

[2026 LiveLaw \(SC\) 181](#)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
**PRASHANT KUMAR MISHRA; J., VIPUL M. PANCHOLI; J.**  
SPECIAL LEAVE PETITION (CRIMINAL) NO. 9281 OF 2025; 20 February, 2026  
**M/s SBS BIOTECH & OTHERS versus STATE OF HIMACHAL PRADESH**

**Drugs and Cosmetics Act, 1940 – Section 18(a)(vi) read with Rule 74, 18-B, 22(1)(cca), 27(d), and 28-A – Record Maintenance – Limitation for Filing Complaint – Jurisdiction of Courts – Held that i. Non-Maintenance of Records as a Substantive Offence: The Appellants were prosecuted for failing to maintain records as stipulated under Schedule M and Schedule U of the Drugs and Cosmetics Rules, 1945, specifically regarding the drug Pseudoephedrine - held that allegations regarding the contravention of Section 18(a)(vi) of the Act (manufacturing/stocking in contravention of rules) are punishable under Section 27(d); ii. Limitation Period for Prosecution: The Appellants argued that the offence fell under Section 18-B (punishable under Section 28-A), which carries a maximum punishment of one year, thus attracting a one-year limitation period under Section 468 of the Cr.P.C. - The Supreme Court rejected this, clarifying that since the allegations included violations of Section 18(a)(vi) punishable under Section 27(d) (imprisonment up to two years), the limitation period is three years as per Section 468 Cr.P.C; iii. Jurisdiction and Committal to Special Court/Sessions: Under Section 32(2), no court inferior to a Court of Session shall try an offence punishable under Chapter IV of the Act - While Section 36-A allows for summary trials by a Magistrate for certain offences, it explicitly excludes those triable by the Special Court or Court of Session - the committal of the case to the Special Judge-I (a Court of Session) was legally sound – Appeal dismissed. [Relied on *Miteshbhai J. Patel Vs. Drug Inspector*, 2025 SCC online SC 2203; Paras 27-32]**

[Arising out of impugned final judgment and order dated 29-07-2024 in CRMMO No. 167/2018 passed by the High Court of Himachal Pradesh at Shimla]

*For Petitioner(s): Mr. Govind Rishi, Adv. Mr. Ashwarya Sinha, AOR Mr. Sanjay Jain, Adv. Mr. Akshay Jain, Adv. Mr. Sankalp Mahindra, Adv.*

*For Respondent(s): Mr. Rohit Bansal, AOR*

**J U D G M E N T**

**VIPUL M. PANCHOLI, J.**

1. Leave granted.
2. This Appeal challenges the judgment and order dated 29.07.2024 in Cr. MMO No. 167 of 2018 passed by the High Court of Himachal Pradesh at Shimla. The Appellants sought the quashing of Complaint No. 36/3 of 2017 (subsequently renumbered as Complaint No. 9 of 19.12.2017). The Appellants are being prosecuted for contravening Section 18(a)(vi) read with Rule 74 and 22(1)(cca) and 18-B, punishable under Section 27(d) and 28-A of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act') and the Rules framed thereunder.
3. Factual Matrix:
  - (i) The Appellant No. 1, M/s SBS Biotech, is a partnership firm engaged in the manufacturing of pharmaceutical preparations at Mauza Rampur Jattan, Nahan Road, Kala Amb, District Sirmaur, H.P.. The firm operates under valid drug licenses issued in

Form-25 and Form-28 of the Drugs and Cosmetics Rules, 1945 ('the Rules'), and is mandated to adhere to Schedule-M of the Rules. Appellant No. 2, Shri Sanjeev Kumar Santoshi, is the Production Head, and Appellant No. 3, Mr. Avinash Banga, was arrayed as the alleged managing partner at the relevant time.

(ii) The chronology of events commenced with an inspection of the firm's premises conducted by the Drug Inspector on 22.07.2014. During this inspection, carried out in the presence of officials of the firm, including the Production Head, it was alleged by the Respondent that the firm had not maintained the requisite records as stipulated by Schedule-M and Schedule-U of the Rules. Specifically concerning the drug Pseudoephedrine B. No. 503413, inadequate details regarding the entry of the drug received from Neha Pharma Pvt. Ltd. were noted, and the firm failed to produce consumption records.

(iii) A Spot Inspection Report was prepared on 22.07.2014. Through this report, the firm was directed under Section 22(d) of the Act not to dispose of the stock of the said drug until the investigation was completed. Further, directions were issued, commanding the firm, pursuant to Section 22(1)(cca) and 18-B of the Act, to produce the complete record of purchase, sale/distribution, and consumption of the said drug within a period of seven days. The Appellants subsequently contended that serving directions via the spot inspection report, rather than a separate notice, was irregular.

(iv) A re-inspection of the manufacturing premises was conducted on 05.08.2014. It was observed that the firm had neither submitted a reply nor produced the complete record as directed. During this re-inspection, it was alleged that huge discrepancies were found in the record of manufacturing, testing, and distribution. Allegations were made that the record was tampered with at certain places, including misleading entries and corrections made with fluid. The firm allegedly failed to explain these discrepancies satisfactorily.

(v) Consequent to these findings, the Drug Inspector seized the drug and corresponding documents in Form-16 on 05.08.2014 for alleged contravention of Sections 18(a)(vi) and 18-B of the Act. The seized items included 24.990 Kg of Pseudoephedrine Hydrochloride I.P. in a blue coloured PVC drum, along with numerous documents, including invoices, a register (pages 1 to 29 of the Pseudoephedrine register), and Batch Production Records (BPRs) for various batches of Eudocet tablets. On the same day (05.08.2014), a separate letter (Annexure R-1/PE) was issued to the firm, requiring them again to submit information, records, and documents under various Sections, including 22(l)(cca), 18-B, and 22(3), within 15 days. The Respondent asserted that the Appellants never responded to this notice.

(vi) On 06.08.2014, the Respondent moved an application before the learned Chief Judicial Magistrate, Nahan, for custody orders in terms of Section 23(5)(b) and (6) of the Act. The learned Judicial Magistrate, Nahan, granted the custody orders. The Appellants, however, consistently asserted that while the seized drug (the PVC drum) was produced before the Court, the records seized in Form-16 were never produced, constituting a blatant violation of Section 23(6) of the Act.

(vii) The Appellants further averred that the Respondent informed the State Drug Controller about the inspection and seizure only after a period of 11 months (via letter dated 02.07.2015). It was contended that this delay, combined with the non-return of the seized original records, constituted a violation of Section 22(2-A) of the Act, which mandates the return of seized records within 20 days (after certified copies are taken).

- (viii) A Show Cause Notice dated 29.07.2015 was received by the firm from the Assistant State Drug Controller-cum-Licensing Authority, seeking an explanation regarding the discrepancies observed. The firm responded via letter dated 13.08.2015, specifically requesting the return of the original documents and records seized in Form-16, or certified copies thereof, noting that their absence prevented the firm from formulating a complete reply. Certified copies of the seized documents were eventually received by the firm's representative on 14.09.2015.
- (ix) The firm submitted a comprehensive and detailed reply dated 03.10.2015. In this reply, the firm contended that there was no violation of Schedule-M or Schedule-U and, therefore, no irregularity in maintaining the records. The firm asserted that the deficiencies pointed out were minor, routine, and generalized. The firm simultaneously requested the release of the seized drug and original records. The Respondent, in their counter-affidavit, asserted that this reply was found to be totally incomplete and unsatisfactory.
- (x) The Prosecution Sanction was granted by the State Drug Controller dated 15.09.2016. The sanction noted the finding of the Screening Committee regarding "irregularities with respect to maintenance of records as required under Schedule M and Schedule U. The sanction was accorded for prosecution under Section 18(a)(vi) read with Rule 74, 18-B, and 22(l)(cca) of the Act and Rules. The Appellants asserted that the prosecution sanction nowhere averred that the manufactured drugs were substandard, misbranded, adulterated, or spurious, arguing that the maximum alleged offence related only to record keeping punishable under Section 18-B/28-A.
- (xi) Pursuant to the sanction, the criminal Complaint No. 36/3 of 2017 was filed on 27.02.2017. The complaint alleged contravention of Sections 18(a)(vi) read with Rule 74 and 22(l)(cca) and 18-B, punishable under Section 27(d) and 28-A of the Act.
- (xii) The learned Judicial Magistrate First Class, Nahan, vide Order dated 06.04.2017, took cognizance of the Complaint and summoned the Appellants for offences punishable under Section 18(a)(vi), 18-B, and 28A of the Act. The Appellants contended that this order of cognizance was non-reasoned and failed to apply judicial mind. Furthermore, the Appellants contended that the proceedings were barred by limitation under Section 468 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C'), arguing that the offence under Section 18B/28-A carries a punishment extending up to one year, meaning the one-year limitation applied, whereas cognizance was taken more than two and a half years after the inspection (22.07.2014 to 06.04.2017).
- (xiii) Thereafter, the learned Judicial Magistrate First Class, vide Order dated 05.10.2017, committed the case to the learned Special Judge-I, Sirmaur. This committal was made on the finding that the offence punishable under Section 27(d) read with Section 28-A is exclusively triable by the Court of Special Judge. The case was renumbered as Complaint No. 9 of 19.12.2017.
- (xiv) The Appellants, being aggrieved by the Cognizance Order dated 06.04.2017 and the Committal Order dated 05.10.2017, filed a Petition under Section 482 Cr.P.C (Cr. MMO No. 167 of 2018) before the High Court of Himachal Pradesh. They argued that the committal was illegal in view of the saving clause under Section 32(2) read with Section 36-A of the Act, which provides for summary trial by a Judicial Magistrate First Class for offences punishable with imprisonment for a term not exceeding three years.
- (xv) The High Court of Himachal Pradesh, vide the final impugned Judgment dated 29.07.2024, dismissed the Petition. The High Court held that the learned Special Judge-I, Sirmaur, has jurisdiction to try the offences under Chapter IV of the Act. The High Court

determined that the limitation period was three years under Section 468 Cr.P.C because the offence punishable under Section 27(d) carries imprisonment up to two years, thereby rejecting the limitation plea. The High Court also concluded that the omission of Section 27(d) in the cognizance order was a clerical error.

4. Being aggrieved and dissatisfied with the dismissal of quashing petition, the appellants have preferred the present appeal.

5. Heard learned counsel for the appellants and learned counsel for the Respondent-State.

6. Learned counsel for the appellants would mainly contend that the impugned complaint has been filed alleging contravention of the provisions of Section 18 (a) (vi) read with Rule 74 and 22 (1)(cca) and 18-B punishable under Section 27 (d) and 28-A of the Act of 1940. However, the cognizance has been taken for contravening Section 18 (a) (vi) and 18-B punishable under Section 28-A of the Act of 1940. Learned counsel urged that the High Court has committed an error by observing that the omission on the part of the Magistrate referred under Section 27 (d) of the act is a typographical error. At this stage, it is also submitted that in the present case, the question arises as to whether non-maintenance and non-furnishing of the records as prescribed under Schedule M & U of Rules of 1945 would constitute an offence under Section 18 (a) (vi) read with Rule 74 punishable under Section 27 (d) or would fall under Section 18-B punishable under Section 28-A of the Act of 1940.

7. Learned Counsel referred provisions contained in Section 18, 27 (d), 18-B as well as Section 28-A of the Act. Learned counsel also referred the relevant rules as well as Schedule M & U of the Rules. After referring to the same, learned counsel would contend that Section 18 provides for Prohibition of manufacture and sale of certain drugs and cosmetics and not for maintenance of record or non-furnishing of information. Further, the contravention shall have to be in relation to manufacture, sale, or stock or exhibit or offer for sale of drugs & cosmetics in contravention of any provisions of the said Chapter (Chapter IV) or any Rule made thereunder. Learned counsel, therefore, urged that primarily Section 27 (d) could be invoked where the contravention is regarding any drug or cosmetic but not in relation to maintenance of record and nonfurnishing of information.

8. At this stage, it is also contended that Section 18-B specifically provides for non-maintenance of record and non-furnishing of information and the same is made punishable under Section 28-A of the Act, for which the Trial Court has rightly taken cognizance. At this stage, it is pointed out that Section 28-A is punishable for a maximum period of one year and, therefore, limitation under Section 468 of Cr.P.C would be one year. Thus, in the present case, the complaint which has been filed after a period of two and a half years would be barred by limitation.

9. Learned counsel has placed reliance upon the decision rendered by this Court in the case of Miteshbhai J. Patel Vs. Drug Inspector, 2025 SCC online SC 2203. Learned counsel has also relied upon decision in the case of Cheminova (India) Ltd. Vs. State of Punjab reported in 2021 (8) SCC 818.

10. Learned counsel for the appellant further submits that another question arises for consideration is whether the offence punishable with imprisonment for less than 03 years and not to be tried by the Special Court under Section 36-AB, or by the Court of Sessions, shall have to be tried by the Magistrate Court in view of saving clause under Section 32(2) read with Section 36-A of the Act of 1940.

**11.** Learned counsel referred the provisions contained in Section 32(2), 36-A and Section 36AB of the Act and, thereafter, submitted that Section 32(2) starting with the saving clause would give way to the applicability of Section 36-A of the Act and, therefore, the offences punishable with imprisonment not exceeding 03 years but not related to spurious or adulterated drugs to be tried by Special Court under Section 36-AB or by the Court of Sessions, shall essentially to be tried by the Magistrate under Section 36A of the Act. Learned counsel, therefore, contended that finding recorded by the High Court regarding the offences falling under Chapter IV to be tried by the Court of Sessions or by the Special Court, as the case may be, is fallacious and deserves to be set aside.

**12.** Learned counsel for the appellants further submits that the High Court has committed an error while placing reliance upon decision rendered by this Court in the case of Union of India Vs. Ashok Kumar Sharma reported in 2021 (12) SCC 674. It is submitted that the said judgment was rendered by this Court in different context and has no bearing on the facts or law in the present case.

**13.** Learned counsel for the appellants, therefore, urged that the impugned order passed by the High Court be set aside and thereby the proceedings filed by the respondent against the appellants as well as the order of taking cognizance be quashed and thereby the present appeal be allowed.

**14.** Per contra, learned DAG for the respondent-State has vehemently opposed the present appeal. He would contend that the concerned Inspector in the Spot Inspection Report dated 22.07.2014 had recorded that the petitioners were instructed not to dispose of the stock of the relevant drug batch until the completion of the investigation. The petitioners were also directed to furnish the remaining records, as the documents produced at the time of inspection were found to be incomplete. Further, during the seizure of the records certain serious irregularities including total non-maintenance of raw material, registers required under Schedules M & U of the Act and the Rules were found. Most of the batches had no entries or stock release records showing clear misuse and lack of accountability thereby rendering the petitioners liable to be punished under Section 27 (d) for violation of Section 18 (a) (vi) of the Act read with Rule 74 of the Rules, 1945.

**15.** Learned DAG further submits that the petitioners failed to respond to the notice issued to them along with the Spot Inspection Report. Despite repeated notices, the petitioners failed to produce the requisite documents and, therefore, on 15.09.2016, the respondents applied for grant of sanction to prosecute the petitioners under Section 18 (a) (vi) read with Rule 74, 18-B and 22(1)(cca). After getting the sanction from the Competent Authority, the impugned complaint came to be filed upon which the cognizance was taken by the learned Judicial Magistrate First Class on 06.04.2017.

**16.** At this stage, learned DAG has also referred relevant provisions of the Act as well as the Rules and, thereafter, contended that by not providing the complete records, the petitioners have violated Section 27 (d) of the Act as well as the Rules.

**17.** Learned counsel for the respondent further submits that the plea of limitation raised by the petitioners is misconceived. Learned DAG submits that violation of Section 18 (a) (vi) is punishable under Section 27 (d) of the Act which provides punishment for a period of not less than one year which may extend up to two years. Thus, the complaint is not barred by limitation under Section 468 of Cr.P.C as contended by learned counsel for the appellants.

18. Learned DAG lastly contended that the learned JMFC has rightly committed the case of the learned Special Judge (I) as the offence punishable under Section 27 (d) read with Section 28-A is exclusively triable by the Court of Special Judge.

19. Learned DAG, therefore, urged that the High Court has not committed any error while rejecting the quashing petition filed by the present appellants and, therefore, this Court may not interfere with the impugned order.

20. Having heard learned counsel appearing for the appellants and having gone through the material placed on record as well as the provisions of law and the decisions relied upon by the learned Advocates, it transpires that the complaint has been filed against the appellants on 22.02.2017 wherein specific allegations are levelled with regard to the contravention of Section 18 (a) (vi) read with Rule 74 and Section 22 (1)(cca) and Section 18-B punishable under Section 27 (d) as well as under Section 28-A of the Act. From the record it further transpires that the appellant had not maintained the requisite records as stipulated under Schedule M & U of the Rules.

21. At this stage, we would like to refer the relevant provisions of the Act as well as the Rules.

Section 18 - Prohibition of manufacture and sale of certain drugs and cosmetics.—From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute.....

.....

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

Section 18B-Maintenance of records and furnishing of information.—Every person holding a licence under clause (c) of section 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act.]

Section 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;.....

(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.

Section 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).....

....

(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.

22. Schedule M provides for good manufacturing practices for premises and materials whereas Schedule U provides for particulars to be shown in manufacturing records.

23. From the aforesaid provisions contained in the Act of 1940 and the Rules framed thereunder it transpires that no person can manufacture for sale or for distribution, or sell or stock or exhibit or offer for sale or distribute any drug or cosmetic in contravention of any provisions of Chapter IV or any Rule made thereunder. Further, every person holding a license is required to keep and maintain such records register and other documents as may be prescribed and shall furnish to the officer or authority exercising power under the Act. It further transpires that Section 27 (d) specifically provides that if a person manufactures for sale or for distribution or sells or stocks or exhibits etc. any drug or other than drug in contravention of any provisions of Chapter IV or any Rule made thereunder shall be punishable with imprisonment for a term which shall not be less than one year but which may extended to two years.

24. Now, keeping in view the aforesaid provisions, if the complaint filed by the respondent against the appellants before the learned JMFC is examined, it is revealed that in the title of the complaint it has been specifically referred relevant provision of the Act as well as the Rule including Section 18-B punishable under Section 27 (d) and 28-A of the Act. Further, if the order of cognizance is carefully examined, copy of which is placed on Page 99 of the compilation, it is revealed that in the said order also in the title Section 27 (d) of the Act is specifically referred.

25. At this stage, if the order of committal passed by the learned JMFC, copy of which is produced at Page 103 of the compilation, is once again carefully examined, it has been specifically stated in Para 1 itself that the accused have been sent up to stand their trial for the offence punishable under Section 27 (d) read with Section 28-A of the Act. Further, in last paragraph of the order once again the learned Magistrate has observed that the offence punishable under Section 27 (d) read with Section 28-A of the Act is exclusively triable by the learned Court of Sessions Judge, therefore, the case of the accused is committed to the Court of learned Special Judge (I), Sirmaur District at Nahan. Thus, looking to the aforesaid aspects it can be said that while writing the hand written order, the learned JMFC has missed to mention Section 27 (d).

26. At this stage, it is pertinent to observe that the complainant has specifically alleged in the complaint filed before the learned JMFC, against the present appellants, in Para 2 of the complaint that, after disclosing identity and purpose the record of the drug in question i.e. pseudoephedrine was checked and inspected thoroughly in view of the provisions of the Act and it was observed that the firm had not maintained the records as per Schedule M & Schedule U of the Act of 1940 and Rules of 1945. Further, in paragraph 3 of the complaint it has been further alleged that the firm was given opportunity and time to disclose information, record/documents but firm failed to disclose the complete record as asked and lot of discrepancies in the purchase and sale record of the sold drug in question were found. In paragraph 5 of the complaint it has been further alleged that record was tempered at certain places, some misleading entries were also observed. In paragraph 7 of the complaint, the complainant has alleged that after careful examination

of the batch production record as seized from the premises of the firm, it was also observed that the firm has done the grievous manipulation and violations at the time of manufacturing and testing of the said drugs and committed blunder in manufacturing the drugs as per the record as seized by the firm. It is also alleged that the comparative study of the production, consumption and sale has been done in this regard and it was observed that the heavy misuse has been done by the firm for the said habit forming drug and the firm could not produce the record for the illegal sale done by the said firm. At this stage, we would like to refer the provisions contained in Rule 74 of the Rules more particularly its Clause (d). It provides that the licensee shall keep records of the details of manufacture as per particulars given in Schedule U of each batch of the drugs manufactured by him and such record shall be retained for a period of 05 years.

(i) Now, if we refer Schedule M, it transpires that it provides for good manufacturing practices and requirements of premises, plant and equipment for pharmaceutical products. Further, Clause 12 of Schedule M provides for documentation and records.

(ii) Similarly, Schedule U states about particulars to be shown in manufacturing records. Para (ii) of the said Schedule states about records of raw materials.

27. From the aforesaid allegations levelled by the complainant in the complaint as well as relevant provisions of the Rules and Schedule M and U, it is revealed that allegations are with regard to commission of an offence under Section 18(a)(vi) of the Act of 1940. Thus, when the allegations are levelled for commission of the offence punishable under Section 18(a)(vi) of the Act, the same is punishable under Section 27(d) of the Act.

28. In view of the aforesaid, when Section 27 (d) of the Act provides for imprisonment for a term not less than one year but may extend to two years, as per Section 468 of Cr.P.C. complaint can be filed within a period of 03 years. In the present case, the complaint has been filed within a period of 03 years (two years and six months). We are, therefore, of the view that the complaint is not time barred as contended by learned counsel for the appellants.

29. Learned counsel for the appellants has placed reliance upon the decision rendered by this Court in the case of Miteshbhai J. Patel (Supra). Learned counsel has more particularly referred Para 7 to 9 of the said decision. It is required to be observed that in paragraph 7 of the said decision this Court has specifically held that any complaint disclosing offence punishable under Section 27 of the Act ought to have been made within a period of 03 years. In the said case, as observed in Para 8, the complaint were filed much later than 03 years. In the present case, as discussed hereinabove, the complaint has been filed within a period of 03 years and, therefore, the aforesaid decision would not render any assistance to learned counsel for the appellants.

30. Learned counsel for the appellants also placed reliance upon the decision rendered by this Court in the case of Cheminova (India) Ltd. (Supra). In the said case also, as observed in Para 12, the complaint was filed beyond a period of 03 years and, therefore, this Court quashed the complaint which was filed after a period of 03 years on the ground that the said complaint is barred by limitation under Section 469 of Cr.P.C. We are, therefore, of the view that this decision would not be applicable to the facts of the present case.

31. Now, at this stage, we would like to refer provisions contained in Section 32 (2), 36-A & 36-AB of the Act which provides as under:

Section 32: Cognizance of offences- (1) No prosecution under this Chapter shall be instituted except by—



.....  
(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

Section 36A- Certain offences to be tried summarily.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 5 [all offences (except the offences triable by the Special Court under section 36AB or Court of Session under this Act] punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial : Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year: Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.

Section 36AB- Special Courts. — (1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. Explanation. —In this sub-section, “High Court” means the High Court of the State in which a Court of Session designated as Special Court was functioning immediately before such designation. (2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

32. From the provisions contained in Section 32(2) of the Act, it is revealed that save as otherwise provided in the Act of 1940, no Court inferior to that Court of Sessions shall try an offence punishable under this Chapter (Chapter IV).

(i) Now, if we carefully examine Section 36-A of the Act, it transpires that the said Section provides that certain offences are to be tried summarily. It has been specifically provided that notwithstanding anything contained in Cr.P.C., all offences punishable with imprisonment for a term not exceeding 03 years other than offence under Section 33(I)(1)(b) shall be tried in a summary way by Judicial Magistrate First Class except the offences triable by the Special Court under Section 36-AB or Court of Sessions.

(ii) Thus, Section 36-A specifically excludes the offences triable by the Special Court under Section 36-AB or Court of Sessions under this Act from the purview of Section 36-A of the Act. Now, Section 32(2) specifically provides that no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter (Chapter IV). Thus, it can be said that for the offences punishable under Chapter IV, the Court inferior to the Court of Session shall not try such offences.

(iii) We are, therefore, of the view that when Section 32(2) specifically provides for offence to be tried by the Courts not inferior to the Court of Sessions, Section 36-A would not be applicable to the facts of the present case. Hence, learned JMFC has rightly

committed the case to the Court of Sessions and thereby has not committed illegality as alleged by learned counsel for the appellants.

33. In view of the aforesaid discussion, we are of the view that the High Court has not committed any error while dismissing the petition filed by the present appellants under Section 482 of the Cr.P.C. for quashing of the complaint. Hence, no interference is required.

34. Accordingly, the present appeal stands dismissed.

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