IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.930 of 2023

Date of Decision: 07.05.2026

M/s Salus Pharmaceuticals and Others **.....Petitioners**

Versus

Union of India **.....Respondent**

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ***Yes.***

For the Petitioners: Mr. Sanjay Jain, Mr. Akshay Jain, Mr. Anuj Nag and Mr. Hakam Bhardwaj, 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 under Drugs and Cosmetics Act/0000012/2022 (CNR No.HPSO11-000598-2022) for contravening Sections 18(a)(i) read with Section 16, punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, along with all other consequential proceedings, including the order of cognizance dated 07.09.2021 passed by the learned Judicial Magistrate First Class, Nalagarh, District Solan.

2. Quintessential facts as emerge from the pleadings adduced on record by the respective parties are that on 04.06.2019, Drugs Inspector, CDSCO, Sub-Zone Baddi, inspected the premises of Medical Store, Military

Hospital, Jalandhar Cantt., and drew samples of tablet Medtoin (Phenytoin Sodium Tabvlets IP) (Batch No.SPT190048A, manufacturing date January 2019, expiry date December 2020, manufactured by M/s Salus Pharmaceuticals, petitioner No.1-Firm) for the purpose of test and analysis on Form 17 of the Drugs Rules, 1945. One sample portion was forwarded to Government Analyst, Regional Drugs Testing Laboratory, Kolkata **(for short, 'RDTL, Kolkata')** on 06.06.2019 along with a copy of Form 18 by the afore Drugs Inspector, which sample was received in the afore laboratory on 21.06.2019. Afore sample portion was analysed by the Government Analyst, who declared drug in question to be not of standard quality (Annexure P-1).

3. After receipt of aforesaid adverse report dated 11.11.2019 from RDTL, Chandigarh, letter dated 28.11.2019 was written to Officer-in-Charge of ECHS of Jalandhar (the hospital from whom the sample was taken on 04.06.2019) conveying the adverse report. Along with afore letter, test report in Form 13 was also annexed (Annexure P-2). Afore hospital in return disclosed to the complainant that drug in question was acquired from Kumar and Bros, Jalandhar. Pursuant to notice dated 24.12.2019, afore Kumar and Bros, Jalandhar, disclosed the name of M/s Medroute India Pvt. Ltd., Jalandhar, as the source of acquisition of the said drug in question. Vide letter dated 24.01.2020, complainant conveyed adverse report to afore M/s Medroute India Pvt. Ltd., Jalandhar (Annexure P-4),

which subsequently vide reply dated 29.01.2020, disclosed the name of petitioner No.1-Firm, as source of acquisition of drugs, however it attached the invoice of M/s Arvincare (Annexure P-5). The adverse report was conveyed to M/s Arvincare vide letter dated 14.02.2020, who disclosed the name of petitioner no. 1-firm. Complainant further conveyed the adverse report to petitioner No.1 vide letter dated 15.07.2020 (Annexure P-6) along with one sealed sample portion. Joint inspection of the premises of the petitioner No.1-Firm was carried out on 16.10.2020, whereafter permission to prosecute petitioner No.1 as well as its Directors came to be sought by complainant from Drugs Controller General of India vide letter dated 04.01.2021 (Annexure P-8). Afore authority gave permission to prosecute the petitioner as well as other accused vide letter dated 03.05.2021.

4. In the afore background, complaint sought to be quashed in the instant proceedings came to be filed in the Court of learned Judicial Magistrate First Class, Nalagarh, District Solan on 18.08.2021. Afore Court vide order dated 07.09.2021, took cognizance of the offence and consequently, summoned the petitioners to face the trial (Annexure P-10). Before afore case could be taken to its logical ends, petitioners have approached this Court in the instant proceedings for quashing of complaint as well as summoning order. Vide order dated 13.09.2023, further proceedings pending before the Court of learned Judicial Magistrate First Class, Nalagarh, District Solan, H.P., in complaint sought to be quashed

were stayed, as a result thereof, no further progress has been made in the complaint. In the afore background, petitioners have approached this Court in the instant proceedings for quashing and setting aside the complaint as well as consequential proceedings pending in the competent Court of law.

5. Precisely, the grouse of the petitioners, as has been highlighted in the grounds of petition and further canvassed by Mr. Sanjay Jain, learned counsel representing the petitioners is that complaint filed by the respondent is without jurisdiction and patently illegal and as such, same being an abuse of process of Court, deserves to be quashed and set aside. Mr. Jain, learned counsel representing the petitioners, vehemently argued that entire prosecution instituted by the Drugs Inspector appointed by the Central Government is without jurisdiction and without lawful authority. He submitted that executive functions under Chapter-IV of the Drugs Act shall essentially be exercised by the Drugs Inspector appointed by the State Government, and certainly not by the one appointed by the Central Government. He further argued that neither the Constitution nor any Act made by the Parliament, including the Drugs Act and the Drugs Rules, provide for exercise of the executive functions in relation to Chapter-IV by any authority of the Central Government, including the Drugs Inspector appointed by it, rather Drugs Inspector appointed by the Central Government shall, to the exclusion of the State Government, exercise executive functions in relation to Chapter III relating to import of drugs and

cosmetics, but certainly not in relation to Chapter IV. He submitted that Drugs Inspector who had filed complaint and at relevant time conducted the investigation, have not been validly appointed in terms of Section 21 of the Drugs Act by virtue of the gazette notification specifically for such area and for such classes of drugs for the purposes of their exercising the jurisdiction and any government order would not be in accordance with express language of Section 21 of the Drugs Act.

6. Mr. Jain further argued that Section 34 of the Drugs Act encapsulate the concept of vicarious liability on the persons, who are Incharge of, and were responsible to the company for the conduct of the business of the company, as well as the company for making them guilty of the offences committed by the company, which terms indubitably includes the partnership firms. He submitted that though petitioners herein are partners of petitioner No.1-firm, but they could neither be termed Incharge nor responsible for the conduct of the business of the firm so as to fasten vicarious liability. While making this Court peruse complaint, which is sought to be quashed, Mr. Jain strenuously argued that no role has been assigned to petitioners No.2 to 5 in the firm. Complaint has been filed in a casual and mechanical manner without ascertaining the true and correct facts rendering the entire prosecution as a nullity. He submitted that petitioners No.2 to 5 have nothing to do with the day-to-day affairs of the firm. For that matter, the manufacturing and analysis are done under the

supervision of technical staff duly endorsed on the licenses issued by the competent authority. He submitted that day-to-day affairs of the firm are being taken/carried by the Plant Manager, who is appointed by petitioner No.1-firm, hence, in no circumstances, petitioners No.2 to 5 could be termed to be the persons Incharge of, and responsible to the firm for the conduct of the business.

7. While referring to Rule 45 of the 1945 Rules, Mr. Jain submitted that test and analysis of the sample is necessarily required to be conducted within a period of sixty days in terms of amendment vide GSR 103(E) dated 02.02.2017. He submitted that further proviso to the aforesaid Rule would make it abundantly clear that in case the sample could not be analysed within such period, the Government Analyst shall seek extension of time from the Government giving specific reasons for delay in such retesting or analysis. The insertion of the period, within which the test is to be carried out by the Government Analyst by virtue of afore amendment, is mandatory, and not directory. However, in the instant case, afore mandate of provision of Rule 45 has been violated with impunity. He submitted that drug in question was manufactured in January 2019, sample was drawn on 04.06.2019 and adverse report on Form 13 was issued on 11.11.2019. During this period of approximately five months, it does not come on record as to under what circumstances, the subject drug was stored, more so, when the product is highly unstable and has specified storing condition.

He submitted that there is nothing in the complaint or documents annexed with the complaint to establish that the subject drug was properly stored. Lastly, Mr. Jain argued that principles of natural justice were not adhered to by the Court concerned before issuing process because no opportunity of being heard was afforded to the petitioners, rather simply on the basis of complaint Court concerned without verifying the correctness of the averments proceeded to issue summons, which being totally contrary to law deserves to be interfered with.

8. Pursuant to notices issued in the instant proceedings, respondent-UOI has filed reply, wherein facts, as have been noticed hereinabove, have not been disputed, rather stands admitted. It is averred in the reply that all accused are the persons, who are responsible for the conduct and affairs of the accused-firm/company and as such, are liable to be punished under relevant provisions of law, as detailed in the complaint. Mr. Shashi Shirshoo, learned Central Government Counsel, while referring to Section 21 of the Drugs Act submitted that Central Government or State Government may by notification in the official gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be. He submitted that as per Section 21 of the Drugs Act, appointment of a person as an Inspector is to be notified in the official gazette for such areas as may be

assigned to him by the Central Government or State Government, as the case may be. He submitted that it does not prohibit the Government from appointing more than one person for an area, rather empowers to do so and further it does not restrict the area assigned to an Inspector to a particular segment of the Country or State, rather it empowers the Government for appointment of Inspectors for such areas as may be assigned to them. He submitted that Drugs Inspector was appointed by the Government of India under Section 21 of the Drugs and Cosmetics Act, 1940, for whole of India vide Gazette Notification No.F.No.A12025/03/2012-D dated 07.11.2013. While making this Court peruse averments contained in the complaint sought to be quashed, learned Central Government Counsel attempted to argue that required pleas with regard to day-to-day involvement of the petitioners in the affairs of the company have been made.

9. I have heard learned counsel representing the parties and gone through the record of the case.

10. 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.

11. In this regard, reliance is place upon **Amish Devgan vs Union of India and Ors**, **(2021) 1 SCC 1**, wherein the Hon'ble Apex Court held as under:

> "(vii) Conclusion and relief
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> 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)
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> > "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."

12. 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."

13. Recently, Hon'ble Apex Court in **Abhishek Singh vs Ajay Kumar and Ors.**, **(2025) SCC OnLine SC 1313**, held as under:

"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."
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> 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."

14. 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.

15. 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.

16. 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.

17. 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:
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> > "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)
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> 8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.
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> 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.
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> 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.
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> 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."

18. 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.
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> 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)

19. 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.

20. 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.

21. 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."

22. Aforesaid provision of law deals with offence, if any, committed by company. Aforesaid provision of law provides that where an offence under this Act has been committed by a company, every person who at the time of commission of offence, 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. Suresh Chandra Dubey and Mr. Praveen Singh were in-charge of and were responsible to, the company for the conduct of the business of the company, liability cannot be fastened on petitioners, especially petitioner nos. 2 to 5, being partners of the firm.

23. 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 wherein 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:
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> "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:
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> "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.
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> 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 Ramamurthyv.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 needto 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."

24. 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)

25. 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.

26. 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 to 5, 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.

27. No doubt, accused Nos.2 to 5 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 competent Technical Staff/authorised representative- Mr. Suresh Chandra Dubey and Mr. Praveen Singh, as is evident from the certificate of renewal of license issued by the State Drugs Controller. Though Mr. Shashi Shirshoo, learned Central Government Counsel, attempted to argue that there is no mention, if any, of name of afore persons in the record, but after having carefully perused Annexure P-12 i.e. certificate issued by the State Drugs Controller, this Court is persuaded to agree with Mr. Jain, learned counsel representing the petitioners, that requisite information on Form 26 was given to competent authority with regard to authorised/capable persons. Pursuant to information furnished by petitioner-company, State Drugs Controller, Baddi, Himachal Pradesh, issued licenses to M/s Salus 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 Har Raipur, Near Annapurna Hotel, Baddi, District Solan, Himachal Pradesh. Interestingly, authorised representatives, who are otherwise responsible for testing, have 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 Nos.2 to 5, as far as manufacturing is

concerned. Careful perusal of averments contained in the complaint nowhere suggest that accused Nos.2 to 5 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.

28. Though Mr. Jain, learned counsel representing the petitioners, while referring to Section 193 Cr.P.C., vehemently argued that complaint filed directly before, and also cognizance taken by learned Sessions Judge, without there being committal by learned Magistrate, violates procedure laid down under Section 193 Cr.P.C., however, having carefully perused Section 32 of the Act, which reads as under, no prosecution under this Chapter, i.e. Chapter IV, shall be instituted in Court, inferior to that of Court of Sessions. Section 32 of the Act reads as under:

> "**32. Cognizance of offences. —**
>
> (1)No prosecution under this Chapter shall be instituted except by—
>
> (a)an Inspector; or
>
> (b)any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or
>
> (c)the person aggrieved; or
>
> (d)a recognised consumer association whether such person is a member of that association or not.
>
> (2)Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.
>
> (3)Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

29. Careful perusal of aforesaid provision of law reveals that offences, if any, committed under the provisions mentioned in Chapter IV shall only be triable by the Court of Sessions. Section 32(3) clearly provides that nothing contained in Chapter IV shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Chapter. However, having carefully perused Sections 26B and 33P, this Court finds force in the submission of Mr. Jain, learned counsel representing the petitioners, that prosecution under Chapter IV of 1940 Act can only be launched by the State Government and not by Central Government. Statement of object and reasons of 1940 Act if read with Sections 10 and 18 of 1940 Act, reflects the executive powers in relation to Chapter III and Chapter IV to be exercised by the Central Government and State Government respectively. Even otherwise, Articles 73 and 162 of the Constitution also provides for the executive power in relation of subject under Concurrent List (List III) of the Seventh Schedule to be exercised by the State Government to the exclusion of the Central Government. The executive power in relation to Concurrent List (List III) of the Seventh Schedule can be exercised by the Central Government only in case it is provided by the Constitution or any Act made by the Parliament. Chapter IV of the 1940 Act nowhere provides such exercise of powers by the Central Government, except where the same is expressly provided under Sections 26A, 26B, 33P, etc, conferring

executive power to the Central Government. At this stage, it would be apt to take note of Sections 26-A, 26-B & 33-P, which read as under:

> **"26A. Powers of Central Government to prohibit manufacture, etc., of drug and cosmetic in public interest.—**
> Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied, that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate, restrict or prohibit the manufacture, sale or distribution of such drug or cosmetic.
>
> **26B. Power of Central Government to regulate or restrict, manufacture, etc., of drug in public interest. —**
>
> Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate or restrict the manufacture, sale or distribution of such drug.
>
> **33P. Power to give directions.—**
>
> The Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule or order made thereunder."

30. Section 26A empowers Central Government to prohibits manufacture of drugs and cosmetics in public interest. If the Central Government is satisfied, that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have

the therapeutic value claimed or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then Government may, by notification in the Official Gazette, regulate, restrict or prohibit the manufacture, sale or distribution of such drug or cosmetic. Similarly Section 26B empowers Central Government to regulate or restrict, manufacture, etc., of drug in public interest. Otherwise also, if the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then Government may, by notification in the Official Gazette, regulate or restrict the manufacture, sale or distribution of such drug. Besides aforesaid provision of law, Section 33P also empowers Central Government to give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any rule or order made thereunder. Section 10 and 10A of the Act empowers Central Government to prohibit import of certain drugs or cosmetics in public interest. At this stage, it would be also apt to take note of Section 18 of the Act, which read as under:

> **"18. Prohibition of manufacture and sale of certain drugs and cosmetics.—**
>
> From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a)manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute—

(i)any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii)any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious;

(iii)any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in it together with the quantities, thereof;

(iv)any drug which by means of any statement design or device accompanying it or by any other means, purports or claims to prevent, cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed;

(v)any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi)any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;

(b)sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c)manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality."

31. Section 18, reproduced hereinabove, prohibits any person from manufacture for sale or for distributing, or selling, or stocking or exhibiting any drug which is not of a standard quality, or is misbranded, adulterated or spurious and is not in accordance with the condition of licence issued for such purpose. However, such notification shall be issued by the State Government in official gazette. Chapter IV includes manufacture, sale and distribution of drugs and cosmetics. The executive power essentially lies with the Drugs Inspector appointed by the State Government. Article 256 of the Constitution of India and statement of objects and reasons to Drugs Act, in no uncertain terms, renders the exercise of authority by the Drugs Inspector appointed by the Central Government completely without jurisdiction for want of executive power, which power exclusively lies with the Drugs Inspector appointed by the State Government. Neither the Constitution nor any Act made by the Parliament, including the Drugs Act and the Drugs Rules, provide for exercise of the executive functions in relation to Chapter IV by any authority of the Central Government, including the Drugs Inspector appointed by it, rather Drugs Inspector appointed by the Central Government shall, to the exclusion of the State Government, exercise executive functions in relation to Chapter III relating to import of drugs and cosmetics, but constitutionally not in relation to Chapter IV. The licensing, and overall control, in relation to manufacture, sale, or exhibit or offer for sale forming part of Chapter IV, essentially lies

with the State Government, and to the exclusion of the Central Government, in the absence of any constitutional mandate or the mandate of any Act of Parliament. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **Union of India Vs. V. Sriharan alias Murugun**, AIR 2016 SC (Supp) 739, which reads as under:

> "17. Pithily stated under the proviso to Article 73(1)(a) where there is an express provision in the Constitution or any law is made by the Parliament, providing for specific Executive Power with the Centre, then the Executive Power referred to in sub-clause (a) of sub-article (1) of Article 73 would be available to the Union and would also extend in any State to matters with respect to which the Legislature of the State has also powers to make laws. In other words, it can be stated that, in the absence of any such express provision in the Constitution or any law made by the Parliament in that regard, the enormous Executive Power of the Union stipulated in Article 73(1)(a), would not be available for the Union to be extended to any State to matters with respect to which the Legislature of the State has also powers to make laws. To put it differently, in order to enable the Executive Power of the Union to extend to any State with respect to which the Legislature of a State has also got power to make laws, there must be an express provision providing for Executive Power in the Constitution or any law made by the Parliament. Therefore, the said prescription, namely, the saving clause provided in the proviso to Article 73(1)(a) will be of paramount consideration for the Union to exercise its Executive Power while examining the provision providing for the extent of Executive Power of the State as contained in Article 162."

32. Besides above, this Court finds that adverse report in Form 13 was issued on 11.11.2019, despite receipt of sample on 04.06.2019, which is beyond period of sixty days, as per mandate under Rule 45 of 1945 Rules. On afore count only, complaint sought to be quashed shall not pass the test of judicial scrutiny and as such, no fruitful purpose would be otherwise served in permitting complaint sought to be quashed to sustain. Reliance in this regard is placed upon **M/s G.G. Nutrition and Others Vs. State of Maharashtra and Another**, decided by the High Court of

Judicature at Bombay, in Criminal Writ Petition No.1659 of 2022, which read as under:

> "6. The next judgment is in the case of M. Sea Pharmaceuticals Pvt. Ltd. & anr. Vs. The State of Maharashtra and anr. reported in 2018 ALL MR (Cri.) 3946. In that case also, the accused had replied the notice issued by the authority. The sanction obtained by the complainant was not legal. It was contended that the report of the Analyst was received by the complainant on 20.07.2015 and reply was given on 31.08.2015 and complaint was filed on 04.03.2016. When there was knowledge that the sample was to expire in May 2016 whereas, process was issued on 31.03.2016 and the summons was made returnable on 29.06.2016that is after date of expiry of the sample. Though the accused were not served on the first date and they were served after the returnable date and they were required to appear before the Court on 03.07.2017, it is held that, by that time, the vital right of the accused to get sample re-analyzed and to challenge the report of the Government Analyst was lost. In this view, it was held that, continuance of complaint would be an abuse of process of law and the proceeding was quashed.
>
> 7. Learned advocate for the petitioner further relied upon the judgment delivered by this Court in the case of M/s. Quixotic Healthcare & Ors. Vs. State of Maharashtra & Anr. reported in 2020 ALL MR (Cri) 1880 wherein, there is violation of Rule 45 and in that view of the matter the proceeding of the complainant was quashed. In that case, the sample was taken just before when the same was to expire on 31.08.2010. The report was received on 02.02.2010 by the complainant. The accused wanted to get the sample re-checked, however, the complainant lodged the report only on 30.08.2010. There was no averment in respect of this time period. It was also held in the said judgment that, the main point was agitated was that the sample was drawn on 17.11.2009 and the same was sent for analysis on 18.11.2009. The report was received on 02.02.2010. However, the testing of the sample was beyond statutory period prescribed under Rule 45 which is required to be decided within 60 days. For non compliance of this the proceeding was quashed.

> 8. After considering the submissions and the judgments cited above, this Court finds that, the valuable right to controvert the test report of the Chemical Analyst is lost. There is also violation of Rule 45 that the sample was not tested within 60 days from the date it was drawn. By the time, the summons was received, the drug had already expired and under such circumstances now proceeding with the complaint would be a futile exercise and therefore, continuance of proceeding would clearly be an abuse of process of law. Therefore, this Court finds that, the petition deserves to be allowed."

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. Jain, learned counsel representing 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 under Drugs and Cosmetics Act/0000012/2022 (CNR No.HPSO11-000598-2022) for contravening Sections 18(a)(i) read with Section 16, punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, along with all other

consequential proceedings, including the order of cognizance dated 07.09.2021 passed by the learned Judicial Magistrate First Class, Nalagarh, District Solan, are quashed and set aside qua the petitioners. The petitioners are discharged henceforth.

All pending applications, stand disposed of.

May 07, 2026
Rajeev Raturi

(Sandeep Sharma),
Judge