



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MMO No. 1133 of 2025

Decided on: 07.05.2026

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Sh. Rajesh Marwah

.....Petitioner

Versus

State of Himachal Pradesh & Ors.

....Respondents

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Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup>

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**For the Petitioner** : Mr. Sunny Rawat & Mr. Atul Sahi,  
Advocates.

**For the Respondents** : Mr. Rajan Kahol and Mr. Vishal  
Panwar, Additional Advocates  
General with Mr. Ravi Chauhan and  
Mr. Anish Banshtu, Deputy  
Advocates General.

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**Sandeep Sharma, Judge** (oral)

By way of instant petition filed under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter, '**BNSS**'), prayer has been made on behalf of the petitioner for quashing of complaint No. HFW-HMR(PRO) DRUGS/10-09, registered as Complaint No. 58-1 of 2010 titled as **State of Himachal Pradesh (through Drugs Inspector H.Q. Hamirpur) v. Anil Chand and others** as well as consequent proceedings pending in the court of learned Additional Chief Judicial Magistrate, Nadaun, Hamirpur.

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<sup>1</sup> Whether the reporters of the local papers may be allowed to see the judgment?



2. For having bird's eye view of the matter, facts relevant for adjudication of the case at hand are that on 08.01.2009 Drug Inspector, Headquarters, Hamirpur alongwith Shri Jagdish Chand, Peon, visited the premises of M/s Shri Shri Medical Store, Opposite Bus Stand Nadaun, District Hamirpur, Himachal Pradesh. Drug Inspector concerned after having noticed that Mr. Anil Chand was conducting business of stocking and exhibiting for sale of allopathic drugs over the counter via his retail drugs licence no. HMR/2006/389 and HMR/2006/390 valid upto 29.3.2011, picked up three samples of drug namely Chlorpheniramine Maleate Tablets (C.P. Sys-4) B. No. LGT-8106, expiry date 08/2011, manufactured by M/s Legen Healthcare, Plot No.20, Sector 05, Parwanoo, District Solan, Himachal Pradesh for chemical analysis and as per procedure, sent the same for chemical examination to Government Analyst C.T.L. Kandaghat on 05.02.2009.

3. However, vide report dated 31.10.2009 sample of aforesaid Chlorpheniramine Maleate was found "not of standard quality as defined in the Drugs and Cosmetics Act, 1940 and Rules there under" for the reason that "the sample of Chlorpheniramine Maleate tablets contained less content of Chlorpheniramine Maleate.

4. After receipt of aforesaid 'adverse' analysis report, Drug Inspector concerned, vide letter dated 09.11.2009, sent a communication to Anil Chand, Pharmacist, In Charge M/s Shri Shri Medical Store to disclose the information as required under Section 18-



A of the Act, who in turn, vide his reply, disclosed that the said drug was purchased by him from M/s Aar Kay Surgicals, Tihra Road, Sujanpur, Village and Post Office Sujanpur, District Hamirpur, vide invoice No. AKV=-908 dated 23.12.2008. Drug Inspector concerned, issued letter dated 02.12.2009 to M/s Aar Kay Surgicals, Sujanpur alongwith enclosing therewith copy of adverse analysis report and purchase invoice, asking it to disclose the information as required under Section 18-A of the Act, who in turn vide letter dated 09.12.2009, disclosed that the drug in question was purchased by it from M/s Generica India Limited, 718, 719, Main Burari Road, Burari, Delhi vide invoice No. GIO-2530, dated 21.10.2008. Said firm also informed vide letter 09.12.2009 that drug was received by it from authorized signatory of the said firm, namely Mr. Hem Raj Thakur (hereinafter 'petitioner').

5. In the aforesaid background, Drug Inspector sent a notice to the afore M/s Generia India Ltd. with a copy of Adverse Analysis Report and related copies of purchase invoices, asking it to disclose the information as required under Section 18-A of the Act. Thereafter, authorized representative of afore company on behalf of the firm-M/s Generica India Limited vide letter dated 23.12.2009 disclosed that the said drug was purchased by it from M/s Legen Healthcare, Plot No. 20, Sector 05, Parwanoo, District Solan, Himachal Pradesh vide invoice No. 4, dated 7.10.2008.

6. On the basis of aforesaid information, Drug Inspector issued letter dated 01.02.2010 to M/s Legen Healthcare enclosing therewith



sealed sample portion and it was asked to disclose the information. Said company issued letter dated 10.02.2010 stating that it was not satisfied with report of Government Analyst CTL Kandaghat and requested to send the second sample for re-testing to Central Drug Laboratory. Though aforesaid prayer made by M/s Legen Healthcare was not acceded to but Drug Inspector having found breach of provisions of the Act, filed a complaint in the competent court of law inter alia impleading petitioner as accused no.9.

7. 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 petitioner, however, fact remains that the complaint is still pending adjudication.

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

9. Precisely, the grouse of the petitioner, as has been highlighted in the present petition and further canvassed by Mr. Sunny Rawat, Advocate, appearing for the petitioner is that court concerned, while issuing process against the petitioner, 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 the petitioner, who happens to be one of the partners in company M/s Legen Healthcare, for the reason that he has/had no hand in manufacturing of drug in



question, rather, action could be taken against authorized representative of M/s Legen Healthcare, which otherwise is admitted to have manufactured the drug in question. While making this court peruse Section 19(3) of the Act, Mr. Rawat, learned counsel appearing for the petitioner, vehemently argued that a person, not being the manufacturer of a drug or cosmetic or his agent for the distribution hereof, shall not be liable for contravention of Section 18 (a)(i) if he proves that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof; that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic, in any way, contravened the provisions of that section; and that the drug or cosmetic, while in his possession was properly stored and remained in the same state as when he acquired it.

10. Mr. Rawat, learned counsel for the petitioner further submitted that since companies, which are M/s Generica India Limited and M/s Legan Healthcare being traders/stockiest and manufacturing firm respectively, have not been arrayed as accused, complaint having been filed by Drug Inspector concerned otherwise is bound to fail, in terms of specific provisions contained under Section 34, which mandate for impleadment of company as an accused, if there is violation of any provisions contained under the Act. In support of aforesaid submissions Mr. Sunny Rawat, Advocate invited attention of this court to various judgments, which shall be referred to in the later part of order.



11. Lastly, Mr. Rawat, Advocate argued that since on account of non-compliance of various provisions 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 petitioner herein are allowed to sustain, rather, continuation of same, if permitted would cause great prejudice to the petitioner who would be unnecessarily subjected to ordeal of protracted trial, which otherwise is bound to fail.

12. To the contrary, Mr. Ravi Chauhan, learned Deputy Advocate General, while supporting the registration of complaint by Drug Inspector against the petitioner, vehemently argued that petitioner being partner of M/s Legen Healthcare, is liable and responsible for conduct of business of the company. He submitted that petitioner, who is partner in manufacturing company, is liable to be punished for the commission of offence punishable under Section 34 of the Act. While referring to Section 19(3) of the Act, Mr. Ravi Chauhan, learned Deputy Advocate General further argued that once, there is no denial to the fact that drug in question was manufactured by the company concerned and same was not found to be of standard quality, petitioner being partner in company has been rightly booked for deliberate contravention of the provisions contained under Section 18 of the Act. Lastly, Mr. Chauhan, learned Deputy Advocate General, submitted that petition under Section 528 of BNSS is not maintainable, especially when complaint sought to be quashed is already under trial. He further



submitted that there is overwhelming evidence on record suggestive of the fact that petitioner has contravened various provisions contained under the Act and as such, it would be too premature at this stage to conclude that no case, much less case under Section 18(a)(i) punishable under Section 27(d) of the Act, is made out against petitioner.

13. I have heard learned counsel for the parties and perused material available on record.

14. 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.

15. 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.”

16. 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.”



17. 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."

18. 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.

19. 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.

20. The 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, reiterated that High Court has inherent powers under Section 482 Cr.PC., to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of



framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC, Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled as ***Prashant Bharti (supra)***, the Hon'ble Apex Court has held as under:

“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor* wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30)

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the



stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and



overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

21. 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,

22. Reliance in this regard is also placed upon judgments of the Hon'ble Apex Court in case titled **Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi) Department of Home and Anr**, AIR 2019 SC 210 (paras 16-17) and **Pramod Suryabhan Pawar v. The State of Maharashtra and Anr**, (2019) 9 SCC 608 (paras7-8).



23. 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.

24. Admittedly in the case at hand, drug in question i.e. Chlorpheniramine Maleate was manufactured by M/s Legen Healthcare. Petitioner herein have been arrayed as accused on account of his being partner in afore company, which is admittedly a manufacturer of the drug in question. Sample of drug was drawn from pharmacy namely M/s Shri Shri Medical Store, whose in-charge was Mr. Anil Chand. Above named Anil Chand disclosed to Drug Inspector concerned that the drug in question was purchased from M/s Aar Kay Surgicals, Sujanpur vide invoice dated 23.12.2008. M/s Aar Kay Surgicals, Sujanpur further informed the Drug Inspector concerned that the drug was purchased by it from M/s Generica India Limited vide invoice dated 21.10.2008. Aforesaid private limited company, while responding to notice issued by Drug Inspector concerned, specifically disclosed that it is not the manufacturer of drug in question, rather it has purchased the same from M/s Legen Healthcare and thereafter, being stockiest and trader, supplied the drug in question to whole seller M/s Aar Kay Surgicals, Sujanpur.

25. Record reveals that Drug Inspector concerned, while initiating proceedings against various accused named in the complaint, failed to implead M/s Generica India Limited and M/s Legan Healthcare, being



traders/stockiest and manufacturing firm respectively, as accused. If it is so, prosecution, if any, against petitioner being partner of M/s Legan Healthcare is bound to fail.

26. At this stage, it would be apt to take note of Section 34 of the unamended Act, 1940, 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 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means a body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.”

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 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

28. Till the time, company is arrayed as an accused, offence, if any, committed by company, cannot be ascertained. For the offence, if any, committed by a company, person responsible for conduct of business of the company is to be dealt in accordance with law, but admittedly, for doing so, such company is essentially required to be impleaded as accused. However, in the instant case, M/s Legan Healthcare, being manufacturing firm, has not been arrayed as party till date. Since aforesaid company has not been arrayed as accused, it is not understood how prosecution would prove case against its partner i.e. petitioner herein.

29. Reliance in this regard is placed upon a judgment rendered by Hon'ble Apex Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.***, (2012) 5 SCC 661, wherein, a similar provision enacted in the Negotiable Instruments Act was considered by the Hon'ble Supreme Court and it was held that prosecution of the company is sine qua non for prosecuting the officials of the company. It is not permissible to



prosecute the officials without prosecuting the company. It was observed:-

“58. Applying the doctrine of strict construction, we are of the considered opinion that the commission of an offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491: 1971 SCC (Cri) 97] which is a three-judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352: 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1: 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684: 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

30. A similar view was taken by Hon'ble Apex Court in **Dayle De'souza v. Govt. of India**, 2021 SCC OnLine SC 1012, wherein it was observed:-

“24. There is yet another difficulty for the prosecution in the present case as the Company has not been made an accused or even summoned to be tried for the offence. The position of law as propounded in State of Madras v. C.V. Parekh (1970) 3 SCC 491, reads:



“3. Learned Counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhdas Thacker and any contravention by them would not fasten responsibility on the respondents. The acquittal of the respondents is, therefore, fully justified. The appeal fails and is dismissed.”

25. However, this proposition was later deviated from in *Sheoratan Agarwal v. State of Madhya Pradesh* (1984) 4 SCC 352. This case pertained to the *pari materia* provision under Section 10 of the Essential Commodities Act, 1955. The court held that anyone among the company itself; every person in charge of and responsible to the company for the conduct of the business; or any director, manager, secretary or other officers of the company with whose consent or connivance or because of whose neglect offence had been committed, could be prosecuted alone. However, the person in charge or an officer of the company could be held guilty in that capacity only after it has



been established that there has been a contravention by the company as well. However, this will not mean that the person in charge or an officer of the company must be arraigned simultaneously along with the company if he is to be found guilty and punished.

26. Relying upon the reasoning in Sheoratan Agarwal (supra) and limiting the interpretation of C.V. Parekh (supra), this Court in Anil Hada v. Indian Acrylic Ltd. (2000) 1 SCC 1 had held that:

“13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category, the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such a company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act.”

27. However, subsequent decisions of this Court have emphasised that the provision imposes vicarious liability by way of deeming fiction which presupposes and requires the commission of the offence by the company itself as it is a separate juristic entity. Therefore, unless the company as a principal accused has committed the offence, the persons mentioned in subsection (1) would not be liable and cannot be prosecuted. Section 141(1) of the Negotiable Instruments Act, extends vicarious criminal liability to the officers of a company by deeming fiction, which arises only when the offence is committed by the company itself and not otherwise. Overruling Sheoratan Agarwal and Anil Hada, in Aneeta Hada v. Godfather Travels and Tours Private Limited (2012)5 SCC 661, a 3-judge bench of this court expounding on the vicarious liability under Section 141 of the Negotiable Instruments Act, has held:



“51. We have already opined that the decision in Sheoratan Agarwal runs counter to the ratio laid down in C.V. Parekh which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.

.....

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

31. From the aforesaid exposition of law laid down by Hon'ble Apex Court, it is thus clear that, a company, being a juristic person, cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well. Therefore, it is not permissible to prosecute the petitioner without prosecuting the company. Since the



company has not been arrayed as an accused, therefore, it is not permissible to prosecute the petitioner in view of the binding precedents of the Hon'ble Supreme Court.

32. In the instant case, though petitioner has been arrayed as accused, but the company namely, M/s Legan Healthcare has not been arrayed as accused, as such, prosecution of the petitioner alone is bound to fail.

33. Having scanned the entire material adduced on record, vis-à-vis prayer made in the instant petition, this court is persuaded to agree with Mr. Sunny Rawat, learned counsel appearing for the petitioner, that this court, while exercising power under Section 482 CrPC may proceed to quash the complaint against the petitioner, 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 petitioner in all probabilities.

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

35. It is not in dispute that complaint, which is otherwise sought to be quashed in the instant proceedings, has already been quashed by this Court against other Directors of M/s Generica India Limited, on account of impleadment of their respective companies.

36. In view of detailed discussion made herein above and law taken into consideration, present petition is allowed. Complaint No.



HFWHMR(PRO) DRUGS/10-09, registered as Complaint No. 58-1 of 2010 titled as ***State of Himachal Pradesh (through Drugs Inspector H.Q. Hamirpur) v. Anil Chand*** and others as well as consequent proceedings pending in the court of learned Judicial Magistrate First Class, Nadaun, Hamirpur are quashed and set aside qua the petitioner. The petitioner is discharged henceforth.

Petition stands disposed of. All pending applications, stand disposed of.

**(Sandeep Sharma)**  
**Judge**

May 07, 2026  
(Sunil)