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

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Bench: K.M. Joseph, Sanjay Kishan Kaul

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.200 OF 2020
(@ S.L.P.(CRIMINAL)No.4178 of 2019)

UNION OF INDIA ... APPELLANT(S)

VERSUS

ASHOK KUMAR SHARMA AND OTHERS ... RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. What is the interplay between the provisions of the Code of Criminal Procedure (hereinafter referred to as "CrPC" for short) and the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act" for short)? Whether in respect of offences falling under chapter IV of the Act, a FIR can be registered under Section 154 of the CrPC and the case investigated or whether Section 32 of the Act supplants the procedure for investigation of offences under CrPC and the taking of cognizance of an offence under Section 190 of the CrPC? Still further, can the Inspector under the Act, arrest a person in connection with an offence under Chapter IV of the Act.

2. One Naushad Khan made an online complaint on 22.2.2018. The Commissioner (Food Protection and Drugs) directed enquiry and the Drug Inspector, Mau, U.P. along with two others conducted an inspection at the Sharda Narayan Clinic and Pharmacy and the respondent No.1 was directed to show papers in respect of medicines stored in the shop. The first respondent according to the appellant stated that he did not have any license though he was the owner of the medical store and that he had stored the medicines without proper license. Thereby, he has committed offence under

Section 18 and 27 of the Act. On the basis of recovery made, an FIR came to be lodged on 22.6.2018 purporting to be under Section 18 (a)(i) and Section 27 of the Act. The complainant it may be noted is none other than the Drugs Inspector. The respondent filed a writ petition for quashing the FIR and not to arrest him. The appellant, viz., the Union of India through the Secretary, Ministry of Health and Family Welfare was not made a party to the writ petition. The respondents in the writ petition were the Superintendent of Police, the Station House Officer and the Drugs Inspector, Mau in his personal capacity. This is apart from the State of U.P. which was made the first respondent. It is pointed out by the appellant that the High Court issued notice seeking presence of the appellant. The High Court by the impugned order had allowed the writ petition and quashed the FIR. In short, the reasoning of the High Court is that under the Act Section 32 must be scrupulously observed and it is the mechanism for prosecuting offences and there is no scope for registration of a FIR under CrPC.

FINDINGS OF THE HIGH COURT

3. The High Court referred to Section 32 of the Act and found that only an Inspector, a Gazetted Officer conferred with authority, a person aggrieved or recognized consumer organization is eligible to make a complaint. The court adverted to the other provisions of the Act including Sections 22, 23, 25 and 27 apart from Section 32 and found that the Act clearly lays down a complete code for the trial of offences committed in respect of Drugs and Cosmetics. The Act was a special Act enacted for the trial of offences committed under the Act. No other provision would be applicable as the Act had an overriding effect over all Acts. The provisions of the CrPC would not be applicable except as provided in the Act itself. Since the lodging of an FIR is under Section 154 of the CrPC, the said provision would not be invokable. It further held as follows:

> "21. In this Act, the procedure for launching a prosecution has been clearly laid down saying that prosecution under this Act can be initiated only on a complaint made by an authorized Inspector or other authorized persons defined under Section 32, who is supposed to follow the entire procedure as narrated above. By no stretch of imagination could the concerned Inspector have lodged an F.I.R. in this case and authorize the police to make investigation in this case."

4. It was further held that the lodging of the FIR is absolutely barred and FIR deserved to be quashed. The court also directed the issue of notice to the Inspector who had gone to lodge the FIR, despite there being a special provision for launching the prosecution and explanation was sought. Still further it was directed as follows:

> "23. We, accordingly, allow this petition and quash the F.I.R. and simultaneously it is further directed that notice shall be issued to the concerned Inspector by the Competent Authority to show cause as to why he deliberately lodged an F.I.R. when there is specific provision for prosecuting the accused by lodging a complaint. The explanation and action taken against him, shall be forwarded to the Court by the Competent Authority within 8 weeks from today through Registrar General of this Court who shall place the same before us for perusal in our chambers as soon as the

> same is received by Registrar General. We further grant liberty to the respondent no. 4 to initiate criminal proceedings in accordance with the procedure laid down under this Act forthwith against the petitioner.
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> 24. Registrar General to sent a certified copy of this order to Principal Secretary, Food Safety and Drug Administration, Government of U.P. for his necessary information and follow up action. It is further directed that Principal Secretary, Food Safety and Drug Administration, Government of U.P. shall notify such direction to all the D.Ms. of the State so that no such error recurs."

5. We heard Ms. Pinky Anand, learned Additional Solicitor General appearing on behalf of the appellant. We also heard Shri S. Nagamuthu, learned Senior Counsel, whom we appointed as Amicus Curiae.

SUBMISSIONS OF THE APPELLANT

6. Ms. Pinky Anand, learned Additional Solicitor General would submit that the High Court was in error in holding that FIR under CrPC cannot be lodged in respect of the Act. She drew our attention to Section 36 AC of the Act. Thereunder, as we shall see in greater detail, certain offences under the Act have been declared to be cognizable offences. She would point out that once these offences are declared as cognizable offences it is inconceivable that a FIR cannot be lodged under the CrPC in regard to the same. She drew our attention to Section 4 and 5 of the CrPC. She contended that there is nothing in the Act which detracted from a FIR being registered in regard to offences under the Act. Regarding the consequences flowing from Section 32 of the Act, it is her contention that the High Court fell in error in ignoring Section 36AC of the Act. It is her complaint that the Act contemplated curbing of various highly undesirable activities posing a great threat to the health and the safety of citizens as can be gleaned from the grave offences which have been created under the Act. In fact, it is pointed out that many cases where investigation was carried out on the basis of FIR lodged under the Act will witness unmerited burial and offenders would go scot free if the impugned judgment of the High Court is allowed to stand. There is no bar under the Act to the registration of FIR under CrPC.

7. Shri Nagamuthu, learned senior counsel submitted that having regard to the scheme of the Act and Section 32, in particular, the judgment of the High Court is only to be supported. He drew our attention to the following judgments:

a. Jeewan Kumar Raut and another v. CBI1;

b. State (NCT of Delhi) v. Sanjay2.

8. He also referred to the judgment of this Court in Kanwar Pal Singh v. State of Uttar Pradesh and another in Criminal Appeal No.1920 of 2019. He would submit that as far as offences falling within the ambit of Section 36AC are concerned, a FIR under Section 154 of the CrPC is not contemplated and cannot be registered. The mere fact that Section 36 AC of the Act declares certain offences

under the Act cognizable would not mean that the scheme of Section 32 of the Act can be jettisoned. He would point out that 1 (2009) 7 SCC 526 2 (2014) 9 SCC 772 prosecution can be launched only in the manner provided under the Act in regard to offences under the Act covered by Section 32. The institution of the prosecution can be only at the instance of the persons named in the said section. He points out that Section 32 came to be amended at the same time as Section 36 AC was inserted. Nothing prevented the Legislature if it so desired to provide that the offences falling under Section 32 should be investigated in the manner provided under the provisions of the CRPC namely by lodging a FIR and after investigating the offences by filing a report within the meaning of Section 173 of the CrPC. The fact that such a procedure was not contemplated by the Legislature is clear from the fact that under the pre amended regime, three out of four categories mentioned in the present amended avtaar were already present and the amendment added only one more to the categories of persons who alone could institute the prosecution. In fact, as regards Section 36 AC declaring certain offences under the Act to be cognizable, he drew our attention to the second part of the first schedule of the CrPC. He contended inter alia that even without the aid of Section 36 AC, the offences under Section 27(1)(a) and 27(1)(c) were cognizable having regard to the term of imprisonment provided as punishment for the same. Nothing turned on the offence being cognizable except apprehension of the offender without the aid of a warrant. He would submit that in regard to the offences embraced by Section 32, an F.I.R. within the meaning of the CrPC is not contemplated but he was at pains to point out that this did not stand in the way of an F.I.R. being lodged if the offence constituted a distinct offence under any other law. In such a scenario, while the lodging of the F.I.R. in regard to the offences covered by Section 32 would be impermissible the Officer would be within his powers if he were to register an F.I.R. and proceed to investigate offences other than the offence falling under Section 32, should they be cognizable. In this case, he would submit that the offence alleged is under Section 27 (1)(b) of the Act which squarely fell within the four walls of Section 32. So, also Section 18 prohibiting certain acts fell in Chapter IV of the Act, thus, attracting Section 32. In regard to these offences, Section 32 constitutes a bar for the registration of an F.I.R. under CrPC and the investigation as an ordinary case.

9. In reply to submission of learned Amicus Curiae, Ms. Pinky Anand, learned Additional Solicitor General, drew our attention to Section 36AC and reiterated that neither the CrPC nor the Act constitute a stumbling block to the lodging of an FIR. She also drew our attention to Section 13 of the Act. It is pointed out that Section 13 falls under Chapter III. She contended that the Act contemplated a Special Court to deal with the offences under the Act. The procedure leading to the institution of the prosecution case must be governed by the provisions of the CrPC, runs her argument.

ANALYSIS

10. The Act purports to achieve the object of regulating the import, manufacture, distribution and sale of drugs and cosmetics. The word Drugs has been defined in Section 3(b). Section 3(e) defines Inspector:

> "3 Definitions. —In this Act, unless there is anything repugnant in the subject or context,—

(e) "Inspector" means—

(i) in relation to Ayurvedic, Siddha or Unani drug, an Inspector appointed by the Central Government or a State Government under section 33G; and

(ii) in relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under section 21;

11. Chapter III contains provisions which provide for deeming definitions of misbranded drugs, adulterated drugs, spurious drugs, misbranded cosmetics and spurious cosmetics for the purpose of Chapter III. Section 13 provides for offences arising out of imports. Chapter IV falls under the chapter heading "Manufacture, Sale and Distribution of Drugs and Cosmetics". Interestingly, misbranded drugs, adulterated drugs, spurious drugs, misbranded cosmetics and spurious cosmetics, adulterated cosmetics are defined by provisions found in Chapter IV for the purpose of Chapter IV. Section 18 contemplates that from such date as may be fixed by the State Government, manufacture for sale or distribution, or to sell, or stock or exhibit or offer for sale or distribution of drugs misbranded, adulterated, spurious drugs and cosmetics inter alia are prohibited. Section 21 reads as follows:

"21. Inspectors.— (1) The Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or [classes of drugs or cosmetics or classes of cosmetics] in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the import, manufacture or sale of drugs or cosmetics shall be appointed to be an Inspector under this section. (4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority, having the prescribed qualifications,] as the Government appointing him may specify in this behalf." (Emphasis supplied)

12. It is necessary to notice the rules relevant in this regard. Rule (49) deals with qualifications of Inspectors. It reads as follows: -

"49. Qualifications of Inspectors. —A person who is appointed an Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law: Provided that only those Inspectors—

(i) who have not less than 18 months' experience in the manufacture of at least one of the substances specified in Schedule C, or

(ii) who have not less than 18 months' experience in testing of at least one of the substances in Schedule C in a laboratory approved for this purpose by the licensing authority, or

(iii) who have gained experience of not less than three years in the inspection of firm manufacturing any of the substances specified in Schedule C during the tenure of their services as Drugs Inspectors; shall be authorised to inspect the manufacture of the substances mentioned in Schedule C:

Provided further that the requirement as to the academic qualification shall not apply to persons appointed as Inspectors on or before the 18th day of October, 1993." Rule (51) deals with duties of Inspectors in regard to sale. It reads as follows:

"51. Duties of Inspectors of premises licensed for sale.—Subject to the instructions of the controlling authority, it shall be the duty of an Inspector authorized to inspect premises licensed for the sale of drugs— (1) to inspect not less than once a year all establishments licensed for the sale of drugs within the area assigned to him;

(2) to satisfy himself that the conditions of the licences are being observed;

(3) to procure and send for test or analysis, if necessary, imported packages which he has reason to suspect contain drugs being sold or stocked or exhibited for sale in contravention of the provisions of the Act or rules thereunder;

(4) to investigate any complaint in writing which may be made to him;

(5) to institute prosecutions in respect of breaches of the Act and rules thereunder;

(6) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the controlling authority;

(7) to make such enquiries and inspections as may be necessary to detect the sale of drugs in contravention of the Act;

(8) when so authorized by the State Government, to detain imported packages which he has reason to suspect contain drugs, the import of which is prohibited." Rule (52) deals with duties of Inspectors in regard to manufacturer. It reads as follows:

"52. Duties of inspectors specially authorised to inspect the manufacture of drugs or cosmetics. —Subject to the instructions of the controlling authority it shall be the

duty of an Inspector authorized to inspect the manufacture of drugs— (1) to inspect [not less than once a year], all premises licensed for manufacture of drugs or cosmetics within the area allotted to him to satisfy himself that the conditions of the licence and provisions of the Act and Rules thereunder are being observed; (2) in the case of establishments licensed to manufacture products specified in Schedules C and C (1) to inspect the plant and the process of manufacture, the means employed for standardizing and testing the drug, the methods and place of storage, the technical qualifications of the staff employed and all details of location, construction and administration of the establishment likely to affect the potency or purity of the product;

(3) to send forthwith to the controlling authority after each inspection a detailed report indicating the conditions of the licence and provisions of the Act and rules thereunder which are being observed and the conditions and provisions, if any, which are not being observed;

(4) to take samples of the drugs manufactured on the premises and send them for test or analysis in accordance with these Rules; (5) to institute prosecutions in respect of breaches of the Act and rules thereunder." Section 22 deals with the powers of the Inspector.

reads as follows:

"22. Powers of Inspectors.—(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,—" (a) inspect,—"

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic,—

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,—

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed, and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;

(cc) examine any record, register, document or any other material object found with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c), and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the Rules made thereunder;
(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

22(2)The provisions of the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code. (2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken. (3)If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon by or under this Chapter or refuses to produce any record, register or other document when so required under clause (cca) of sub-section (1), he shall be punishable with imprisonment which may extend to three years or with fine, or with both." (Emphasis supplied)

13. Section 23 provides for the procedure to be followed by the Inspector. It includes the tendering of fair price when a sample is taken of a drug or cosmetic under the Chapter. There are various other

provisions regarding the procedure to be followed by the Inspector which includes seizure of record/ register, documents or other material objects and the need to notify a judicial Magistrate [See Section 23(6)].

14. Section 27 provides for penalty for manufacture, sale etc. of drug in contravention of Chapter IV. It reads as follows:

> "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) any drug deemed to be adulterated under section 17A or spurious under section 17B and which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:
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> Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:
>
> Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.
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> Explanation.--For the purposes of the second proviso, the expression "relative" means--
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> (i) spouse of the deceased person; or
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> (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or
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> (iii) parent of the minor victim; or
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> (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or

(v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,--

(a) the parent; or

(b) a minor brother or an unmarried sister; or

(c) a widowed daughter-in-law; or

(d) a widowed sister; or

(e) a minor child of a pre-deceased son;

or

(f) a minor child of a pre-deceased daughter where no parent of the child is alive; or

(g) the paternal grandparent if no parent of the member is alive;]

(b) any drug--

(i) deemed to be adulterated under section 17A, but not being a drug referred to in clause (a), or

(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:

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 three years and of fine of less than one lakh rupees;

(c) any drug deemed to be spurious under section 17B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more:

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 8 [less than seven years but not less than three years and of fine of less than one lakh rupees];

(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."

15. Sections 27A, 28, 28A, 28B and 29 provide for other offences. Section 30 contemplates penalty in the case of subsequent offences. Section 31 deals with confiscation. Section 32 which is at the center stage of the controversy reads as follows:

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

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter." Section 32B provides for compounding of certain offences.

16. Chapter IV-A provides for "Provisions relating to Ayurvedic, Siddha and Unani Drugs". It also contains provisions for the purpose of Chapter IV-A dealing with deemed definitions of Misbranded drugs, Adulterated drugs, Spurious drugs and are created offences. Section 33G provides for appointment of Inspectors by the Central Government or the State Government. Section 33H makes the provision of Section 22,23,24 and 25 and the rules, if any, thereunder applicable in respect of Ayurvedic, Siddha and Unani drugs. Section 33M reads as follows:

"33M. Cognizance of offences.— (1) No prosecution under this Chapter shall be instituted except by an Inspector [with the previous sanction of the authority specified under sub-section (4) of section 33G.

(2) No Court inferior to that [of a Metropolitan Magistrate or of a Judicial Magistrate of the first class] shall try an offence punishable under this Chapter."

17. The last Chapter of the Act is Chapter V. It bears the Chapter heading "Miscellaneous". Section 36 declares that any Metropolitan Magistrate or Judicial Magistrate of First Class may pass a sentence in excess of the powers under the CrPC. Section 36A provides that certain offences are to be tried summarily.

18. Section 36AB provides for Special Courts. It declares that the Central Government or the State Government in consultation with the Chief Justice of the High Court, shall, for certain offences designate one or more Court of Sessions as a Special Court or Special Courts. Sub-section (2) provides that the Special Court may try an offence other than the offences covered by sub-section (1) which may be charged against the accused at the same trial. Section 36AC around which much arguments were addressed reads as follows:

"36AC. Offences to be cognizable and non-bailable in certain cases. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.

(b) no person accused, of an offence punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or

any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 36AB." Section 36AD also being relevant is referred to:

"36AD Application of Code of Criminal Procedure, 1973 to proceedings before Special Court. — (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government or the State Government may also appoint, for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly." RELEVANT PROVISIONS OF THE CRPC

19. Section 2(a) defines "bailable offence" as offence shown as such in the First Schedule, or which is made bailable under any other law for the time being in force. "Non-bailable offence" means any other offence. 'Cognizable offence' is defined in Section 2(c). It reads as follows:

"2(c) " cognizable offence" means an offence for which, and" cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;" (Emphasis supplied)

20. Section 2(d) defines 'complaint'. It reads as follows:-

"2(d) " complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or

unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

21. Section 2(h) defines investigation as follows:

"2(h)"investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf." (Emphasis supplied)

22. 'Police report' is defined in Section 2 (r) as meaning a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173. Sections 4 and 5 being relevant, we advert to the same.

"4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

23. Chapter XII comes under the heading 'Information to the Police and their Powers to Investigate'. Section 154 inter alia provides that every information relevant to the commission of a cognizable offence given orally to an officer in charge of a Police Station shall be reduced to writing by him or under his direction, and be read over to informant. Every such information whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it. The substance of the same is to be entered in a book to be kept by such officer in such form as may be prescribed. Section 155 deals with information as to non-cognizable cases and the manner of investigation of such cases. No police officer can investigate a non-cognizable offence without the order of the Magistrate having power to try such case or commit such case for trial. Section 156 reads as under:

"156. Police officer's power to investigate cognizable case. – (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having

jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned".

(Emphasis supplied)

24. Section 157 provides for Procedure for Investigation. The limitations for the use of the statement given under Section 161 are spelt out in Section 162. Section 173 provides for the report to be given on completion of investigation.

25. Chapter XIV deals with the "Conditions requisite for Initiation of Proceedings". Section 190 reads as follows:

"190. Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try."

26. Chapter XV deals with Complaints to Magistrates. Section 202 having been referred by the learned Amicus Curiae is extracted:

"202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192,

may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

> Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.
>
> (3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant." (Emphasis supplied)

27. Chapter XVI comes under the chapter heading "Commencement of Proceedings before Magistrates". Section 204 deals with "Issue of Process" in a case where the Magistrate taking cognizance is of the view that there is sufficient ground for proceeding in the matter. It may also be relevant to notice part II of the First Schedule to the CrPC. It must be remembered that cognizable offence has been defined in terms of the classification of the offences under the First Schedule. The first part of the First Schedule deals with offences under the Indian Penal Code. The second part, as it were, deals with classification of offences against other laws. It reads as follows:

> "Classification of Offences against other laws Offence Cognizable or Bailable or By what non-cognizable non-bailable Court triable If punishable with Cognizable Non-bailable Court of death, Session.
>
> imprisonment for life, or imprisonment for more than 7 years;
>
> If punishable with imprisonment for 3 years, and upwards but not more than 7 years. Cognizable Non-bailable Magistrate of the first class.
>
> If punishable with imprisonment for less than 3 years or Non-cognizable Bailable Any Magistrate.

with fine only.

28. Section 4(2) of the CrPC declares that all offences under any law other than the IPC shall be investigated, inquired into and tried and otherwise dealt with according to the CrPC. This is however, subject to any enactment for the time being in force which provides otherwise in the matter of, the manner or place of investigation inter alia in regard to offences under any law other than the IPC. The purport of Section 5 is this:

If any special law or local law for the time being in force contemplates any special jurisdiction or power or any special form of procedure prescribed, unless there is something to the contrary, to be found, it is the provisions of the special law or the local law which would prevail.

IMPACT OF SECTION 2 OF THE ACT

29. We have noticed that Section 2 of the Act declares that the provisions of the Act shall be in addition to and not in derogation of the Dangerous Drugs Act 1930 and any other law for the time being in force. As far as Section (2) of the Act is concerned if the attempt of the appellant is to contend that it imports the provisions in CrPC which tends to overwhelm, in particular, any special procedure provided under the Act, we have no hesitation in repelling the same.

The purport of Section 2 appears to be that Legislature intended to keep alive the provisions of the Dangerous Drugs Act, 1930. It would continue to hold sway despite the enactment of the Act. If there are any other provisions of cognate laws dealing with the subjects dealt with by the Act, the operation of those Acts was to be preserved. The Act does not provide for any express repeal of any enactment. Nothing further needs to be stated about Section 2 and we are of the view that it does not have any further repercussion on the issue at hand. SECTION 32 OF THE ACT

30. Coming to Section 32 of the Act, as already noted by us it falls in chapter IV. Inspectors are appointed by the Central Government or the State Government from persons possessing prescribed qualifications under a notification. Section 21 contemplates prescribing under rules the powers which may be exercised by the Inspectors apart from the duties which may be performed by him inter alia. Section 22 of the Act provides for power of search by the Inspectors. They have power to inspect any premise, take samples, powers of search, examine any record, register, material object and seize them. The Legislature has undoubtedly applied the provisions of the CrPC in regard to searches under the Act. Section 23 elaborately provides for procedure to be adopted by Inspectors.

31. Section 32 falling under section heading ‘Cognizance of offences’ declares, in unambiguous words, that prosecution, under Chapter IV, can be instituted only by (1) an Inspector (2)any gazetted officer of the Central Government or State Government authorised in writing by the respective

Government by a general or special order made in this behalf by that Government (3) the person aggrieved (4) a recognised consumer association whether such person is a member of that association or not. Section 32 further proclaims that unless it is otherwise provided, no court inferior to a court of session shall try an offence punishable under Chapter IV. Section 32(3) makes it clear that nothing in chapter IV would stand in the way of the person being prosecuted against under any other law for any act or omission which constitutes an offence against this Chapter. Section 32 was substituted by Act 22 of 2008. Prior to the substitution it read as follows:

> "32 Cognizance of offences. — (1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a recognised consumer association whether such person is a member of that association or not.
>
> (2) No court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this Chapter.
>
> (3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

32. It will be noticed at once that Section 190 of the CrPC also has a title 'Cognizance of Offence by Magistrate'. Cognizance under Section 190 is contemplated in three different modes. They are - (1) complaints of facts constituting such offences, (2) police report of such facts, (3) upon any information received from a person other than a Police Officer or upon a court being possessed of knowledge about the commission of the offence. In other words, where the court takes cognizance suo motu. A comparison between Section 32 of the Act and 190 of the CrPC dealing with cognizance of offences, makes it abundantly clear that the Law Giver has provided for distinct modes in regard to prosecuting of the offences under the general law, viz., the CrPC and the special provision, as contained in Section 32 of the Act.

33. Section 193 of the CrPC reads as follows:

> "193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

34. Section 195 prohibits the Court from taking any cognizance of the offences mentioned therein except on the complaint in writing by the persons named therein.

35. Section 198A and Section 199 likewise permit the courts to take cognizance only upon the complaint made by the persons mentioned therein. Similarly, Section 199 taboos cognizance of offence of defamation except on the complaint made by some aggrieved person.

36. Section 36AD of the Act applies the provisions of the CrPC except where it is otherwise provided in the Act in regard to the proceedings before the Special Court and the Special Court is deemed to be the Court of Sessions and the person conducting the prosecution is deemed to be the Public Prosecutor. No doubt, the proviso empowers the Central Government or the State Government to appoint for any case or class or group of cases, a Special Public Prosecutor.

37. The Scheme of the Act must be borne in mind when Section 32, which provides, inter alia, that an Inspector can set the ball rolling, is considered. The Inspectors, under the Act, are to possess the prescribed qualifications. The qualifications bear a nexus with the performance of the specialised duties which are to be performed under the Act. Apparently, knowledge about the drugs and cosmetics goes a long way in equipping them to perform their multifarious functions. Section 22 clothing the Inspector with powers must also be viewed thus in the context of the legislative value judgment that a complaint is to be moved by the Inspector under the Act and not by a Police Officer under the CrPC. The Inspector is expected to inspect premises where drugs and cosmetics are being manufactured, sold, stocked, exhibited, offered for sale or distributed. Samples are to be taken at the points of manufacturing, selling, stocking and the points of delivery. He is expected also, where he has reason to believe that an offence under the Act has been committed, to search any person, enter any place, stop and search any vehicle, examine records, and documents and seize the same. Last but not the least, Section 22(1)(d) declares that he may exercise other powers as may be necessary for carrying the purposes of Chapter IV or any Rules made thereunder. The elaborate procedure to be followed by the Inspectors is also provided by the law.

38. Section 26 of the Drugs and Cosmetics Act, 1940, reads as follows:

> "26. Purchaser of drug or cosmetic enabled to obtain test or analysis.—Any person or any recognised consumer association, whether such person is a member of that association or not shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug or cosmetic purchased by him or it and to receive a report of such test or analysis signed by the Government Analyst.
>
> Explanation.—For the purposes of this section and section 32, "recognised consumer association" means a voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force."

39. A perusal of the same would indicate the role which is assigned to any person and recognized consumer association within the meaning of Section 32. Section 26 of the Drugs and Cosmetics Act, 1940 declares that on the application, any person or any recognized consumer association, in the prescribed manner and on payment of prescribed fee, is entitled to submit for test or analysis, to a Government Analyst any drug or cosmetic purchased by the person or the association and to receive a report of such test or analysis signed by the Government Analyst. There can be no gainsaying that armed with a report which reveals the commission of an offence under Chapter IV of the Act, they can invoke Section 32 and prosecute the offender.

40. Section 32 of the Act undoubtedly provides for taking cognizance of the offence by the court only at the instance of the four categories mentioned therein. They are: (a) Inspector under the Act; (b) Any Gazetted Officer empowered by the Central or the State Government; (c) Aggrieved person; and (d) Voluntary Association. It is clear that the Legislature has not included the Police Officer as a person who can move the court. Before the matter reaches the court, under Section 190 of the CrPC, ordinarily starting with the lodging of the first information report leading to the registration of the first information report, investigation is carried out culminating in a report under Section 173. The Police Report, in fact, is the Report submitted under Section 173 of the CrPC to the court. Under Section 190 of the CrPC, the court may take cognizance on the basis of the police report. Such a procedure is alien to Section 32 of the Act. In other words, it is not open to the Police Officer to submit a report under Section 173 of the CrPC in regard to an offence under Chapter IV of the Act under Section 32. In regard to offences contemplated under Section 32(3), the Police Officer may have power as per the concerned provisions. Being a special enactment, the manner of dealing with the offences under the Act, would be governed by the provisions of the Act. It is to be noted that Section 32 declares that no court inferior to the Court of Sessions shall try offence punishable under Chapter IV. We have noticed that under Section 193 of the CrPC, no Court of Sessions can take cognizance of any offence as a Court of Original Jurisdiction unless the case has been committed to it by a Magistrate under the CrPC. This is, undoubtedly, subject to the law providing expressly that that Court of Sessions may take cognizance of any offence as the Court of Original Jurisdiction. There is no provision in the Act which expressly authorises the special court which is the Court of Sessions to take cognizance of the offence under Chapter IV. This means that the provisions of Chapters XV and XVI of the CrPC must be followed in regard to even offences falling under Chapter IV of the Act. Starting with Section 200 of the Act dealing with taking of cognizance by a Magistrate on a complaint, including examination of the witnesses produced by the complainant, the dismissal of an unworthy complaint under Section 203 and following the procedure under Section 202 in the case of postponement of issue of process are all steps to be followed. It is true that when the complaint under Section 32 is filed either by the Inspector or by the Authorised Gazetted Officer being public servants under Section 200, the Magistrate is exempted from examining the complainant and witnesses.

41. The learned Amicus Curiae, when queried about the procedure to be adopted when a complaint is lodged by persons falling in Section 32(C) and (d), viz., the aggrieved person or a voluntary association, it was submitted that the Magistrate can, under Section 202 of the CrPC, order an investigation by the Police Officer or any other person. A perusal of Section 202 would show that in regard to an offence falling under Chapter IV of the Act, being exclusively triable, by a Court of Sessions, the proviso to sub-Section (1) to Section 202 prohibits the direction for investigation under Section 202. The proviso to sub-Section (2) of Section 202 contemplates that when an offence is exclusively triable by the Court of Sessions, and the Magistrate proceeds under Section 202 of the CrPC, he is duty bound to call upon the complainant to produce all its witnesses and examine them on oath. Thus, the effect of the two provisions in sub-Sections (1) and (2), respectively, is as follows:

> A Magistrate proceeding under Section 202 of the CrPC, is subjected to two conditions:

a. Unlike in an ordinary case, meaning thereby, an offence which is not exclusively triable by a Court of Sessions, in a case where it is an offence exclusively triable by a Court of Sessions, the inquiry can be conducted only by a Magistrate himself. It is not open to him to cause an investigation be it by a Police Officer or any other person.

b. In regard to the inquiry so conducted by him, he must call upon the complainant to produce all his witnesses and they must be examined not on the basis of any affidavit, and not without the support of an oath but the examination must be under an oath. It is to be remembered that under the provisions existing under the previous Code, an elaborate preliminary inquiry where even an accused had right of cross-examination of witnesses, was contemplated at the hands of the Magistrate before the committal order was passed.

This no longer survives after the amendment.

42. Offences exclusively triable by a Court of Sessions are ordinarily pursued on the strength of a Police Report. The Police Officer examines witnesses under Section 161 of the CrPC, collects other evidence, arrives at a satisfaction that indeed a case is made out to arraign a person or persons and, accordingly, the charge-sheet is filed under Section

173. Section 207 of the Code contemplates making available statements of all the witnesses examined among other documents to be made available to the accused as provided therein. This prepares the accused for the case he is likely to be called upon to meet in the Court of Sessions.

43. As far as a complainant setting the criminal law in motion is concerned, what is contemplated is that by the mechanism of cognizance under Section 200 read with Section 202, culminating in the issuance of summons or warrant under Section 204, there is material before the Magistrate and the court is assured that the case is not frivolous and wholly meritless going by a prima facie view undoubtedly as contemplated in law at that stage regarding the commission of a cognizance offence. Apart from this, reassuring aspect, as in a prosecution launched under Police Report, the accused in a trial by a Court of Sessions to which Court a case would stand committed under Section 209, would also know beforehand the case he would have to meet having regard to the materials which weighed with the Magistrate and which is also made available to him under Section 208 of the Act. In such circumstances, we need not consider further the argument of the learned Amicus Curiae that a direction for investigation by the Magistrate under Section 202 would not be tabooed as the result of the investigation by the Police Officer pursuant to a direction would not amount to a report under Section 173. This is for the reason that being offences exclusively triable by the Court of Sessions, as noticed earlier, there is a bar against the Magistrate directing investigation under Section 202 by the Police Officer or otherwise.

44. The learned Amicus Curiae submitted that the registering of an FIR under Section 154 of the CrPC in regard to reference under Chapter IV of the Act is a futile exercise. It is his submission that the filing of the First Information Statement (FIS) (We notice his complaint that even courts refer to the FIS as the complaint whereas a complaint is what is contemplated under Section 190 of the CrPC

which is filed before a court) constitutes information provided under Section 154 before a Station House Officer In-Charge of Police Station which activises the Officer and he investigates the matter with the object of filing a report under Section 173 which is also described as charge-sheet in a case where the Officer finds that an offence has been committed. It is named a final report where no basis is found for prosecution. On the strength of the same, he invites the court concerned to take cognizance. If under Section 32 of the Act, the Police Officer has no authority to file a report, he questions the actions of the Police Officer as one which is bound to die a natural death. He would submit that declaring certain offences under Section 36AC cognisable, is only to empower the arrest of the accused.

45. It may be noticed at this juncture, that the Act does contemplate arrest. Section 36AC clearly declares that certain offences are non-bailable. Section 36AC(b) proclaims that no person accused of the offences mentioned therein shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application of such release and where the Public Prosecutor opposes, the court is satisfied that there are reasonable ground for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. This limitation on the grant of bail is in addition to the limitations under the CrPC or and under any other law for the time being in force on grant of bail. The special powers, however, of the High Court regarding the grant of bail under Section 439 of the CrPC, is preserved as found therein.

46. The argument of Ms. Pinky Anand, learned Additional Solicitor General is that having regard to the fact that certain offences under Section 36AC have been declared cognizable, the powers of the police under the CrPC including the duty to register a FIR under Section 154 cannot be obviated. The only prohibition is against the Police Officer lodging the charge sheet. There can be no taboo on the Police Officer registering the FIR and even conducting the investigation. This brings up another issue, who is the person who can arrest a person accused of an offence in Chapter IV of the Act? Is it open to a Police Officer acting under the CrPC to arrest such person? Is the Inspector under the Act empowered to arrest a person accused of an offence under Chapter IV of the Act? Before we deal with this aspect, we may look at how this Court spoke in the past in the matter of taking cognizance among other aspects.

A LOOK AT HOW THIS COURT SPOKE IN THE PAST

47. In Jeewan Kumar Raut and another v. Central Bureau of Investigation3, the case arose under the Transplantation of Human Organs Act, 1994 (TOHO Act). Section 22 of this Act reads as follows:

> "22. Cognizance of offence.— (1) No court shall take cognizance of an offence under this Act except on a complaint made by—
>
> (a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or

> (b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the court. (2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. (3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the 3 (2009) 7 SCC 526 Appropriate Authority to make available copies of the relevant records in its possession to such person."

48. The appellants were Medical Practitioners. An FIR was registered against them under Section 420 of the IPC and Sections 18 and 19 of the TOHO Act at the Police Station. The investigation was transferred to the CBI, respondent in the case. The CBI registered another FIR which included Sections 18 and 19 of the TOHO Act. Appellant no.2 was arrested and produced before the Magistrate. Appellant no.1 surrendered. The respondent filed a complaint under Section 22 of TOHO Act pointing out that the period of 90 days from the detention expired on 07.05.2008, Appellant no.2 filed an application for grant of bail within the meaning of Section 167(2) of the CrPC. It was, while considering the same, this Court held, inter alia, as follows:

> "19. TOHO is a special Act. It deals with the subjects mentioned therein, viz. offences relating to removal of human organs, etc. Having regard to the importance of the subject only, enactment of the said regulatory statute was imperative.
>
> 20. TOHO provides for appointment of an appropriate authority to deal with the matters specified in sub-section (3) of Section 13 thereof. By reason of the aforementioned provision, an appropriate authority has specifically been authorised inter alia to investigate any complaint of the breach of any of the provisions of TOHO or any of the rules made thereunder and take appropriate action. The appropriate authority, subject to exceptions provided for in TOHO, thus, is only authorised to investigate cases of breach of any of the provisions thereof, whether penal or otherwise.
>
> 21. Ordinarily, any person can set the criminal law in motion. Parliament and the State Legislatures, however, keeping in view the sensitivity and/or importance of the subject, have carved out specific areas where violations of any of the provisions of a special statute like TOHO can be dealt with only by the authorities specified therein.

The FIR lodged before the officer in charge of Gurgaon Police Station was by way of information. It disclosed not only commission of an offence under TOHO but also under various provisions of the Penal Code. The officer in charge of the police station, however, was not authorised by the appropriate Government to deal with the matter in relation to TOHO; but, the respondent was. In that view of the matter, the investigation of the said complaint was handed over to it.

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23. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge of Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

xxx xxx xxx xxx

25. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted.

xxx xxx xxx xxx

28. To put it differently, upon completion of the investigation, an authorised officer could only file a complaint and not a police report, as a specific bar has been created by Parliament. In that view of the matter, the police report being not a complaint and vice versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO." (Emphasis supplied)

49. We may also notice the hope expressed by the Court for Parliamentary intervention expressing doubt about the absence of power to arrest with the Officer who is authorised to carry out the investigation:

> "37. In the present case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out investigation and file a charge-sheet is precluded from doing so only by reason of Section 22 of TOHO. It is doubtful as to whether in the event of authorisation of an officer of the Department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused and carry on investigation as if he is a police officer.
>
> We hope that Parliament would take appropriate measures to suitably amend the law in the near future."

50. In Jamiruddin Ansari v. Central Bureau of Investigation and another 4 , the case arose under the Maharashtra Control of Organized Crime Act, 1999 (MCOCA). A private complaint was filed against certain accused persons by a person. The Special Judge ordered the 4 (2009) 6 SCC 316 Commissioner of Police to investigate into the complaint under Section 156(3) of the CrPC. The State took the stand in a Writ Petition challenging the said order that in view of Sections 23(2) of the MCOCA sans previous sanction as contemplated therein, the Court could not take cognizance. It is necessary to advert to Sections 9 and 23 of the said Act. Sections (9) inter alia and 23 of MCOCA reads as follows:

> "9. Procedure and powers of Special Court.—(1) A Special Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.
>
> (2)-(3)***
>
> xxx xxx xxx xxx
>
> "23. Cognizance of, and investigation into, an offence.—(1) Notwithstanding anything contained in the Code,—
>
> (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
>
> (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
>
> (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

51. The Full Bench which was constituted to hear the matter, by a majority, took the view that a private complaint under Section 9, was not trammelled by the requirement under Section 23. This Court held, inter alia, as follows:

> "67. We are also inclined to hold that in view of the provisions of Section 25 of MCOCA, the provisions of the said Act would have an overriding effect over the provisions of the Criminal Procedure Code and the learned Special Judge would not, therefore, be entitled to invoke the provisions of Section 156(3) CrPC for ordering a special inquiry on a private complaint and taking cognizance thereupon, without traversing the route indicated in Section 23 of MCOCA. In other words, even on a private complaint about the commission of an offence of organised crime under MCOCA cognizance cannot be taken by the Special Judge without due compliance with sub-section (1) of Section 23, which starts with a non obstante clause.

> 68. As indicated hereinabove, the provisions of Section 23 are the safeguards provided against the invocation of the provisions of the Act which are extremely stringent and far removed from the provisions of the general criminal law. If, as submitted on behalf of some of the respondents, it is accepted that a private complaint under Section 9(1) is not subject to the rigours of Section 23, then the very purpose of introducing such safeguards lose their very raison d'être. At the same time, since the filing of a private complaint is also contemplated under Section 9(1) of MCOCA, for it to be entertained it has also to be subject to the rigours of Section 23.

Accordingly, in view of the bar imposed under sub-section (2) of Section 23 of the Act, the learned Special Judge is precluded from taking cognizance on a private complaint upon a separate inquiry under Section 156(3) CrPC. The bar of Section 23(2) continues to remain in respect of complaints, either of a private nature or on a police report."

52. Thereafter, the Court proceeded to harmonise the provisions by holding as follows:

> "69. In order to give a harmonious construction to the provisions of Section 9(1) and Section 23 of MCOCA, upon receipt of such private complaint the learned Special Judge has to forward the same to the officer indicated in clause (a) of sub-section (1) of Section 23 to have an inquiry conducted into the complaint by a police officer indicated in clause (b) of sub-section (1) and only thereafter take cognizance of the offence complained of, if sanction is accorded to the Special Court to take cognizance of such offence under sub-section (2) of Section 23."

53. It is pertinent to notice that in the said enactment, under Section 23, there was a taboo against recording of any information under the Act without the prior approval of the Police Officer not below the rank of the Deputy Inspector General of Police. This must be understood as supplanting the provisions of Section 154 of the CrPC to the extent that the modification was spelt out. Not only could the information not be so recorded without the prior approval, investigation also cannot be carried out except by a Police Officer of the rank of Deputy Superintendent of Police and above. This is apart from the prohibition against taking cognizance of an offence under the said Act without the previous sanction of the Police Officer not below the rank of Additional Director General of Police.

54. The decision of this Court in H.N. Rishbud and Inder Singh v. State of Delhi, ETC.5 dealt with a case under the Prevention of Corruption Act, 1947. Investigation in the said case was undertaken by an Officer without authorisation by the Magistrate under Section 5(4) of the Prevention of Corruption Act, 1947. Cognizance was taken and the trial went on. The accused thereupon pointed out the flaw in the investigation. It is in the said circumstances, this Court proceeded to deal with what is investigation, inter alia:

> "8. ... Thus, under the Code investigation consists generally of the following steps:
>
> 5 AIR 1955 SC 196 (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4)

> Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section
>
> 173. ..."

55. No doubt, the Court went on to take the view that the invalidity of the investigation, if brought to the knowledge of the Court at a sufficiently early stage, remedial steps may be taken to get the illegality cured. However, it was found that if cognizance is taken on a Police Report vitiated by the breach of a mandatory provision relating to investigation, the result of the trial cannot be affected unless it has resulted in a miscarriage of justice. It is pertinent to note that the Court made the following observations as well:

> "9. ... Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises." (Emphasis supplied)

56. In Institute of Chartered Accountants of India v. Vimal Kumar Surana and another 6 , the matter arose under the Chartered Accounts Act, 1949. The respondent, who had passed the examination of Chartered Accountant but was not a member of the appellant-Institute, was sought to be prosecuted on the basis that he had represented before the Tax Authorities on the basis of the Power of Attorney or as Legal Representative and was submitting documents by preparing forged seals. The Authorised Representative of the appellant-Institute submitted a complaint to the Police Officer. After investigation, the Police filed a challan of offences under the IPC and Sections 24 and 26 of the Chartered Accountants Act. The same was successfully questioned by the respondent on the basis that it fell foul of the mandate of Section 28 of the Chartered Accounts Act.

57. Section 28 of the Chartered Accountants Act, 1949 reads as follows:

> "28. Sanction to prosecute No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government."

58. This Court went on to notice the line of decisions rendered by this Court which permitted prosecution of distinct offences by way of dealing with the argument based on prohibition against prosecution and punishment for the same offence flowing from Article 20(2) of the Constitution of India. We notice paragraphs 20,21 and 41 of Vimal Kumar Surana and another (supra):

6 (2011) 1 SCC 534 "20. In other words, if the particular act of a member of the Institute or a non-member or a company results in contravention of the provisions contained in Section 24 or sub-section (1) of Sections 24-A, 25 or 26 and such act also amounts to criminal misconduct which is defined as an offence under IPC, then a complaint can be filed by or under the order of the Council or of the Central Government under Section 28, which may ultimately result in imposition of the punishment prescribed under Section 24 or sub-section (2) of Sections 24-A, 25 or 26 and such member or non-member or company can also be prosecuted for any identified offence under IPC.

21. The object underlying the prohibition contained in Section 28 is to protect the persons engaged in profession of Chartered Accountants against false and untenable complaints from dissatisfied litigants and others. However, there is nothing in the language of the provisions contained in Chapter VII from which it can be inferred that Parliament wanted to confer immunity upon the members and non-members from prosecution and punishment if the action of such member or non-member amounts to an offence under IPC or any other law.

xxx xxx xxx xxx

41. It is also apposite to mention that except the provision contained in Section 28 against the prosecution of a person, who is alleged to have acted in contravention of sub-section (1) of Sections 24, 24-A, 25 or 26 otherwise then on a complaint made by or under the order of the Council or the Central Government, the Act does not specify the procedure to be followed for punishing such person. In the absence of any such provision, the procedure prescribed in CrPC has to be followed for inquiry, investigation and trial of the complaint which may be filed for contravention of any of the provisions contained in Chapter VII of the Act—Section 4 CrPC."

59. In State (NCT of Delhi) v. Sanjay, ETC., ETC. 7 , the matter arose under the Mines and Minerals Development and Regulation Act, 1957 (MMDR Act) as also under Sections 378 and 379 of the IPC and the question which arose for decision was whether the provisions of Sections 21 and 22, apart from other provisions of the MMDR Act, operated as a bar to prosecution for offences under Section 379/114 and other provisions of the IPC. Section 21 of the said Act prescribes 7 (2014) 9 SCC 772 various penalties. Section 22 deals with cognizance of offences and it reads as follows:

"22.Cognizance of offences.—No court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

60. The Court was dealing with appeals from judgments of High Courts of Delhi and Gujarat. The registration of the cases was challenged on the basis of Section 22 of the MMDR Act. Paragraphs 8, 9, 10 and 11 reveals the questions which arose and how it

came to be dealt with by the High Court:

> "8. Criminal Appeal No. 499 of 2011, as stated above, arose out of the order [Sanjay v. State, (2009) 109 DRJ 594] passed by the Delhi High Court. The Delhi High Court formulated three issues for consideration:
>
> (1) Whether the police could have registered an FIR in the case;
>
> (2) Whether a cognizance can be taken by the Magistrate concerned on the basis of police report; and (3) Whether a case of theft was made out for permitting registration of an FIR under Sections 379/411 of the Penal Code.

9. The Delhi High Court after referring various provisions on the MMDR Act vis-à-vis the Code of Criminal Procedure disposed of the application directing the respondent to amend the FIR, which was registered, by converting the offence mentioned therein under Sections 379/411/120-B/34 IPC to Section 21 of the MMDR Act. The High Court in para 18 of the impugned order held as under:

> "18. In view of the aforesaid and taking into consideration the provisions contained under Section 21(6) of the said Act I hold that:
>
> (i) The offence under the said Act being cognizable offence, the police could have registered an FIR in this case;
>
> (ii) However, so far as taking cognizance of an offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorised officer, which may be filed along with the police report;
>
> (iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of the said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorised officer."

10. On the other hand the Gujarat High Court formulated the following questions for consideration:

> (1) Whether Section 22 of the Act would debar even lodging an FIR before the police with respect to the offences punishable under the said Act and the Rules made thereunder?
>
> (2) In case such FIRs are not debarred and the police are permitted to investigate, can the Magistrate concerned take cognizance of the offences on a police report?
>
> (3) What would be the effect on the offences punishable under the Penal Code in view of the provisions contained in the Act?

11. The Gujarat High Court came to the following conclusion:

> (i) The offence under the said Act being cognizable offence, the police could have registered an FIR in this case;
>
> (ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorised officer, which may be filed along with the police report;
>
> (iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorised officer."
>
> 61. The Gujarat High Court also held that Section 22 did not prohibit registering an FIR by the Police in regard to offence under the MMDR Act and the Rules thereunder.

However, it was not open to the Magistrate to take cognizance. This Court, after referring to the decisions in Sanjay, ETC., ETC. (supra), held as follows:

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled.

Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly." (Emphasis supplied)

62. Chapter XII of the CrPC carries the chapter heading "Information to the Police and their Powers to Investigate". The Chapter starts off with Section 154 carrying Section heading "Information in cognizable cases". It declares that every information relating to a cognizable offence given to an officer in charge of the police station, if given orally, is to be reduced to writing and whether given in writing or reduced to writing it is to be signed by the informant. The key elements of Section 154 CrPC can be noticed. Information in relation to a cognizable offence reaching the officer in charge of a police station which is ordinarily understood as first information statement concerning cognizable offences sets the ball rolling so far as the police officer, in charge of a police station is concerned. The next provision to notice in the Chapter is Section 156. It provides that any officer in charge of a

police station may without the order from a Magistrate investigate any cognizable offence within which a court, having jurisdiction over a local area within the limits of such station, would have the power to enquire into or try under the provisions of Chapter XIII. In fact, Section 177 of the CrPC, which is the first Section in Chapter XIII dealing with jurisdiction of Criminal Courts Inquiries and Trial, proclaims that every offence shall ordinarily be enquired into and tried by a court within whose jurisdiction, the offence was committed. Thus, ordinarily, it is the Police Officer, within whose jurisdiction the cognizable offence is committed, would have the jurisdiction to investigate that offence. Section 178 onwards provide for the exceptions to Section 177 and we need not probe this matter further. Sub-section (2) declares the proceedings of police officer in a case of cognizable offence shall not in any stage be called in question on the ground that the case was one which he was not empowered to investigate under the provision. Lastly, sub-section (3) provides that any Magistrate who is empowered under Section 190 may order such an investigation which the officer is to undertake under sub-section (1). It is next relevant to notice Section 157 CrPC:

> "157. Procedure for investigation preliminary inquiry.(1) If, from

information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses

(a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

63. It comes under the section heading 'Procedure for investigation'. The body of the Section can be split-up into the following parts - (i) An officer in charge of a police station may from information received have reason to suspect the commission of an offence. He may also have reason to suspect the commission of cognizable offence not on the basis of any information but otherwise. (ii) As far as information is concerned, it is clearly relatable to the information which has been provided to him

within the meaning of Section 154. Cases where he acts on his own knowledge would be covered by the expression otherwise.

(iii) The offences must be an offence which he is empowered under Section 156 to investigate. We have noticed that a police officer is empowered to investigate a cognizable offence without an order of the Magistrate. As far as non-cognizable offence is concerned, he cannot investigate such offence without the order of the Magistrate having power to try or commit the case for trial. (iv) However, a police officer who undertakes to investigate the matter is obliged to forthwith send a report of the same to the Magistrate empowered to take cognizance of an offence upon a police report. It is at once relevant to notice in the facts of this case that this indispensable element is not present. This is for the reason that under Section 32 of the Act, a Magistrate is not competent to take cognizance of the offences under Chapter IV of the Act upon a police report. At this juncture, we may notice Section 158 CrPC. It speaks about the manner of sending the report to the Magistrate under Section 157. It is a matter governed by a general or special order issued by the State Government. Quite clearly even Section 158 cannot apply in the case of a cognizable offence falling under Chapter IV of the Act for the reasons which we have adverted to. Section 159 enables the Magistrate on receiving such report to direct investigation or if he thinks fit at once to proceed or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry or otherwise to dispose of the case in the manner provided in the Code. It is clear that the purpose of Section 157 is to hold the police officer accountable to keep informed the Magistrate. It acts as an assurance that the reports are not tampered, and that the rights of the accused are sought to be secured. The purport of Section 159 is also to enable the Magistrate to exercise control over the investigation. All these aspects are irrelevant and out of bounds both for the police officer and the Magistrate in respect of an offence falling under chapter IV of the Act.

64. Section 160 refers to investigation under the Chapter, viz., Chapter XII. Section 161 speaks about the examination of witnesses and how the statements are to be reduced to writing. Again, Section 161 speaks about an investigation carried out under Chapter XII. The use to which statements under Section 161 can be put and the limitation on the same are spelt out in Section 162 CrPC. Reverting back to Section 157, we have taken note of the requirement about the police officer reporting to the Magistrate about the reason to suspect entertained by the police officer about the commission of a cognizable offence on which the Magistrate is to take cognizance on a report. Be it remembered that the Magistrate can take cognizance under Section 190 of the CrPC on a complaint, a police report or information received from any person other than a police officer or otherwise. Section 157 appears to contemplate information received under Section 154 or knowledge gained otherwise about the commission of a cognizance offence clothing the police officer with the power to investigate leading to the sending of the report to the Magistrate being confined to cases where officer intends to send the police report which has been defined as the report under Section 173 of the CrPC. In regard to taking cognizance under Section 32 of the Act, it is unambiguously clear that there is no place for a police report within the meaning of Section 173 of the CrPC in regard to offences falling under Chapter IV of the Act. Section 157 contemplates that the Officer proceeding either by himself or through his subordinate Officer to investigate the facts and circumstances, and if necessary, to take measures for the discovery and the arrest of the offender. But on reading the provisions, we gather the unmistakable impression that the law giver has empowered the police officer to investigate in

the case of a cognizable offence without any order of the Magistrate where he ultimately in an appropriate case wishes the Court to take cognizance based on the material he gathers and transmits a police report. If this impression of ours is not flawed, an inevitable corollary would be that in the case of offence under Chapter IV of the Act though it be cognizable, a police officer would not have the power to investigate the matter. Section 169 speaks about the duty to release a person in custody if it is found on investigation that there is no sufficient evidence or reasonable ground of suspicion to justify forwarding such person to the Magistrate. Section 170 deals with cases where an officer conducting investigation finds sufficient evidence or reasonable ground and the accused is forwarded to the Magistrate empowered to take cognizance of the offence upon a report. Again, the cardinal requirement for the officer to invoke Section 170 is availability of power with the Magistrate to take cognizance upon a police report. This key requirement is absent in the case of an offence falling under Chapter IV of the Act. The link therefore snaps. Section 173 speaks about the report on completion of the investigation for the police officer. Section 173 (5) is to be read with Section 170, that is to say, in a case where there is sufficient material for prosecuting the concerned person, the documents and the statements of witnesses are to be forwarded to the Magistrate as provided therein. We have already noted Section 190 of the CrPC. Sections 154, 156, 157, 158, 159, 160, 161, 170 and 173 are part of a scheme of provisions geared to empower and require investigation of cognisable offences which are to culminate in a police report within the meaning of Section 190(b) of the CrPC. However, what is applicable in respect of offences under Chapter IV of the Act is not 190 of the CrPC but Section 32 of the Act which does not permit cognizance being taken on a police report. The entire exercise of a police officer proceeding on a basis of a FIR becomes futile. It is not contemplated in law. It therefore becomes unauthorised.

IMPACT OF LALITA KUMARI V. GOVERNMENT OF UTTAR PRADESH AND OTHERS8

65. In the said case, a Constitution Bench of this Court has held that registration of an FIR is mandatory under Section 154 of the CrPC, if the information discloses commission of a cognizable offence and no preliminary 8 (2014) 2 SCC 1 inquiry is permissible in such a situation. It was further held that a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not, if the information received does not disclose a cognizable offence but indicates the need for such an inquiry. The Court has also indicated certain cases where a preliminary inquiry may be conducted, depending on the facts and circumstances of each case. They include matrimonial disputes, commercial offences and cases where there is abnormal delay/latches. This Court also held that the aforesaid were not exhaustive of all conditions which may warrant a preliminary inquiry.

66. We would think that this Court was not, in the said case, considering a case under the Act or cases similar to those under the Act, and we would think that having regard to the discussion which we have made and on a conspectus of the provisions of the CrPC and Section 32 of the Act, the principle laid down in Lalita Kumari (supra) is not attracted when an information is made before a Police Officer making out the commission of an offence under Chapter IV of the Act mandating a registration of a FIR under Section 154 of the CrPC.

DUTY OF POLICE OFFICER UNDER SECTION 154 OF THE CRPC IRRESPECTIVE OF IMPACT OF TERRITORIAL JURISDICTION

67. In State of A.P. v. Punati Ramulu and others 9 , the Police Constable had refused to record the complaint on the ground that the said Police Station had no territorial jurisdiction over the place of crime. It was held as follows:

> "4. ... It was certainly a dereliction of duty on the part of the constable because any lack of territorial jurisdiction, could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed." (Emphasis supplied) 9 AIR 1993 SC 2644

68. In Satvinder Kaur v. State (Govt. of NCT of Delhi) and another10, this Court held, inter alia, as follows:

"10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having 10 AIR 1999 SC 3596 jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it." (Emphasis supplied)

69. This was a case where the FIR had been quashed by the High Court under Section 482 CrPC on the ground that the Police Officer at Delhi was not having territorial jurisdiction. It was a case under Section 498A of the IPC. This Court set aside the judgment of the High Court quashing the FIR, also taking note of Section 156(2) of the IPC.

70. There is practice of registering an FIR as a Zero FIR, when the Police Station at which FIR is registered, does not have territorial jurisdiction, and then, it is made over to the Police Station which has jurisdiction in the matter. Could it, therefore, be said that when information is given to a Police Officer, within the meaning of Section 154 of the CrPC, in relation to the commission of a cognizable offence under Chapter IV of the Act, the Police Officer must register a FIR and then make it over to the Inspector.

71. It is to be noted that the duty to register FIR, when information is received about a cognizable offence falling under Chapter IV of the Act, it is clear from the very inception that a Police Officer has no jurisdiction to investigate the offence. It is not a case of absence of territorial jurisdiction. No doubt, if it is a case of another Police Officer being empowered to investigate the offence in terms of powers under CrPC, the law is, as laid down, that there is the obligation to register an FIR and then make it over to the Police Station which has jurisdiction. In fact, a conflict, when in the context of Sections 178 to 185 of the CrPC, which constitute exceptions to the general principle laid down in Section 177 of the CrPC, the High Court is to decide the dispute, as is provided in Section 186 of the CrPC. If an information is relatable only to cognizable offences under Chapter IV of the Act, we would think that the Police Officer would be out of bounds and he has no role to play in the investigation as neither he nor any other Police Officer has any role to play in the investigation. His duty lies in referring the complainant to the concerned Drugs Inspector. If he is in receipt of information about an offence under Chapter IV of the Act, he must promptly notify the concerned Drugs Inspector. POWER TO ARREST UNDER THE ACT

72. One of the reliefs which is sought by the first respondent-writ petitioner was a direction not to arrest him. The Act does not expressly confer upon the Inspector the power to arrest. This brings up the issue, therefore, of the person empowered to arrest.

73. Perusal of Section 36AC of the Act makes it clear that arrest is contemplated under the Act. Conditions have been imposed for grant of bail as enacted in Section 36AC which we have already referred. If the Inspector under the Act has no authority to carry out the arrest, there cannot be a situation where arrest is in the contemplation of the law giver and yet there is no person who can effectuate that arrest.

74. The further question which would therefore arise is, the impact of finding that arrest can be effected by a police officer in respect of a cognizable offence under Chapter IV of the Act on the need to register an FIR under Section

154. We have already noticed that under Section 157 of the Act making a report to the Magistrate who can take cognizance of a police report renders the provision as such inapplicable under Chapter IV of the Act.

75. The question would arise if investigation is not permissible for a police officer under Section 157 and that he cannot give a report under the said provision, can he be empowered to carry out the arrest? Is the scheme of arrest under Section 41 of the Act interlinked with the power of arrest under Section 157? We heard the learned Counsel for the petitioner and the learned Amicus Curiae on this point and have considered their Written Submissions as well.

PROVISIONS AS TO ARREST IN THE CONSTITUTION OF INDIA – ARTICLE 22(1) AND ARTICLE 22(2).

76. Article 22(1) and Article 22(2) of the Constitution of India, reads as follows:

> "22. Protection against arrest and detention in certain cases (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

77. At this juncture, it is necessary to notice the judgment of this Court in D.K. Basu v. State of West Bengal 11 . In the said case, this Court issued various 11 (1997) 1 SCC 416 directions in regard to safeguards to be observed in the matter of effecting arrest. They are found in paragraph-35 and read as follows:

> "35. We, therefore, consider it appropriate to issue the

following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

> (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
>
> (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
>
> (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
>
> (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
>
> (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

78. We may observe what this Court laid down in paragraphs-36 and 37:

"36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier."

79. When this Court laid down in paragraph-37 that the requirements laid down by this Court would apply with equal force to other governmental agencies, to which reference was made earlier, the Court had in mind the following statements in paragraph-30 of the Judgment:

"30. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. ....." No doubt, these are all cases where express power of arrest was conferred on those Authorities under the concerned law.

80. We may notice that a Bench of this Court in Arnesh Kumar v. State of Bihar and another12 again considered the aspect relating to the balance that is to be struck between individual liberty and societal order, while exercising power of arrest. Though the matter arose under Section 498A of the Indian Penal Code, 1860, which deals with matrimonial cruelty read with the Dowry Prohibition Act, 1961, the Court issued directions as contained in from paragraph-11.1 to 11.8. It also held as follows:

12 (2014) 8 SCC 273 "12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

81. Still later, we may notice that a Bench of this Court frowned upon arrest which was unwarranted in the decision reported in Rini Johar v. State of M.P.13 and the Court also granted compensation, having regard to the manner in which the petitioner was treated in the said case. After referring to Arnesh Kumar (supra), this Court in Rini Johar (supra), inter alia, held as follows:

"22. We have referred to the enquiry report and the legal position prevalent in the field. On a studied scrutiny of the report, it is quite vivid that the arrest of the petitioners was not made by following the procedure of arrest. Section 41-A CrPC as has been interpreted by this Court has not been followed. The report clearly shows that there have been number of violations in the arrest, and seizure. Circumstances in no case justify 13 (2016) 11 SCC 703 the manner in which the petitioners were treated." No doubt, the Court, in Arnesh Gupta (supra), was dealing with the case which dealt with a situation where the offences were punishable with imprisonment upto seven years, and as mandated in Section 41 of the CrPC., reasons had to exist for effecting an arrest as provided therein.

THE POWER OF ARREST UNDER THE CRPC

82. Chapter V of the CrPC deals with the arrest of persons. Section 41 of the CrPC, vide the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009, Section 5) (w.e.f. 01-11-2010), deals with the power of the Police Officer to arrest without warrant. It reads as follows after substitution:

> "41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
>
> (a) who commits, in the presence of a police officer, a cognizable offence;
>
> (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-
>
> (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
>
> (ii) the police office is satisfied that such arrest is necessary-
>
> (a) to prevent such person from committing any further offence; or
>
> (b) for proper investigation of the offence; or
>
> (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
>
> (d) to prevent such person from making any inducement, threat or promise to any person 14Substituted by Act 5 of 2009, sec.5(i), for clauses (a) and (b) (w.e.f. 1-11-2010).

acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

> [Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.] (ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be 15 Ins. By Act 41 of 2010, sec.2 (w.e.f. 2-11-2010).

stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-

section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

[(2) Subject to the provisions of Section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]."

83. Section 41A of the CrPC, inserted w.e.f. 01.11.2010, provides for issuance of Notice by the Police Officer in all the cases covered by Sub-Section (1) of Section 41 of the CrPC, where the arrest of a person is not required, to appear before him. As long as a person complies with the Notice, Section 41A(iii) prohibits arrest unless the Police Officer, for reasons to be recorded, is of the view that he is to be arrested. Section 41B of the CrPC, again inserted w.e.f. 01.11.2010, casts a duty on a Police Officer, making an arrest, to bear an accurate, visible and clear 16Subs. By Act 5 of 2009, sec. 5(ii), for sub-Section (2) (w.e.f. 1-11-2010).

identification of his name. He is to prepare a Memorandum of Arrest, which is, inter alia, to be countersigned by the person arrested. Section 41D of the CrPC confers a right on the arrested person

to meet an Advocate of his choice during the interrogation, though not throughout interrogation. Under Section 42 of the CrPC, if a person commits a non-cognizable offence in the presence of a Police Officer or he is accused of committing a non-cognizable offence, and the Police Officer, on demanding his name and residence, is met with a refusal or the giving of a name or residence, which the Officer believes to be false, arrest can be made but for the purpose of ascertaining the name and residence. In fact, he is to be released immediately on executing a bond when the true name and residence is ascertained. If there is failure to ascertain the address within twenty-four hours, inter alia, of arrest, no doubt, it is forthwith forwarded to the nearest Magistrate having jurisdiction. The Act contemplates arrest by a private person. The power and the procedure, is detailed in Section 43 of the CrPC, it reads as follows:

> "43. Arrest by private person and procedure on such arrest.
>
> (1) Any private person may arrest or cause to be arrested any person who in his presence commits a non- bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.
>
> (2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re- arrest him. (3) If there is reason to believe that he has committed a non- cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released."

84. Section 46 of the CrPC provides for the manner of arrest. Section 47 enables the Police Officer to search the place entered by a person sought to be arrested. Section 48 of the CrPC reads as follows:

> "48. Pursuit of offenders into other jurisdictions. A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India."

85. The person arrested is not to be subjected to more restraint than is necessary to prevent his escape, declares Section 49 of the CrPC. Every Police Officer or other person, arresting a person without a warrant, is bound forthwith to communicate to him all particulars of the offence for which he is arrested or other grounds for such arrest. This is provided for in Section 50 of the CrPC. A Police Officer, when he arrests a person without warrant and he is not accused of committing a non-bailable offence, is duty-bound to inform him of his entitlement to be released on Bail. The Police Officer is also under an obligation to inform, under Section 50A of the CrPC, a nominated person about the factum of arrest. This came into force on 23.06.2006.

Section 51 deals with search of the arrested person.

86. Section 54 of the CrPC declares that when any person is arrested, he shall be examined by a Medical Officer.

Section 54A of the CrPC, inserted w.e.f. 23.06.2006, specifically provides for identification of the arrested person. Section 55A of the CrPC, inserted w.e.f. 31.12.2009, makes it the duty of the person, having the custody of the person, to take reasonable care of the health and safety. Section 56 of the CrPC makes it the duty of the Police Officer, arresting without warrant, to produce the person arrested before a Magistrate having jurisdiction without unnecessary delay or before the Officer In-charge of a Police Station. This is, no doubt, subject to the provisions as to Bail. Section 57 of the CrPC, reads as follows:

"57. Person arrested not to be detained more than twenty- four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court."

87. The Officer In-charge of Police Station is to report about all persons arrested without warrant to the District Magistrate or the Sub-Divisional Magistrate as directed by the District Magistrate. Section 59 of the CrPC provides that no person, who has been arrested by a Police Officer, shall be discharged, except on his own bond or on Bail or under the Special Order of the Magistrate. Section 60A of the CrPC provides that no arrest is to be made, except in accordance with the provisions of the CrPC or any other law being in force, providing for arrest. Chapter XI of the CrPC provides for preventive action of the Police. Section 151 of the CrPC, inter alia, empowers a Police Officer, knowing of a design by a person to commit a cognizable offence, to arrest him without orders from a Magistrate and without a warrant. Section 157 of the CrPC provides, inter alia, that the Police Officer, proceeding to investigate a case, may take measures for the arrest of the offender. Section 167 of the CrPC deals with a case where investigation is not completed within twenty-four hours, as fixed in Section 57 of the CrPC. It provides that in such a situation, if there are grounds for believing that the accusation or information is well founded, the person arrested, is to be forwarded to the Magistrate, inter alia. Section 167 empowers Magistrate to order remand of the accused person, as provided therein.

A FEW WORDS ABOUT THE PROVISIONS AS TO BAIL

88. Chapter XXXIII of the CrPC deals with Bail. Section 436 of the CrPC deals with Bail in the case of an arrest of a person accused of a bailable offence. There is a Statutory Right to Bail in the manner provided therein. Section 437 of the CrPC provides for Bail in the case of a non-bailable offence. It, essentially, deals with a situation where a person is brought before a court other than the

High Court or Court of Sessions. There are certain restrictions and conditions to be fulfilled in the matter of grant of Bail on the Court, as is stated therein.

89. Section 439 of the CrPC, confers special powers on the High Court or the Court of Sessions in regard to Bail. It reads as follows:

> "439. Special powers of High Court or Court of Session regarding bail.
>
> (1) A High Court or Court of Session may direct-
>
> (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;
>
> (b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice. (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

90. Section 36AC of the Act, around which much arguments were addressed reads as follows:

> "36AC. Offences to be cognizable and non-bailable in certain cases. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
>
> (a) every offence, relating to adulterated or spurious drug and punishable under clauses
>
> (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.
>
> (b) no person accused, of an offence punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond

unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 36AB."

91. The learned Counsel for the Union of India would submit that the Inspector, under Section 32 of the Act, cannot be treated as a Police Officer who has the power to arrest under the CrPC. Reliance is placed on Badaku Joti Savant v. State of Mysore 17 . Similarly, support is drawn from Raj Kumar Karwal v. Union of India and others 18 . Reliance is also placed on Ramesh Chandra Mehta v. State of W.B.19, Illias v. Collector of Customs, Madras20, State of U.P. v. Durga Prasad and Balkishan A. Devidayal v. State of Maharashtra22. These decisions, apparently, are relied on to show that Officers of Department, including the Directorate of Revenue Intelligence (DRI), invested with powers of investigation under the Narcotic Drugs and Psychotropic Substances Act, 1985, Customs Act, 1962 and under the Railway Property (Unlawful Possession) Act, 1966, are not Police Officers. It is, therefore, the case of the petitioner that important indispensable attribute of a Police Officer is not only authority to investigate but to also have power to file a Report under Section 173 of the CrPC.

17 (1966) 3 SCR 698 18(1990) 2 SCC 409 19(1969) 2 SCR 461 20(1969) 2 SCR 613 21(1975) 3 SCC 210 22(1980) 4 SCC 600

92. It is further contended that unlike the Prevention of Money-Laundering Act, 2002, which specially provides that "no Police Officer can investigate into an offence under the Act", the Act in question is silent. The special provision must prevail in case of conflict with the general provision. In view of absence of specific powers on the Inspector under the Act, provisions of CrPC will prevail. A literal interpretation, according to the plain meaning of the language, is commended for our acceptance. The provisions of Section 36AC of the Act are emphasized before us treating offences

thereunder as being cognizable and non-bailable. It is submitted that there is power to arrest with the Police. The judgment in Deepak Mahajan (supra) is sought to be distinguished. The implication of Section 36AC of the Act is that the offences set-out therein can be investigated by the Police. Therefore, Section 36AC will apply notwithstanding Section 32 of the Act. Otherwise, the intention of the Legislature, in making the offence cognizable and, at the same time, to denude the Police of the power to prosecute, would be a contradiction. It is pointed out that before Section 36AC of the Act, the offences relating to adulterated and spurious drugs under the Act, were non-cognizable offences. It is also contended that Section 36AC of the Act now makes an exception by empowering the Police to investigate and consequently prosecute for the offences specifically set-out in Section 36AC. It is pointed out that the offences set-out in Section 36AC, other than the offences relating to adulterated drugs and spurious drugs, could not have been considered cognizable in terms of Schedule I Part 2 of the CrPC. Except Section 27A and 27C and Section 30(1) of the Act, all other provisions mentioned in Section 36AC of the Act, were non-cognizable offences as per Schedule I Part 2 of the CrPC. But having regard to the amended Section 36AC of the Act, it is the special provisions in Section 36AC, which will prevail.

THE SUBMISSIONS OF THE LEARNED AMICUS IN REGARD TO ARREST.

93. When the Court pointed out that there is no express power on the Drugs Inspector under the Act to arrest and when an arrest is effected, whether it becomes necessary to register an FIR under Section 154 of the CrPC. The learned Amicus Curiae submitted as follows:

> He agreed that for a person to be released on Bail, he should have been remanded to custody. He should further have been arrested under Section 157 of the CrPC in order that he be remanded under Section 167 of the CrPC. If he is arrested under Section 41(1) of the CrPC, immediately thereafter, a case should be registered and he should be sent to the Court seeking remand. Any case registered under Section 154 or 155 of the CrPC, is to culminate in the Report under Section 173(2) of the CrPC. There is no other way for giving disposal to the case.
>
> Filing of such a Final Report under Section 190 of the CrPC is to take cognizance, and since Section 32 of the Act would bar such cognizance, no purpose would be served in registering the case. The Legislative intent, under Section 32 of the Act, cannot be diluted. The Police Officer, therefore, cannot arrest under Section 157 of the CrPC. While introducing Section 36AC, the Legislature was presumed to know the bar in Section 32. There is an inconsistency between Section 32 and Section 36AC, though they were amended/introduced by the same amendment. It becomes the duty of the Court to avoid a head-on clash between the two Sections. It is contended that the Court must effect reconciliation. Reliance is placed on judgment of this Court in D. Sanjeevayya v. Election Tribunal, Andhra Pradesh and others23.

94. Learned Amicus Curiae further submits that Section 21 of the Act speaks of the “Appointment of the Inspectors”. The qualifications of Inspectors are provided in Rule 49 23 AIR 1967 SC 1211 of the Drugs and Cosmetics Rules. They are Experts in the subjects so far as the powers are provided in

Sections 22 and 23 of the Act. The provisions in Section 23 are mandatory. The Act provides for getting a Report on the sample and the accused is also enabled to seek a Second Report from the Central Laboratory. The Police Officer may not have the qualifications. He may not know how to draw the sample. The procedure can be meaningfully followed only by the Inspectors. Legislature did not intend to give similar powers to the Police. It is further contended that if it is held that the Police can file a Final Report, upon which cognizance can be taken, it will make Section 32 of the Act non-existent. Similarly, in an attempt to interpret Section 36AC, if the Police is conferred with the power to arrest, it will lead to authorizing the Police to also register the case under Section 154 of the CrPC and to file a Final Report under Section 173(2) of the CrPC. It is difficult to harmonise Section 32 and Section 36AC of the Act, it is pointed out. The learned Amicus Curiae draws our attention to the following observations of this Court in Sultana Begum v. Prem Chand Jain24:

> "11. The statute has to be read as a whole to find out the real intention of the legislature.
>
> 12. In Canada Sugar Refining Co. v. R. [1898 AC 735 : 67 LJPC 126] , Lord Davy observed:
>
> "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."
>
> 13. This Court has adopted the same rule in M. Pentiah v. Muddala Veeramallappa [AIR 1961 SC 1107 : (1961) 2 SCR 295] ; Gammon India Ltd. v. Union of India [(1974) 1 SCC 596 : 1974 SCC (L&S) 252 : AIR 1974 SC 960] ; Mysore SRTC v. Mirja Khasim Ali Beg [(1977) 2 SCC 457 : 1974 SCC (L&S) 282 :
>
> AIR 1977 SC 747] ; V. Tulasamma v. Sesha Reddy [(1977) 3 SCC 99 : AIR 1977 SC 1944] ; Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : AIR 1978 SC 995] ; CIT v. National Taj Traders [(1980) 1 SCC 370 : 1980 SCC (Tax) 124 : AIR 1980 SC 485] ; Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR

24 (1997) 1 SCC 373 1962 SC 1044 : 1962 Supp (3) SCR 1] and J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170 : (1961) 1 LLJ 540] xxx xxx xxx xxx

15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

> (1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them. (2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

95. Police cannot arrest as there can be no investigation by the Police. Section 36AC of the Act stipulates stringent conditions for granting Bail. It can be made applicable when the accused is remanded to the custody by the Magistrate while committing the case to the Sessions Court.

96. As regards Section 41 of the CrPC, the learned Amicus Curiae would point out that empowering the Police to arrest in respect of cognizable offence, under the said provisions, being a general provision, may not be countenanced as the general provisions are overridden by the provisions of the Act. Again, arrest under Section 41 of the CrPC must be followed by the registration of the case under Section 154 of the CrPC, which is not possible in view of Section 32 of the Act. The learned Amicus Curiae also voices the apprehension that if power to arrest is conferred on the Police Officer, under Section 41, then, in every special enactment, such as the Food Adulteration Act, Income-Tax Act, Food Safety and Standards Act, Customs Act, etc., the Police will arrest under Section 41 of the CrPC, register a case and file a Final Report. The special provisions of those Acts, restricting cognizance only on the basis of a complaint, would be rendered nugatory.

97. The learned Amicus Curiae would also submit that though there is no specific provision empowering the Drugs Inspector to arrest, Section 22(1)(d) of the Act may be interpreted and it be held that the Inspector has power to arrest. In this regard, reliance is placed on Deepak Mahajan (supra).

ANALYSIS

98. The arrest of a person involves an encroachment on his personal liberty. Article 21 of the Constitution of India declares that no person shall be deprived of his personal liberty and life except in accordance with procedure established by law. There can be no doubt that the power to arrest any person therefore must be premised on a law which authorizes the same.

99. Under the Act, as noted by us, and bearing in mind the law laid down in connection with similar Statutes, we have no hesitation in rejecting the argument of the petitioner that after the amendment of Section 36AC of the Act, making the offences cognizable and non-bailable, it is open to the Police Officer to prosecute the person for the offences set-out in Section 36AC of the Act. Having regard to

the express provisions of Section 32 of the Act, insofar as the prosecution is to be launched qua offences falling within the four walls of Chapter IV of the Act, and which are also the subject matter of Section 36AC of the Act, there cannot be any doubt that prosecution of the offender, for such offences, can be done only in the manner provided in Section 32 of the Act. The prosecution can be launched only by the persons mentioned in Section 32 of the Act. A Police Officer, as such, does not figure as one of the persons who may prefer a report under Section 173(2) of the CrPC, on which, cognizance could be taken by the Special Court. Undoubtedly, as we have already clarified in respect of an offence under Chapter IV, if the acts or omission also constitutes an offence under any other law, under Section 32(3) of the Act, it may be open to the Police Officer, if he is otherwise empowered under the said law, to prosecute the person for the same offence, to act as such.

100. Consequently, the registration of an FIR, which under the scheme of the CrPC, sets the ball rolling, empowering the Police Officer to investigate under Section 157 of the CrPC, and gather material and finally file a Report, would all appear to us to be inapplicable to an offence under Chapter IV of the Act.

101. The conundrum, however, is posed by the aspect relating to arrest. Undoubtedly, there is no express power on the Inspector to arrest under the Act. The argument of the learned Additional Solicitor General, Ms. Pinky Anand that the Drugs Inspector could not be a Police Officer as he is not a person who can file a Report under Section 173 of the CrPC and, therefore, he cannot arrest, does not appeal to us. The decisions relied upon by the learned Counsel, referred to by us in paragraph-91 hereinbefore, only declare that the Customs Officer under the Customs Act and the other officers in the enactments, which we have referred to, are not Police Officers in the context of Section 25 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act', for short). Section 25 of the Evidence Act renders inadmissible a confession made to a Police Officer. The question here is not whether the Drugs Inspector is a Police Officer and the question here is whether he is empowered to carry out arrest of a person under the Act. Still further, the question to be answered is, whether a Police officer under the CrPC is deprived of his power, under the CrPC, to arrest. These are the questions to be answered by us.

102. The Court must start with the presumption that Parliament, which is author of the CrPC and also the Act in question, was aware of the provisions of the CrPC, as it existed at the time when the Act was enacted in 1940. This is following the principle that the Legislature must be assumed to know the law which exists on the Statute Book when it makes a new law. It must, therefore, be assumed to know that the power of arrest is expressly conferred on the Police Officer in the manner which we have referred to. The Legislature has not, in the Act, yet conferred express power on the Drugs inspector, to arrest. However, Section 22(1)(d) of the Act, which deals with the powers of the Inspector, inter alia, enables the Inspector to exercise such other powers as may be necessary for carrying out the purpose of Chapter IV or any Rules made thereunder. The sanction, which is contemplated under Chapter IV, is the criminal sanction by way of prosecuting a person for contravening the provisions of Chapter IV of the Act. In other words, the Legislature has given teeth to the law by providing for prosecuting offenders. The Inspector is at the center stage. In every other aspect, as can be seen from the Act, the implementation of its provisions is vitally dependent upon the powers and functions assigned to the Inspector. The very qualifications, which are provided in

the Rules, as indispensable for being appointed as an Inspector, represents a carefully chosen value judgment by the Legislature to assign the implementation of the Act through the competent hands of qualified persons. The Act is enacted to achieve the highest public interest in as much as what is at stake is the health of the members of the public, which again is recognized as one of the aspects covered by the Fundamental Right protected under Article 21 of the Constitution of India. Keeping the Police Officer out from the categories of persons, who could prosecute offenders for offences under Chapter IV of the Act, is also a carefully thought out ideal.

THE DECISION OF THIS COURT IN DIRECTORATE OF ENFORCEMENT V. DEEPAK MAHAJAN AND ANOTHER25

103. In Deepak Mahajan (supra), the question arose in the context of provisions of Section 35 of the Foreign Exchange Regulation Act, 1973 (FERA) and Section 104 of the Customs Act, 1962, which expressly conferred power of arrest on the Officers under the Acts. The question which 25 (1994) 3 SCC 440 squarely arose was whether upon arrest being effected under Section 35 of the FERA and Section 104 of the Customs Act, a remand could be ordered under Section 167(2) of the CrPC. In the course of discussion, the Court proceeded to hold that the CrPC gives power of arrest not only to the Police Officer, but to a Magistrate and also under certain circumstances or given situations to private persons. It went on to hold that in every arrest there is custody but not vice-versa. It further held as follows:

> "54. The above deliberation leads to a derivation that to invoke Section 167(1), it is not an indispensable pre-requisite condition that in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorised officer or an officer empowered to arrest (notwithstanding the fact that he is not a police officer in its stricto sensu) on a reasonable belief that the arrestee "has been guilty of an offence punishable" under the provisions of the special Act is sufficient for the Magistrate to take that person into his custody on his being satisfied of the three preliminary conditions, namely (1) the arresting officer is legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code." (Emphasis supplied)
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> 104. Section 35(2) in FERA and Section 104(2) of the Customs Act, provided that the person arrested was to be taken before a Magistrate without unnecessary delay. As regards the power to detain the person arrested under Section 167(2) of the CRPC, it was held as follows:
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> "102. From the foregoing discussion, it is clear that the word 'accused' or 'accused person' is used only in a generic sense in Section 167(1) and (2) denoting the 'person'

whose liberty is actually restrained on his arrest by a competent authority on well-founded information or formal accusation or indictment. Therefore, the word 'accused' limited to the scope of Section 167(1) and (2) — particularly in the light of Explanation to Section 273 of the Code includes 'any person arrested'. The inevitable consequence that follows is that "any person is arrested" occurring in the first limb of Section 167(1) of the Code takes within its ambit "every person arrested" under Section 35 of FERA or Section 104 of the Customs Act also as the case may be and the 'person arrested' can be detained by the Magistrate in exercise of his power under Section 167(2) of the Code. In other words, the 'person arrested' under FERA or Customs Act is assimilated with the characteristics of an 'accused' within the range of Section 167(1) and as such liable to be detained under Section 167(2) by a Magistrate when produced before him."

105. The Court went on to consider the impact of other laws in regard to the scope of the expression "Police Officer". It held as follows:

"111. Neither the Police Act, 1861 (Act V of 1861) nor any other statute defines the expression 'police officer'. Shortly stated, the main duties of the police are the prevention, detention and investigation of crimes. As the powers and duties of the State have increased and are increasing manifold, various Acts dealing with Customs, Excise, Forest, Taxes etc. have come to be passed and consequently the prevention, detention and investigation of offences as prescribed under those Acts have come to be entrusted to officers with different nomenclatures appropriate to the subject with reference to which they function. However, as stated supra, though the powers of customs officers and enforcement officers are not identical to those of police officers qua the investigation under Chapter XII of the Code yet the officers under the FERA and Customs Act are vested with certain powers similar to the powers of police officers."

106. Section 167(1) of the CrPC contemplates forwarding the diary which was interpreted to be not the general diary and the special diary under Section 167(2) of the CrPC. In regard to the enactments in question, this Court held as follows:

"113. Though an authorised officer of Enforcement or Customs is not undertaking an investigation as contemplated under Chapter XII of the Code, yet those officers are enjoying some analogous powers such as arrest, seizures, interrogation etc. Besides, a statutory duty is enjoined on them to inform the arrestee of the grounds for such arrest as contemplated under Article 22(1) of the Constitution and Section 50 of the Code. Therefore, they have necessarily to make records of their statutory functions showing the name of the informant, as well as the name of the person who violated any other provision of the Code and who has been guilty of an offence punishable under the Act, nature of information received by them, time of the arrest, seizure of the contraband if any and the statements recorded during the course of the detection of the offence/offences."

107. It also found the following powers available under five Central enactments:

Sl. Name of the Act Power to Power to Power to No. search search search premises suspected persons persons, entering or leaving India

1. Foreign Sec. 37 Sec. 34 Sec. 34 Exchange Regulation Act,

2. The Customs Act Sec. 105 Sec. 100 Sec. 101

3. The Gold Sec. 58 — Sec. 60 (Control) Act (now repealed)

4. The Prevention Sec. 10(2) S. 6 to be r/w — of Food S. 18 or the Adulteration Sea Customs Act. Act.

5. The Railway Sec. 10 — — Property and Sec.

(Unlawful Possession) Act.	11					
Power to stop and search conveyances	Power to seize goods, documents etc.		Power to arrest.	Power to examine persons	Power to summon persons to give evidence and produce documents	
Sec. 36	Sec.	38	Sec. 35	Sec. 39	Sec. 40	
Sec. 106	Sec.	110	Sec. 104	Sec. 107	Sec. 108	
Sec. 61	Sec.	66	Sec. 68	Sec. 64	Sec. 63	
—	Sec.	10	Sec. 10(B)	—	—	
—	—		Sec. 6	—	Sec. 9	

108. The Court further held as follows:

“116. It should not be lost sight of the fact that a police officer making an investigation of an offence representing the State files a report under Section 173 of the Code and becomes the complainant whereas the prosecuting agency under the special Acts files a complaint as a complainant i.e. under Section 61(ii) in the case of FERA and under Section 137 of the Customs Act. To say differently, the police officer after

> consummation of the investigation files a report under Section 173 of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under Section 190(1)(b) of the Code whereas the empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take cognizance of the said offence under Section 190(1)(a) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under the Code or under the special procedure, if any, prescribed under the special Acts. Therefore, the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation." (Emphasis supplied)
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> 109. In fact, as laid down in Deepak Mahajan (supra), the power of arrest can be conferred on persons other than a Police Officer. We are, for the moment, excluding the position under the CrPC that even a private person can arrest as provided in Section 43 of the CrPC. The Foreign Exchange Regulation Act, 1973 (hence repealed); the Customs Act, 1962; the Gold (Control) Act, 1968 (repealed); the Prevention of Food Adulteration Act, 1954 (hence repealed) and the Railway Property (Unlawful Possession) Act, 1966, in Sections 35, 104, 68, 10B and Section 6, respectively, conferred power of arrest on the Officers under these Acts.

Therefore, if we interpret Section 22(1)(d) of the Act, as comprehending the power of arrest with the Drugs Inspector, then, his competency to arrest, a requirement in law, as laid down again in Deepak Mahajan (supra) (See paragraph-54), would stand satisfied. However, the further question is, what is the procedure to be followed by the Inspector, and still finally, whether the Police Officer, under the CrPC, will stand deprived of the power to arrest. The argument of the learned Amicus Curiae appears to be that since a Police Officer, once he registers an FIR under Section 154 of the CrPC, is duty-bound to carry the matter to its logical conclusion, viz., to investigate the matter as provided in the CrPC, and finally, file a Report under Section 173(2) of the CrPC, to persuade the Court to take cognizance in an appropriate case, all of which powers are not available to a Police Officer in regard to offences under Chapter IV of the Act, the interpretation that avoids such a futile exercise, which also is unauthorized and illegal in law, should be adopted.

110. We do agree with the learned Amicus Curie that the Police Officer, for instance, cannot be approached by any person with a complaint that a cognizable offence under Chapter IV of the Act has been committed and he is not bound to register the FIR in terms of the law which is being held down by this court in Lalita Kumari (supra). This is for the reason that if he were to register an FIR, then, he would have to pass on to the stage of Section 157 of the CrPC and, furthermore, carry out investigation, as understood in law, for which neither is he deemed qualified or empowered by the Law Giver nor is he entitled to file a Report under Section 173 of the CrPC.

POWER OF ARREST UNDER THE ACT

111. We are faced with a situation which projects a discord between two Statutes, viz., the CrPC and the Act, and the only silver-lining appearing on the horizon, is the ambit of the power under Section 22(1)(d) of the Act. We may recapitulate the said provision, at this juncture. It reads as follows:

> "22. Powers of Inspectors. – (1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,-
>
> xxx xxx xxx xxx
>
> (d) Exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made there under." Apart from the same, there is no express power of arrest under the Act on the Drugs Inspector.

SOME ENACTMENTS CONTAINING PROVISIONS SIMILAR TO SECTION 22(1)(d) OF THE ACT

112. We may notice that the Seeds Act, 1966 (Section 14(1)(e), the Insecticides Act, 1968 (Section 21(f)), the Kerala Fish Seed Act, 2014 (Section 19(1)(e), Uttarakhand Ground Water (Regulation and Control of Development and Management) Act, 2016 [Section 13(1)(j)], contain provisions similar to what is contained in Section 22(1)(d) of the Act.

113. The Weekly Holidays Act, 1942 [Section 8(1)(c)], the Jammu and Kashmir Factories Act, 1999 [Section 9(1)(c)], contained provisions which confer power on the Authorities under the Act to exercise such other power as may be necessary for carrying outer purposes of the enactment. As far as the Shops and Commercial Establishment Act, 1958 [Section 19(1)(c)], after conferring the power to exercise such powers, as may be necessary for carrying out the Act, the Law Giver carves out a limitation by way of a proviso that no one shall be required, under the said Section, to answer any question or give any evidence tending to incriminate him. Such a proviso is also found in the Private Medical Establishment Act, 2007 [vide Section 21(1)(b)] as also in the Jammu and Kashmir Factories Act, 1999.

SPECIFIC STATUTES CONFERRING POWERS OF ARREST; COGNIZABLE VERSUS NON-COGNIZABLE OFFENCE

114. It is, however, relevant to notice the provisions of the enactments containing the power to arrest and referred to in Deepak Mahajan(supra). Section 104 of the Customs Act, 1962, at present, reads as follows:

> "104. Power to arrest. –(1) If an officer of customs empowered in this behalf by general or special order of the 3[Principal Commissioner of Customs or Commissioner of Customs] has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or

> section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the 4Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to —

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh rupees, shall be cognizable.

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to —

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.26"

115. Section 35 of the The Foreign Exchange Regulation Act (FERA), 1973 read as follows (FERA came to be repealed by The Foreign Exchange Management Act (FEMA), 1999]:

> "35. Power to arrest.—(1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any

person in India or within the Indian customs waters has been guilty of an offence punishable under this Act, he may arrest such person and 26 Prior to 13.07.2006, when the present provision came to be substituted by Act 29 of 2006, the power to arrest was confined in relation to person about whom reason to believe was entertained that he had committed an offence under Section 135. As can be seen the power of arrest after 13.07.2006, has become more wide. Further, it is to be noticed, that Sections 104(4) was substituted by Act 23 of 2012 w.e.f. 28.05.2012. Sub-Section (4) before substitution read as follows:

"4.[Notwithstanding anything contained in Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act, shall not be cognizable. The change brought about by sub-Section (4) as substituted, is that the offences mentioned in sub-Section (4), have been declared to be cognizable. However, under Section 104(5), all other offences under the Act have been declared to be non-cognizable.

shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where any officer of Enforcement has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the 1[Code of Criminal Procedure, 1973 (2 of 1974)]."

116. Section 68 of the Gold (Control) Act, 1968 (which also stands repealed in 1990), read as follows:

"68. Power to arrest.

(1) Any Gold Control Officer authorised by the Administrator in this behalf may, if he has reasons to believe that any person has contravened, or is contravening, or is about to contravene any provision of this Act, arrest such person and shall as soon as possible inform him of the grounds for such arrest and shall take such arrested person to the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(2) Any officer who has arrested any person under this section shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1898 (5 of 1898)." (Emphasis supplied)

117. Section 10(8) of the The Prevention of Food Adulteration Act, 1954 (37 Of 1954), read as follows:

> "10(8) Any food inspector may exercise the powers of a police officer under section 42 of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized." It may be noticed that Section 42 of the Cr.P.C. confers power of arrest on a Police Officer to arrest even in regard to a non-cognizable offence in the circumstances mentioned therein without a warrant.

118. Finally, Section 6 of The Railway Property (Unlawful Possession) Act, 1966, read as follows:

> "6. Power to arrest without warrant.—Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned." Here, it is relevant to notice that the persons empowered are members of the force, which is defined as being members of the force and the word 'force' is defined as the Railway protection force constituted under the Railway Protection Force Act, 1957. It is an armed force.

119. In the Foreign Exchange Management Act, 1999, there is no express power of arrest, as such conferred. Instead, it is relevant to notice Section 37 of the said enactment:

> "37. Power of search, seizure, etc.— (1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13. —(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13."
>
> (2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13. (3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act."

120. The provision for arrest is contained in the Second Schedule to the Income-Tax Act as a mode of recovery of tax.

121. A perusal of Section 104(4) of the Customs Act, as it stood when this Court decided Deepak Mahajan (supra), would show that while an express power was conferred on the Customs Officer to arrest under Section 104(1), it was considered to be non-cognizable offence. Further, the power of

arrest was confined only to an offence committed under Section 135 of the Act. It is apposite to notice that under the CrPC, there is no power with the Police Officer to arrest in the case of a non-cognizable offence except upon a Warrant or Order of a Magistrate.

122. In this regard, it may also be apposite to refer to the provisions of the Central Excise Act, 1944. Section 13 confers the power to arrest. It reads as follows:

> "13. Power to arrest:- Any Central Excise Officer not below the rank of Inspector of Central Excise may, with the prior approval of the Principal Commissioner of Central Excise or Commissioner of Central Excise, arrest any person whom he has reason to believe to be liable to punishment under this Act or the rules made thereunder."
>
> 123. However, Section 9A, as it stood prior to it being amended from the year 2004 onwards, declared that the offences under Section 9 were to be deemed to be non-cognizable under the provisions of the Code of Criminal Procedure. In Sunil Gupta v. Union of India27, the Division Bench of the Punjab and Haryana High Court had to answer the question as to whether the power of arrest, under Section 13 of the Act, could be exercised without a warrant, in view of the fact that under Section 9A, the offence was declared as non-cognizable. The Court took the view that Section 13 embodied a substantive power. It held, inter alia, as follows:
>
> "21. In our view, Section 13 embodies a substantive power. It confers the power to arrest. The procedural safeguards have been protected by Section 18. This provision merely regulates the exercise of power under Section 13. It only provides that the searches and arrests under the Central Excise Act "shall be carried out in accordance with the provisions of the Code of Criminal Procedure ....." In other words, an officer of the Central Excise shall make the arrest in the manner laid down in Section 46 of the Code of Criminal Procedure. He "shall actually touch or confine the body of the person to be arrested....." In case of resistance, the officer of the Central Excise "may use all means necessary to effect the arrest." The persons arrested "shall not be subjected to more restraint than is necessary to prevent 27 2000(118) ELT 8 P&H his escape." Similarly, a search shall be carried out in accordance with the procedure laid down in Section 100. If the person of a lady has to be searched, it shall be done "by another woman with strict regard to decency."

Two or more independent and respectable inhabitants of the locality shall be called upon to be present. The search shall be made in their presence and "a list of things seized in the course of such search ..... shall be prepared ....." In a nut shell, the procedural protection contained in the Code of Criminal Procedure has been guaranteed even in case of arrests and searches under the Central Excise Act, 1944. No more."

124. A Single Judge of the High Court of Gujarat, also posed the following question as the one which it had to answer in the case reported in Bhavin Impex Pvt. Ltd. v. State of Gujarat28, as follows:

> "1. The key question that arises for consideration in this writ petition is as to whether the authorities under the Central Excise Act, 1944 (hereinafter referred to as 'the Act') have the power to arrest a person under Section 13 of the Act without a warrant and without filing an FIR or lodging a complaint before a Court of competent jurisdiction." 28 2010(260) ELT 526 (Gujarat)

125. The Court purported to follow the Punjab and Haryana High Court in Sunil Gupta (supra), which we have referred and held, inter alia, as follows:

> "This Court is in agreement with the view taken by the Punjab and Haryana High Court, viz, a Central Excise Officer, (satisfying the conditions laid down under Section 13) is not debarred from arresting a person without a warrant when he has reason to believe that the person is liable to punishment under the Act or the rules made thereunder. Section 13 is not curtailed by Section 18 and in fact Section 18 is merely procedural."

126. We must, however, notice the judgment of this Court reported in Om Parkash and Another v. Union of India and Another29, a Judgment, which dealt with the Central Excise Act, 1944 and also the Customs Act, 1962. The question, however, which arose was, whether under the said enactments, as the offences were non-cognizable, were they bailable as well? Section 9A, as it was considered by this Court, read as follows:

> 29 (2011)14 SCC 1 "9A. Certain offences to be non-cognizable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.

(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding, as may be prescribed.

Provided that nothing contained in this sub-section shall apply to -

(a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of sub-section (1) of Section 9;

(b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005."

127. The Court did make reference to both Sunil Gupta (supra) and Bhavin Impex Pvt. Ltd. (supra). This Court went on to find, on an examination of the provisions, that being non-cognizable offences under the Central Excise Act, and taking note of the fact that as a general rule, though, with exceptions under the First Schedule to the CrPC, non-cognizable offences were treated as bailable, and also, taking note of Section 20 of the Excise Act, which appeared to show that the offences were bailable that they were bailable. What is, however, noteworthy for the purpose of deciding the case before us, is the statement of the law as contained in paragraph-41, which reads as follows:

> "41. In our view, the definition of "non-cognizable offence" in Section 2(l) of the Code makes it clear that a non-cognizable offence is an offence for which a police officer has no authority to arrest without warrant. As we have also noticed hereinbefore, the expression "cognizable offence" in Section 2(c) of the Code means an offence for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In other words, on a construction of the definitions of the different expressions used in the Code and also in connected enactments in respect of a non-cognizable offence, a police officer, and, in the instant case an excise officer, will have no authority to make an arrest without obtaining a warrant for the said purpose. The same provision is contained in Section 41 of the Code which specifies when a police officer may arrest without order from a Magistrate or without warrant." (Emphasis supplied)

128. The Court applied the same principles in regard to the cases which it decided under the Customs Act. We may notice that Section 18 of the Central Excise Act, 1944 provides for the manner of making an arrest. It reads as follows:

> "18. Searches and arrests how to be made.- All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898(5 of 1898), relating respectively to searches and arrests made under that Code."

129. Equally of interest, are the provisions contained in Sections 19, 20 and 21:

> "19. Disposal of persons arrested.- Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the officer in charge of the nearest police station.
>
> 20. Procedure to be followed by officer in charge of police station.- The officer in charge of a police station to whom any person is forwarded under Section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

> 21. Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under Section 19. – (1) When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:

> Provided that-
>
> (a) If the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;
>
> (b) If it appears to the Central Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior."

130. On a perusal of the statement of law contained in paragraph-41, we find that this Court has found that as the provisions under the enactments in question declared the offences to be non-cognizable, the officer exercising the power of arrest, could not arrest, except after obtaining a warrant for the said purpose. That they may not arrest without obtaining a warrant in respect of the non-cognizable offences, being the view taken by this Court, cannot be squared with the view taken by Punjab and Haryana High Court and Gujarat High Court, respectively, in Sunil Gupta (supra) and also Bhavin Impex Pvt. Ltd. (supra), which took the view in effecting arrest under the Central Excise Act, no warrant was required. It is apparently consequent upon the same that Legislature stepped in with amendments. Section 9A came to be amended and it reads as follows after the amendment:

> "Section 9A. Certain offences to be non-cognizable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), offences under section 9, except the offences referred to in sub-section (1A), shall be non-cognizable within the meaning of that Code.

(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such

compounding amount and in such manner of compounding as may be prescribed:

> Provided that nothing contained in this sub
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> -section shall apply to ---
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> (a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause
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> (a),(b),(bb),(bbb),(bbbb) or (c) of sub
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> -section (1) of section 9;
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> (b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act,1985 (61 of 1985);
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> (c) a person who has been allowed to compound once in respect of any of the offence under this Chapter for goods of value exceeding rupees one crore;
>
> (d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005." (Emphasis supplied)

131. The result would appear to be that acknowledging the effect of making the offences being non-cognizable to be to limit the power of the authorities under the Act for effecting arrest under the Act, to require a warrant, certain offences were declared to be cognizable as noticed in Section 9A, as amended after the Judgment in Om Parkash (supra). The resultant position after the amendment is, it became open to the Officers to effect the arrest in regard to a cognizable offence without obtaining a warrant.

132. In regard to the Customs Act, 1962 in Section 104, under the present avatar, two changes have been brought about. Firstly, the power to arrest is available in respect of offences under Sections 132, 133, 135, 135A and 136. The offences are divided into two categories. Under Section 104(4), the offences which fall within its ambit, are treated as cognizable. The other offences are treated as non-cognizable under Section 104(5). For instance, if a person is involved in an offence relating to evasion or attempted evasion of duty exceeding 50 lakhs rupees (w.e.f. 01.08.2019), while the offence is cognizable, the power of arrest is conferred on the Officers under Section 104(1). The power to arrest is conferred and the only condition to be fulfilled is that the Officer has reason to believe that the person has committed offence concerned. The position is the same in respect of offence relating to prohibited goods.

133. We have embarked upon referring to the provisions relating to arrest under the Excise Act and Customs Act and the decision of this Court in Om Prakash(supra) in taking the view as it did in paragraph-41, in order to appreciate the contention that, after the amendment to Section 36AC, the

offences have been declared cognizable. If we proceed on the basis that the power of arrest can be traced from Section 22(1)(d) of the Act, then, after the amendment in Section 36AC, by which, the offences falling under Chapter IV of the Act, which are declared as cognizable and non-bailable, the decks are cleared for effecting arrest without a warrant by the Inspector.

134. However, the question would arise whether there exists the power of arrest with the Drugs Inspector. We will, on the one hand, array possible objections to the conferment of such powers. The power to arrest is a drastic power. It involves encroachment on personal liberty. The Drugs Inspector is not a Police Officer under the CrPC. The Legislature was aware of the power of the Police Officer to arrest when he embarks on investigation of a cognizable case, as is clear from Section 157 of the CrPC. There is another indication in the Act which may reveal the mind of the Legislature that the power of arrest was not intended to be conferred on the Drugs Inspector. Section 34AA, reads as follows:

> "34AA.- Penalty for vexatious search or seizure.—Any Inspector exercising powers under this Act or the rules made thereunder, who,—
>
> (a) without reasonable ground of suspicion searches any place, vehicle, vessel or other conveyance; or
>
> (b) vexatiously and unnecessarily searches any person; or
>
> (c) vexatiously and unnecessarily seizes any drug or cosmetic, or any substance or article, or any record, register, document or other material object; or
>
> (d) commits, as such Inspector, any other act, to the injury of any person without having reason to believe that such act is required for the execution of his duty, shall be punishable with fine which may extend to one thousand rupees." There is no reference to arrest forming the subject matter of penalty.

135. In contrast, we must notice Section 22 of the Central Excise Act, 1944, reads as follows:

> "22. Vexatious search, seizure, etc., by Central Excise Officer.—Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who—
>
> (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;
>
> (b) vexatiously and unnecessarily detains, searches or arrests any person;
>
> (c) vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

> (d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty, shall, for every such offence, be punishable with fine which may extend to two thousand rupees. Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both." (Emphasis supplied)

136. Still further, as we have noticed in the Central Excise Act, 1944, apart from the fact that the power of arrest is expressly conferred, the manner, in which the power is to be exercised, is specifically indicated, as we have noticed on a perusal of Sections 19 and 20. Section 68 of the Gold Control Act, 1968 has expressly conferred power of arrest, the conditions in which the power could be exercised and further procedure to be followed.

137. We have noticed that the Inspector under the Act has been conferred with a vast and formidable array of powers, and in an enactment like the Act, the taking of samples, the Report given by the Competent Officer in regard to the same and the right reserved to the concerned person to seek a further Report from the Central Laboratory, go a long way in the successful culmination of a complaint under Section 32 of the Act. The Inspector is, undoubtedly, endowed with the power of inspection, taking samples of any drug or cosmetic, searching any person, searching any place, searching any vehicle, examining records, registers, documents and other material objects and seizing the same, requiring any person to produce any record, register or other document. These are powers which are expressly conferred on the Inspector. Though, a complaint could be filed by other categories of complainants in Section 32 of the Act, the Inspector is pivot around which the Act moves. Rule 51(4) makes it a duty on the part of the Drugs Inspector to investigate any complaint in writing which may be made to him. It is also his duty under Rule 51(5) to institute prosecution in respect of breaches of the Act and the Rules thereunder. He is also duty-bound under Rule 51(7) to make inquiries and inspections as may be necessary to detect sale of drugs in contravention of the Act. Under Rule 52, in regard to manufacture of drugs, it is again the duty to institute prosecution for breaches besides making inspections of all premises. This is having regard to both his qualifications and also the powers conferred on him. Section 23 of the Act, undoubtedly, is the procedure to be followed by the Inspector. We are, therefore, to ascertain the meaning of the expression "other powers", which are essential for carrying out the object of Chapter IV and the Rules made thereunder. The Legislature has not given any hint, intending to limit the scope of the residuary powers. No doubt, the Act is a pre-Independence Act. If we interpret that it is a Drugs Inspector, acting under Section 22 of the Act, who alone can investigate offences falling under Chapter IV of the Act and there is no power for the Police Officer under the CrPC to investigate under the Act or to file a Report under Section 173 of the CrPC, which indeed is indisputable, then, a power of arrest, which is necessary for the purpose of investigating and prosecution of the offences falling within Chapter IV of the Act, must be conceded to the Drugs Inspector. The legislative intention in conferring various powers, as we have noticed in the foregoing provisions of Section 22 of the Act and declaring that all other powers, which are necessary for the purpose of the Act, are to inhere in the Drugs Inspector, reassures us that we would be correctly ascertaining the legislative intention to be that on a Drug Inspector taking-up a matter falling under Chapter IV of the Act, he is

invested with the power to arrest.

138. There is another aspect which may have an important bearing on the issue. Under Section 36AC of the Act, the offences as mentioned therein which include some of the offences under Chapter IV of the Act are declared cognizable and non-bailable. The provision imposes restriction on the arrested person being released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application and when the public prosecutor opposes the application, the Court is to be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit an offence. This limitation, is apart from the limitations in the CrPC, inter alia. Now, the Police Officer acting under the CrPC even proceeding for a moment on the basis that it is sufficient that a mere memorandum of arrest as required under the CrPC is prepared and further there is compliance with other provisions of the CrPC also, would it suffice is the question that would arise in the following manner? We have noted from the provisions of the Act and the Rules that it is the Drugs Inspector who is empowered and duty bound to investigate the complaint about violations of acts and rules. He is the person charged with a duty of prosecuting the offenders. If the police officer is merely to be granted a power of arrest and without having any power of investigation then how would it be possible for the police officer to make any investigation under the act and if no investigation is possible, how would the Police Officer be in a position to be of any assistance to the Public Prosecutor and, therefore, to the Court in the disposal of an application for bail? In other words, it would be based on the records of investigation and material collected by the investigating officer that a Court in a case would decide as to whether bail is to be granted or not. How would the police officer seek a remand for carrying out investigation which he cannot do? If the Act and the Rules do not contemplate investigation by a Police Officer, then, conferring the power of arrest on the Police Officer, would, in fact, frustrate the working of the Act. On the other hand, if it is the Drugs Inspector who can arrest, the following consequences would follow:

> a. He has the requisite technical qualifications to properly investigate and prosecute the offender.
>
> b. He would be able to make adequate entries in whatever document he has to maintain as a part of investigation and it would facilitate a proper and fair consideration of an application for bail within the meaning of Section 36AC of the Act and also facilitate a request for remand under Section 167 of the Cr.P.C.

139. Declaring the power to arrest with the Inspector, is not to be understood as proclaiming that the Inspector is bound to arrest any person. The provisions of the CrPC, relating to arrest, would necessarily have to be followed by the Drugs Inspector. In fact, he is obliged to bear in mind the law, as declared by this Court in D.K. Basu (supra), and the peril of defying the same, would be to invite consequences, inter alia, as are provided therein. As far as the arrest, not being mentioned in Section 34AA, as forming a ground for visiting the delinquent Officer with penalty, it may be noticed that there is a residuary power in Section 34AA and it would cover any act. We notice that Section 34AA(d) provides that if any Inspector, exercising powers under the Act or the Rules made thereunder, commits, as such Inspector, any other act, to the injury of any person without having

reason to believe that such act is required for the execution of his duty, he shall be punishable with fine which may extend to one thousand rupees.

140. Regarding the power for seeking and ordering a remand under Section 167, we would apply the principles laid down by this Court in Deepak Mahajan (supra) and the same principles would apply.

141. This process of interpretation would produce the result of harmonizing two seemingly irreconcilable commands from the Law-Giver. This interpretation commends itself to us for the reason that the investigation into offences, under Chapter IV of the Act, would commence, be carried out and would culminate in, in the safe hands of the competent and qualified Statutory Authority, as designated by law. It would also avoid an outside agency like a Police Officer, being obliged to register an FIR, for the reason that where arrest has to be made, a FIR is to be registered, and, when the registering of the FIR carries with it an unattainable object of preferring a Final Report under Section 173 of the CrPC, as far as the Police Officer is concerned. We make it clear that if a Police Officer is approached with regard to a complaint regarding commission of an offence falling under Chapter IV of the Act, he is not to register an FIR unless it be that a cognizable offence, other than an offence falling under Chapter IV of the Act, is also made out. He must makeover the complaint to the competent Drug Inspector so that action in according with law is immediately taken where only offences under Chapter IV are made out.

142. As far as the arrest contemplated under Section 41 of the CrPC is concerned, in case a cognizable offence, falling under Chapter IV of the Act, is committed, either in the presence of the Drugs Inspector, or in respect of which offence, a Police Officer would have power to arrest, as provided therein, viz., covered by the situations contemplated under Section 41(ba), the Drugs Inspector would be entitled to effect the arrest. We are arriving at this conclusion on the basis that since the procedure under the CrPC is to be read as applicable, except to the extent that a different procedure is to be provided under the Act, and since there is no procedure or power otherwise provided in the Act in regard to arrest, the powers and procedure available to a Police Officer, with the limitations on the said power, as laid down in D.K. Basu (supra), as also as contained in the CrPC, would be applicable.

143. By way of following Deepak Mahajan (supra), we hold that the Drugs Inspector, under the Act, is invested with certain powers similar to a Police Officer. Still further, we would hold that the word “investigation” cannot be limited only to a Police investigation, as has been noted in Deepak Mahajan (supra). Thirdly, we find that the power to arrest a person must indeed flow from the provisions of a Statute. The statutory provision under the Act is Section 22(1)(d). The arrested person, under the Act, would be an accused person to be detained under Section 167(2) of the CrPC. No doubt, the Police Officer is bound to provide assistance to the Inspector in case of need to effectuate the arrest where there is resistance or likelihood of resistance. No doubt, in regard to the arrest in relation to offences falling under Chapter IV of the Act, which do not fall under Section 36AC, the power of arrest would depend upon the provision in the Schedule to the CrPC.

144. We again reiterate that the existence of the power to arrest with the Drugs Inspector is not to be understood as opening the doors to making illegal, unauthorized or unnecessary arrest. Every power

comes with responsibility. In view of the impact of an arrest, the highest care must be taken to exercise the same strictly as per the law. The power of arrest must be exercised, recognizing the source of his authority, to be Section 22(1)(d) of the Act, which is for carrying out the purpose of Chapter IV of the Act or any Rules made thereunder.

145. Section 33P of the Act, reads as follows:

> "33P. Power to give directions.—The Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule or order made thereunder." We notice that the Central Government is conferred with powers to give directions to the State Government for the purpose of carrying into execution, in the State, any of the provisions of the Act or any Rule or Order made thereunder. It is for the Central Government to consider the question whether it can, under the said provision, issue directions in regard to the power of arrest, which we have found, subject to what we have stated in this Judgment.

146. Further, Section 58 of the CrPC provides that the Officers In-charge of Police Stations are to report cases of all persons arrested without warrant as provided therein. We make it clear that the Drugs Inspector must, apart from other relevant provisions of the CrPC, comply with the requirement of reporting. In view of the need to safeguard the interest of persons, who may be proceeded against by the Drugs Inspector, we also hold and direct that the Drugs Inspector will immediately, after arrest, make a report of the arrest to his superior Officer.

147. It has been brought to our notice that FIRs have been filed in regard to offences under Chapter IV of the Act. In the view we have taken, no further investigation can be done by the Police Officer. However, it is in the interest of justice that the FIRs are made over by the Police Officers to the concerned Drugs Inspector at the earliest. We are persuaded to issue such directions in the exercise of our powers under Article 142 of the Constitution of India.

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.

149. Before we proceed to the operative portion of our Judgment, we must express the hope that the vexed issues which we have resolved through this Judgment, in regard to the power of arrest, may engage the competent Legislative Body.

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.

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.

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.

151. In view of our conclusions/directions and subject to the same, we would, on the facts, uphold the impugned Judgment and dismiss the Appeal. We record our appreciation for the enlightening submissions of the learned Amicus Curiae Shri S. Nagamuthu.

.....J. (SANJAY KISHAN KAUL) .....J. (K.M. JOSEPH) NEW DELHI, AUGUST 28, 2020.