
Supreme Court on Powers of Police and Drugs Inspectors to Arrest – Challenges and Way Forward

Presentation by
S. W. Deshpande
Chief Advisor, AIDCOC
Former Joint Commissioner
FDA – Maharashtra



Agenda

- ☐ Overview of relevant provisions under applicable Acts and Rules
- ☐ Procedure followed prior to Supreme Court judgment
- ☐ Contentions before Supreme Court
- ☐ Conclusion and directions by the Supreme Court
- ☐ Law laid by Supreme Court in D.K. Basu
- ☐ Way forward

Applicable Acts and Provisions

Drugs and Cosmetics Act, 1940 and Rules, 1945

- ☐ Section 21- Appointment of Inspector
- ☐ Rule 49 - Qualification of Inspector
- ☐ Section 22 - Powers of Drugs Inspector
- ☐ Section 23 and 25 - Procedure to be followed

Applicable Acts and Provisions

Drugs and Cosmetics Act, 1940 and Rules, 1945

- ☐ Section 32 - Cognizance of offences
- ☐ Section 33M - Cognizance of offences in respect of Ayurvedic, Unani and Sidha Drugs
- ☐ Section 36AC - Certain offences to be cognizable and bailable
- ☐ Section 36AD - Trial of certain offences by Special Court.

Applicable Acts and Provisions

Code of Criminal Procedure, 1973

- ☐ Section 2(c) - Definition of cognizable offence
- ☐ Section 2(h) - Definition of Investigation
- ☐ Section 4 - Trial of offences under Indian Penal Code and other laws

Applicable Acts and Provisions

Indian Penal Code

- ☐ Section 274- Adulteration of drugs
non cognizable and non bailable
- ☐ Section 275- Sale of adulterated drugs
non cognizable and bailable
- ☐ Section 276- Sale of drug as different drug or preparation
non cognizable and bailable

Applicable Acts and Provisions

Indian Penal Code

- ☐ Section 463- Forgery
- ☐ Section 464- Making false document
- ☐ Section 465- Punishment for forgery cognizable and bailable

Applicable Acts and Provisions

Indian Penal Code

- ❑ Section 468- Forgery for purpose of cheating cognizable and non bailable
- ❑ Section 471- Using false document or electronic record as genuine cognizable and bailable

Appointment of Inspector

Section 21

- ☐ Both Central and State Government can appoint.
- ☐ Persons having prescribed qualification [Rule 49]
- ☐ By notification in official gazette
- ☐ For specified area
- ☐ Person having financial interest cannot be appointed

Powers

Drugs Inspector is empowered to

- ☐ Inspect
- ☐ Take sample
- ☐ Issue prohibitory order, search and seizure
- ☐ Examine records etc.
- ☐ Issue directions to produce records, register, documents
- ☐ *Exercise such other powers as may be necessary*

Procedure

Section 23 -

- ☐ Procedure for sampling
- ☐ Disposal of counterpart
- ☐ To revoke prohibitory order if no contravention noticed
- ☐ Obtain safe custody order from Court for seized property

Procedure

Section 25 -

- ☐ Government Analyst to furnish report to Inspector
- ☐ Disposal of Government Analyst Report
- ☐ Procedure for challenging report and sending sample to CDL

Section 32-Cognizance of Offence

Institution of prosecution only by

- ☐ An Inspector; or
- ☐ Any gazetted officer of the Central Government or a State Government authorized 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

Section 32-Cognizance of Offence

Institution of prosecution only by

- ☐ The person aggrieved; or
- ☐ A recognized consumer association whether such person is a member of that association or not.

Forum of Trial- Sessions Court

Simultaneous prosecution for offence under any law permissible - Section 32(3)

[as amended by Act 26 of 2008 effective from 10.8.2009]

Section 36AC- Nature of Offence

- ❑ Offences relating to adulterated and spurious drugs to be cognizable and non bailable.
- ❑ Restrictions on bail accused not be released on bail or on his own bond unless:-
 - (i) Public Prosecutor has been given an opportunity to oppose bail application.
 - (ii) That there is reason to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail

Types of offences

- ☐ Cognizable
- ☐ Non Cognizable

Cognizable Offences

- These are the offences in which Police officers can carry out search and seizure without search warrant and can arrest accused without warrant.
- Part I of Schedule 1 specifies which offences under IPC are cognizable or non cognizable.

Cognizable Offences

- ❑ These are the offences in which Police officers can carry out search and seizure without search warrant and can arrest and accuse without warrant.
- ❑ Part II of Schedule 1 is concerned with offences under special Act.
- ❑ Offences for which punishment is 3 years and above are cognizable.

Investigation

Section 2(h) of the CODE

All proceedings under the Code:-

☐ For collection of evidence by Police officer.

or

☐ For collection of evidence by other person authorized by the Magistrate.

Investigation

- Proceeding to the spot
- Ascertainment of facts and circumstances
- Discovery and arrest of suspected offender [in case of non cognizable offence arrest can be effected only under warrant issued by the Magistrate]

Investigation

Collection of evidence which may include:-

- Recording of statements, search and seizure
- Formation of opinion as to whether there is sufficient case against the accused.

Applicability of CRPC

Section 4 (1) of CRPC

Offences under IPC shall be :-

- Investigated
- Inquired
- Tried or
- Otherwise dealt with :- -
- In accordance with the provisions of CODE

Applicability of CRPC

Section 4 (2) of CRPC

Offences under other Acts shall be :-

- Investigated
- Inquired
- Tried or
- Otherwise dealt with :- -
- In accordance with the provisions of CODE

Subject to specific provisions under the special Acts.

Existing Procedure

- ☐ In routine cases involving mostly licensed dealers or established entities - search and seizure carried out by Drugs Inspector in exercise of powers under Section 22.
- ☐ Cases where drugs are reported to be not of standard quality investigation carried out by Drugs Inspector
- ☐ Prosecution filed in Court after completion of investigation.

Procedure followed prior to Supreme Court Judgment

- ☐ In cases involving clandestine activity, rackets, multiple locations or interstate rackets where arrest is warranted police help is sought by giving First Information Report to the police.
- ☐ Case registered by the police based on FIR
- ☐ If offences under IPC are disclosed those charges are also included

Procedure followed prior to Supreme Court Judgment

- ☐ Investigations are jointly conducted by police and Drugs Inspector
- ☐ Accused arrested by police, remand, bail etc. handled by police. Technical support provided by Drugs Inspector
- ☐ On completion of investigation, papers forwarded to Drugs Inspector
- ☐ Complaint filed by the Drugs Inspector
- ☐ Charge sheet/report under 173 filed by police along with complaint.
- ☐ In some cases, complaint and charge sheet clubbed together

Procedure followed prior to Supreme Court Judgment

- ❑ Separate Crime Branch Drugs Control created exclusively to investigate cases under Drugs Act and also under Food Act.
- ❑ Home Department had issued circular to police for providing all necessary police help to Drugs Inspectors and Food Inspectors.
- ❑ The practice of giving FIR, investigation by police and arrest of accused by police was not objected by the Courts.
- ❑ Police officer's powers of search and seizures under the Code are not taken away by Section 22 of the Act. [Bichitrananda Swain Vs State of Orissa, Orissa High Court 1988 CRI LJ 292]

Background

- ❑ Stock of drug was seized from M/s. Sharda Narayan Clinic and Pharmacy, UP as it was stocked without proper license
- ❑ Drugs Inspector filed an FIR for violation of Section 18(a)(i) r/w Section 27 of the Act.
- ❑ Ashok Sharma filed writ petition in Allahabad High Court for quashing FIR and not to arrest him

Background

- ❑ High Court referred to Section 22, 23, 25, 27, 32 and observed that Act clearly lay down complete code for trial of offences
- ❑ Section 32 authorizes only Inspector for launching the prosecution
- ❑ Inspector should not have lodged FIR and authorized police to investigate the case
- ❑ Lodging of FIR is barred and FIR quashed

Appeal Before Supreme Court

- ❑ Union of India challenged the Allahabad High Court order by filing an appeal
- ❑ Ms. Pinky Anand, Additional Solicitor General appeared for appellant [Union of India]
- ❑ Shri. S. Nagamuthu, Senior Counsel was appointed as Amicus Curiae

Contentions

Ms. Pinky Anand for appellant

- ☐ Reliance on Section 36AC under which offences relating to adulterated and spurious drugs are declared cognizable.
- ☐ Once the offences are cognizable, it is inconceivable that FIR cannot be lodged under CRPC.
- ☐ Reliance on Section 4 and 5 of CRPC to argue that there is nothing in the Act which detracted from FIR being registered

Contentions

Ms. Pinky Anand for appellant

- ☐ Reliance on Section 36AC to contend that powers of the police under CRPC and duty to register FIR are not taken away.
- ☐ Only prohibition under the Act is police officer cannot launch prosecution
- ☐ Drugs Inspector under Section 32 is not a police officer and does not have powers to arrest

Contentions

Shri. Nagamuthu - Amicus Curiea

- ❑ Merely because certain offences are made cognizable under Section 36AC the provisions of Section 32 cannot be ignored
- ❑ If the legislature desired, they could have amended Section 32 to provide that offences falling under section 32 should be investigated by lodging FIR and by filing report under Section 173 of CRPC

Contentions

Shri. Nagamuthu - Amicus Curiae

- ❑ Offences under Section 27(1)(a) and 27(1)(c) were cognizable even without help of Section 36AC
- ❑ Reliance on the scheme of Act requiring appointment of Inspector with prescribed qualification who are experts in the subject
- ❑ Powers and procedure is prescribed under Section 22 and 23. The provision of Section 23 are mandatory. Section 25 is also mandatory

Contentions

Shri. Nagamuthu - Amicus Curiae

- ❑ Similar powers are not given to the police officer
- ❑ If it is considered that police can file a final report and cognizance is taken on such report then it will make Section 32 non existant
- ❑ If Section 36AC is interpreted to confer powers of arrest to police it will mean authorizing police to register case under Section 154 and file final report under 173 of CRPC. It is difficult to harmonize Section 36AC and Section 32

Supreme Court's Observations

- ❑ Scheme of the Act must be kept in mind
- ❑ The qualification of Inspector bears a nexus with the performance of the specialized duties by the Inspectors
- ❑ Knowledge about drugs and cosmetics goes a long way in equipping Inspectors to perform their multifarious functions

Supreme Court's Observations

- ❑ Section 22 which gives powers to Inspectors must be viewed in the context of legislative value judgment that complaint is to be filed by the Inspectors and not by the police.
- ❑ Section 22(1)(d) declares that Inspector may exercise other powers as may be necessary for carrying of purpose of chapter IV or any rules made thereunder.
- ❑ Inspector has certain powers similar to police officer and the word investigation is not limited only to a police investigation

Conclusion and Directions

- ❑ In view of Section 32 and also scheme of CRPC police officer cannot prosecute offenders
- ❑ Police officer cannot register FIR under Section 154 of CRPC and cannot investigate offences as per CRPC
- ❑ There is no bar to the police officer to investigate and prosecute a person who has committed offence under other Acts as stated under Section 32(3)

Conclusion and Directions

- ❑ Under Section 22(1)(d) Drugs Inspector can arrest the accused in respect of cognizable offences under Chapter IV without any warrant
- ❑ Drugs Inspector is bound by law as laid down by Supreme Court in D.K. Basu Vs State of West Bengal [1997]1 SCC 416 and also follow CRPC
- ❑ All pending FIR with police to be returned to Drugs Inspectors
- ❑ The directions are applicable from the date of Supreme Court judgment

Law Laid down in D.K. Basu

- ☐ Officer handling interrogation should bear visible and clear identification and name tag with designation
- ☐ Particulars of officers handling interrogation must be recorded in a register
- ☐ Memo of arrest to be prepared at the time of arrest

Law Laid down in D.K. Basu

- ❑ Such memo to be attested by at least one witness either member of the family of the arrestee or a respectable person of the locality. Memo to be signed by the arrestee
- ❑ One friend or other person know to the arrestee or having interest in his welfare should be informed.
- ❑ Time and place of arrest and venue of custody must be notified to the next friend or relative living outside the district or town through legal AID organization in the district and police station telegraphically

Law Laid down in D.K. Basu

- ☐ The arrestee must be made aware of his right to have someone informed of his arrest
- ☐ Entry should be made in a diary which should include name of the next friend who has been informed and the particulars of the officer having custody of the arrestee.
- ☐ If the arrestee requests then he should be medically examined
- ☐ The arrestee should be medically examined by trained doctor every 48 hours by doctor on panel prepared by DGHS

Law Laid down in D.K. Basu

- ❑ Copies of documents including memo of arrest, referred above should be sent to Magistrate
- ❑ The arrestee should be permitted to meet his lawyer during interrogation though not throughout the interrogation
- ❑ Police Control Room should be provided at all districts and state headquarters where information regarding the arrest and place of custody shall be communicated within 12 hours.

Way Forward

- ❑ The declaration by the Supreme Court that the Drugs Inspector has power to arrest and that police officer does not have power to record FIR and investigate will put tremendous responsibility and challenge to the Drugs Inspectors in performance of their duties.
- ❑ Joint action plan will have to be worked out by the Food and Drugs Administration and Home Department so that police help is available to the Drugs Inspectors and logistics about custody of the accused will have to be worked out in cooperation with the police

Way Forward

- ❑ The Drugs Inspectors will have to be sensitized about the Supreme Court Judgment and the obligations as declared in D.K. Basu's case.
- ❑ Extensive training probably on par with training imparted to police officer will have to be given to the Drugs Inspectors
- ❑ The policy may be framed in such a manner that arrest is resorted to only when absolutely necessary

References

- ❑ Drugs and Cosmetics Act, 1940 and Rules, 1945
- ❑ Code of Criminal Procedure, 1973
- ❑ Union of India Vs Ashok Kumar Sharma and others 2020 SCC online SC 683
- ❑ D.K. Basu Vs State of West Bengal [1997]1 SCC 416

THANK YOU