

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
JAMMU**

Reserved on: 07.07.2026

Pronounced on: 10.07.2026

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*Whether the operative part or full
judgment is pronounced: **Full***

CRM(M) No.461/2022

DR. JOHNS PVT. LTD.

...PETITIONER(S)

Through: - Mr. Mujeeb Andrabi, Advocate.

Vs.

STATE OF J&K

...RESPONDENT(S)

Through: - Mr. Hakeem Aman Ali, Dy. AG.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged the complaint filed by respondent Drugs Inspector Zone-3, Srinagar, alleging commission of offences under Section 18(a)(i) and 18(B) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short "the Act"), and the proceedings emanating therefrom.

2) It appears that respondent Drugs Inspector has filed the impugned complaint against the petitioner and co-accused before the Court of learned Chief Judicial Magistrate, Srinagar. On the basis the basis of said complaint, the learned Magistrate has, vide order dated 17.04.2018, issued process against the petitioner as well as other co-accused.

3) In the complaint it has been alleged that on 9th January, 2014, the respondent Drugs Inspector conducted routine inspection of the premises of M/S JAF (accused No.1) and lifted six number of drug samples including sample of the drug, namely, "CADCAL capsules (4x5x10 caps)" with batch No.SCDCL-009, date of manufacturing 05/2013, date of expiry 04/2015, manufactured by the petitioner company, for the purpose of analysis. The sample was sent to the Government Analyst after it is sealing and a report bearing No.L/DA/2014-15/1095, dated 31.10.2014, was rendered by the Government Analyst, wherein it was indicated that the sample of the drug, namely, CADCAL capsules, is not of standard quality. Accordingly, accused No.1 was asked to furnish the purchase record and other relevant information. After obtaining the said information, the matter was taken up with accused No.2, M/S Sane Enterprises, vide communication dated 01.12.2014, and various details were sought from it. In response thereto, it was informed by accused No.2 that it had purchased the stock of the drug in question from M/S King Fisher Pharma, accused No.3. The matter was taken up by the complainant with accused No.3, vide communication dated 06.04.2015 but even after repeated reminders, no response was received from accused No.3.

4) It has been further submitted in the complaint that vide communication dated 02.06.2015, the matter was also taken up with accused No.4, the petitioner herein, the manufacturer of the drug in question, and relevant information was sought. It has been submitted that on 08.12.2016, a representative of the petitioner company visited the office of the complainant but failed to give anything in writing.

5) It has further been submitted in the impugned complaint that after obtaining the sanction for launching prosecution against the accused persons from the controlling authority, vide letter dated 30.06.2017, the impugned complaint came to be filed before the learned trial Magistrate.

6) The petitioner has challenged the impugned complaint, primarily, on two grounds; one, that the learned trial Magistrate has taken cognizance of the offences when the period of limitation for filing prosecution against the petitioner for the alleged offences had already expired and, therefore, cognizance of the offences taken by the learned Magistrate is not sustainable in law; secondly, it has been contended that the date of expiry of the drug, which is subject matter of the impugned complaint, was April 2015, whereas the impugned complaint came to be filed on 16.04.2018, as a result of which the petitioner has been deprived of exercising its right under Section 25(3) of the Act, which provides for

right of an accused to adduce evidence in controversion to the report of the Government Analyst.

7) I have heard learned counsel for the parties and perused the case.

8) As per the impugned complaint, the petitioner is alleged to have committed offences under Section 18(a)(1), punishable under Section 27(d) as also offences under Section 18B of the Act. Section 27(d) provides that a person who manufactures for sale or for distribution or sells or stocks or exhibits or offers for sale or distributes any drug in contravention of any provision of Chapter IV of the Act, is to be punished with imprisonment for a term which may not be less than one year but which may extend to two years, and with fine which shall not be less than Rs.20,000. Thus, the maximum punishment carried by the offence which is alleged to have been committed by the petitioner in this case is imprisonment of two years.

9) Section 538-B of J&K Cr. P. C, which is applicable to the present case, creates a bar to taking cognizance after the lapse of period of limitation. As per sub-section (1) of aforesaid provision, a Court cannot take cognizance of an offence after the expiry of period of limitation. Sub-section (2) of Section of Section 438-B provides limitation of three years if the offence

is punishable with imprisonment for a term exceeding one year but not exceeding three years.

10) In the present case, the fact that sample of the drug collected from the premises of accused No.1 was found not to be of standard quality came to the notice of the respondent/complainant when the report of the Government Analyst was received by the Drugs Inspector on 11.11.2014. This is clearly spelled out in para (5) of the impugned complaint. Thus, limitation for taking cognizance of offence would commence from 11.11.2014. As already stated, the offence alleged to have been committed by the petitioner and other accused carries maximum punishment of two years imprisonment. Therefore, cognizance of such offence can be taken within a period of three years from the date of commission of the offence. In the present case, as already stated, the impugned complaint came to be presented before the learned trial Magistrate only on 16.04.2018, which is after a period of more than three years. Therefore, there was a legal and statutory bar to the learned trial Magistrate to take cognizance of the offences against the petitioner on the basis of the impugned complaint.

11) Although Section 538-G of the J&K Cr. P. C, a Court is vested with power to take cognizance of an offence even after expiry of period of limitation, but for that purpose, the Court

has to be satisfied on the facts and in circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. However, in the present case, the complainant has not stated anything in the complaint as to under what circumstances delay was occasioned in filing the impugned complaint nor the learned trial Magistrate has recorded any reasons for entertaining the complaint even after the expiry of period of limitation. Therefore, the order impugned dated 17.04.2018, whereby the learned trial Magistrate has taken cognizance of the offences and issued process against the petitioner, is legally not sustainable.

12) That takes us to the second contention raised by the petitioner. Section 25(3) of the Act provides that a report signed by the Government Analyst would be evidence of the facts stated therein and such evidence would be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars, etc. have been disclosed, has, within 28 days of receipt of the report, notified in writing to the Inspector or the Court before which any proceedings in respect of the sample are pending, that he intends to adduce evidence in controversion of the report. Thus, a valuable statutory right has been conferred upon the manufacturer, seller, retailer etc. to adduce evidence in

controversion of the report of the Government Analyst. Failure to exercise such right makes the test report conclusive evidence against such manufacturer, dealer, etc.

13) In the instant case, the petitioner was informed about the test report by the Drugs Inspector vide communication dated 02.06.2015. The date of expiry of the drug in question was April 2014. Thus, by the time the petitioner was informed about the report of the Government Analyst, which provided that the sample of the drug was found to be not of standard quality, the drug in question had already expired. Besides this, the complaint, as already stated, was filed before the learned trial Magistrate on 16.04.2018. Therefore, by the time the complaint was filed against the petitioner, the drug in question had already expired. The petitioner, therefore, could not have exercised his right to adduce evidence in controversion of the report of the Government Analyst by seeking an order of retesting of the sample after filing of the complaint or by notifying in writing to the Drugs Inspector, its intention to adduce evidence in controversion of the report.

14) The Supreme Court has, in the case of **Municipal Corporation of vs. Ghisa Ram**, AIR 1967 SC 970, while dealing with a similar issue, made the following observations:

“It appears to us that when a valuable right is conferred by s. 13 (2) of the Act on the vendor to have the sample given to him analysed by the

Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive -evidence of its contents. Obviously, the right has been given to the vendor in order that, for his, satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.”

15) Similarly, in **Nikson Pharmaceuticals and Ors. V. State of Rajasthan and Ors**, 2008 (3) Crimes 573 (Raj.), the High Court of Rajasthan has observed that expiry date of sample is relevant and in order to safeguard the rights of accused to have sample tested from Central Insecticide Laboratory, it is incumbent upon the prosecution to file complaint expeditiously so that right of accused is not lost.

16) Again, in **Shiv Narain Bansal and another v. State of Haryana and another**, 1996 Cri. L. J. 338, a Single Judge of Punjab and Haryana High Court, while dealing with a similar situation, made the following observations:

"12. In view of my discussion above. I find force in the argument of the learned counsel for the petitioners that the petitioners had informed the Drugs Inspector in time for sending their sample to get it tested from the Central Drugs Laboratory

but it was the fault of the Inspector that the sample could not be sent to the Central Drugs Laboratory in time and it was sent only after its expiry date. The petitioners obviously have been deprived of their right given to them under Section 25(3) of the Act.

13. In this view of the matter, the petition is allowed. The complaint as well as other proceedings taken in pursuance thereof including the charge against the petitioners, is quashed."

17) In *State of Haryana v. Unique Farmaid (P) Ltd.*, (1999)

8 SCC 190, the Supreme Court while dealing with a case under the provisions of Insecticides Act, which are analogous to the provisions contained in Section 25(4) of the Act, has observed as under:-

"12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been

deprived of that right, thus, prejudicing them in their defence.

13. In these circumstances, High Court was right in concluding that it will be an abuse of the process of court if the prosecution is continued against the respondents the accused persons. High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals."

18) Relying upon the aforesaid observations, the Supreme Court in the case of **Medicamen Biotech Limited and another v. Rubina Bose Drug Inspector**, (2008) 7 SCC 196, quashed the proceedings on the ground that the accused in the said case had been deprived of valuable right under Section 25(3) and 25(4) of the Drugs and Cosmetic Act.

19) From the foregoing analysis of the legal position, it is clear that once it is established that valuable right of the accused to adduce evidence in controversion of the Government Analyst's report is defeated due to acts and omissions of the Drugs Inspector, prosecution against the accused deserves to be quashed.

20) In the instant case, the sequence of events, as narrated in the preceding paras, shows that the respondent-Drugs Inspector has failed to adhere to the mandatory requirements, inasmuch as he has not taken steps with reasonable dispatch so that the petitioner could have availed its right to get the sample re-tested in accordance with the its right under Section 25(3) of the Act. There has been delay on the part of

the Drugs Inspector in informing the petitioner about the report of the Government Analyst and there has also been inordinate delay on the part of the Drugs Inspector in filing the impugned complaint. This clearly depicts inaction and negligence on the part of the respondent, which has resulted in loss of valuable right to the petitioner.

21) For what has been discussed hereinabove, the petition is allowed and the impugned complaint and the proceedings emanating therefrom, to the extent of petitioner herein, are quashed.

22) A copy of this order be sent to the learned trial Magistrate for information and compliance.

SRINAGAR

10.07.2026

"Bhat Altaf-Secretary"

(Sanjay Dhar)
Judge

Whether the **judgment** is reportable: **YES/NO**