

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL PETITION NO: 7334 OF 2025

Between:

A.K.Gupta, Zonal Manager (Retired) M/s Hindustan Antibiotics Limited Aged 75
years, Occ Retired employee, R/oNo 708, Sector-9, Panchkula, Haryana

...PETITIONER/ACCUSED No.1 in SPL

AND

The Union of India, Represented by the Drugs Inspector Sri Rahul S.Shakhaure,
Zonal Office, Central Drugs Standard Control Organisation CDSCO Bhavan,
S.R.Nagar, Hyderabad

...RESPONDENT/COMPLAINANT

Petition under Section 528 of B.N.S.S. praying that in the circumstances stated in
the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to
quash the Spl SC No 03 of 2019 on the file of the Ld.1st Addl.Metropolitan Sessions
Judge, Hyderabad at Nampally against the petitioner/Accused No 1 .

I.A. NO: 2 OF 2025

Petition under Section 528 of B.N.S.S. praying that in the circumstances stated in
the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to
stay all further proceedings in Spl SC No 03 of 2019 on the file of the Ld.1st
Addl.Metropolitan Sessions Judge, Hyderabad at Nampally against the
petitioner/Accused No 1 pending disposal of the main Criminal Petition and pass

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri V.R.MACHAVARAM , Advocate for the Petitioner and Sri Pulimamidi Shashidhar Reddy, Standing Counsel for Central Govt. on behalf of the Sole Respondent .

The Court made the following: ORDER

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL PETITION No.7334 of 2025

DATE OF ORDER : 25.03.2026

Between:

Mr.A.K.Gupta

...Petitioner/accused No.1

And

The Union of India
Represented by the Drugs Inspector
Sri Rahul S. Shakhaure,
Zonal Office, Central Drugs Standard
Control Organisation CDSCO Bhavan,
S.R.Nagar, Hyderabad

... Respondent

ORDER:

This Criminal Petition is filed with the following prayer:

“...Pleased to quash the Spl SC No.03 of 2019 on the
file of the Ld.1st Addl. Metropolitan Sessions Judge,
Hyderabad at Nampally against the petitioner/Accused
No.1 and pass such orders...”

2. Heard Mr.V.R.Machavaram, learned counsel for petitioner
and Mr.B.Narasimha Sarma, learned Additional Solicitor
General of India appearing for respondent.

3. Complaint came to be filed in the month of March, 2012
under Section 200 of Cr.P.C., read with Section 32(1) of the

Drugs and Cosmetics Act, 1940, for an offence under Section 16 of the Drugs and Cosmetics Act, 1940 punishable under Section 27 of the Drugs and Cosmetics Act, 1940, (for short 'Act, 1940') in the Court of XI Additional Chief Metropolitan Magistrate, City Criminal Courts at Secunderabad.

4. In the complaint (annexed at Page No.5) place of offence is shown as Central Hospital, South Central Railway, Lalaguda, Secunderabad (referred to as 'Hospital'). The complainant-respondent drew sample along with CBI officials on 14.05.2010 from the premises of hospital, as per the Act and Rules, in Form 17A with Sample No. PBN/AP-SZ/36-10.

5. Samples were forwarded to Government Analyst to Central Drugs Laboratory, Kolkata, in Form 18 vide memorandum No.6-2(1)/Sub Zone/2010/733, dated 21.05.2010 for test analysis. Test report was received in Form 13 from Government Analyst on 16.08.2010 for the sample of Roxythromycin Tablets I.P. (Indian Pharma Copoeia) 150 mg bearing Batch No. H-8462T, declared as 'Not of standard quality', as sample did not confirm to I.P. with respect to dissolution.

6. A show cause notice dated 30.08.2010 was issued to hospital for disclosing the sale particulars of drug, and further a direction was issued not to use the subject batch of drug, a copy of the original test report was given to the hospital.

7. On the basis of the complaint received, the XI Additional Chief Metropolitan Magistrate, City Criminal Courts, committed the case to concerned Court, i.e., I Additional Metropolitan Sessions Judge, Hyderabad at Nampally Courts. On the basis of contents of complaint and the material, case was numbered as Special S.C. No.03 of 2019 (on the file of the I Additional Metropolitan Sessions Judge, Hyderabad at Nampally).

8. Petitioner/accused No.1 herein filed this petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023'). Learned counsel for petitioner/accused No.1 submitted that sample of drug, Roxythromycin 150 mg bearing Batch No.H-8462T, was drawn from the hospital on 14.05.2010, that the drug was manufactured in March, 2009 and petitioner retired on 31.01.2009.

9. It is submitted that the petitioner was a Zonal Manager in Hindustan Antibiotics Limited at the particular point of time. It is the specific case of petitioner that petitioner/accused No.1



was not in charge of day-to-day affairs of company at the time of manufacture of drug, and that one Preeth International Private Limited was drug manufacturer who supplied the drug.

10. It is not in dispute that petitioner retired from company on 31.01.2009, that the drug was manufactured in the month of March, 2009, after retirement of petitioner/accused No.1 by Preeth International Private Limited, which is arrayed as an accused in SPL S.C. No.03 of 2019.

11. It is the case of complainant-respondent that all the accused, i.e., accused Nos.1 to 3, have contravened Section 16 of Act, 1940, punishable under Section 27 of Act, 1940, and that offences committed by accused Nos.1 to 3 occurred at Hyderabad. Hence, complaint.

12. When the petition came up on earlier occasion, Court queried the counsel for complainant-respondent as to how petitioner was arrayed as an accused when it was not disputed that he retired from service on 31.01.2009 and that the drug was manufactured in the month of March, 2009 and as to how petitioner/accused No.1 could be mulcted for not maintaining the standard quality of Roxythromycin tablets I.P 150 mg bearing Batch No. H-8462T.

13. Learned counsel sought time for instructions. An investigation report dated 21.08.2025 came to be filed vide Memo No.32013/26 dated 12.03.2026, the contents of which are as follows:

“Observations:

The subject NSQ product “Roxithromycin Tablets I.P 150mg, B.No.H-8462T, D/M.03/2009, D/E. 02/2011 manufactured by M/s.Hindustan Antibiotics Ltd (Government of India Enterprises) at M/s.Preet International Pvt.Ltd., works & office: 33-34, EPIP Phase. II (Thana), Baddi, H.P., India. Therefore, the product related documents such as Batch Manufacturing Record, Batch packaging record, testing records etc. were not found available with the firm.

As per records and service book available with the firm, Mr.A.K.Gupta (DOB.06.01.1949) has joined in the organization as Medical Representative-II on 12.03.1979. Further, Mr.A.K.Gupta at the age of superannuation stands retired from the services of the company w.e.f.31.01.2009 vide part II order No.08, dated. 28.01.2009. Service book and other documents of Mr.A.K.Gupta is attached as Annexure-I.

Further, it is stated that, Mr.A.K.Gupta (After completion of 60 years) has retired from the services, however, in the office order it is mentioned that after opting for voluntary retirement and relieved from the services of the company w.e.f.31.01.2009. In this regard, the firm has submitted declaration stating that Mr.A.K.Gupta has retired from the services of the company w.e.f. 31.01.2009 and not by “opting for voluntary retirement” which was typographical error. Declaration by the firm is attached as Annexure-II.

The firm has fails to produce the documents pertaining to the role and responsibilities of Mr.A.K.Gupta.

Further, the firm has stated that Mr.G.Rajendran, Divisional Manager I/C (South Zone) was responsible person for day-to-day business activities of the firm after retirement of Mr.A.K.Gupta on 31.01.2009. (Declaration submitted by the firm is attached as Annexure-III)

Remarks:

Based on the documents/Records verified and discussed with staff, the investigation team is of opinion that, Mr.A.K.Gupta has joined in the organization i.e. M/s. Hindustan Antibiotics Ltd (Government of India Enterprises), Pimpri, Pune-411018 as Medical Representative-II on 12.03.1979 and at the age of superannuation stands retired from the services of the

company as an Assistant Marketing Manager on 31.01.2009. However, in the office order, it was mentioned that "after opting for voluntary retirement he has relieved from the services of the company w.e.f. 31.01.2009". In this regard, the firm has declared that, which was the typographical error. Further, it is stated that the firm has not produced documents pertaining to the role and responsibilities of Mr.A.K.Gupta. Further, the firm has stated that Mr.G.Rajendran, Divisionsal Manager I/C (South Zone) was responsible person for day-to-day business activities of the firm after retirement of Mr.A.K.Gupta on 31.01.2009."

14. Report placed on record is styled as an investigation report by Mr.A.Vijayendra Chary, Drugs Inspector, Central Drug Standard Control Organization, West Zone, Mumbai, and Mr.Sachin Bugad, Drugs Inspector, Food and Drug Administration, Pune Division, Maharashtra. It is reflected in the report that one Mr. G. Rajendran, Divisional Manager, in charge of the South Zone, was responsible for the day-to-day business activities of firm, after the retirement of Mr. A. K. Gupta on 31.01.2009 (from M/s. Hindustan Antibiotics Limited, Pune).

15. It defies the logic of this Court (on perusal of report), as to how a person (petitioner/accused No.1), who retired in the month of January, 2009, can be named in the complaint and charged with offences/allegations for not maintaining standard quality of drug as prescribed under the Act, without any basis.

16. Learned counsel appearing on behalf of complainant placed on record a notarized affidavit of Mr. A. K. Gupta, dated 03.08.2007. It is submitted that the contents of notarized affidavit were also the basis for lodging the complaint. The following are the contents of the notarized affidavit:

"That I am working as Zonal Marketing Manager with Hindustan Antibiotics Ltd. (A Govt. of India Enterprise) S.C.O.808, Manimajra, Chandigarh.

2. That I am authorized person of M/S Hindustan Antibiotics Ltd. (A Govt. of India Enterprises), Pimpri, Pune.

3. The the name of Directors of our company are:-

i) Dr. Jivtesh Singh Maini, IAS

ii) Sh.G.S.Sandhu

6. That the company is responsible for quality of products which are to be manufactured on the loan licence at M/s Preet International Pvt. Ltd EPIP Phase-II. Plot Nos.32 - 34 Thana baddi, Distt. Solan (H.P)/

7. That M/S Preet International Pvt. Ltd has given as an undertaking for the utilization of manufacturing facility to manufacture the products on loan licence basis.

8. That the manufacturing loan licence of M/S Preet International Pvt.Ltd. EPIP Phase-II, Plot No.33-34, Thana Baddi, Distt, Solan (H.P). can be cancelled or suspended in case of any dispute on quality.

9. That the company will be updated by the rules & instructions issued by the department from time to time under the Drug & Cosmatic Act 1940 & rules their under.

10. That the company will maintain proper manufacturing & analysis record as per the Schedule-V & Drug & Cosmatic Act 1940 & rules there under."

17. Notarized affidavit is dated 03.08.2007, drug is manufactured in 2009, complaint is lodged invoking Section 200 of Cr.P.C. in the month of March, 2012. Contents of affidavit filed in the year, 2007 are used for levelling allegations and framing charges on petitioner for not maintaining the standard quality of a drug manufactured in March 2009, that

too when petitioner retired on 31.01.2009, the episode does not make any sense.

18. It is contended that affidavit is a statement on oath and the contents are considered for initiation of complaint.

19. Contentions advanced that the contents of affidavit coupled with other facts are suffice to sustain the complaint of March, 2012 are untenable. On a perusal of the affidavit it is apparent that the contents cannot form the basis for initiating steps to mulct the petitioner. The ingredients of Sections invoked have to be spelled out (atleast *prima facie*) in the complaint that acts of omission and commission are committed by accused, though not in detail.

20. Officers/authorities who prefer to lodge a complaint [under Section 200 of Criminal Procedure Code (for short 'Cr.P.C')], against an employee/individual have to independently apply their mind before a complaint is lodged against an employee (petitioner/accused No.1 herein), as his job/career is at stake and has a bearing on the family too.

21. In the present case, petitioner retired in the month of January, 2009, drug is manufactured in March, 2009, affidavit

is dated August, 2007 and complaint is in March, 2012. This Court is unable to visualise the link as to how petitioner can be mulcted for offences under the Act, 1940. Petitioner/accused No.1 ceased to be associated with M/s.Hindustan Antibiotics from 31.01.2009. A complete non-application of mind by the officer who lodged the complaint is apparent.

22. Hospital authorities procured the subject drug from M/s. Fair Deal Enterprises. Fair Deal Enterprises in their reply to show cause notice stated that they procured drug from M/s. Hindustan Antibiotics. Product drug is manufactured by Preeth International Private Limited (on loan licence basis), an accused in S.C.No.03 of 2019, which supplied the drug to Hindustan Antibiotics, and Fair Deal Enterprises supplied to South Central Railway Hospital, Hyderabad, Lalaguda from where the drug sample was collected by Drug Inspector.

23. It is submitted by learned Additional Solicitor General that complainant is no more, person who has drawn the samples is retired. This does not, in any way, come to the rescue of the State, as the officer who seized the drug sample, who lodged the complaint, have acted on behalf of the State Government/Union Government not in their personal capacity.

24. If acts of this nature are permitted, to set criminal law into motion, holding individuals to be responsible, when there is no involvement (as in the present case), it would amount to abuse of process of Court.

25. Initiation of criminal proceedings or setting criminal law into motion affects the citizen's right to freedom and liberty granted under Article 21 of the Constitution of India. This Court cannot aid authorities, who in responsible positions act in such a haste manner, to indict an employee, without any substantial material before them.

26. Authorities have to apply their mind when persons/employees are being charged and named in complaints, which have serious consequences. The impact of a drug supplied in public hospitals, not of standard quality, has a profound bearing on the health of patients, drugs supplied to Government Hospitals/Public Hospitals have to be of standard quality. The quality of the drug supplied has been found to be of low standard/quality, as per the report of Government Analyst from the Central Drugs Laboratory of Kolkata. The petitioner/accused No.1 is shown as the person responsible for the act, which is not correct.

27. This Court has no hesitation in holding that the company which manufactured and supplied the drug should be dealt with sternly, when it is found to be of low quality/standard. This Court is conscious of the fact that accused No.3 is not before this Court. In the larger public interest, this Court holds that organizations/units which manufacture substandard drugs and supply to hospitals (including Government Hospitals), should be dealt with an iron hand and the persons responsible have to be charged for offence(s) in accordance with law.

28. On a perusal of the material on record, this Court is of the opinion that holding the petitioner/accused No.1 to be an accused is without any basis. The material on record evidently displays/reflects that petitioner was not in service at the time of manufacture of drug. Generally quality of the drug is ascertained, after its manufacture and not before, but standards have to be maintained at the time of manufacturing process. Petitioner, having retired two months prior to the manufacture of drug, could not be held responsible for acts of omission or commission in not maintaining or testing the standard of drug, that too when he is not responsible for day to day business of the Unit at the relevant time. The investigation report reflects that one Mr.G.Rajendran, Divisional Manager I/c (South Zone),

was responsible person for day-to-day business activities of firm after retirement of petitioner/accused No.1. It is stated that action is initiated against him. Petitioner should not have been mulcted for offences by setting criminal law in motion, it is sheer abuse of process of law, affecting his fundamental right under Article 21 of the Constitution of India.

29. It is trite to extract the relevant portion of the investigation report (at paragraph No.13) placed on record:

“...The firm has not produced the documents pertaining to the role and responsibilities of Mr.A.K.Gupta.

Further, the firm has stated that Mr.G.Rajendran, Divisional Manager I/C (South Zone) was responsible person for day-to-day business activities of the firm after retirement of Mr.A.K.Gupta on 31.01.2009. (Declaration submitted by the firm is attached as Annexure-III).”

30. On a perusal of the relevant portion of the report, it is apparent that petitioner/accused No.1 has no role and responsibility in the entire episode.

31. Submissions are made that present incumbent officers are in no way responsible in naming the petitioner/accused No.1 in the complaint. This Court is conscious of the fact that they are not part of the acts in setting the criminal law into motion against petitioner/accused No.1.

32. The allegations and offences alleged against the petitioner/accused No.1 under Section 16 of the Act, 1940, punishable under Section 27 read with Drugs and Cosmetics Rules, 1945, were wholly illegal and contrary to the facts on record. Therefore, this Court deems it appropriate to set aside the proceedings and allow the criminal petition filed herein under Section 528 of the BNSS, 2023.

33. Having considered the material on record and the contentions advanced, this Court deems it to be a fit case to impose costs on respondent authorities to secure the ends of justice. The Hon'ble Apex Court, while dealing with the aspect of imposition of costs in exercise of inherent jurisdiction under Section 482 of Code of Criminal Procedure (Section 528 of BNSS, 2023), in **Mary Angel and Others v. State of Tamil Nadu**¹ at paragraph No.8, held as follows:

" In our view, Section 482 CrPC stands independently from the other provisions of the Code and it expressly saves the inherent powers of the High Court by providing that:

"482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

Therefore, to prevent abuse of the process of the court or otherwise to secure the ends of justice the High Court is empowered to pass "such order" which may include order to pay costs to the informant (complainant) and the language of the section does not in terms place any fetter. This power

¹ (1999) 5 SCC 209

is not conditioned or controlled by any other section nor is curtailed by any provisions which empower the court to award costs. No doubt, this jurisdiction is of an exceptional nature and is to be exercised in exceptional cases for achieving the purposes stated in the section. Secondly, costs could be either for the purpose of meeting the expenses of the litigation as it can be exemplary to prevent the abuse of the process of the court or to secure the ends of justice or giving effect to any order passed under the Code."

34. The Hon'ble Apex Court further held at paragraph No.22 as follows:

"In the result, we hold that while exercising inherent jurisdiction under Section 482, the Court has power to pass "such orders" (not inconsistent with any provision of the Code) including the order for costs in appropriate cases

- (i) to give effect to any order passed under the Code, or
- (ii) to prevent abuse of the process of any court, or
- (iii) otherwise to secure the ends of justice.

As stated above, this extraordinary power is to be used in extraordinary circumstances and in a judicious manner. Costs may be to meet the litigation expenses or can be exemplary to achieve the aforesaid purposes."

35. This Court has no hesitation to hold that there has been an abuse of process of Court and injustice is meted out to petitioner/accused No.1. Criminal law is set into motion, without any basis against the petitioner/accused No.1. The respondent authorities are directed to pay costs of Rs.50,000/- to meet the litigation expenses of the petitioner/accused No.1. The amounts shall be paid within a period of four (04) weeks from the date of receipt of a copy of this order.

36. For reasons aforesaid, the Criminal Petition stands allowed and the proceedings against the petitioner/accused No.1 in Spl.S.C.No.03 of 2019 on the file of the 1st Addl. Metropolitan Sessions Judge, Hyderabad, at Nampally, are liable to be quashed and accordingly quashed.

Miscellaneous applications pending, if any, shall stand closed.

SD/- K.BHAVANI SWAMY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

ONE FAIR COPY TO THE HON'BLE JUSTICE ANIL KUMAR JUKANTI
(For His Lordship's kind Perusal)

To

1. The 1st Additional Metropolitan Sessions Judge, Hyderabad at Nampally.
2. 11 LR Copies
3. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi
4. The Secretary, Telangana Advocates Association Library, High Court for the State of Telangana, High Court Buildings at Hyderabad.
5. One CC to SRI V.R.MACHAVARAM, Advocate [OPUC]
6. One CC to SRI PULIMAMIDI SHASHIDHAR REDDY, S.C. For Central Govt., Advocate [OPUC]
7. Two CD Copies

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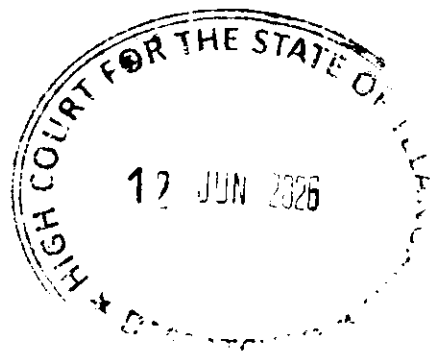


HIGH COURT

DATED: 25/03/2026

ORDER

CRLP.No.7334 of 2025



ALLOWING THE CRL.P.

20
12/06/2026