff named in the licence shall be forthwith reported to the Licensing Authority.
3. If the licensee wants to manufacture for sale additional items of drugs not included above he should apply to the Licensing Authority for the necessary endorsement as provided in Rule 69(5). This licence will be deemed to extend to the categories so endorsed.
4. * * *
5. The licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the licence. Where any change in the constitution of the firm takes place, the current licence shall be deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh licence has been taken from the Licensing Authority in the name of the firm with the changed constitution."
21. A perusal of clause 2 of Form 25 which is a licence issued under Rule 70 of the said Rules would reveal that it authorizes the sale by way of wholesale dealing and storage for sale by the licensee of the drugs manufactured under the licence, subject to the conditions applicable to licence for sale. It is the contention of the respondent that the licence under Form 25 is subject to Form 20B and since accused No.3 did not have a licence under Form 20B, the sale to accused No.3 by the appellants was in contravention of Section 18 (a)(vi) of the said Act.
22. It is undisputed that both the accused i.e. appellant No.1 and accused No.3 possessed licence under Form 25. The allegation is that since accused No.3 did not possess a licence under Form 20B, appellant No.1 could not have sold the drugs to accused No.3 for further sale thereof.

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

23. We find the said argument to be totally fallacious in nature. As discussed hereinabove, the term 'manufacture' is an inclusive term and has a wide scope. It includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution.
24. For appreciating the rival contention, it will be apposite to explain the nature of processes that are undertaken by appellant No.1 and accused No.3. Appellant No.1 purchases Nitrous Oxide I.P. in bulk and after storing them in bulk containers sells them for further sale. Accused No.3 purchases the large containers from appellant No.1, opens the seal and stores them in smaller containers and reseals them for further distribution and sale.
25. Since both accused No.3 and appellant No.1 are holding the licence for manufacture, they will be entitled to carry out any process or part of process which includes altering or breaking up with a view to its further sale or distribution.
26. Since accused No.3 also possesses licence under Form 25 for manufacture it is not only entitled to alter, break up, repack and relabel the product received from appellant No.1, it is also entitled to do it with a view for further sale or distribution. Since accused No.3 is also holding the licence under Form 25, it is entitled to sell and distribute the product received from appellant No.1 after altering, breaking it up and packing it in smaller containers. On a plain and literal interpretation of the term 'manufacture' as defined in the said Act, we find that the contention of the State is totally untenable. It would have been a different matter if accused No.3 did not have a licence under Form 25 which apart from permitting accused No.3 from altering, breaking it up and packing the product received from appellant No.1 in a smaller container also authorizes it to further sell the same by wholesale dealings. Only in the absence of any licence with accused No.3 which permitted it to further sell and distribute the product received from appellant No.1, sale of the product by appellant No.1 to it would have contravened the provisions of Section 18(a)(vi) and constituted an offence punishable under Section 27(d) of the said Act.
27. Ms. Prerna, learned counsel for the State vehemently argued that since the licence under Form 25 is 'subject to' the licence for sale i.e.

Supreme Court Reports

Form 20B, there was a violation of Section 18(a)(vi) of the said Act.

28. Even if the contention of the learned counsel for the State is to be accepted, still an offence would not be made out.
29. The term 'subject to' has been defined in the Black Law's Dictionary, 5th Edition at Page 1278, which reads thus:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for."

30. As such, the licence under Form 25 would be liable, subordinate, subservient, inferior, obedient to; governed or affected by the licence under Form 20B. However, for that, the prosecution will have to show that appellant No.1 who possesses the licence under Form 25 has violated any of the provisions under licence in Form 20B. The learned counsel for the State has not been in a position to point out violation of any of the conditions as stipulated in Form 20B.
31. In that view of the matter, we find that even if the allegations made in the complaint are taken at its face value, no case is made out for an offence punishable under Section 18(a)(vi) read with Section 27 (d) of the said Act.
32. There is another ground on which the impugned judgment and order is liable to be quashed and set aside. It will be relevant to refer to the order passed by the learned Magistrate while issuing the process which reads thus:

"The Drugs Inspector Kadapa filed complaint against A1 and A2 U/s 32 of Drugs and Cosmetics Act 1940 and 1945 for the contravention of the sec 18(c) Punishable under section 27(b)(ii) on A1 to A4 and contravention of section 18(a)(vi) r/w condition of the license in form 25 point No. 03 r/w Rule 65(5)(1)(b) of the Act, punishable under section 27(d) on A5 and A6.

It is submitted that all the concerned records i.e., document number 1 to 6, 7 (72 pages of carbon copy bills on which the payment order passed by Superintendent, RIMS General Hospital, Kadapa) Serial No.8 to 19 and Serial No. 20 containing (pages 1 to 15 along with cover) shown

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

and filed along with the complaint and other connected records are verified and found it on correct lines.

It is further submitted in this case No property seized in this case except the above said documents.

Hence, if your honour pleases the case may be taken on file against A1 and A6 and may be pass orders for issue of C.C. No. and also summons to A1 to A6.

Submitted

Taken on file U/Secs.32 of Drugs and Cosmetics Act 1940 and 1945 for the contravention of the sec 13(c) Punishable under section 27(b)(ii) on A1 to A4 and Contravention of section 18(a)(vi) r/w condition of the

license in form 25 point No. 03 r/ow Rule 65(5)(1)(b) of the Act, punishable under section 27 (d) on A5 and A6 of the said Act.

Issue summons to A1 to A6.

Call on 5/3/18.”

33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.
34. In this respect, it will be relevant to refer to the following observations of this Court in the case of **Pepsi Foods Ltd.** (supra):

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of

Supreme Court Reports

preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.
36. The said law would be consistently following by this Court in a catena of judgments including in the cases of *Sunil Bharti Mittal v. Central Bureau of Investigation*⁷, *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others*⁸ and *Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another*⁹.
37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of *Lalankumar Singh* (supra), has observed thus:

“38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie case* against the accused. No doubt, that the order need not contain

7 (2015) 4 SCC 609 : 2015 INSC 18

8 (2015) 12 SCC 420 : 2015 INSC 983

9 (2021) 5 SCC 435 : 2021 INSC 160

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*⁹, which reads thus:

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons.

Supreme Court Reports

A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

39. A similar view has been taken by this Court in the case of *Ashoke Mal Bafna* (*supra*).

40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed.”

38. In the present case also, we find that there is no application of mind even for the namesake by the learned Magistrate while issuing the process. On this ground also, the impugned judgment and order is liable to be quashed and set aside.
39. We also find that the High Court has totally misdirected itself in the present matter. It will be relevant to refer to the following observations of the High Court:

"24. Admittedly, petitioners/accused have sold the nitrous oxide to Accused 3 & 4 without producing the license. Accused No.3 firm was given permission for manufacturing of nitrous oxide.

25. On repetition, as discussed supra, the 3rd accused has given licence to manufacture the Nitrous Oxide and Oxygen and the petitioner/A5 firm is also given licence to manufacture Nitrous Oxide.

26. In the instant case, the petitioners/accused have sold the drug in contravention of the Act and Rules and, therefore, in view of the provisions under Section 18(a)(vi) r/w Section 27 of the Act, 1940 is liable to be prosecuted.”

40. Having observed all this, the learned Single Judge of the High Court goes on to observe that the definition of ‘manufacture’ as defined under Section 3(f) of the said Act was not relevant for deciding the present issue. It goes on to say that since accused No.3 was

INOX Air Products Limited now known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh

given licence to manufacture, he was not authorized to purchase it from accused No.5. We find that the said interpretation is without considering the plain nature of Section 3(f) of the said Act and is totally unsustainable in law.

41. In view of the detailed elaborations made by us hereinabove, we pass the following order:
 - (i) The appeal is allowed;
 - (ii) The impugned judgment and order 12th January 2024 passed by the High Court of Judicature of Andhra Pradesh at Amravati in Criminal Petition No. 4148 of 2018 is quashed and set aside; and
 - (iii) The summoning order dated 20th January 2018 passed by the Trial Court in C.C. No. 71 of 2018 and the proceedings arising therefrom are also quashed and set aside.
42. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain