# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 21st May, 2025

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**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**
**THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

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## Crl.L.P. No.03 of 2024

**Petitioner** : Union of India

***versus***

**Respondents** : M/s. Mukul Enterprises and Another

Application under Section 378(3) of the
Code of Criminal Procedure, 1973

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**Appearance**

Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Natasha Pradhan and Ms. Sittal Balmiki, Advocates for the Petitioner.

Mr. Sudesh Joshi, Advocate with Mr. Uma Shankar Sarda and Mr. Adarsh Gurung, Advocates for the Respondents.

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# JUDGMENT

Meenakshi Madan Rai, J.

***1.*** The Petitioner has filed the instant application under Section 378(3) of the Code of Criminal Procedure, 1973, seeking leave to file Appeal, to assail the Judgment, dated 31-05-2022, of the Court of the Learned Special Judge (Drugs and Cosmetics Act, 1940), Gangtok, in Sessions Trial (D&C Act, 1940) Case No.01 of 2018 (*Union of India* vs. *M/s. Mukul Enterprises and Another*), which acquitted the Respondent No.2.

***2.*** Learned Deputy Solicitor General of India submits that, leave may be granted to the Petitioner to file the Appeal as the Learned Trial Court failed to appreciate the legal position of the present case, which fell under Chapter IV of the Drugs and Cosmetics Act, 1940 (for short, "DC Act") wherein Sanction for prosecution is not mandatory. Learned Deputy Solicitor General

added that the Learned Trial Court also did not consider the admission of the Accused Respondent No.2 herein, that he had supplied rolled bandages, with batch no.014 to the Complainant and overlooked the forensic report that had concluded that, the bandages, the articles in question in the Complaint, were spurious and of substandard quality. The Learned Trial Court was of the view that independent witnesses were required at the time of lifting samples, which is clearly not the demand of the Statute, apart from which the Trial Court failed to consider that the Drug Inspector has powers and duties to conduct regular sampling of at least ten articles/medicines in a month when he considers the articles to be suspicious. The Learned Trial Court ignored the evidence furnished by the Appellant and concluded that the Prosecution had failed to prove its case and thereby acquitted the Appellant No.2. That, the interest of justice would be served if the leave to Appeal is granted.

***3.*** *Per contra*, it was argued by Learned Counsel for the Respondents that requisite procedure prescribed by the Statute was not followed by the Prosecution (the Petitioner herein) and the various provisions, as pointed out by the Learned Trial Court, in the impugned Judgment, including Section 22(cc) & (cca) and Section 22(2) of the DC Act were not complied with. Granting leave to Appeal would be to the detriment of the Respondents as no materials for Prosecution have been furnished by the Petitioners.

***4.*** We have heard the Learned Counsel for the parties *in extenso*. We have also perused the impugned Judgment.

***5.*** The Trial Court in the impugned Judgment framed the following question for determination;

(a) *That, M/s. Mukul Enterprises (A1) under the proprietorship and control of accused Md. Mohdul Islam (A2) had sold spurious drugs, i.e., rolled bandages above, purportedly manufactured by a fictitious Company.*

***6.*** The Learned Trial Court examined the evidence of six witnesses examined by the Complainant/Appellant herein, before the Court and noted that owing to certain procedural irregularities and non-compliance with the mandatory provisions of the DC Act, the case is liable to fail. The Court noted that, it was the case of the Complainant that the rolled bandages had been lifted from the medical store of the Central Health Store Organisation (CHSO), Health Department, where admittedly no Stock Register or Inventory Register or any document showing that the said items was stored in the said place were produced before the Court. CW5 and CW2 admitted as much. It was further observed that no independent witnesses were joined while conducting the search, followed by the seizure of the alleged spurious rolled bandages. The procedure prescribed under Section 23 of the DC Act was also not complied with which required the Inspector to show that one portion of the samples was sent to the alleged retailer/supplier, i.e., the Accused, as mandated by Section 23(4)(ii) and (iii) of the DC Act. Further, one portion of the concerned samples which was required to be forwarded to the Court was deposited before the Court of the Learned Chief Judicial Magistrate only at the time of filing of the Complaint and not immediately after the seizure of the samples as mandated by Statute. This was admitted by the Complainant himself with no explanation for the delay. Neither CW-5 nor the Complainant CW-4 had supplied a copy of the report of the Government Analyst to the Accused (A2), which seriously violated the right of the Accused to obtain a re-test of the sample within a

reasonable time. That, Section 25(2) of the DC Act mandates that a copy of the report of the Government Analyst must be made available to the Accused. Non-supply of the report has proved fatal to the Complainant's case and prejudiced the Accused. The Learned Trial Court went on to hold that no evidence indicated the conditions of storage of the rolled bandages in the CHSO while the Complainant or CW-5 failed to shed light on this aspect. Besides the above infirmities, it was noticed that the batch number of the rolled bandages was originally seen to have been printed as 102 with manufacturing date 07/2014 and expiry date 06/2017. However, this has been scored out and the number 014 written alongside in hand. CW-6 admitted as much. No counter-signature appeared against such overwriting. The possibility of the overwriting having been done in order that the batch number matched the one in the Complaint could not be ruled out. Hence, the acquittal of the Respondent No.2.

***7.*** Having given due consideration to the submissions before us and to the findings of the Learned Trial Court, it emanates without a doubt that there has been procedural lapses on the part of the Prosecuting Agency. Pausing here, we record that the Petitioner did not press the point pertaining to 'Sanction' which was initially raised during the arguments advanced by Learned Deputy Solicitor General. That having been said, we are aware that the overarching principles in the Indian legal system is that procedural rules serve to facilitate justice rather than obstruct it. The Supreme Court has held that procedural laws should not dominate substantive rights or the pursuit of justice (See, ***HDFC Bank Limited and Others*** vs. ***Union of***

***India and Others***[1]), however it is also settled law that procedural breach should not prejudice the rights of the parties involved. Only if there is no breach, the Courts are encouraged to overlook such technicalities to achieve a just outcome. Law mandates that when a thing is required to be done in a particular manner, the said process has to be complied with unerringly and a via method or circumvention of the procedure vitiates the case at the threshold.

***8.*** On this facet, we may notice that in ***Babu Verghese and Others*** vs. ***Bar Council of Kerala and Others***[2] the Supreme Court observed that;

> **"31.** It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor* v. *Taylor* [(1875) 1 Ch D 426 : 45 LJCh 373] which was followed by Lord Roche in *Nazir Ahmad* v. *King Emperor* [(1936) 63 IA 372 : AIR 1936 PC 253] who stated as under:
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> > "[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."
>
> **32.** This rule has since been approved by this Court in *Rao Shiv Bahadur Singh* v. *State of V.P.* [AIR 1954 SC 322 : 1954 SCR 1098] and again in *Deep Chand* v. *State of Rajasthan* [AIR 1961 SC 1527 : (1962) 1 SCR 662] . These cases were considered by a three-Judge Bench of this Court in *State of U.P.* v. *Singhara Singh* [AIR 1964 SC 358 : (1964) 1 SCWR 57] and the rule laid down in *Nazir Ahmad case* [(1936) 63 IA 372 : AIR 1936 PC 253] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.**"**

***9.*** In light of the foregoing discussions, we are of the considered opinion that lapses have occurred in the statutory procedure which have been circumvented to the detriment of the accused. The Petitioner has thereby failed to make out a *prima facie* case or raise arguable points to allow leave to file the Appeal.

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[1] (2023) 5 SCC 627
[2] (1999) 3 SCC 422

***10.*** Accordingly, we are not inclined to allow the leave to Appeal and the Petition stands dismissed and disposed of as also the Appeal.

***11.*** Pending applications, if any, also stand disposed of.

**(Bhaskar Raj Pradhan )**
**Judge**
**21-05-2025**

**( Meenakshi Madan Rai )**
**Judge**
**21-05-2025**

Approved for reporting : **Yes**

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