

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 7565/2018

1. M/s Brothers Pharma Pvt. Ltd, F-869, Road No.14, Vkia Area, Jaipur, Through Its Directors And Concerned Employees.
2. Smt. Bela Khurana W/o Dr. Rajesh Khurana, Director M/s Brothers Phrama Pvt. Ltd. F-869, Road No.14, V.k.i.a. Area, Jaipur, Raj.
3. Dr. Rajesh Khurana Manufacturing Chemist, M/s Brothers Phrama Pvt. Ltd. F-869, Road No.14, V.k.i. Area, Jaipur.
4. Shri Uhma Shankar S/o Shri Chiterpal Sharma, R/o Kariavala, Po Dhankiya, District Jaipur 302012, Manufacturing Chemist M/s Brothers Phrama Pvt. Ltd. F-869, Road No.14, V.k.i. Area, Jaipur.
5. Shri R.k. Mishra, Analytical Chemist, M/s Brothers Phrama Pvt. Ltd., Address F-869, Road No.14, V.k.i. Area, Jaipur.
6. Smt. Krishna Kakkar, F-869, Road No.14, V.k.i. Area, Jaipur.

----Petitioners

Versus

1. State of Rajasthan, Through PP.
2. Vachan Singh Meena, Drug Control Officer, Mini Swasthya Bhawan, Sethi Colony, Jaipur, Raj.

----Respondents

For Petitioner(s)	:	Mr. Tarun Kumar Mishra
For Respondent(s)	:	Mr. Archit Bohra, AGC Mr. Shree Ram Dhakar, PP with Mr. Anirudh Singh Mr. Rahul Verma Mr. Yashwant Singh

JUSTICE ANOOP KUMAR DHAND

Order

30/04/2026

1. By way of filing the instant petition, the following prayer has been made:-

"a. That your Lordships may graciously be pleased to accept and allow this petition for quashing of the complaint and all subsequent proceedings qua the petitioners, filed by respondent No.2 Before The Court of Chief Metropolitan Magistrate, Jaipur Metro, Jaipur, for the offence under Section 18(A)(1), 27(B) (II), 27(A), ©, 27(D), 18(c), 36-AC of the Drugs and Cosmetics Act, 1940 read with Rules of 1945 made there under, and pending before the Court of Additional Chief Metropolitan Magistrate No.4, Jaipur Metro, Jaipur as Criminal Complaint Case No.31/2018 titled as State Vs. Avdhesh Kumar, wherein the cognizance of the offence has already been taken by the learned Court below by invoking extraordinary jurisdiction under Section 482 Cr.P.C.

b. To pass any other order as deemed fit, for which the petitioner shall remain ever grateful."

2. Learned counsel for the petitioners submits that the complaint was submitted by the Drugs Inspector against the petitioners along with co-accused persons for the offences under Section 18(a)(1), 18(c), read with Sections 16, 17A, 17B, 18A, 18B, 17(c), 22(3) and 36-AC of the Drugs and Cosmetics Act, 1940. The learned Magistrate, vide its order dated 03.01.2018, has passed a cyclostyle order and has taken cognizance against the petitioners for the abovestated offences without any application of mind. He further submits that aforesaid order is not legally sustainable in the eyes of law in light of the judgment passed by this Court in case of **M/s Cadila Pharmaceuticals Ltd. & Anr. Vs. State of Rajasthan & Anr.** while deciding S.B. Criminal Miscellaneous (Petition) No. 6524/2025 on 28.11.2025.

Hence, under these circumstances, interference of this Court is warranted.

3. *Per contra* learned counsel appearing on behalf of the respondent opposed the arguments raised by counsel for the petitioners but he is not in a position to controvert the aforesaid submissions.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. Perusal of the impugned cognizance order dated 03.01.2018, reveals that a pre-typed performa/typed format has been prepared by the learned Magistrate and the same has been filled by writing by hand. The name of the accused and the offences alleged. There is total non-application of mind on the part of the learned Magistrate while passing the impugned order and the same has been passed in a mechanical way. This Court in case of **M/s Cadila Pharmaceuticals Ltd. (supra)** has taken such practice of the learned Magistrate in a serious view and it has been held by this Court in paragraph Nos.10 to 24, which reads as under:-

"10. Perusal of the impugned cognizance order and material available on the record indicates that samples of the drugs were taken by the Drug Inspector and after analysis of the same, the drugs were found to be of sub-standard quality. Hence, the complaint has been submitted against the Stockists, Distributors and Directors of the Company and the learned Magistrate has taken cognizance against all the petitioners, under the above noted provisions of the Act of 1940.

11. Basically, the petitioners are feeling aggrieved by the impugned order by which cognizance has been taken against them for the above stated offences and they have approached this Court for quashing of the cognizance order on several grounds and one of the

grounds is that it is a non-speaking order and it does not reflect the reasons for proceeding against the petitioners. Several other arguments have also been raised that the petitioners are not having any liability for the sub-standard drugs. Hence, it is prayed that the order of taking cognizance be quashed against them.

12. The term "cognizance" has nowhere been defined under the Code, but the word itself is of indefinite import. The word itself is derived from the Latin word 'cognoscere', and the French Word "conoissance" which means "to know", "to become acquainted with", or "to recognize". The Black's Law Dictionary defines the term "cognizance" as "Judicial notice, knowledge or acknowledgement" or "the judicial hearing of a cause".

13. In criminal law, the term "cognizance" has no esoteric or mystic significance, and the same is reflected by the omission of any formulaic definition of the term under the Code. However, over time, the term "cognizance" has come to acquire a special and distinct connotation, through a catena of decisions and authoritative exegesis rendered by this Court. The expression "cognizance" means to 'become aware of' or 'to take notice of judicially'. The special connotation that has been ascribed to the term denotes or indicates the stage at which a judicial authority such as a Court of Sessions or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence.

14. Cognizance is, at its heart, always an act of the court. It entails not merely the receipt of information or the mechanical act of acknowledgement of a particular offence by a judicial authority, but a conscious application of mind by it, to the information disclosed or received, as the case may be, and the subjective element of its satisfaction that i) an offence has indeed occurred and ii) the circumstances necessitate setting into motion criminal proceedings in respect of the said offence, or at the very least take steps for ascertaining if there is any basis for initiating such proceedings. Cognizance is attended by the assumption of jurisdiction for proceeding further.

15. Having understood the legal import of the term “cognizance”, we may now profitably turn towards understanding how cognizance may be taken. Chapter XIV of the Code deals with “Conditions requisite for initiation of proceedings”, and Section(s) 190 to 199 contained thereunder, delineates the methods and the limitations subject to which cognizance of offence may be taken by the various criminal court empowered thereunder.

16. Remarkably, none of the provisions in the aforesaid Chapter prescribe how ‘cognizance’ is to be taken, and rather only describe the conditions and limitations for the initiation of proceedings under the Code. This is because, taking cognizance, as already stated, is an act of court, and the prosecuting agency or complainant have no control over the same. It is predicated upon application of judicial mind and is not dictated by the complaint or police report, which cannot be construed by any formulaic approach. ‘Taking cognizance’ does not involve any formal action of any kind. It occurs as soon as a judicial authority applies its mind to the suspected commission of an offence.

17. The process of “taking cognizance” is one of variable and indeterminate import; it neither carries a uniform or fixed procedural contour nor has it been used in the same sense throughout the scheme of the Code. This is because “taking of cognizance” signifies the setting into motion, the criminal justice machinery, which may be done, under the Code, in different ways, which is why it derives its understanding from the various procedures by which proceedings are initiated under the Code, and as such its import differs, depending upon the context of the procedure in which it has been used. Hence, there exists no rigid taxonomy or formulaic framework for “taking cognizance”, and the act of “taking cognizance” has to be understood from the procedure itself, more particularly, at which stage, it could be said that there has been an application of judicial mind for the purpose of initiating proceedings under the Code or in simple words, cognizance has been taken.

18. It is equally true that at the stage of taking cognizance, the Magistrate is mainly concerned with the allegations made in the complaint on the

evidence led in support of the same and is not required to enter into a detailed discussion on the merits or demerits of the case and he is to find out only a prima facie case and at this stage, he is not supposed to see the defence of the accused.

It is well settled that at the stage of taking cognizance, the accused has got absolutely no locus standi and is not entitled to be heard in the question whether the process should be issued against him or not.

19. But, at the same time, this fact cannot be lost sight of that a reasoned and speaking order must be passed by the Magistrate, after formal and due application of judicial mind, to proceed further in the matter ensuring that the ingredients of the offence for which cognizance is being taken are present. Though, meticulous appreciation of evidence is not required to be done but atleast a formal application of mind must be there.

20. It is settled proposition of law that the order of summoning the accused must reflect that the Magistrate has applied his mind to the facts of the case. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient grounds exist for proceeding against the accused.

21. Hon'ble Apex Court in the case of **Lalankumar Singh Vs. State of Maharashtra**, reported in **2022 SCC Online 1383** has held in para 38, 51, 52 and 53 as under:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*⁹, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for

proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

22. The above view taken by the Apex Court in the case of **Lalankumar Singh** (supra) has been followed in the cases of **M/s JM Laboratories** (supra) and **Inox Air Products Private Ltd.**(supra) where it has held that there is no application of mind even for the namesake by the learned Magistrate while issuing the process. Hence, the same was held to be a non-speaking order.

23. In the instant case also while passing the impugned cognizance order, the learned Magistrate has not assigned any reason as to how a prima facie case is made out against the petitioners for

proceeding against them for the above stated offences. A totally non-speaking order has been passed in a very cursory manner by the Trial Court. Hence, the same is not tenable in the eyes of law and is liable to be and is hereby quashed and set aside.

24. The matter is remitted to the learned Magistrate to pass a reasoned and speaking order afresh, after due application of judicial mind and proceed further in the matter ensuring that the ingredients of the offences for which cognizance is required to be taken are present. It is made clear that meticulous appreciation of evidence is not required to be done at the cognizance stage. If the Magistrate comes to the conclusion that a prima facie case is made out against the accused persons, including the petitioners, he would be at liberty to proceed against them in accordance with law, without considering the defence of the accused and without granting them any opportunity of hearing, as the accused has no locus standi and are not entitled to be heard on the question whether the process should be issued against them or not."

6. Applying the above preposition of law, this Court is of the view that the learned Magistrate has not applied his mind while passing the order impugned, rather the same has been passed in a casual way by filling in the blanks of the pre-typed performa/typed format for taking cognizance against the petitioners. On this count alone, the order impugned is not sustainable in the eyes of law and is liable to be quashed and set aside. The matter is remitted to the learned Magistrate to pass fresh cognizance order within a period of four weeks from the date of receipt of certified copy of this order.

7. Let a copy of this order be sent to the learned Magistrate for necessary compliance.

(ANOOP KUMAR DHAND),J