



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.657 of 2022

Reserved on: 23.04.2026

Date of Decision: 06.05.2026

M/s VADSP Pharmaceuticals and OthersPetitioners
Versus
Union of IndiaRespondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioners: Mr. Anand Sharma, Senior Advocate, with Mr. Karan Sharma, Advocate.

For the Respondent: Mr. Shashi Shirshoo, Central Government Counsel.

Sandeep Sharma, J.

By way of instant petition filed under Section 482 of Code of Criminal Procedure, prayer has been made on behalf of the petitioners herein for quashing of Complaint Case 6/3 of 2022 titled 'Union of India through Drugs Inspector vs. M/s VADSP Pharmaceuticals and ors.' as well as consequent proceedings initiated under Sections 16, 18(a)(i), 18(a)(vi) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 pending before the Court of Ld. Chief Judicial Magistrate, Nalagarh, Baddi, Himachal Pradesh.



2. Precisely facts of the case are that complainant, Mr V. Kaviyarasan, the then Drugs Inspector drew a sample on Form-17 of drug 'Rabeprazole Sodium and Domperidone sustained release Capsules (KaxyraB-D)', Batch No. KRD-05, DoM- 10-17, DoE-09-19, manufactured by M/s Unison Pharmaceuticals, Plot No. 124, E.P.I.P, Industrial Area Phase-1, Jharmajri, Baddi, H.P., on 24.11.2017 in the presence of Mr. Premnath, Analytical Chemist of the firm. Thereafter, the sample was divided into three portions and was sealed as per the procedure. The drugs inspector also handed over a copy of Form-17 along with one portion of a sealed sample to Mr. Premnath, an Analytical Chemist.

3. Thereafter, the Drugs Inspector, on 28.11.2017, sent one sample of the drug on Form-18 to the Government Analyst, Regional Drugs Testing Laboratory, Sector 39-C, Chandigarh-160036, after completing the codal formalities. On 20.02.2018, complainant received test and analysis report from the Government Analyst on Form-13 whereby the said sample of the drug was declared as "Not of Standard Quality" for the reason that the sample does not conform to the claim as per patent and Proprietary in respect to the Dissolution of Rabeprazole Sodium (after 1 hr.) (after 4 hr), (after 8 hr.).



4. After receipt of the said sample analysis report, on 20.03.2018 The Drugs Inspector served a notice to Mr. Premnath (M/s Unison Pharmaceuticals) alongwith the test reports thereby directing them to stop the sale /distribution and recall the drug alongwith some other details. Pursuant to afore notice, the firm replied to the notice, requested for retesting from Central Drugs Laboratory, however, complainant proceeded to apply for permission from Central Authority to launch prosecution sanction against the petitioners vide letter dated 19.09.2019, which was granted vide letter dated 14.09.2021.

5. Taking cognizance of averments contained in the complaint and documents annexed therewith, learned trial Court issued process against the accused named in the complaint, including the petitioners, however, fact remains that the complaint is still pending adjudication.

6. Being aggrieved by the filing of the complaint and summoning order, the petitioners have approached this Court for the quashing of the complaint, details whereof are given as above, with the following prayer:

“a. The present petition may very kindly be allowed, throughout, with exemplary costs, thereby, quashing and setting aside the Drugs complaint issued by the Drug Inspector CDSCO Sub Zone Baddi, Himachal Pradesh against the present petitioners.

b. The present petition may very kindly be allowed, thereby, quashing and setting aside the proceedings initiated through Drugs Inspector, before the learned Chief Judicial Magistrate, Nalagarh, Baddi, H.P in



Complaint Case No. 6/3 of 2022, titled as Union of India vs. M/s VADSP Pharmaceuticals and others pending qua the present petitioners.

c. That the entire record pertaining to the complaint Case No. 6/3 of 2022 dated 18/1/2022, titled as Union of India vs. M/s VADSP Pharmaceuticals and others pending before the learned Chief Judicial Magistrate, Nalagarh, Baddi H.P may kindly be called for utmost adjudication of the present case.”

7. Pursuant to notices issued in the instant proceedings, respondent State has filed reply to the present petition, wherein facts as have been noticed herein above, have not been disputed, rather stand admitted.

8. Precisely, the grouse of the petitioners, as has been highlighted in the present petition and further canvassed by Mr. Anand Sharma, learned senior counsel duly assisted by Mr. Karan Sharma, Advocate, appearing for the petitioners is that court concerned, while issuing process against the petitioners, failed to take note of the fact that the complaint filed by Drug Inspector concerned under relevant provisions of Act/Rules is not maintainable against petitioners for the reason that petitioner nos. 2 and 3, who were mere partners of the firm were neither in-charge nor responsible to the firm for conduct of the business, rather the petitioners had appointed Mr Premnath, Analytical Chemist, as the in-charge and he was responsible for the business



transactions of the firm under Section 34 of the Drugs and Cosmetics Act.

9. While making this court peruse the complaint, Mr. Sharma, learned senior counsel attempted to carve out a case that there is not a single word suggestive of the fact that petitioners being Directors of company concerned were responsible for day-to-day activities of company, rather for that purpose authorized person, Mr. Prem Nath, Analytical Chemist, was appointed.

10. Mr Sharma further submitted that the samples were collected from the firm on 24.11.2017 and same was referred to the Government Analyst on 20.02.2018, after a delay of almost 3 months. He submitted that this is in violation of Section 23(4)(i) and Section 46 of the Act which casts a duty upon the Drugs Inspector to send the said samples forthwith to the Government Analyst for test and analysis and further the Government Analyst to send the adverse analysis report forthwith to the Drugs Inspector who shall inform the manufacturer forthwith, however, in the present case the report was sent to the petitioners on 20.03.2018, that is after a lapse of considerable time.

11. Lastly, Mr. Sharma, learned senior counsel argued that since on account of non-compliance of provision as detailed herein above, prosecution case is bound to fail, no fruitful purpose would be served in



case, complaint as well as consequent proceedings against the petitioners herein are allowed to sustain, rather, continuation of same, if permitted would cause great prejudice to the petitioners who would be unnecessarily subjected to ordeal of protracted trial, which otherwise is bound to fail.

12. To the contrary, Mr Shashi Shirshoo learned Senior Panel Counsel, while supporting the registration of complaint by Drug Inspector against the petitioners, vehemently argued that petitioners being partners of M/s VADSP Pharmaceuticals, are liable and responsible for conduct of business of the company. He further submitted that firm was directed to furnish the details of the responsible person, but no response was received, therefore, the plea that Mr Premnath, Analytical Chemist, is the responsible person is not acceptable.

13. Mr Shirshoo further submitted that there is no timeline for sending the sample to the Drug Testing Laboratory for testing the sample by the laboratory. The references to the specific test or analysis have already been made in the report. The sample was not found to be of the prescribed standard, and the complaint was rightly filed before the Court.



14. I have heard Mr Anand Sharma, learned Senior Counsel, assisted by Mr Karan Sharma, learned counsel for the petitioners and Mr Shashi Shirshoo, and learned Senior Panel Counsel for the respondent.

15. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC.

16. In ***Amish Devgan vs Union of India and Ors***, (2021) 1 SCC 1, the Hon'ble Apex Court held as under:

“(vii) Conclusion and relief

116. At this stage and before recording our final conclusion, we would like to refer to decision of this Court in Pirthi Chand [State of H.P. v. Pirthi Chand, (1996) 2 SCC 37 : 1996 SCC (Cri) 210] wherein it has been held : (SCC pp. 44-45, paras 12-13)

“12. It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in



support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance with the provisions which are considered mandatory and effect of its non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance issue of process under Criminal Procedure Code is availed of. A reading of a [Vide Corrigendum dated 20-3-1996 issued from Residential Office of Hon'ble Mr Justice K. Ramaswamy.] complaint or FIR itself does not disclose at all any cognizable offence — the court may embark upon the consideration thereof and exercise the power.”

17. In the case of **Kaptan Singh vs State of Uttar Pradesh and Ors.**, (2021) 9 SCC 35, the Supreme Court held as under :

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of



U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683]* in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the



trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.”

18. Recently, Hon’ble Apex Court in ***Abhishek Singh vs Ajay***

Kumar and Ors., (2025) SCC OnLine SC 1313, reiterated that:

“9. The scope of the Court's power to quash and set aside proceedings is well-settled to warrant any restatement. While the arguments advanced have the potential to raise many issues for consideration, we must first satisfy ourselves as to the propriety of the exercise of such power by the High Court. The task of the High Court, when called upon to adjudicate an application seeking to quash the proceedings, is to see whether, prima facie, an offence is made out or not. It is not to examine whether the charges may hold up in the Court. In doing so, the area of action is circumscribed. In *Rajeev Kourav v. Baisahab*, it was held:

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.” 15. In that view of the matter, we hold that the High Court had improperly quashed the proceedings initiated by the appellant. It stands clarified that we have not expressed any opinion on the matter, and the guilt or innocence of the



respondents has to be established in the trial, in accordance with the law. The proceedings out of the subject FIR, mentioned in paragraph 2 are revived and restored to the file of the concerned Court.”

19. A three-Judge Bench of the Hon'ble Apex Court in case titled ***State of Karnataka v. L. Muniswamy and others***, 1977 (2) SCC 699, held that High Court while exercising power under Section 482 Cr.PC is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

20. Subsequently, in case titled ***State of Haryana and others v. Bhajan Lal and others***, 1992 Supp (1) SCC 335, the Hon'ble Apex Court while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings



ought not to be permitted to degenerate into a weapon of harassment or persecution.

21. Reliance is placed upon judgment of Hon'ble Apex Court in ***Prashant Bharti v. State (NCT of Delhi)***, (2013) 9 SCC 293, relying upon its earlier judgment titled as ***Rajiv Thapar and Ors v. Madan Lal Kapoor***, (2013) 3 SCC 330.

22. Reliance in this regard is also placed upon judgment passed by the Hon'ble Apex Court in ***B.N. John Vs. State of U.P., 2025 SCC OnLine SC 7***, which reads as under:

"7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously



instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.” (emphasis added)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

23. Reliance is further placed upon the judgment passed by the

Hon'ble Apex Court in **Ajay Malik v. State of Uttarakhand, 2025 SCC**

OnLine SC 185, which reads as under:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.



9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, inter alia, contemplate the following situations : (i) the criminal complaint has been filed with mala fides; (ii) the FIR represents an abuse of the legal process; (iii) no prima facie offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335)

24. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings,

25. Now being guided by the aforesaid proposition of law laid down by the Hon'ble Apex Court, this Court would make an endeavor to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

26. It is apparent from the bare perusal of the Section 34 of the Act that a Company is primarily liable for the commission of an offence punishable under the Act. As per afore provision of law, vicarious



liability has been fastened upon a person who, at the time the offence was committed, was in charge of and responsible to the Company for the conduct of its business. Section 34 of the Act reads as under:

“34. Offences by companies.—

(1)Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

27. Aforesaid provision of law deals with offence, if any, committed by company. Aforesaid provision provides that where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to the aforesaid section provides that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence



to prevent the commission of the offence. Since, in the case at hand also Mr. Premnath was in-charge of and was responsible to, the company for the conduct of the business of the company, liability cannot be fastened on petitioners, especially petitioner nos. 2 and 3, being partners of the firm.

28. In this regard, reliance is placed upon judgment of Hon'ble Apex Court **in *Susela Padmavathy Amma v. Bharti Airtel Ltd.***, 2024 SCC OnLine SC 311 wherei it has been held that a person can be vicariously liable if he is in charge and responsible to the Company for the conduct of its business. Relevant paras of the judgment reads as under:

“18. In the case of State of Haryana v. Brij Lal Mittal (1998) 5 SCC 343, this Court observed thus:

“8. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act, which reads as under:

“34. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves



that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if, at the material time, he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director, a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question, we, however, find that except for a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.”

19. It could thus be seen that this Court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in charge of and was also responsible to the company for the conduct of its business.

20. In the case of S.M.S. Pharmaceuticals Ltd. (supra), this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word “director” as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

“8. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company, but he may not know anything about the day-to-day functioning of the company. As a director, he may be attending meetings of the Board of Directors of the company, where they usually decide policy matters and guide the course of business of the company. It may



be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-today functions of the company. These are matters which form part of the resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company.”

21. It was held that merely because a person is a director of a company, it is not necessary that he is aware of the day-today functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary to aver as to how the director of the company was in charge of the dayto-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

22. In the case of *Pooja Ravinder Devidasani v. State of Maharashtra* (2014) 16 SCC 1, this Court observed thus:

“17. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of the commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the



business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed : (SCC p. 336, paras 13-14)

“13. Section 141 is a penal provision creating vicarious liability, which, as per settled law, must be strictly construed. It is therefore not sufficient to make a bald, cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with a strict interpretation of penal statutes, especially where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.”(emphasis in original)

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189: 1971 SCC (Cri) 279: AIR 1971 SC 2162], this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335: 1981 SCC (Cri) 453]).



20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

21. In *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 (2007) 1 SCC (Cri) 621], it was held by this Court that: (SCC pp. 584-85, para 7) “7. ... It is not necessary for the complainant to specifically reproduce the wordings of the section, but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for the commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company.” (emphasis supplied) By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.”

23. It could thus clearly be seen that this Court has 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.

24. A similar view has previously been taken by this Court in the case of *K.K. Ahuja v. V.K. Vora* (2009) 10 SCC 48.

25. In the case of *State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana* (2010) 11 SCC 469, this Court reiterated the position thus:



“17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused was in charge of the business of the company or responsible for the conduct of the company's business. Every Director does not need to be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of the business of the company and how and in what manner he is responsible or liable.”

26. In the case of *Ashoka Mal Bafna* (supra), this Court observed thus:

“9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of the commission of an offence will be liable for criminal action. (See *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378: AIR 2015 SC 675].)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.”

27. A similar view has been taken by this Court in the case of *Lalankumar Singh v. State of Maharashtra* 2022 SCC OnLine SC 1383, to which one of us (B.R. Gavai, J.) was a party.”

29. Reliance is also placed upon ***Pawan Kumar Goel v. State of U.P., 2022 SCC OnLine SC 1598*** wherein it has been held that only



a person, who is in charge of and responsible to the Company for its affairs can be summoned and punished for the acts of the Company.

Relevant paras of the judgment reads as under:

“22. A two-judge Bench of this Court in the case of K.K. Ahuja v. V.K. Vora(2005) 8 SCC 89, after analysing the provisions contained in Section 141 of the Act, observed as under:—

“16. Having regard to section 141, when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonoured, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished:

- i every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company;
- ii any Director, Manager, Secretary or other officer of the company with whose consent and connivance, the offence under section 138 has been committed; and
- iii any Director, Manager, Secretary or other officer of the company whose negligence resulted in the offence under section 138 of the Act being committed by the company. While the liability of persons in the first category arises under sub-section (1) of Section 141, the liability of persons mentioned in categories (ii) and (iii) arises under sub-section (2). The scheme of the Act, therefore, is that a person who is responsible to the company for the conduct of the business of the company and who is in charge of the business of the company is vicariously liable by reason only of his fulfilling the requirements of subsection (1). But if the person responsible to the company for the conduct of business of the company, was not in charge of the conduct of the business of the company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.



17. The criminal liability for the offence by a company under section 138 is fastened vicariously on the persons referred to in sub-section (1) of section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly. When conditions are prescribed for extending such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of section 141 is imperative. As pointed out in *K. Srikanth Singh v. North East Securities Ltd. - (2007) 12 SCC 788*, the mere fact that at some point of time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability under section 141 of the Act. 18. Sub-section (2) of section 141 provides that a Director, Manager, Secretary or other officer, though not in charge of the conduct of the business of the company will be liable if the offence had been committed with his consent or connivance or if the offence was a result of any negligence on his part. The liability of persons mentioned in subsection (2) is not on account of any legal fiction but on account of the specific part played-consent and connivance, or negligence. If a person is to be made liable under sub-section (2) of section 141, then it is necessary to aver consent and connivance, or negligence on his part.”

23. The scope of Section 141 of the NI Act was again exhaustively considered by this Court *Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89.*:

“10.What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of the business of the company at the time of the commission of an offence who will be liable for criminal action. It follows from this that if a director of a Company who was not in charge of and was not responsible



for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of the business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager, or Secretary was enough to cast criminal liability, the Section would have said so. Instead of “every person”, the section would have said “every Director, Manager or Secretary in a Company is liable”...etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action...

18. To sum up, there is an almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelt out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelt out. A complaint has to be examined by the Magistrate in the first instance on the basis of the averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable



under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what the case is which is alleged against him. This will enable him to meet the case at the trial.”(emphasis supplied)

30. Reliance is also placed upon judgment of Hon'ble Apex Court in case titled ***Rajesh Viren Shah v. Redington India Ltd., (2024) 4 SCC 305: 2024 SCC OnLine SC 143, K.S. Mehta v. Morgan Securities & Credits (P) Ltd., 2025 SCC OnLine SC 492.*** Similarly, in yet another judgment of Hon'ble Apex Court in ***Siby Thomas v. Somany Ceramics Ltd., (2024) 1 SCC 348*** held that the primary responsibility to make the averment, that the accused is in charge and responsible for the firm for its affairs lies upon the complainant, in the absence of which the accused cannot be held liable.

31. From the aforesaid exposition of law it is quite apparent that primary responsibility to make the averment, that the accused is in charge and responsible for the firm for its affairs, lies upon the complainant, in the absence of which the accused cannot be held liable. In the case at hand also, the complaint is completely silent regarding role of accused nos. 2 and 3, being in-charge and their responsibility towards accused No.1-firm. These averments do not satisfy the parameters laid down by the Hon'ble Supreme Court in the aforesaid judgments.



32. No doubt, accused Nos.2 and 3 are the partners in the firm of accused No.1, but the question which needs to be determined is whether they being in the capacity of partners of the accused-firm could be prosecuted in the given facts and circumstances, especially when accused-firm has appointed authorised representative-Mr. Prem Nath, Chemical Analyst. Though Mr. Shashi Shirshoo, learned Central Government Counsel, attempted to argue that there is no mention, if any, of name of Mr. Prem Nath, Chemical Analyst in the record, but after having carefully perused application bearing Cr.MP No.3686 of 2025 filed by the petitioner for placing on record certain vital documents, this Court is persuaded to agree with Mr. Anand Sharma, learned Senior Counsel representing the petitioner, that requisite information on form No.26 was given to competent authority with regard to authorised/capable person Mr. Prem Nath. Pursuant to information furnished by petitioner-company, which was earlier known as M/s. Unison Pharmaceuticals, State Drugs Controller, Baddi, Himachal Pradesh, issued licenses to M/s Unison Pharmaceuticals, which subsequently was renamed as M/s VADSP Pharmaceuticals, for manufacture of categories of drugs specified in Schedule C and C(1), excluding those specified in Schedule X to the Drugs and Cosmetics Act, 1945, at Jharmajri, Baddi, District Solan, Himachal Pradesh.



Interestingly, authorised representative, who is otherwise responsible for testing, has been not made accused and as such, complaint lodged at the behest complainant-Union of India is bound to fail. Besides above, as has been observed hereinabove, there is no specific mention with regard to role of the partners i.e. accused No.2 and 3, as far as manufacturing is concerned. Careful perusal of averments contained in the complaint nowhere suggest that accused Nos.2 & 3 were responsible for day-to-day affairs of the accused-firm No.1, especially manufacturing, which otherwise was done under the supervision of technical team.

33. Having scanned entire material adduced on record, vis-à-vis prayer made in the instant petition, this court is persuaded to agree with Mr. Anand Sharma, learned senior counsel, appearing for the petitioners, that this court, while exercising power under Section 482 of Code of Criminal Procedure may proceed to quash the complaint against the petitioners, because continuance thereof would be sheer abuse of process of law, since, for the reasons stated herein above, case of prosecution is bound to fail against the petitioners in all probabilities.

34. Otherwise also, in case prayer made on behalf of the petitioners is not accepted they would be unnecessarily subjected to ordeal of facing protracted trial, which otherwise is bound to fail.



35. In view of detailed discussion made herein above and law taken into consideration, present petition is allowed. Complaint Case 6/3 of 2022 titled 'Union of India through Drugs Inspector vs. M/s VADSP Pharmaceuticals and ors.' as well as consequent proceedings initiated under Sections 16, 18(a)(i), 18 (a)(vi) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 pending in the court of Ld. Chief Judicial Magistrate, Nalagarh, Baddi. Himachal Pradesh are quashed and set aside qua the petitioners. The petitioners are discharged henceforth. All pending applications, stand disposed of.

All pending applications, stand disposed of.

May06, 2026

Rajeev Raturi

**(Sandeep Sharma),
Judge**