



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 450/2018

c/w

CRMC No. 690/2017

CRMC No. 720/2017

CRMC No. 44/2018

CRMC No. 64/2018

Reserved on: 30.03.2026

Pronounced on : 02.04.2026

Uploaded on : 02.04.2026

Whether the operative part or full
judgment is pronounced: Full

Amit Kumar Bansal and Ors.

....Petitioners

Through:- Mr. Sunil Sethi, Sr. Advocate with
Mr. Ankesh Chandel, Advocate.

V/s

Sanjeev Kumar Gupta

.....Respondents

Through:- Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(JUDGMENT)

01. By virtue of this judgment, the afore-titled five petitions under Section 482 of CrPC, involving common question of law are proposed to be disposed of.

02. Background facts:

(i) CRMC No. 450/2018

2.1. Through the medium of the present petition under Section 482 of CrPC, the petitioners, who have been impleaded



as accused Nos. 1 to 3, 5 to 8 and 11 in the impugned complaint, have challenged the complaint registered as File No. 1208/Complaint with date of institution as 10.04.2018, filed by the respondent against them before the court of learned Chief Judicial Magistrate, Jammu, alleging commission of offences under Section 18 (a) (i) read with Section 27 (d) of the Drug and Cosmetics Act, 1940 (hereinafter to be referred to as **“Act of 1940”**). Challenge has also been thrown to order dated 10.04.2018 passed by the learned Chief Judicial Magistrate, Jammu by virtue of which process has been issued against the petitioners and co-accused.

2.2. As per allegations made in the impugned complaint, sample of drug Ceftriaxone Inj. I.P, Batch No. CFXM 16041, manufacturing date 05/2016, expiry date: 04/2018, manufactured by the accused company M/s Theon Pharmaceuticals Ltd was found to be not of standard quality upon its analysis by the government analyst. As per the allegations made in the impugned complaint, petitioner No. 1 is the Managing Director of the accused company whereas, petitioners No. 2 and 3 are the whole time Directors of the accused company and as such, are responsible to the accused company and are also persons incharge of the business of the accused company. It is further averred in the impugned complaint that petitioner No. 4, 5, 6 and 7 are the other Directors of the accused company and they are also



responsible to the accused company by virtue of their designation and they are the persons incharge of the business of the company. On the basis of these allegations, the petitioners are sought to be prosecuted for having committing the aforesaid offences.

(ii) CRMC No. 690/2017

2.3 Through the medium of the present petition, the petitioners have challenged the complaint registered as File No. 31 of 2017 with date of institution as 31.08.2017, filed by the respondent against them before the court of learned Judicial Magistrate 1st Class, Kishtwar, alleging commission of offences under Section 18 (a) (i) read with Section 27 (d) of the Drug and Cosmetics Act, 1940.

2.4 Petitioner No. 1 happens to be accused No. 2, petitioner No. 2 happens to be accused No. 3, petitioner No. 3 happens to be accused No. 5, petitioner No. 4 happens to be accused No. 6, petitioner No. 5 happens to be accused No. 7, petitioner No. 6 happens to be accused No. 8 and petitioner No. 7 happens to be accused No. 1 in the impugned complaint. It is alleged in the impugned complaint that upon analysis of sample of drug Glimepiride and Metformin Hydrochloride (SR) Tablets Batch No. GT160179, manufacturing date 02/2016, expiry date: 01/2018, manufactured by the accused company M/s Theon Pharmaceuticals Ltd., it was found to be not of standard quality.



2.5 According to the complainant, petitioner No. 7 happens to be the Managing Director of the accused company whereas, petitioners No. 1 and 2 are the Whole Time Directors of the accused company, petitioners No. 3 and 6 are the Additional Directors of the accused company whereas, petitioners No. 4 and 5 are the Directors of the accused company and in that capacity they have been arraigned as accused.

(iii) CRMC No. 720/2017

2.6 Through the medium of the present petition, the petitioners have challenged the complaint registered as File No. 31 of 2017 with date of institution as 31.08.2017, filed by the respondent against them before the court of learned Judicial Magistrate 1st Class, Kishtwar, alleging commission of offences under Section 18 (a) (i) read with Section 27 (d) of the Drug and Cosmetics Act, 1940.

2.7 Petitioner No. 1 happens to be accused No. 9, petitioner No. 2 happens to be accused No. 10, petitioner No. 3 happens to be accused No. 4, petitioner No. 4 happens to be accused No. 12 and petitioner No. 5 happens to be accused No. 11 in the impugned complaint. It is alleged in the impugned complaint that upon analysis of sample of drug Glimepiride and Metformin Hydrochloride (SR) Tablets Batch No. GT160179, manufacturing date 02/2016, expiry date: 01/2018, manufactured by the accused company M/s Theon



Pharmaceuticals Ltd., it was found to be not of standard quality.

2.8 As per the impugned complaint, petitioner No. 1 was AGM-Production of the accused company, petitioner No. 2 was Senior Manager (Quality Control) of the accused company, petitioner No. 3 was Whole Time Director, petitioner No. 4 was proprietor of accused company whereas petitioner No. 5 is the accused company. The petitioners have been arraigned as accused in the aforesaid capacity.

(iv) CRMC No. 44/2018

2.9 Through the medium of the present petition, the petitioners have challenged the complaint registered as File No. 28/Complaint with date of institution as 09.06.2017, filed by the respondent against them before the court of learned Chief Judicial Magistrate, Jammu, alleging commission of offences under Section 18 (a) (i) read with Section 27 (d) of the Drug and Cosmetics Act, 1940.

2.10 As per the contents of the impugned complaint, upon analysis of sample of drug Ceftriaxone Inj. I.P Batch No. CFXM 16031, manufacturing date 04/2016, expiry date: 03/2018, manufactured by the accused company M/s Theon Pharmaceuticals Ltd., it was found to be not of standard quality.

2.11 Petitioners No. 1 to 3 have been impleaded as accused Nos. 1 to 3, petitioners No. 4 to 10 have been



impleaded as accused No. 5 to 11 in the impugned complaint. As per the averments made in the impugned complaint, petitioner No. 1 happens to be the Managing Director of the accused company, petitioners No. 2 and 3 happen to be the Whole Time Director of the accused company, petitioners No. 4 to 7 happen to be the Directors of the accused company, petitioner No. 8 happens to be the AGM Production Manager, petitioner No. 9 happens to be the Senior Manager (Quality Control) whereas petitioner No. 10 happens to be the manufacturing company. In that capacity, the petitioners have been arraigned as accused persons.

(V) CRMC No. 64/2018

2.12 Through the medium of the present petition, the petitioners have challenged the complaint registered as File No. 27/Complaint with date of institution as 09.06.2017, filed by the respondent against them before the court of learned Chief Judicial Magistrate, Jammu, alleging commission of offences under Section 18 (a) (i) read with Section 27 (d) of the Drug and Cosmetics Act, 1940.

2.13 As per the contents of the impugned complaint, upon analysis of sample of drug Ceftriaxone Inj. I.P Batch No. CFXM 116002, manufacturing date 01/2016, expiry date: 12/2017, manufactured by the accused company M/s Theon Pharmaceuticals Ltd., it was found to be not of standard quality.



2.14 Petitioners No. 1 to 3 have been impleaded as accused Nos. 1 to 3, petitioners No. 4 to 10 have been impleaded as accused No. 5 to 11 in the impugned complaint. As per the averments made in the impugned complaint, petitioner No. 1 happens to be the Managing Director of the accused company, petitioners No. 2 and 3 happen to be the Whole Time Directors of the accused company, petitioners No. 4 to 7 happen to be the Directors of the accused company, petitioner No. 8 happens to be the AGM Production Manager, petitioner No. 9 happens to be the Senior Manager (Quality Control) whereas petitioner No. 10 happens to be the accused manufacturing company. In that capacity, the petitioners have been arraigned as accused persons.

03. Grounds of challenge:

3.1 The main ground of challenge that has been raised by the petitioners in all the aforesaid petitions is that there are no specific averments made in the impugned complaints ascribing any role to the petitioners. It has been contended that the accused company had submitted a declaration with the competent authority informing it that Sh. Puran Chand Joshi, Director of the company, is the person responsible to the company for the conduct of the business of the company under Section 34 of the Act of 1940, therefore, only the said person could have been impleaded as an accused in the impugned complaints and that there being no specific



allegations in the impugned complaints against the other accused, as such, prosecution against the said accused is not sustainable in law.

4. I have heard learned counsel for the parties and perused record of the case including record of the trial court.

05. Analysis

5.1 All the impugned complaints, which are subject matter of challenge by way of afore-titled petitions, have been filed against M/s Theon Pharmaceutical Ltd, which is the accused company. The samples of drugs, which are subject matter of the impugned complaints, have been manufactured by M/s Theon Pharmaceutical Ltd, as such, the said company happens to be alleged offender. The question that arises for determination is as to which of its officers/functionaries are to be arraigned as accused along with the said company for their prosecution in respect of commission of offences under the Act of 1940. In this regard, Section 34 of the Act of 1940 is required to be noticed. It 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.

5.2 From a perusal of the aforesaid provision, it is manifest that when an offence has been committed by a company, every person who, at the time when the offence was committed, was incharge of and was responsible to the company for the conduct of the business of the company along with the company is deemed to be guilty of the offence and shall be liable to be proceeded against. It further provides that a person responsible to the company has the option of rebutting the aforesaid presumption if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent commission of the offence. Thus, the presumption relating to commission of offence by the company under the Act of 1940 extends to the person who was incharge and responsible to the company at the relevant time. However, the presumption is rebuttable



in nature. Thus, once it is shown that a person has been nominated by a company to be incharge and responsible to the company for the conduct of the business, a presumption that he has committed the offence along with the company gets triggered against him. Such person has to be arraigned as an accused in connection with the prosecution relating to an offence committed by the company.

5.3 So far as other officers of the company, whether Managing Directors or other functionaries are concerned, their culpability would depend upon the nature of allegations relating to their role made in the complaint filed against the offender company. If there are specific allegations leveled against any officer or functionary of the company relating to commission of an offence by the company, of course the said officer or functionary of the company is liable to be prosecuted in connection with an offence committed by the company.

5.4 In my aforesaid view, I am supported by the ratio laid down by the Supreme Court in the case of **M/s Cheminova India Limited and anr Vs. State of Punjab and Ors, (2021) 8 SCC 818**. Paragraph 9 of the said judgement is relevant to the context and the same is reproduced as under:

“9. [Section 33](#) of the Act deals with ‘offences by companies’. A reading of [Section 33\(1\)](#) of the Act, makes it clear that



whenever 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, or 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. In the case on hand, it is not in dispute that on behalf of the 1st Appellant – Company, 2nd Appellant – Managing Director has furnished an undertaking dated 22.01.2013, indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides manufactured by the said Company and he was authorized to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. Even, at Para 5.10 in the counter affidavit filed before this Court, it is pleaded by the Respondents that by appointing persons responsible for affairs of the Company, quality control, etc., 2nd Appellant – Managing Director cannot escape his liability from offences committed by 1st Appellant – Company. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility and the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2nd Appellant – Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1st Appellant – Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc. In the instant case, the Company has passed a resolution, fixing responsibility of one of the Managers namely Mr. Madhukar R. Gite by way of a resolution and the same was furnished to the respondents by the 2nd Appellant in shape of an undertaking on 22.01.2013. When furnishing of such undertaking fixing the responsibility of the quality control of the products is not in dispute, there is no reason or justification for prosecuting the



2nd Appellant – Managing Director, on the vague and spacious plea that he was the Managing Director of the Company at the relevant time. A reading of [Section 33](#) of the Act also makes it clear that only responsible person of the Company, as well as the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under [Section 33](#) of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein. Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at this stage to quash the proceedings against the 1st Appellant – Company.”

5.5. From the aforesaid analysis of legal position, it becomes clear that merely on the basis of bald allegations made in the complaint against a functionary or officer of the company does not make the said officer/functionary responsible for the conduct of business of the company. The presumption of being responsible for the conduct of the business of the company arises only against a person, who has been nominated by the company as person responsible to the company for conduct of business under Section 34 of the Act of 1940. With this legal position in mind, let us now deal with the individual cases.

**(i) CRMC No.450/2018**

5.6 The material on record of the trial court annexed to the impugned complaint in this case would reveal that the accused company had informed the respondent that Sh. Puran Chand Joshi (accused No. 4) is the person incharge and responsible for manufacturing and analysis of the offending drug in question and is competent person to act on behalf of the company as envisaged under Section 34 of the Act of 1940. The petitioners have also placed on record a copy of communication dated 21.02.2015 issued by the State Drugs Controller, Controlling-Cum-Licensing Authority, Baddi, District Solan, H.P whereby it has been noted that Sh. Puran Chand Joshi, Director of the accused company has been endorsed as person responsible to the company for conduct of business of company under Section 34 of the Act of 1940. Thus presumption under section 34 of the Act of 1940 arises against afore-named accused. The impugned complaint to the extent of accused Puran Chand Joshi as also to the extent of accused company has to proceed further.

5.7 So far as the petitioners No. 1 to 7 are concerned, the issue whether the impugned complaint can proceed against them would depend upon the nature of allegations leveled against them in the impugned complaint. If we have



a look at the averments made in the impugned complaint, the only allegation against the petitioners No. 1 to 7 is that petitioner No. 1 is the Managing Director whereas other petitioners are either Whole Time Directors or Directors of the accused company. No specific role has been ascribed to them in connection with commission of the alleged offence. Merely because the petitioners No. 1 to 7 happen to be the Managing Director/Directors of the accused company would not make them liable to prosecution for the alleged offence unless a specific role is ascribed to them. In the absence of specific allegations against these petitioners, merely on the basis of bald assertion, the impugned complaint as against them cannot proceed further.

(ii) CRMC No. 690/2017

5.8 In this case also, the accused company happens to M/s Theon Pharmaceuticals Limited. As per the material on record, Sh. Puran Chand Joshi (accused No. 4) is the person incharge and responsible for manufacturing and analysis of the offending drug in question and is competent person to act on behalf of the company as envisaged under Section 34 of the Act of 1940. The petitioners have placed on record copy of communication dated 21.02.2015 issued by the State Drugs Controller, Controlling Cum Licensing Authority



Baddi, District Solan, H.P whereby it has been noted that Sh. Puran Chand Joshi, Director of the accused company has been endorsed as person responsible to the company for conduct of business of company under Section 34 of the Act of 1940. Therefore, the impugned complaint to the extent of accused Puran Chand Joshi as also to the extent of the accused company has to proceed further.

5.9 Coming to the question whether there are any specific allegations in the impugned complaint as against the petitioners, who happen to be Managing Director/Directors of the accused company, a perusal of the impugned complaint would reveal that there are no allegations much less specific allegations made in the impugned complaint with regard to the role of the petitioners in the commission of the alleged offence. The impugned complaint, therefore, as against the petitioners cannot proceed further.

(iii) CRMC No. 720/2017

5.10 In this case also, the accused company happens to M/s Theon Pharmaceuticals Limited. As per the material on record, Sh. Puran Chand Joshi (accused No. 4) is the person incharge and responsible for manufacturing and analysis of the offending drug in question and is competent



person to act on behalf of the company as envisaged under Section 34 of the Act of 1940. The petitioners have also placed on record a copy of communication dated 21.02.2015 issued by the State Drugs Controller, Controlling Cum Licensing Authority, Baddi, District Solan, H.P whereby it has been noted that Sh. Puran Chand Joshi, Director of the accused company has been endorsed as person responsible to the company for conduct of business of company under Section 34 of the Act of 1940. Therefore, the impugned complaint to the extent of accused Puran Chand Joshi as also to the extent of accused company has to proceed further.

5.11 So far as role of petitioners No. 1, 2 and 4 is concerned, a perusal of the impugned complaint would reveal that petitioner No. 1, who has been impleaded as accused No. 9, is shown to be the AGM-Production (Tablet/Capsule Section), petitioner No. 2 is shown to be Senior Manager (Quality Control) of the accused company whereas, petitioner No. 4 is shown to be the Proprietor of M/s Theon Pharmaceuticals Ltd, Srinagar. However, there are no allegations much less specific allegations in the impugned complaint as against petitioners No. 1, 2 and 4 with regard to their role in the alleged offence. The impugned complaint is completely silent as to what role the



afore-named three petitioners have played in the alleged offence. The complaint to the extent of the petitioners No. 1, 2 and 4, therefore, cannot proceed further.

(iv) CRMC No. 44/2018

5.12 In this case also, the accused company happens to M/s Theon Pharmaceuticals Limited. As per the material on record, Sh. Puran Chand Joshi (accused No. 4) is the person incharge and responsible for manufacturing and analysis of the offending drug in question and is competent person to act on behalf of the company as envisaged under Section 34 of the Act of 1940. The petitioners have also placed on record a copy of communication dated 21.02.2015 issued by the State Drugs Controller, Controlling Cum Licensing Authority Baddi, District Solan, H.P whereby it has been noted that Sh. Puran Chand Joshi, Director of the accused company has been endorsed as person responsible to the company for conduct of business of company under Section 34 of the Act of 1940. Therefore, the impugned complaint to the extent of accused Puran Chand Joshi as also to the extent of the accused company has to proceed further.

5.13 That takes us to the role of other petitioners/accused. Excepting the allegations that



petitioners No. 1 to 7 happen to be the Managing Director/Director of the accused company, there are no specific allegations against these petitioners ascribing any role to them with regard to commission of alleged offence. On the basis of mere bald allegations against these petitioners, they cannot be arraigned as accused in the impugned complaint.

5.14 Regarding petitioners No. 8 and 9, it is specifically alleged in the impugned complaint that they are approved technical employees of the accused company and are actively involved in manufacturing and production of the offending drug. Thus, there are specific allegations against these two petitioners in the impugned complaint. Therefore, the impugned complaint as against petitioners No. 8 and 9 as also against petitioner No. 10 has to proceed further.

(v) CRMC No. 64/2018

5.15 In this case also, the accused company happens to M/s Theon Pharmaceuticals Limited. As per the material on record, Sh. Puran Chand Joshi (accused No. 4) is the person incharge and responsible for manufacturing and analysis of the offending drug in question and is competent person to act on behalf of the company as envisaged under Section 34 of the Act of 1940. The petitioners have also



placed on record a copy of communication dated 21.02.2015 issued by the State Drugs Controller, Controlling Cum Licensing Authority Baddi, District Solan, H.P whereby it has been noted that Sh. Puran Chand Joshi, Director of the accused company has been endorsed as person responsible to the company for conduct of business of company under Section 34 of the Act of 1940. Therefore, the impugned complaint to the extent of accused Puran Chand Joshi as also to the extent of the accused company has to proceed further.

5.16 That takes us to the role of other petitioners/accused. Excepting the allegation that petitioners No. 1 to 7 happen to the Managing Director/Director of the accused company, there are no specific allegation against these petitioners ascribing any role to them with regard to commission of alleged offence. On the basis of mere bald allegations against these petitioners, they cannot be arraigned as accused in the impugned complaint.

5.17 Regarding petitioners No. 8 and 9, it is specifically alleged in the impugned complaint that they are approved technical employees of the accused company and are actively involved in manufacturing and production of the offending drug. Thus, there are specific allegations against



these two petitioners in the impugned complaint. Therefore, the impugned complaint as against petitioners No. 8 and 9 as also against petitioner No. 10 has to proceed further.

Conclusion:

6. In view of the foregoing discussion, the afore-titled petitions are disposed of in the following manner:

- (i) **CRMC No. 450/2018** is partly allowed and the impugned complaint to the extent of petitioners No. 1 to 7 and the proceedings emanating therefrom as against the aforesaid petitioners are quashed. The impugned complaint, however, to the extent of other accused shall proceed further.
- (ii) **CRMC No. 690/2017** is partly allowed and the impugned complaint to the extent of petitioners No. 1 to 7 and the proceedings emanating therefrom as against the aforesaid petitioners are quashed. The impugned complaint, however, to the extent of other accused shall proceed further.
- (iii) **CRMC No. 720/2017** is partly allowed and the impugned complaint along with proceedings emanating therefrom to the extent of petitioners No. 1, 2 and 4 are quashed. The petition to the extent of other petitioner is dismissed.



- (iv) **CRMC No. 44/2018** is partly allowed and the impugned complaint to the extent of petitioners No. 1 to 7 and the proceedings emanating therefrom as against the aforesaid petitioners are quashed. The petition to the extent of petitioners No. 8, 9 and 10 is dismissed.
- (v) **CRMC No. 64/2018** is partly allowed and the impugned complaint to the extent of petitioners No. 1 to 7 and the proceedings emanating therefrom as against the aforesaid petitioners are quashed. The petition to the extent of petitioners No. 8, 9 and 10 is dismissed.
- 7.** Original record of the trial court be sent back.



सत्यमेव जयते

(SANJAY DHAR)
JUDGE**JAMMU**
02.04.2026
Naresh/Secy.Whether the judgment is speaking: **Yes**Whether the judgment is reportable: **Yes**