

EVIDENCE BEFORE CHARGE

P.W. No. 1 on S.A.

Name : Sharadchandra Krishnarao Nandekar,
Age : 61 years,
Occupation : Retired Asst. Commissioner,
R/o. : Nagpur

Examination in chief by Ld. APP Smt. Priyanka B. Zirpe for State :-

I was working as Drug Inspector from June 2011 to 2014 in the Office Jt. Commissioner, FDA, Nagpur. I am appointed under Section 21 of Drugs and Cosmetics Act 1940 and Rules there under from October, 1993. I have filed xerox copy of Gazette notification about my appointment on record. Xerox copy of notification is now shown to me. I have brought the original with me. The contents of xerox copy are same as per original.

2. (Ld. Advocate for the accused raised objection to exhibit this document as according to him it does not bear signature or stamp of the concerned officer.

Ld. APP for the prosecution replied that this is a notification having presumptive value of genuineness.

Perusal of the original notification brought by the witness shows that it is dated 26.08.1993. It is more than 30 years old document and that too Gazette notification issued from the office of Governor. Therefore, it has presumptive value. Hence, the xerox thereof placed on record being same as per original is marked as **Exh.P-1.**)

3. I am authorized to institute this prosecution under section 33 M of Drugs & Cosmetics Act, 1940. I have filed xerox of gazette

notification to that effect and brought the original with me. Contents of xerox are same as per original. It is marked as Exh.P-2.

4. I have also placed on record true copy of my transfer order dated 23.05.2011 issued by our office. It is marked as Exh.P-3.

5. On 26.10.2011 a news was published in daily Lokmat that Lakadganj Police have arrested three accused who were selling spurious Zandu Balm, Tata Tea, Detergent Powder- Surf Excel, Wheel etc. As Zandu Balm comes under the category of Ayurvedic Medicine and Tata tea comes under the category of Food, our office asked me to make inquiry at Lakadganj Police Station as to what has been seized by them in respect of Zandu Balm.

6. Accordingly, on 26.10.2011, I met Police Inspector at Lakadganj Police Station and gave him a letter asking as to what action is taken by them and also asked for documents related to it. Office copy of the letter now shown to me is the same. It bears my signature and signature of concerned police personnel regarding receipt thereof. Contents of the letter are correct. It is marked as Exh.P-4.

7. Concerned P.I. informed me that PSI Anand Kokare has effected this raid. Therefore, I met PSI. Anand Kokare. He told me that he had received complaint about it from Pvt. Vigilant Officer Suresh Dudhani, of IPR Vigilant Services. Said PSI told me that they had raided the premises situated at Marwadi Chowk, Opposite Prince Garage, Itwari, Nagpur and found that the above accused are engaged in stocking / selling spurious Zandu Balm, Detergent Powder- Surf Excel etc. Said PSI also told that they raided at Wadi and found spurious Zandu Balm, Detergent Powder- Surf Excel etc. Accordingly, he supplied me the copy of

seizure panchnamas. Police also registered Crime No. 4147/2011, in respect of the said offence on 23.10.2011. Copy of FIR was supplied to us. He also supplied copy of statement of the accused to us.

8. On 04.11.2011 the complainant drawn sample of following drugs under Panchnama dt. 04.11.2011:

I) 4 x 20 x 9 ml ZANDU BALM EK Balm Tin Kam, Batch No.AL 0077
Mfg. dt. 06/11, Exp. 05/14, Mfg. Lic No. UKAY 161/2009
manufactured by M/s Emami Limited, Plot No.40- 41, Sector 5, IIE
SIDCUL Pant Nagar, Dist: U.S. Nagar, Uttarakhand Pin – 263153.

II) 4 x 20 x 9 ml ZANDU BALM EK Balm Tin Kam, Batch no.AL 0190
mfg. dt. 08/11, Exp. 05/14, Mfg. Lic No. UKAY 161/2009
manufactured by M/s Emami Limited, Plot no.40- 41, Sector 5, IIE
SIDCUL Pant Nagar, Dist: U.S. Nagar, Uttarakhand, Pin 263153.

The above samples were drawn from Arvind A. Kokare, PSI, Lakadganj police Station, Nagpur under Form 17. Original copies of Form No.17 were given to PSI Kokare and receipts thereof were obtained. Two Form 17 and receipts thereof are now shown to me. They are the same. They bear signatures of myself and PSI Kokare. The contents thereof are correct. Form No.17 and receipts are respectively marked as Exh.P-5 and P-6.

9. I draw the panchnama of aforesaid action taken. Xerox copy of panchnama now shown to me. It bears signatures of two panchas, officer of muddemal room and myself. Contents thereof are correct. It is marked as Article- 'A'.

10. On 05.11.2011, the complainant sent one each part of said sample to Drugs Control Laboratory, Mumbai under Form 18 A, for test and analysis by Registered Post A.D. Postal receipts are dated 09.11.2011. Now I am shown office copies of two Form 18 A. They bear my signatures. Contents are correct. They are respectively marked as Exh.P-7 and P-8. Original receipts are also placed on record. They are respectively marked as Exh.P-9 and P-10.

11. The complainant also sent letter dated 05.11.2011 to the Government Analyst, Drugs Control Laboratory, Mumbai. Office copy of the letter now shown to me is the same. It bears my signature. Its contents are correct. It is marked as Exh.P-11.

12. On 27.03.2012 the complainant received Reports of both the samples from Govt. Analyst, Drugs Control Laboratory, Mumbai. As per the Reports following observations are made-

A) Zandu Balm Batch No. AL0077-' Sample is 'Not of Standard Quality as defined under Drug and Cosmetics Act, 1940 and Rules thereunder'.

B) Zandu Balm Batch No. AL0190-' Sample is 'Not of Standard Quality as defined under Drug and Cosmetics Act, 1940 and Rules thereunder'.

Both the reports bear signatures of Government Analyst. They are dated 20.03.2012. They are respectively marked as Exh.P-12 and P-13.

Further examination in chief is deferred due to recess.

Date : 09.04.2025
Nagpur.

(J. V. Pekhale-Purkar)
Additional Chief Judicial Magistrate,
Nagpur.

Examination in chief is resumed on S.A. after recess.

13. On 17.4.2012 the complainant handed over one copy of each Report to Kokare, PSI, Lakadganj, Nagpur alongwith letter. Office copy of that letter now shown to me is the same. It bears my signature as well as signature and stamp of concerned police station regarding receipt thereof. Contents thereof are correct. It is marked as **Exh.P-14**.

14. Vide letter Exh.P-14 the complainant asked for report regarding action taken by the Police Station. On 04.11.2011 the accused namely Nilesh Jain gave letter to our office. The letter now shown to me is the same. It is marked as **Exh.P-15**. Other accused namely Yogesh Dholwani gave statement in our office. The statement bears signature of that accused as well as myself. Accused Anil Govardhandas Joshi gave his statement in front of another officer of our office. I again say that it was letter cum statement addressing to myself and another officer. It bears signature of that accused and another officer M.C. Pawar.

15. The accused Yogesh Dholwani and Anil Joshi had also submitted xerox copies of their election cards.

16. The complainant sent letter to all the accused on 07.12.2011 by Registered Post A.D. and asked them to disclose the name and address of the person from whom they acquired Zandu Balm and also sent copies of those letters to the concerned Police Station. Office copies of three letters now shown to me are the same. They bear my signatures. Contents thereof are correct. They are respectively marked as **Exh. P-16 to P-18**. Three postal receipts and three acknowledgments are also placed on record. They are respectively marked as **Exh. P-19 to P-24**.

17. On 19.12.2011, letter dated 17.12.2011 was received by our office from Police Station, Lakadganj thereby giving report about the

action taken by them against the accused. Letter now shown to me is the same. It bears signature of PSI Kokare. It was addressed to our office. It is marked as Exh.P-25. Copies of statements of the accused were also annexed with that letter. Copies of seizure panchnama were also annexed with that letter.

18. On 08.05.2012 I have visited the premises of M/s. Emami Limited, situated at Plot No.40, 41, sector 5, IIE Sidcul, Pant Nagar, Uttarakhand, i.e. the licensed manufacturer of Zandu Balm. At the time of visit Shri Sarat Roy, Quality Assurance Manager was present. I handed over Analytical Report copy and sealed samples of both Batch drugs to Shri Sarat Roy along with letter dated 08.05.2012. Office copy of that letter now shown to me is same. It bears my signature. The contents thereof are true and correct. It also bears signature of Sarat Roy regarding receipt of the letter. It is marked as Exh.P-26.

19. The manufacturar of Zandu Balm verified both the sealed samples with Quality Control and denied manufacturing of the drug sample seized from the accused and reported the sealed samples are spurious in nature as per reply letter dt. 08.05.2012. Reply letter now shown to me is same. It was addressed to me. It also bears signature of Sarat Roy. It is marked as Exh.P-27. He also supplied sample of Zandu Balm manufactured by them alongwith the said letter. Along with letter Exh.P-27, Sarat Roy also gave comparison tables of both complaint sample and their own sample. These tables bear signatures of Sarat Roy and stamp of the company. He also supplied photographs of complaint samples and control sample along with letter Exh.P-27. Not only this, he also supplied attested copies of licences and form 26 D along with letter Exh.P-27. All these documents are part of letter Exh.P-27 hence, collectively marked as Exh.P-27.

20. I have submitted complaint samples and control samples in the Court. I can identify those samples, if shown to me. Now I am shown two complaint samples and two control samples. These samples are the same. Complaint samples are marked as Article- 'B' and 'C'. Control samples are marked as Article- 'D' and 'E'. I am also shown two sealed samples which were taken by me from PSI Kokare. They are respectively marked as Article- 'F' and 'G'.

21. It was found in investigation that the accused sold spurious manufactured Zandu Balm received from different places. I sent Report and Investigation papers to Joint Commissioner, Headquarter and Controlling Authority, Food & Drugs Administration, M.S. Mumbai vide letter No. Ausou Pra/Zandu Balm/1137//11/2 dt. 14.06.2012 and requested to give consent for prosecution against all the accused. Office copy of letter now shown to me is the same. It bears signature of A.V. Giri, Jt. Commissioner, Nagpur. I identify his signature. The contents of the letter are correct as per our record. It is marked as Exh.P-28.

22. On 20.02.2013 my office received Sanction letter dated 08.02.2013 from Controlling authority & Joint Commissioner (H.Q.) Mumbai for filing prosecution against the said accused. Sanction Letter now shown to me is the same. It bears signature of O.S. Sagwani, Controlling authority & Joint Commissioner (H.Q.), Mumbai. It is marked as Exh.P-29.

23. On 23.02.2011, I again sent letter to Lakadganj Police Station calling about details of investigation done by them. This letter was received by the concerned police station on 23.02.2013. Now I say that date of letter to be 23.02.2011 is wrong and correct date is 23.02.2013.

This letter bears my signature. Its contents are correct. It is marked as Exh.P-30.

24. Police supplied me final report. As per my investigation and enquiry by the Police Authority, it was revealed as under:

- (i) That accused No.1,2 & 3 are engaged in manufacture for sale of spurious drug i.e Zandu Balm, B.No. AL0077 & AL0190 purported to be manufactured by M/s. Emami Limited, situated at Plot No.40, 41, Sector 5, IIE SIDCUL, Pant Nagar, Dist: U.S. Nagar, Uttarakhand.
- (ii) That accused No.1,2, & 3 engaged in manufacture of spurious drug without keeping any record of purchase of raw Material, Packing material, finished goods etc., and utilized name of genuine manufacture M/s. Emami Limited, situated at Plot No.40, 41, sector 5, IIE SIDCUL, Pant Nagar, Dist: U.S. Nagar, Uttarakhand.

Thereafter, I filed complaint against all the accused in the Court.

Today all the accused are present before the Court.

Examination in chief is over.

Matter is adjourned for cross examination till next date.

Date : 09.04.2025
Nagpur.

(J. V. Pekhale-Purkar)
Additional Chief Judicial Magistrate,
Nagpur.