IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, PAYYANNUR

Present : Kum. Lakshmipriya. T. K.,
Judicial First Class Magistrate.

Saturday, the 21st day of March, 2026/30th day of Phalguna, 1947

CALENDER CASE NO.753/15

Complainant	:		The Drug Inspector, Office of the Assistant Drugs Controller, Kannur.
Accused	:	1.	M/s Indica Laboratories (P) Ltd., Indica House, L B Sastri Road, Ahmedabad-380025. Regd. Office near Diamond Chowky L B Sastri Road, Ahmedabad. (Accused No.1 is represented by the following partner)
		2.	Narendra R Patel, 4, Sagar Society, Opp. Shakthi Enclave, Judges Bunglow Road, Bodakdev, Ahmedabad-380054.
			(By Adv. Sri. P P Sandeepkumar)
Offence	:		U/s 17 B (d) and 18 (a) (i) which is punishable under section 27(c) and 27 (d) Drugs and Cosmetics Act 1940
Plea	:		Not Guilty.
Finding	:		Not Guilty.
Sentence or Order	:		Accused are acquitted u/s 248(1) of Cr.P.C.

DESCRIPTION OF ACCUSED

Sl. No.	Name of the Accused	P.S.& No.	Cr. No.	Name of offence	Father's Name	Occupation	Residence	Age
1.	Drug Inspector, Kannur	M/s Indica Laboratories,	....	.....	....	Ahamedabad	....	
2.	Drug Inspector, Kannur	Narendra R Patel	....	.....	....	Ahamedabad	....	

Date of:

1. Occurrence :29.01.2010
2. Complaint :18.10.2012
3. Apprehension :17.10.2013
4. Release on bail :17.10.2013
5. Commitment : ...
6. Commencement of trial : 24.09.2019
7. Commencement of evidence : 15.10.2019
8. Close of trial : 16.03.2026
9. Sentence or order : 21.03.2026
10. Service copy of judgment : Copy is ready
11. Explanation for delay : No delay
12. Period of detention undergone during investigation, inquiry or trial for the purpose of section 428 CrPC : ...

This case came up for consideration during today's proceedings and the court delivered the following:

J U D G M E N T

1. The complainant/Drug Inspector has filed complaint against accused No.1 and 2. Accused number 1 is the manufacturing company of a tablet named Rabica-10 and the 2nd accused is the responsible person for conduct of business of allopathic drugs in India on behalf of the manufacturing company/accused No.1.

2. **Prosecution case in brief is as follows**: On 19.02.2009 the drug inspector drew a sample of the drug RABICA-10(RABEPRAZOLE TABLETS) batch number 3238, manufacturing date 08/2007, expiry date 07/2010 manufactured by M/s Indica Laboratories (P) Ltd., Indica House, L B Sastri Road, Ahmedabad-380025, India from an allopathic drug distributor namely M.s Sakthi Agencies, near bus stand, Main road, Payyannur, Kannur district on 19/02/2009. The proprietor cum competent person was present at the time of sampling. The sample was divided into four equal portions and sealed. One sealed portion of the sample was forwarded to the government analyst, Drugs testing laboratory Thiruvanthapuram on 26/2/2009. The government analyst, Drugs testing laboratory Thiruvanthapuram declared the above drugs as Not of standard Quality as per the test report. Thereby the accused have committed the above said offences.

3. The court took cognizance of offence and issued process against accused. On appearance of both accused, copies of all relevant prosecution records are furnished to them. After hearing both sides, charge u/s 17 B (d) and 18 (a) (i) which is punishable under section 27(c) and 27 (d) Drugs and Cosmetics Act 1940 was framed and read over and explained to accused to which they pleaded not guilty and claimed to be tried.

4. On the side of prosecution PW1 to PW7 were examined and Exts. P1 to P20 were marked. After examining other available witnesses, the

prosecution evidence closed. After the witnesses of the prosecution have been examined both the accused were questioned u/s 313(1)(b) of Cr.PC. Accused denied all the incriminating circumstances that appeared in evidence against them. Thereafter the accused are given chance to adduce evidence and called upon to enter their evidence, but no defence evidence was adduced on behalf of the accused.

5. Heard both sides.

6. **Point arise for consideration**:

1) Whether Accused No.1 being the company and Accused No.2 being the person responsible for the conduct of business of allopathic drugs in India on behalf of the manufacturing company manufactured a drug that was not of standard quality and thereby committed an offence under Section 17B(d), punishable under Section 27(c) of the Drugs and Cosmetics Act, 1940 ?

2) Whether Accused No.1 and Accused No.2 sold to the public, through their consignee agent and distributor, a spurious drug and thereby committed an offence under Section 18(a)(i), punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940?

3) Whether the complainant had complied all mandatory requirements of filing complaint?

4) If the offence is proved, what is the order as to sentence?

7. **Point Nos. 1 & 2:** These points are considered together for the sake of convenience. Prosecution examined 7 witnesses and Exts.P1 to P20 were marked. The allegation is that the accused No.1 and 2 manufactured a Not of standard quality drug as well as a spurious drug and sold to the public via its consignee agent and distributor and thereby committed the offence.

8. PW1 is the Food Safety Officer who deposed that he is the Drug inspector at Asst. Drugs control office and as per transfer and posting order of drugs controller in the year 2007, he was posted at Kannur office and the photo copy of the order attested by Drug Inspector, P K Sasi is marked as Ext.P1. He further deposed that on 19.02.2009 he took the sample of allopathic medicine named RABICA-10 (Rabi Przole-Tab) as per law from Shakthi agencies near Payyanur bus stand. The batch number of the above sample is 3238 and the expiry date is 07-2010 and the manufacture of the medicine is one Indica laboratories Pvt. Ltd - Ahamedabad and the owner of the firm, competed person named Ganesan was present at the time of incident and the sample was taken in the presence of the owner. 200 tablets were taken for sample and he did not open the original container of the manufacture for sampling and he has divided equal four portions and each portions were sealed separately. He further deposed that one portion was given to the owner Ganesan along with form 17 and he received the same and which is marked in the form 17 original copy and the original copy is marked

as Ext.P2 and Ganesan acknowledged in the backside of the same which is marked as Ext.P2(a) and he has given price for the sample to owner. He further deposed that balance 3 samples were kept in the almirah in the office and one of the samples was sent to Govt. Analyst, Drug Testing Laboratory, Thiruvananthapuram along with sample form 18 for examination on 26.02.2009 and the copy of form 18 is marked as Ext.P3. PW1 further deposed that in the month of May 2009 he was transferred from Kannur to Kasaragod and in the month of March 2010 returned to Kannur as per transfer and posting order and on perusal of file it is found that the sample is not of standard as per the report from Government analyst and since it was challenged by the manufacture, the another portion of sample was sent to Controller, drugs laboratory, Kolkata through Magistrate court, Payyannur. He received the copy of analytical report from the court which is marked as Ext.P4 and in the report is was declared that the medicine was Not of standard and it was spurious. He further deposed that he has received direction from Drugs Controller for conducting prosecution against the manufacture as it was spurious. He wanted the details of the manufacture from the District Drugs controller office and they send the details on 28.03.2011 to his office. He further deposed that he has retired on 31.03.2011 from service and his transfer order to Kasaragod is marked as Ext.P5 and the transfer order to Kannur is marked as Ext.P6.

9. PW2 deposed that he has taken charge of the Drug Inspector at Kannur and on perusal of test report received from Thiruvananthapuram Drug Test Laboratory it was found that the medicine Rabica 10 was not of standard quality and the content of the medicine ie rabe prazole ip contained was only 47%. Hence the notice was sent to the firm named Sakthi Agencies, Payyannur for stopping the sale of above said medicine and also directed to produce the connected documents regarding the purchase of the medicine. He further deposed that a copy of test report also handed over to the firm and the firm submitted the purchase documents and as per the documents it is revealed that the medicine was purchased from City Drugs, Kozhikode. The third sample of the medicine and test report was sent to City Drugs, Kozhikode and the manufacture of the medicine named Indica Laboratories Pvt. Ltd, Ahammedabad. Hence the notice was sent to the City Drugs, Kozhikode for stopping the sale of above said medicine and also produce the connected documents regarding the purchase of the medicine. PW2 further deposed that as per the purchase documents produced by City Drugs Kozhikode it is seen that the medicine was purchased from Indica Laboratories Pvt. Ltd, Ahmedabad and as per the Ext.P7 letter received from them the test report of the Drug Test Laboratory, Thiruvananthapuram was challenged and the test reports are marked as Ext.P8 and Ext.P9. He further deposed that he has

submitted a CMP before the court for sending the 4th sample as the test report was challenged.

10. PW3 deposed that he was the Asst. Drugs Controller, Kannur at the time of incident and his appointment order as a Drug Inspector number is Ec3/2291/2010/OC dtd,21.02.2011 and he identified the copy of the same and also he identified the photo copy of document regarding the jurisdiction of drug inspector. He further deposed that his predecessor Drug inspector P K Narayanan send the medicine rabica 10 batch number 3238 manufacture date 8/2007 expiry date 7/2010 and manufactured by Indica Laboratories collected from Sakthi agencies, Payyannur and the intimation was prepared in form 17. He further stated that he has sent a part of sample to Thiruvananthapuram Drug Test Laboratory with memorandum to govt analyst, form 18. He further deposed that the Govt. Analysis Drug Testing Laboratory declared that the quality of above mentioned medicine is lacking and they submitted an examination report in Form 13. He further deposed that after the investigation of the case he has filed a complaint before the court which is marked as Ext.P18 and he admitted his signature. The gazette copy no.14312/F1/2000/HdFW9 dtd.19.11.2001 regarding his jurisdiction is marked as Ext.P19, the transfer and posting order dtd.21.02.2001 is marked as Ext.P20.

11. PW4 deposed that he is the Drug Inspector of Asst. Control office, Kollam in the year 2011 and he sent the partnership license details of Indica Laboratory, Ahmedabad through office on requisition of Sasi, Kannur Inspector. Ext.P10 is the partnership deed and Ext.P11 is the certified copy of validated drug license certificate (Form 26) and Ext.P11(a) is the reply notice of Indica Laboratories.

12. PW5 is the Kollam Asst. Controller who deposed that he has sent constitution details of Indica laboratories Hyderabad to Kannur Drug Inspector and identified the original drug license and the covering letter of the details sent is marked as Ext.P13.

13. PW6 is the Managing Partner of Kozhikode City Drugs who deposed that on 16.12.2018 he received a letter from Drug Inspector, Kannur regarding the purchase of the product and he sent a reply on 28/12/2008 and the acknowledgment of the receipt of the letter is marked as Ext.P14. It is further deposed that on 6/01/19, the invoice of the company purchased was sent to Drug inspector, Kannur and he has the details of the same.

14. PW7 deposed that he was the proprietor of Shakthi agencies pharmaceutical. On 12/07/2009, Narayanan, the drug inspector Kannur, came to the shop and took the medicine RABICA-10 tablet of M/s Indica Laboratories for testing. It is further deposed that the samples of that medicine were also taken and that was taken in his presence. It is further deposed that

the drug inspector directed him not to sell that medicines as it is not of standard quality. He further deposed that purchase invoice was also given to them. Further deposed that the tablets were purchased from City drugs, Kozhikode. He identified the copy of the purchase invoice and he further deposed that it was directed that the remaining stocks to be sent back to city drugs and was accordingly sent and that intimated to the drug inspector and that is marked as Ext.P15. The credit note sent to city drug is marked as Ext.P16. Further deposed that 90 strips of the same medicine were remaining in the firm and that was also sent to the city drugs and that was also intimated to the drug inspector via Ext.P17 reply.

15. The defense submits that the prosecution has failed to establish the foundational elements of the alleged offence. As per Ext.P18, Accused No.1 is a private limited company, while Accused No.2 is described as a "partner responsible person," which is legally impossible since a private limited company can only have directors, officers, or shareholders, not partners. The prosecution relied on Exhibit P10, a photocopy of a partnership deed, to fix liability on Accused No.2, but this document has no connection with Accused No.1, M/s Indica Laboratories (P) Ltd.

16. It is further argued that the sample was not properly packed or preserved, and there was an unexplained delay of nearly 10 months in sending it for chemical analysis, contrary to Section 23(4)(i) of the Act, which

mandates that samples be sent “forthwith” to the Government Analyst. Rabeprazole is known to be sensitive to moisture, heat, and light, and requires controlled storage conditions to maintain potency. No evidence was produced to show that the sample was stored appropriately. Given the unreasonable delay and lack of proof of proper preservation, the reliability of the chemical analysis report is seriously undermined.

17. The defense argues that the conflicting reports from the State and Central laboratories create serious doubt in the prosecution case. Exts. P8 and P9 confirm the presence of Rabeprazole (0.0472 mg), but the sample drawn on 19.02.2009 and received on 28.02.2009 was tested only on 16.11.2009 and completed on 05.12.2009 an unexplained delay of nearly 10 months. This delay is significant given Rabeprazole’s sensitivity to moisture, heat, and light, which can affect potency if not stored under controlled conditions. No evidence was produced to show proper preservation, making the test results unreliable. Further, Ext.P9 treats the drug as official in the Indian Pharmacopoeia (IP), though this was not mentioned on the label. Since the product was manufactured 20 months before its inclusion in IP, the analyst should have applied the procedure for patent or proprietary medicines. Reliance on IP standards was therefore improper and contrary to law.

18. The defense contends that Exhibits P1 to P20 were marked, but several (P1, P5, P6, P10, P11, P11(a), P12, and P16) are mere photocopies,

which are inadmissible. Moreover, the mandatory requirement under Section 23(1) of the Act that the Inspector must tender the fair price of the sample and obtain acknowledgment was not complied with. No bills, documents, or oral evidence were produced to prove that PW1 followed this procedure, nor was any averment made in the complaint. Exhibit P16, being only a copy of a credit note, is not legally admissible. No evidence was produced to show that M/s Sakthi Agency purchased the medicine from the first accused or its distributors. PW1 stated the drugs were bought from City Drugs, Kozhikode, but no supporting documents were filed. Hence, the prosecution failed to establish any link between the seized sample and the first accused.

19. Further, the ingredients of Sections 17B(d) and 18(a)(i) are not satisfied. Section 17B(d) applies where a drug is wholly or partly substituted, but no such allegation exists. On the contrary, Exts. P8 and P9 confirm the presence of Rabeprazole, ruling out substitution. Neither the complaint nor the chemical report explains how the drug was determined to be spurious under Section 9B. Hence, the prosecution has failed to prove that the drug was spurious or that the accused committed offences under Sections 17B(d) and 18(a)(i). Accordingly, the prosecution case lacks cogent evidence, fails to establish the basic requirements of law, and is unsustainable against the accused.

20. Per contra learned APP vehemently argued that all the procedures prescribed under section 23 were complied at the time of taking the sample and the sample was in a sealed cover and properly maintained. Moreover, from the evidence of PW1 and PW7 that the sampling procedure was done properly as 4 samples were taken and one was sent to owner, and second one was sent to the analyst and the other one was produced before the court, one was given to the manufacturer. PW7 the proprietor of Shakthi agencies pharmaceutical deposed that the samples of that medicine were taken in his presence. Moreover, the posting order of the food safety officer is also produced. The credit notes and letter from the accused company is also produced to connect the accused person with this offence. Further contended that the Ext.P4 report of central laboratory supports the prosecution case. Further it is stated that in Ext.P7 letter the company admitted that accused no. 1 is the manufacturer and the same batch tablet was tested by them though they didn't admit the content of the report. Moreover, a single vakkalath was filed for both accused No.1 and 2. Thus accused No.2 himself has admitted that he is representing the first accused which is a company and has also signed in 313 examination on behalf of the first accused. In the Ext.8 and 9 report the presence of rabe prazole ip contained was only 47% and it is not upto the standard. It further stated that certified copy of the partnership is also produced to prove that the second accused is a partner in that firm.

21. I have gone through the entire evidence in detail. The first and foremost issue as argued by the defense is that Ext.P18 complaint contains a fundamental flaw as it describes Accused No.1 as a private limited company and Accused No.2 as a partner responsible person of that company. This is legally impossible because a private limited company cannot have “partners” as the partnership firm can only have directors or officers. To support their argument, the defense points out that Ext.P10, the partnership deed produced by the complainant, attempts to link Accused No.2 to Accused No.1, but this creates inconsistency since a partnership deed cannot establish responsibility in a private limited company.

22. On the other hand, the prosecution contends that both accused are represented by the same advocate, filed the same vakkalath, and that Accused No.2 himself admitted to representing the company. Furthermore, Accused No.2 signed the statement under Section 313 CrPC on behalf of Accused No.1, thereby acknowledging his role in representing the company.

23. The issue revolves around whether Accused No.2 can legally be held responsible for the acts of Accused No.1, a private limited company. The defense highlights a fatal flaw in the complaint which is the mischaracterizing of the company’s structure and the role of Accused No.2. This raises serious doubts about the validity of the prosecution’s case, as responsibility in a

private limited company must be established through its directors or officers, not through a partnership deed.

24. However, the prosecution relies on conduct and admissions of Accused No.2, who represented the company in proceedings and signed on its behalf. While this may show practical representation, it does not cure the fundamental legal defect in the complaint. Courts generally require strict compliance with corporate law distinctions, and misdescription of the company's structure can be fatal to the prosecution's case. Upon verification of the records of Indica Laboratories Pvt. Ltd. in the Ministry of Corporate Affairs database, it is evident that the company was incorporated on 02/09/1978 and remains active. The company has three directors: Ramanlal Jesanghabhai Patel, Mitesh Jesanghabhai Patel, and Arvind Bhagubhai Patel, with the first two serving as managing directors who would ordinarily be responsible for the acts of the company.

25. However, none of these directors have been arraigned as accused in the present case to represent the company. Legally, the complainant could have either arrayed the managing directors or all directors to represent the company, but instead, the complainant chose to arraign the working partner under Ext.P10 partnership deed as the second accused. It is further noted that the second accused was never a director or a person responsible for the conduct of the company's business, particularly during the period when the

medicine in question was allegedly manufactured and sold in the market.

26. It is important to note that Indica Laboratories Pvt. Ltd. and M/s Indica Laboratories, though similarly named, are distinct legal entities represented by different persons. A private limited company, being an artificial legal person, can only act through its directors or authorized officers. Unless the responsible individuals are properly arraigned to represent the company, liability cannot be personally fastened upon them. In such circumstances, only the company itself can be held liable, and not individuals who are not legally recognized as its representatives.

27. Further the prosecution did not produce Memorandum of Association or Article of Association or other documents pertaining to Accused No.1 company. And there is no pleading how the 2nd accused is connected with Accused No.1, which is a private limited company. The prosecution failed to show who are the Director or Managing Director of the company or who are the responsible person at the time of manufacturing the alleged medicine. It is the primary duty of the prosecution to prove who are responsible for the conduct of business of the company at the time of alleged offence.

28. Learned counsel relied on **Lalankumar singh v state of maharastra** reported in 2022 KHC OnLine 7072, wherein it is held that merely reproducing the words of the section without a clear statement of fact

as to how and in what manner a Director of the company was responsible for the conduct of the business of the company, would not ipso facto make the Director vicariously liable. In this case there is no such mentioning in the complaint and the arraigning of the second accused itself is invalid.

29. Therefore, the legal position is that the complaint suffers from a structural defect, making the arraignment of Accused No.2 as a “partner” of a private limited company legally untenable. This undermines the prosecution’s foundation, despite Accused No.2’s procedural admissions.

30. The next contention is that the sample taken was not properly packed and preserved and there is unreasonable and unexplained delay in sending the sample for chemical analysis. PW1 drew samples on 19/02/2009. Ext.P18 is the complaint and it is alleged that there is no averment in Ext.P18 complaint about packing of the sample and the prosecution has no case that the sample was kept in good preserved condition. The sample drawn was sent for chemical analysis only on 26/02/2009. There was one-week delay in sending sample to chemical analysis and not explained by prosecution. On verification of Ext.P18 complaint it is mentioned that sample taken was divided into four equal portions and sealed. It is true that apart from this nothing about the method of preservation is seen stated in the complaint hence we have to go through the evidence of PW1, 2 and 3 to verify whether the sample was preserved and there was proper chain of custody. Further it is

contended that no documentary evidence has been produced to show that the alleged medicine was purchased by M/s Sakthi Agency from the 1st accused or its distributors. The complaint states that the sample medicine was taken from M/s Sakthi Agency, Payyanur. However, PW1 deposed that the medicine had been purchased from M/s Sakthi Agency from City Drugs, Kozhikode. No document has been produced to substantiate this claim. Thus, it is alleged that the prosecution has failed to establish any link between the seized drug sample and the 1st accused.

31. During cross-examination, PW1 admitted that no document exists to prove the sample was taken from an allopathic drug, though the complaint mentions it. He stated that supplying such drugs requires permission from the state drug controller and confirmed that permission from FDCA Gujarat was obtained on 07/08/2006. However, he was unaware whether the drug was labelled as IP, whether it was patented, or the method of analysis for patented products. He also admitted ignorance about how the drug was preserved in the shop.

32. PW1 acknowledged that although there were shops and people nearby, none were included as seizure witnesses. He obtained a purchase bill from the shop, but it was a credit bill paid by cheque, which was not mentioned in the complaint. Thus it is admitted that the giving of credit bill is not mentioned in the complaint. He further admitted lacking knowledge of

the drug's molecular formula, its instability in humid conditions, and the effects of sunlight and moisture on rabeprazole sodium. Further stated that after taking the sample, it was not under his custody, and he was unaware of its subsequent handling. But he explained that the delay in sending the sample to the government lab was due to R.57 compliance, which typically takes 5–6 days. While it was suggested that defective packing and delay altered the drug's quality, PW1 denied this.

33. Further the sample was sent to the Trivandrum lab by registered post, but this was not recorded in the complaint. PW1 admitted he could not confirm how the sample was preserved at the post office or in the office after his transfer to Kasaragod. He also acknowledged discrepancies between the central lab report and the Trivandrum lab report. The central lab test was conducted between 25/06/10 and 28/06/10, just before the drug's expiry date, and PW1 was unaware of the reasons for the delay in preparing the report.

34. Thus the cross-examination of PW1 highlights significant gaps and inconsistencies in the handling, preservation, and documentation of the drug sample. His admissions reveal uncertainty about the drug's nature, stability, and custody, as well as procedural lapses such as omission of key details in the complaint and reliance on a credit bill. The discrepancies between lab reports and the timing of the central lab test further weaken the reliability of the

prosecution's evidence. Overall, the testimony raises doubts about the integrity of the sample and the accuracy of the findings, undermining the strength of the case.

35. Similarly, in the cross-examination of PW2, it is stated that the drug inspector's appointment order was not produced. He admitted, however, that he did not know whether the IP (Indian Pharmacopoeia) standard used for testing the sample was the one applicable after the medicine's manufacturing date. He further acknowledged that he was unaware whether the IP standard for rabeprazole had been published at the time of the medicine's manufacture. PW2 also admitted that the sample was taken on 28/02/2009, but the testing only began on 16/11/2009 and was completed on 05/12/2009. PW2's testimony reveals procedural and technical uncertainties**.** Moreover, the significant delay between sample collection and testing (over eight months) further weakens the credibility of the evidence, as it leaves room for doubts about the sample's integrity and the accuracy of the results. Together, these admissions cast serious doubt on the prosecution's case.

36. PW3 stated that he had produced documents showing his appointment as the drug inspector of Kannur Circle, but when it was suggested by defense counsel that such documents were not actually produced, he gave no reply. But PW3 was recalled and the copy of circular

defining his jurisdiction and his appointing order and transfer order were produced and marked. Further he admitted that before selling any medicine, the manufacturer must obtain approval from the FDCA, and confirmed that this particular medicine had approval from Gujarat FDCA. He further acknowledged that the permission indicated the medicine was not labelled under IP standards, which would imply it was a patented product of the company. However, PW3 admitted that he had not investigated whether the medicine was patented or the method of its analysis.

37. He also admitted that he did not know whether rabeprazole sodium, a component of the medicine, dissolves easily in water or becomes unstable in humid conditions. PW3 confirmed that rabeprazole content was present in the Ext.P9 report, but not in adequate quantity. He further admitted that he could not say how the sample was preserved in the central lab, nor could he confirm whether moisture content in the sample might have affected the test results.

38. PW3's testimony also reveals uncertainty and lack of thorough investigation. While he acknowledged the medicine had regulatory approval and was not labelled under IP, he failed to verify whether it was patented or to understand the proper method of analysis. His lack of knowledge about the chemical properties of rabeprazole sodium, combined with his inability to confirm how the sample was preserved or whether moisture influenced the

results, raises serious doubts about the reliability of the testing process. These admissions weaken the credibility of the prosecution's evidence and suggest that the conclusions drawn from the sample analysis cannot be considered fully dependable.

39. Moreover, Section 23(4)(l) states that the sample "shall forthwith" be sent to Govt. Analyst. But this mandate is not complied in the above case as it is not seen stated in the complaint why the delay of 7 days taken to forward the sample to the government analyst, drugs testing laboratory, Thiruvanthapuram. Though it is stated by PW1 that the delay occurred due to compliance under R 57 of Drugs Rules, 1945, the complainant has not specified the reason for such delay. R 57 of Drugs Rules state that an Inspector must send the sample or its container for analysis under Section 23(4) of the Act to the Government Analyst in a sealed packet, accompanied by a memorandum in Form 18, either by registered post or by hand, enclosed in an outer cover addressed to the Analyst. Additionally, a copy of the memorandum and a specimen impression of the seal used must be sent separately to the Government Analyst, also by registered post or by hand. Thus the option available to the complaint was either to send it by post or by hand. Even if it is send by post the reason for delay of 7 days is not seen satisfactorily explained. Further the witness could not satisfactorily explain the manner in which the sample were preserved in each and every stage. Moreover, the fact that the

sample was sent to government laboratory by post is not seen mentioned in the complaint as well. Thus it is a violation of section 23 (4) (1) of Act. Though the counsel stated that the proof of purchasing the medicine is not seen produced, it can be seen that the credit note is mentioned in the complaint as well as in the evidence of PW1 and it is also marked as Ext.P16.

40. Learned counsel relied on **Zakir Hussain v. State of Bihar and Another** reported in 2015 KHC 1521, wherein it is held that procedural requirements and mandatory provisions contained in Section 23 of the Act must be strictly complied with. Further it is held that "since the drawing of the sample is itself found to be in violation of the requirements laid down under S.23 of the Act, no prosecution could be launched against the petitioner for anyone of the provisions under The Drugs and Cosmetics Act, 1940. That apart, even the Analyst's report does not clearly spell out as to how the sample, alleged to have been manufactured by the firm of the petitioner, was spurious". Thus in the case in hand there is a violation of section 23 (4) (1) of Act. So the procedural irregularities and the delay cast serious doubt on the prosecution case and the accused is entitled to the benefit of doubt.

41. The next contention of the accused is that there is a conflict between the state and central lab report. It is further alleged that rabica-10 (Rabeprazole Tablets), manufactured by M/s Indica Laboratories (P) Ltd in August 2007 with expiry in July 2010, is a patent and proprietary medicine

under Section 3(h) of the Act. Rabeprazole sodium and its tablets became official in the Indian Pharmacopoeia (IP) only on 1 April 2008—20 months after the company obtained product permission. Thus, Rabica-10 was not covered by IP standards in 2007. Since IP prescribes official drug standards and analysis procedures, the chemical analysis in this case should have been conducted according to the patent or proprietary specifications of the product, not IP standards.

42. In the above case two different chemical analysis reports are there. Ext.P8 and P9 are the chemical analysis reports from State Drug Analysis Laboratories Trivandrum and Ext.P4 is the chemical analysis report from Central Drugs Laboratory. As per Ext.P8 and P9, it gives positive result of rabeprazole. It contains 0.0472 mg of rabeprazole Sodium. Ext.P8 and P9 reports show that date of receipt as 28/2/2009, date of test on 16/11/2009, completed test on 05/12/2009. In the above case alleged sample drawn on 19/02/2009 and the date of receipt of medicine is 28/02/2009. So after receipt of the medicine the procedure of test started only after 10 months of its receipt. This delay is not explained. Ext.P9 clearly shows that the drug is official in IP, which is not mentioned in the label. So the result based on standard of IP not the proper method settled in patent or proprietary medicine. Since the product manufactured 20 months before the product published in IP the analyst should have analyzed the product basing on the

procedure stated in the patent. So the procedure adopted by the Chemical Analyst is not proper and against law. Since the product is an organic medicine the chemical analysis test should have been done immediately without any delay. It is alleged that Rabeprazole is known to be sensitive to moisture, heat and light and if not stored under controlled conditions, its potency can degrade over time. No evidence is produced before the court by the prosecution to show that the sample was stored at required temperature and humidity. The unreasonable delay of 10 months in chemical analysis testing, especially for a temperature sensitive formulation like rabeprazole sodium renders the test result unreliable.

43. From the evidence of PW1, 2 and 3 it is clear that they have no knowledge of the drug's molecular formula, its instability in humid conditions, and the effects of sunlight and moisture on rabeprazole sodium. Further PW1 admitted that the sample was sent to the Trivandrum lab by registered post, but this was not recorded in the complaint. PW1 also admitted that he could not confirm how the sample was preserved at the post office or in the office after his transfer to Kasaragod. He also acknowledged discrepancies between the central lab report and the Trivandrum lab report. The central lab test was conducted between 25/06/10 and 28/06/10, just before the drug's expiry date, and PW1 was unaware of the reasons for the delay in preparing the report. Thus it is evident that Ext.P4 report and Ext.P8 and P9 reports shows a

contradictory result. PW3 stated that rabeprazole content was present in the Ext.P9 report, but that was not in adequate quantity. On perusal of Ext.P9 report, the result portion reveals that each enteric coated tablet of average weight 136.35 mg contains 0.0472 mg of Rabeproazole sodium against the label claim of Rabeprazole sodium 10-mg ie, 0.47% of the stated amount. The Ext.P4 chemical analysis report of Central Laboratory shows that the chemical analysis test was done after 16 months from the date of drawing the sample. The date of test shown in P4 report is 06/07/10 which is just few days before the expiry date of the product. The expiry date was 07/10. As per Ext.P4 report there is no Rabeproazole in the given sample. Ext.P8 and P9 shows that the sample contains Rabeproazole sodium. But when tested by Central Laboratory after 16 months the presence of Rabeproazole is absent in the same sample. Ext.P8 and P9 test conducted on 06/11/2009 after 10 months and Ext.P4 test conducted after 16 months. From these two conflicting and contradictory reports it proves that due to delay in chemical analysis test, the contents of the medicine have deteriorated. These two conflicting reports suggest that the sample was not packed and stored as per the procedure contemplated in the Act. From the evidence of PW1 to PW3, it is evident that they are unaware of the unsuitability of this medicine in humid conditions and its way of preservation before reaching these laboratories. Thus the overall analysis of the entire evidence on record cast doubt on the test result as it

gives contradictory result due to passage of time which would give an impression that the medicine would have contain adequate amount of Rabeproazole if the test was conducted few months back or if the sample was properly maintained and preserved. So even Ext.P8 and P9 result shows that Rabeproazole was inadequate in the tablet, this court cannot rely upon such an inconsistent result. The conflict between State and Central Lab Reports creates serious doubt. This contradiction casts serious doubt on the reliability of prosecution evidence. The conflict in expert opinion entitles the accused to benefit of doubt. Moreover, such prolonged delay makes the results unreliable. Moreover, Ext.P9 states the drug is official in IP, though this was not mentioned on the label. Since the product was manufactured before its inclusion in IP, the analyst should have followed the patent procedure, not IP standards. Thus, the method adopted was improper and legally unsound, rendering the test results questionable.

44. Further the defense argued that the prosecution had marked Exhibits P1 to P20, among which Exhibits P1, P5, P6, P10, P11, P11(a), P12, and P16 were only photocopies. It was contended that such photocopies are inadmissible in evidence. Reliance was placed on leading judgments, including 2018 (5) KHC 231, 2019 (1) KLJ 40, and 2023 (1) KLT 296 (Para 6), where the Hon’ble Court held that photocopies cannot be admitted unless the procedure under Section 65 of the Evidence Act is followed.

45. The prosecution, however, maintained that these exhibits were true copies duly attested by the Drugs Inspector. In Ramlagan Singh v. State (1960 KHC 5542), it was held that the appointment of a Drugs Inspector can be judicially noticed at any stage of the case, and a copy of the relevant notification need not be marked as an exhibit. The Court further clarified that under Section 57 of the Evidence Act, judicial notice must be taken of the office held by an individual if his appointment is notified in the official Gazette. In the present case, the prosecution has produced true copies of the relevant documents, duly attested. Therefore, I find no merit in the contention raised by the accused.

46. Thus the prosecution has failed to establish with cogent evidence that this medicine is distributed by Accused No.1 as alleged in the above case. Further, the prosecution has failed to prove that the drug in question was supplied by the 1st accused. Further no document produced to prove the fact that M/s Sakthi agency purchased the drug from M/s Indica laboratories Pvt Ltd. Moreover, the prosecution failed to prove that second accused represent the first accused which is a company. So the prosecution has failed to establish any connection between seized drug sample and the 1st accused. In the above reasons, no criminal liability can be fastened upon the accused, and the prosecution case is unsustainable as against the accused.

47. On a careful consideration of the oral and documentary evidence, the arguments advanced and the decisions cited, I find that the prosecution has miserably failed to prove beyond all reasonable doubts that the accused manufactured a drug not of standard quality or spurious drug as alleged. The foundational requirements under Sections 17B(d), 18(a)(i), 23 and 34 of the Act remain unproved due to procedural lapses, unexplained delays, lack of link between the sample and Accused No.1, and conflicting analyst reports rendering the evidence unreliable. The mandatory compliance of 'forthwith' sending sample u/s 23, proper storage for sensitive drug, and analysis per proprietary standards (not IP which was inapplicable) stand violated. The conflict in reports (Exts.P4, P8, P9) due to delays of 10-16 months, especially for moisture/heat-sensitive rabeprazole creates irreconcilable doubt, entitling accused to acquittal.

48. Hence in the interest of justice, I conclude that the prosecution is failed to prove the guilt of the accused with cogent evidence and therefore, accused is entitled for an acquittal, Points are answered against prosecution.

49. Hence, I find that the prosecution could not succeed to connect the accused with the occurrence. Therefore, in the above scenario, I am of view that the prosecution could not succeed in proving the case against the accused beyond reasonable doubt. Therefore, the accused is found not guilty of the offence alleged against him.

50. **Point No.2:** In view of my finding on point Nos. 1, both accused are found not guilty of the offences punishable u/s 17 B (d) and 18 (a) (i) which is punishable under section 27(c) and 27 (d) Drugs and Cosmetics Act 1940.

In the result,

Accused are acquitted u/s 248(1) of CrPC of the offences punishable u/s 17 B (d) and 18 (a) (i) which is punishable under section 27(c) and 27 (d) Drugs and Cosmetics Act 1940.

(Dictated to Confidential Assistant, transcribed and typed her, corrected and pronounced by me, in open court this on the 21st day of March, 2026.)

Sd/-
Judicial First Class Magistrate,
Payyannur.

APPENDIX:
WITNESSES FOR THE PROSECUTION :

PW1	Narayanan	Complainant
PW2	Anilkumar	Official witness
PW3	P. K. Sasi	Official witness
PW4	Prabhakumar	Official witness
PW5	Dr. Ashok Kumar	Official witness
PW6	Thasif A S	Official witness
PW7	V V Ganesan	Official witness

EXHIBITS FOR THE PROSECUTION :

Ext.P1/PW1	Photocopy of posting order No. E3/1708/2007/DC dtd. 19.05.17
Ext.P2/PW1	Form 17 dtd.19.02.09
Ext.P2(a)/PW1	Rear page of Ext.P2 dtd.19.02.09
Ext.P3/PW1	Form 18 dtd. 24.02.09
Ext.P4/PW1	Certified copy of chemical report dtd. 06.07.10
Ext.P5/PW1	Copy of transfer order No. E3.1957/2009/DC dtd. 22.05.19
Ext.P6/PW1	Copy of Transfer order No. E3-145/10/DC dtd. 30.03.10
Ext.P7/PW7	Letter from Indica Laborataries (P) Ltd. dtd.09.01.10
Ext.P8/PW7	Test report (Form 13) dtd. 17.12.09
Ext.P9/PW7	Laboratory Protocol)Test report dtd.07.12.09
Ext.P10/PW4	Partnership deed dtd. Nil.
Ext.P11/PW4	Renewal license for Form 26 dtd.04.06.08
Ext.P11(a)/PW4	Renewal license for the period 2007-2011 dtd.12.06.08
Ext.P12/PW7	Reply notice of Indica Laboratory dtd. 14.10.09
Ext.P13/PW7	Covering letter of Drug Inspector, Kannur, Zone III dtd. 31.12.10
Ext.P14/PW7	A/D card dtd.30.12.09
Ext.P15/PW7	Letter from Sakthi Agencies dtd. 08.01.10
Ext.P16/PW7	Credit note dtd. 04.01.10

Ext.P17/PW7	Letter from Sakthi Agencies dtd. 15.12.09
Ext.P18/PW3	Complaint dtd. 28.09.2012
Ext.P19/PW3	Gazette notification dtd. 19.11.01.
Ext.P20/PW3	Posting order dtd. 21.02.01

MATERIAL OBJECTS MARKED : Nil.

WITNESSES FOR THE DEFENCE : Nil.

EXHIBITS FOR THE DEFENCE : Nil.

MATERIAL OBJECTS MARKED : Nil

Sd/-
Judicial First Class Magistrate,
Payyannur.

//True copy//

Judicial First Class Magistrate,
Payyannur.