

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.74/2024

The State of Tripura, represented by the Secretary, Home Department,
Government of Tripura.

.....Petitioner(s)

V E R S U S

1. Dr. Pradip Bhaumik, President, i.e. Central Executive Committee (i.e. CEC) of the Hepatitis Foundation of Tripura (i.e. HFT), ITI Road, Indranagar, Agartala.
2. Er. Saibal Nandi, Vice President, CEC of HFT, ITI Road, Indranagar, Agartala.
3. Dr. Priyabrata Sinha, Vice President, CEC of HFT, ITI Road, Indranagar, Agartala.
4. Sri Dibakar Debnath, General Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
5. Er. Kajal Banik, Joint Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
6. Dr. Avik Chakraborty, Joint Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
7. Mr. Biman Kanti Roy, Finance Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
8. Mr. Ashok Kr. Chakraborty, Asst. Finance Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
9. Mr. Snehangshu Sekhar Datta, Office Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
10. Mr. Suman Biswas, Press Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
11. Er. Chinmoy Debnath, Executive Body Member (i.e. EBM), CEC of HFT, ITI Road, Indranagar, Agartala.
12. Mr. Ranajib Bhaumik, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
13. Mrs. Tulsi Ghosh Banik, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
14. Mr. Pradip Banik, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
15. Mrs. Debi Chakraborty, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
16. Sri Mrinal Kanti Guha, Staff, Hepatitis Foundation of Tripura, ITI Road, Indranagar, Agartala.

.....Respondent(s)

Crl.Rev.P. No.75/2024

The State of Tripura, represented by the Secretary, Home Department,
Government of Tripura.

.....Petitioner(s)

V E R S U S

1. Dr. Pradip Bhaumik, President, i.e. Central Executive Committee (i.e. CEC) of the Hepatitis Foundation of Tripura (i.e. HFT), ITI Road, Indranagar, Agartala.
2. Er. Saibal Nandi, Vice President, CEC of HFT, ITI Road, Indranagar, Agartala.
3. Dr. Priyabrata Sinha, Vice President, CEC of HFT, ITI Road, Indranagar, Agartala.
4. Sri Dibakar Debnath, General Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
5. Er. Kajal Banik, Joint Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
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10. Mr. Suman Biswas, Press Secretary, CEC of HFT, ITI Road, Indranagar, Agartala.
11. Er. Chinmoy Debnath, Executive Body Member (i.e. EBM), CEC of HFT, ITI Road, Indranagar, Agartala.
12. Mr. Ranajib Bhaumik, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
13. Mrs. Tulsi Ghosh Banik, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
14. Mr. Pradip Banik, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
15. Mrs. Debi Chakraborty, EBM, CEC of HFT, ITI Road, Indranagar, Agartala.
16. Sri Sumit Ghosh, Pharmacist & Staff, Hepatitis Foundation of Tripura, Agartala.
17. Sri Ashim Deb, Staff, Hepatitis Foundation of Tripura, Agartala.

.....Respondent(s)

For Petitioner(s) : Mr. Raju Datta, Public Prosecutor.

For Respondent(s) : Mr. Paramartha Datta, Advocate,
Mr. Alik Das, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and Judgment & Order: *25th June, 2025*

Whether Fit for Reporting: *YES*

JUDGMENT & ORDER (ORAL)

Heard Mr. Raju Datta, learned Public Prosecutor, for the petitioner-State and Mr. Paramartha Datta, learned counsel together with Mr. Alik Das, learned counsel for the respondents.

2. CrI. Rev. P. No.75 of 2024 has been tagged together as not only the issues involved are same but the same set of respondents are accused except one more in CrI.Rev.P. No.75 of 2024 of having committed the offences under Sections 27(b)(ii) and 18(c) of Drugs & Cosmetics Act, 1940 (for short, the Act of 1940). These two revision petitions arise out of the impugned orders of the same date i.e. 02.08.2024 passed by Special Judge, West Tripura, Agartala in Special (D&C) No. 01/2023 and Special (D&C) No.02/2023 respectively.

3. Both the special cases arise out of two complaints being CR No.261/2019 and CR No.262/2019 (Annexure-1 in both the petitions) lodged before the learned Chief Judicial Magistrate, West Tripura, Agartala by the complainant-Inspecting Officer (Drugs), Office of the Deputy Drugs Controller, Government of Tripura, Agartala with similar allegations that the accused persons had been found to store drugs without a valid license which is punishable under Section 27(b)(ii) read with Section 18(c) of the Act of 1940. Upon transfer to the Court of learned Judicial Magistrate, First Class, Court No.6, Agartala, West Tripura, both the complaint cases were proceeded by examination of the complainant and her witnesses. Cognizance was taken

on 15.11.2019. The learned Judicial Magistrate, First Class, Court No.6, Agartala, thereafter committed the case by order dated 01.08.2023 (Annexure-3 in both the petitions) to the Court of learned Sessions Judge, West Tripura, Agartala, in view of the specific provisions under Section 32(2) of the Act of 1940 that no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter after supply of the statement of the persons examined by the Magistrate and other documents to the accused persons in compliance of the Section 208 of the Cr.P.C. Thereafter, the accused persons filed an application under Section 245 (2) of Cr.P.C. before the learned Sessions Court for discharge from the liability of the case (Annexure-4 in both the petitions). They asserted that the present case was not maintainable because the learned Judicial Magistrate, 1st Class, Court No.6, Agartala, West Tripura, took cognizance of offence under Section 27(b)(ii)/18(c) of the Act of 1940 and thereafter recorded evidence which is not permissible as per Section 32(2) of the Act of 1940. They, therefore, prayed for discharge of the accused persons from the liability of the case. Averments in the applications filed under Section 245(2) of Cr.P.C. by the accused persons in both the cases do not refer to the merits of the complaint or the statements recorded before the learned Magistrate on examination of the complainant and her witnesses that the ingredients of the offence under Section 27(b)(ii)/18(c) of the Act of 1940 are not made out against them. However, the learned Special Judge, West Tripura, Agartala by the impugned order dated 02.08.2024 proceeded to hold that the learned Judicial Magistrate took oral evidence of all the prosecution witnesses under Section 202(2) of Cr.P.C which was not proper as it had no jurisdiction to try the case in view of Section 32(2) of the Act of 1940. On the applications under Section 245(2) of Cr.P.C. by the accused

persons challenging the maintainability of the case, the learned Magistrate realizing that it had no jurisdiction to try the case ultimately committed it to the Court of sessions for trial vide order dated 01.08.2023 without passing any specific order. The learned Special Judge, West Tripura, Agartala also proceeded to examine the question as to whether the complaint and the materials available on the record constitute the offences alleged under Section 27(b)(ii)/18(c) of the Act of 1940. The learned Special Judge, West Tripura, Agartala, after going through the materials and the statement recorded by the learned Magistrate held that no prima facie case against the accused persons have been made. All the accused persons/respondents were thereby discharged from the liability of this case and set at liberty. Their bail bonds were also discharged. The State being aggrieved by the impugned orders dated 02.08.2024 passed in Special (D&C) No. 01/2023 and Special (D&C) No.02/2023 has preferred the two revision petitions.

4. Mr. Raju Datta, learned Public Prosecutor for the petitioner-State, has inter alia submitted as follows:

- (i) That taking of cognizance by the learned Judicial Magistrate even erroneously does not vitiate the proceedings in view of Section 460(e) of the Cr.P.C.
- (ii) Sub Section 2 of Section 32 of the Act of 1940 provides that no Court inferior to that of a Court of Sessions shall try an offence punishable under this Chapter, save as otherwise provided in the Act. Relying upon the decision of the Apex Court in the case of *Hardeep Singh versus State of Punjab and others* reported in (2014) 3 SCC 92 specifically paragraph No. 38, it is submitted

that the trial commences on the framing of charge and not from the stage of taking of cognizance. Therefore, the learned Judicial Magistrate did not commit any error in taking cognizance in respect of the offence alleged in the complaint instituted by the competent officer under the Act of 1940. The criminal proceedings were not vitiated. The learned Magistrate rightly committed the case to the Court of Sessions for proceeding with the trial after supply of the papers in compliance of the Section 208 of the Cr.P.C.

- (iii) Learned Public Prosecutor further submits that since the offences are exclusively triable by the Court of Sessions no application of discharge can be maintained under Section 245 of the Cr.P.C. Such prayer can be made only in consonance with the specific provisions under Section 227 of the Code. The learned Special Court has completely overlooked the inherent infirmity in the application for discharge filed by the accused persons.
- (iv) It is submitted that the application for discharge under Section 245 of the Code questions the maintainability of the case before the learned Judicial Magistrate in view of Section 32(2) of the Act of 1940. The application of discharge was completely silent on whether the complaint and the statement recorded by the learned Magistrate at the pre charge stage along with other documents produced before the learned Judicial Magistrate constitute the ingredients of the offences under Section

27(b)(ii)/18(c) of the Act of 1940. The learned Sessions Court had, therefore, no occasion to examine the materials to come to a finding that no prima facie offence is made out against the accused persons under the aforesaid sections.

- (v) However, the learned Special Court also proceeded to hold after detailed scrutiny of the materials placed on record that no prima facie offence is made out against the accused persons. Such a finding was wholly uncalled for at that stage since the accused persons had themselves failed to take that plea in their application for discharge under Section 245 of the Cr.P.C. It is submitted that the complaint read along with the statement of the complainant and complainant witnesses and other documents produced before the learned Magistrate supplied to the accused persons under Section 208 of the Cr.P.C, clearly make out a case under the offending provisions of Act of 1940 i.e. Section 27(b)(ii)/18(c). Therefore, the impugned order may be set aside. The learned Special Judge, West Tripura, Agartala, may be directed to proceed with the trial from the stage after framing of the charge.

5. Mr. Paramartha Datta, learned counsel for the respondents, has in opposition inter alia made the following submissions:

- (i) That no offence as alleged in the complaint is made out against the accused persons since they were having a valid license to store Hepatitis vaccines.

(ii) The learned Magistrate committed a serious error in law by entertaining the complaint and proceeding with recording of the statement of the complainant and the complainant witnesses and thereafter taking cognizance. Sub Section 2 of Section 32 of the Act of 1940 bars any Court inferior to the Court of Sessions Judge to try the offences under the Chapter-IV save as otherwise provided under the Act. Therefore, the order of cognizance was vitiated. The complaint was also not maintainable.

(iii) The application for discharge filed under Section 245 of the Cr.P.C. before the learned Magistrate at the first instance was ignored. However, the learned Magistrate after realizing that it did not have jurisdiction to try the offence proceeded to commit the case to the Court of Sessions after supplying of the papers under Section 208 of the Cr.P.C. The committal of the case to the Court of Sessions could not amount to curing the defect in the order taking cognizance.

(iv) That the learned Sessions Court duly entertained the application under Section 245(2) of the Cr.P.C. for discharge of the accused persons wherein the accused persons/respondents had primarily taken the plea that the case is not maintainable before the learned Judicial Magistrate in view of the Section 32(2) of the Act of 1940.

However, the learned Sessions Court was not precluded from examining the materials on record to arrive at a finding that no prima facie case is made out against the accused persons under the aforesaid sections.

- (v) That mere non mentioning or wrong mentioning of a provision of law does not denude the jurisdiction of the learned Court in exercise of powers on the plea of discharge. He, however, does not dispute that the appropriate provision for discharge in such a case triable by the Court of sessions is under Section 227 of this Code. Learned counsel for the respondents submits that if the materials on record collected before the learned Court of Judicial Magistrate are duly scrutinized, no offence as alleged would be made out against the petitioner. If the materials on record do not constitute the offence alleged under the Act of 1940, this Court would refrain from interfering in the impugned orders by which the petitioners have been discharged. Therefore, the revision petitions may be dismissed as being without merit.

6. I have considered the submissions of the learned counsel for the parties at length and taken note of the materials placed from record. At the outset, it is pertinent to refer to the relevant provision of the Act of 1940. Chapter – IV of the Act of 1940 deals with manufacture, sale and distribution of drugs and cosmetics. Section 22 of the Act of 1940, provides the powers of

inspectors to inspect, take samples of any drug or cosmetic, examine, search any person or place, 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. He is also empowered to examine any record, register, document or any other material object found 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. He is empowered to exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder. The provisions of the Code 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 the said Code. Any willful obstruction in the exercise of such powers to the inspector conferred upon him by or under this Chapter is punishable with imprisonment which may extend to three years, or with fine, or with both.

7. Section 23 of the Act of 1940 provides the procedure where an inspector takes a sample of a drug or cosmetic for the purpose of test or analysis under this Chapter by tendering the fair price thereof and giving a written acknowledgment therefore. Section 23 further provides in detail the procedure for test or analysis of such samples seized by the inspector. Section 27 of the Act of 1940, provides for penalty for manufacture, sale, etc. of drugs in contravention of this Chapter. Respondents are alleged to have committed offence under Section 27(b)(ii) of the Act of 1940 which provides that any person himself or on his behalf manufactures for sale or for distribution, or

stocks or exhibits or offers for sale or distributes, any drug without a valid license 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. However, the trial 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. Section 32 of the Act of 1940, which is material to the question raised herein to be taken note of reads as under:

“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.”

8. In the instant case it is not in dispute that the complaint has been lodged by the authorized person i.e. the Inspecting Officer (Drugs), Office of the Deputy Drugs Controller, Government of Tripura, Agartala. Sub Section (2) of Section 32 provides that 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. It is by now well settled by virtue of the Constitution Bench judgment of the Apex Court in the case of *Hardeep Singh versus State of Punjab and others* reported in (2014) 3 SCC 92, that the trial of a criminal case commences from the stage of the framing of the charge and not from the stage of taking of cognizance. The opinion of the Apex Court at paragraph No.38 is extracted hereunder:

“38 In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken”

9. As such the trial had not commenced in both the cases after taking of cognizance by the learned Judicial Magistrate on the complaint lodged by the competent officer. In order to examine the plea raised by the respondents that the complaint was not maintainable before the learned Judicial Magistrate and the proceedings were vitiated on account of cognizance being erroneously taken by him under Section 27(b)(ii)/18(c) of the Act of 1940, the relevant provisions of Section 190 of the Code along with Section 200 to 204 are being reproduced hereunder:

“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.

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200. Examination of complainant.-

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:
Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

201. Procedure by Magistrate not competent to take cognizance of the case.—If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,—

- (a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;
- (b) if the complaint is not in writing, direct the complainant to the proper Court.

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, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, 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.

203. Dismissal of complaint.

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

- (a) a summons-case, he shall issue his summons for the attendance of the accused, or
 - (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.
- (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
- (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
- (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
- (5) Nothing in this section shall be deemed to affect the provisions of section 87.”

10. Section 460 of the Code under Chapter XXXV relating to irregular proceedings, are being reproduced hereunder:

“460. Irregularities which do not vitiate proceedings.

If any Magistrate not empowered by law to do any of the following things, namely:-

- (a) to issue a search-warrant under Section 94;
- (b) to order, under Section 155, the police to investigate an offence;
- (c) to hold an inquest under Section 176;
- (d) to issue process under Section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
- (e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190;
- (f) to make over a case under sub-section (2) of Section 192;
- (g) to tender a pardon under Section 306;
- (h) to recall a case and try it himself under Section 410; or
- (i) to sell property under Section 458 or Section 459,

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.”

11. In the present case the written complaint was lodged by the competent officer, the Inspector of Drugs as per requirement of Section 32(1) of the Act of 1940, before the Court of learned Chief Judicial Magistrate. Upon transfer, the case proceeded before the Court of learned Judicial Magistrate. The learned Judicial Magistrate called upon the complainant to examine herself and her witnesses by following the procedure prescribed under Section 200 of the Code and after taking cognizance vide order dated 15.11.2019 summons were issued upon the accused persons. In view of Section 200(b) such a course may not have been required as the complaint was made by a public servant in writing in discharge of her official duties. The accused persons appeared on 04.01.2020 on such summons.

12. In the case of *Rosy and another Versus State of Kerala and others* reported in *(2000) 2 SCC 230*, the Apex Court has delineated the course to be adopted by a Magistrate upon receiving a complaint under Chapter- XIV of the Code. Paragraph No.20 of the report containing the opinion of the Court is extracted hereunder:

“20. Hence, what emerges from the above discussion is:

I. (a) Under Section 200 the Magistrate has the jurisdiction to take cognizance of an offence on the complaint after examining upon oath the complainant and the witnesses present.

(b) When the complaint is made in writing by a public servant acting or purporting to act in discharge of his official duties, the Magistrate need not examine the complainant and the witnesses.

(c) In such case the court may issue process or dismiss the complaint.

II. (a) The Magistrate instead of following the procedure stated above may, if he thinks fit, postpone the issue of process and hold inquiry for the purpose of deciding whether or not there

is sufficient ground for proceeding against the person accused. Such inquiry can be held by him or by the police officer or by any other person authorised by him.

(b) However, where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, the direction of investigation by the police officer is not permissible and he is required to hold inquiry by himself. During that inquiry he may decide to examine the witnesses on oath. At that stage, the proviso further gives mandatory directions that he shall call upon the complainant to produce all his witnesses and examine them on oath. The reason obviously is that in a private complaint, which is required to be committed to the Sessions Court for trial, it would safeguard the interest of the accused and he would not be taken by surprise at the time of trial and it would reveal the version of the witnesses whose list is required to be filed by the complainant under Section 204(2) before issuance of the process.

(c) The irregularity or non-compliance therewith would not vitiate further proceedings in all cases. A person complaining of such irregularity should raise objection at the earliest stage and he should point out how prejudice is caused or is likely to be caused by not following the proviso. If he fails to raise such objection at the earliest stage, he is precluded from raising such objection later.”

13. The decision in the case of *Rosy* (Supra) has been relied upon in the case of *Shivjee Singh Vs. Nagendra Tiwary & Ors.*, reported in (2010) 7 SCC 578. In the instant case, the Apex Court was considering the question whether examination of all witnesses cited in the complaint is sine qua non for taking cognizance by a Magistrate in a case exclusively triable by the Court of Sessions? The Apex Court examined the provisions of the Code under Chapter XIV, XV and XVI containing the provisions under Section 190, Section 200 to 209 of the CrPC and the precedents on the subject and held that the use of the word “shall” in the proviso to Section 202(2) is prima facie indicative of mandatory character of the provisions contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non-examination on oath of any or some of the witnesses cited by the

complainant is, by itself, not sufficient to denude the Magistrate concerned of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so.

14. The Apex Court in the case of *Rosy* (supra) has observed that the irregularity of non-compliance thereof would not vitiate further proceedings in all cases. A person complaining of such irregularity should raise objection at the earliest stage and he should point out how prejudice is caused or is likely to be caused by not following the proviso. The question involved in the present case is whether taking of cognizance by the learned Judicial Magistrate was without jurisdiction or has vitiated the trial in view of the specific provisions under Section 32(2) of the Act of 1940. Chapter – XXXV of the Code deals with irregular proceedings. Section 460 enumerates such proceedings which are not vitiated due to irregularity. It provides that if any Magistrate not empowered by law to do any of the following things enumerated under (a) to (i) thereof erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered. Sub Clause (e) of Section 460 provides that if the Magistrate is not empowered by law to take cognizance of an offence under Clause (a) or (b) of Sub-Section 1 of Section 190, the proceedings shall not be set aside merely on the ground of her not being so empowered meaning thereby that such irregularity would not vitiate the proceedings. Compare to the above, Section 461 of the Code provides that if the Magistrate takes cognizance of an offence under Clause (c) of Sub Section 1 of Section 190, without being empowered in law on that behalf, his proceedings shall be vitiated.

15. The present complaint case falls under Section 190(1)(a) of the Code since the present complaint was instituted by the competent authority authorized under the Act of 1940. Therefore, taking of cognizance by the learned Judicial Magistrate would not vitiate the proceedings. However, after taking of cognizance, since the case was exclusively triable by the Court of Sessions as per Section 32(2), the learned Magistrate, rightly committed it to the Court of Sessions after complying the provisions of Section 208 of the Cr.P.C. Since the charges were not framed by the learned Court of Judicial Magistrate, the trial had not commenced in the sense provided under Section 32(2) of the Act.

16. The accused persons preferred an application for discharge under Section 245(2) of the Code before the learned Special Judge, West Tripura, Agartala, taking the plea that the present case was not maintainable because the learned Judicial Magistrate, First Class, took cognizance of offence under Section 27(b)(ii)/18(c) of the Act of 1940 and thereafter evidence was recorded which is not permissible as per Section 32(2) of the Act.

17. In the application for discharge, the accused persons did not in specific terms raise the plea that no prima facie offence is made out under the aforesaid sections on the basis of the complaint, statement of complainant and its witnesses and other documents produced before the learned Judicial Magistrate. The learned Special Court proceeded to not only deal with the legal issue whether the case was not maintainable on account of cognizance being taken by the learned Judicial Magistrate under the offending provisions of the Act of 1940, but erroneously also proceeded to examine the plea on

merits to come to a finding that no prima facie offence was made out against accused persons. In a case triable by the Sessions Court, the relevant provisions for seeking a discharge are provided under Section 227 of the Code which the accused persons did not invoke.

18. Therefore, in the light of the discussions made and the reasons recorded hereinabove, this Court is of the considered view that the impugned order is unsustainable in law. Taking of cognizance by the learned Judicial Magistrate did not vitiate the trial of the present complaint cases. The learned Sessions Court would now proceed from the stage of framing of the charge for commencement of the trial. The respondents are at liberty to make a prayer for discharge before the learned Sessions Judge, West Tripura, Agartala, under the relevant provisions of the Code which may be considered in accordance with law.

19. Let it be made clear that no observations made hereinabove would influence the learned trial Court on merits on the applications for discharge made by the accused persons/respondents.

Both the revisions petitions are accordingly allowed.

Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ