HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case: CRM(M) No. 237/2019

Reserved on: 16.07.2026

Pronounced on: 11.08.2026

Uploaded on: 12.08.2026

Whether the operative part or full judgment is pronounced: Full

1) Ankur Kirtikumar Mehta age 38 years
S/o Dr. Kirtikimar Laxmidas Mehta,
R/o House No.A-1101, Satyam Insigniya,
Near Chadan Party Plot, Jodhpur.
Ahmadabad, Gujarat.

2) Dr. Kirtikimar Laxmidas Mehta
Age 72 years
S/o Sh. Lakshmi Das Nenschibahi Mehta
R/o House No.A-1101, Satyam Insigniya,
Near Chandan Party Plot, Jodhpur.
Ahmadabad, Gujarat.

3) Nirav Kirti Kumar Mehta Age 40 years
S/o Dr. Kirtikimar Laxmidas Mehta,
R/o House No.B-1101, Satyam Insigniya,
Near Chandan Party Plot, Jodhpur.
Ahmadabad, Gujarat. ..... Petitioner(s)/Appellant(s)

Through :- Mr. Varut Kumar Gupta, Advocate with
Mr. Umar Javed, Advocate
Mr. Vikas Khair, Advocate
(Through Virtual Mode)

Vs

Bharti Bachloo
Drugs Inspector, Sub-Zone, Jammu
Central Drugs Standard Control
Organization,
C/o Office of Assistant Drugs Controller (I)
Indian Institute of Integrative Medicine,
Canal Road, Jammu .....Respondent(s)

Through :- Mr. Prem N Sadotra, Advocate

CORAM:
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Prayer:

1. The petitioner, through the medium of the instant Criminal Miscellaneous Petition under Section 561-A of the Code of Criminal Procedure, 1898, has sought the following relief:

> ***"Set Aside the Complaint as well as Order dated 26.07.2018 by virtue of which Learned Court of Chief Judicial Magistrate Jammu has taken cognizance of Offences under Section 18 (a) (i) read with Section 27 (d) of Drugs and Cosmetics Act, 1940 and issued process against petitioners in File No. 154/Complaint/2018 {Date of Institution 26.07.2018} titled "Union of India through Drugs Inspector, Central Drugs Standards Control Organization, Jammu Vs. Corona Remedies Pvt. Ltd. & Ors." and also, set aside all orders passed therein against petitioners."***

Brief Facts:

2. The petitioners are Directors of M/s Corona Remedies Pvt. Ltd., accused No. 1 in the impugned complaint. The Company is a private limited company incorporated under the Companies Act and has its registered office and place of business at C-Mondeal Business Park, Gurudwara S. G. Highway, Thaltej, Ahmedabad. The Company holds a valid drug manufacturing licence issued by the Licensing Authority, Himachal Pradesh for manufacture, sale and distribution of various drugs at its manufacturing unit situated at Tehsil and District Solan, Himachal Pradesh.

3. The case arises out of the manufacture and supply of a drug, namely, "Locipil Tablets", Batch No. CHI15020, manufactured in September, 2015, with an expiry date of May, 2018, by M/s Corona Remedies Pvt. Ltd. A sample of the aforesaid drug was lifted by the Drugs Inspector, Central Drugs Standard Control

Organization, from the premises of ESIC Model Hospital, Bari Brahmana, Jammu, on Form No. 17. The sample was thereafter subjected to the statutory process of testing and analysis under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder.

4. The Government Analyst, Regional Drugs Testing Laboratory, Chandigarh, vide report dated 31.08.2016 in Form No. 13, declared the aforesaid drug to be *"Not of Standard Quality"*. Upon receipt of the said report, the Drugs Inspector, on 09.09.2016, sought information from the Medical Superintendent, ESIC Model Hospital, Bari Brahmana, Jammu, regarding the source of purchase of the drug in question. The Medical Superintendent disclosed M/s Corona Remedies Pvt. Ltd. as the source of purchase and supply of the said drug.

5. Thereafter, the respondent-Department issued a statutory notice dated 22.09.2016 to the Company at its manufacturing unit in Himachal Pradesh, informing it about the report of the Government Analyst and the declaration of the drug as *"Not of Standard Quality"*. The Company, through its authorized representative, submitted a reply dated 03.11.2016, informing the Department that the sale of the concerned batch had been stopped and that no stock of the said product remained with the Company. The Company also furnished the documents sought by the Department along with its reply.

6. Subsequently, a joint inspection of the manufacturing unit of the Company was conducted on 04.11.2016 by two Drugs Inspectors. During the course of such inspection, the manufacturing process and relevant records of the Company were examined. The Joint Investigation Report, inter alia, recorded that the batch had been manufactured under Good Manufacturing Practices and that the required quantity of bulk drug had been used for manufacturing the said batch. The report,

while taking note of the findings of the Government Analyst, ultimately recommended that action be initiated in accordance with the applicable guidelines governing cases where drugs are declared spurious or *"Not of Standard Quality"*.

7. On the basis of the material collected during the aforesaid proceedings, the respondent instituted the criminal complaint bearing File No. 154/Complaint/2018, titled *"Union of India through Drugs Inspector, Central Drugs Standards Control Organization, Jammu v. Corona Remedies Pvt. Ltd. & Ors."*, before the Court of the learned Chief Judicial Magistrate, Jammu, alleging commission of offences under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940. The petitioners herein were arrayed as accused Nos. 2, 4 and 7 in the said complaint.

8. The learned Chief Judicial Magistrate, Jammu, vide order dated 26.07.2018, took cognizance of the offences alleged in the complaint and issued process against the accused persons, including the present petitioners. Aggrieved of the aforesaid complaint and the order dated 26.07.2018, the petitioners have approached this Court by way of the instant petition under Section 561-A of the Code of Criminal Procedure, 1898, seeking, inter alia, setting aside of the complaint, the aforesaid order taking cognizance and all orders passed therein against the petitioners.

9. The record reveals that when the matter was listed before this Court on 03.05.2019, the Court, upon being *prima facie* satisfied, stayed the proceedings before the Court of the learned Chief Judicial Magistrate, Jammu. The said order continues to remain operative as on date.

Arguments on behalf of the petitioners:

10. Mr. Varut K. Gupta, learned counsel, has argued on behalf of the petitioners, who are arrayed as accused Nos. 2, 4 & 7 in the impugned complaint.

11. The petitioners are Directors of M/s Corona Remedies Pvt. Ltd., accused No. 1 in the impugned complaint. It is their case that, notwithstanding their position as Directors, they were neither responsible for nor involved in the manufacture or production of the drug in question and, therefore, cannot be held criminally liable for the alleged offence.

12. Learned counsel for the petitioners Mr. Varut Kumar Gupta has submitted that M/s Corona Remedies Pvt. Ltd. is a private limited company incorporated under the Companies Act and has its registered office and place of business at C-Mondeal Business Park, Gurudwara S. G. Highway, Thaltej, Ahmedabad. The Company holds a valid drug manufacturing licence issued by the Licensing Authority, Himachal Pradesh for manufacture, sale and distribution of various drugs at its manufacturing unit situated at Tehsil and District Solan, Himachal Pradesh. According to learned counsel, the licence itself demonstrates that the manufacturing activities are carried out under the direct technical supervision of qualified technical personnel whose names are duly endorsed therein. It is, therefore, contended that the petitioners, who are Directors of the Company, have no role in the actual process of manufacture or production of the drugs

13. It has further been submitted that the petitioners, being Directors, were concerned only with the financial and policy decisions relating to the management of the Company and were stationed at Ahmedabad, whereas the

manufacturing unit was situated at Solan, Himachal Pradesh. According to learned counsel, none of the petitioners was present or working at the manufacturing unit when the inspection was conducted. The sample of the drug in question, namely, "Locipil Tablets", was collected by the Drug Inspector from the premises of ESIC Model Hospital, Bari Brahmana, Jammu, and the prosecution was thereafter instituted before the learned Chief Judicial Magistrate, Jammu.

14. Learned counsel for the petitioners has urged that the respondent has instituted a criminal complaint under Section 18(a)(i) of the Drugs and Cosmetics Act, 1940, against the petitioners and other persons arrayed as accused therein. Through the medium of the instant petition, the petitioners seek to challenge the legality and maintainability of the proceedings arising out of the said complaint, as well as the order dated 26.07.2018, whereby cognizance was taken by the competent court.

15. Learned counsel for the petitioners has drawn the attention of this Court to the allegations contained in the impugned complaint. It is alleged therein that the Drugs Inspector, CDSCO, lifted a sample of the drug "Locipil Tablets" on Form No. 17 from the premises of ESIC Model Hospital, Bari Brahmana, Jammu. The particulars of the drug, as recorded in the complaint, are as under:

Drug in question	Locipil Tablets
Batch No.	CHI15020
Date of Mfg	09/2015
Exp. Dt	05/2018
Manufacture by	Corona Remedies Pvt. Ltd.

16. It has further been alleged in the impugned complaint that the respondent prepared Form No. 18 under Rule 57 of Drugs and Cosmetics

Rules, 1945 and one sample portion of drug in question was sent to Government Analyst, RDTL, Regional Drugs Testing Laboratories, Chandigarh for testing and analysis. The Government Analyst, vide Report dated 31.08.2016 in Form No. 13 issued in conformity with Rule 46 of the aforesaid Act, declared the drug in question to be *'Not of Standard Quality'*.

17. It is further submitted that, after receipt of the aforesaid report, the Drug Inspector, on 09.09.2016, sought information from the Medical Superintendent, ESIC Model Hospital, Bari Brahmana, Jammu, regarding the source of purchase of the drug, whereupon the Medical Superintendent disclosed Corona Remedies Pvt. Ltd. as the source of purchase and supply. Thereafter, the respondent issued notice dated 22.09.2016 to the Company at Himachal Pradesh, informing it about the Government Analyst's report, to which the Company submitted its reply dated 03.11.2016. It is further submitted that the Department thereafter conducted a joint inspection of the manufacturing unit on 04.11.2016 through two Drugs Inspectors. The inspection found the manufacturing process and records to be in order and, inter alia, recorded as under:

> ***"(i) The test of Assay and uniformity of dosage units of Desogestral in which the said batch has been declared as not of standard quality has been performed at M/s Choksi Laboratories, Plot No. 362, Industrial Area Phase-II, Panchkula, Haryana for which the firm has agreement for contract analysis of raw material and finished products. The results were found within limit."***

18. On the strength of the aforesaid material, the Drug Inspector proceeded against the Company without awaiting the outcome of the joint inspection, despite the notice dated 22.09.2016 having already been issued. It is contended

that the Joint Investigation Report does not attribute any criminal liability to the petitioners or disclose any specific role played by them in the alleged offence. Rather, according to learned counsel, the report records that the batch had been manufactured in accordance with Good Manufacturing Practices and that the requisite quantity of bulk drug had been used in its manufacture. It is, therefore, urged that the report, coupled with the fact that none of the petitioners were found present or working at the manufacturing unit, negates the allegation that they were involved in the manufacture of the drug in question.

19. It is further submitted that the statutory procedure contemplated under the Drugs and Cosmetics Act was not duly followed. According to Learned Counsel for the petitioners, the Drug Inspector, by proceeding with the prosecution without affording the petitioners an effective opportunity to controvert the Government Analyst's report, deprived them of their valuable statutory right under Section 25(4) of the Act. It is also contended that one portion of the sample was required to be produced before the Court in terms of Section 23(4) of the Act and the Drug Inspector ought to have produced the said sample before the learned trial Court taking cognizance.

20. Learned counsel for the petitioners has placed reliance on Section 23(4) of the Drugs and Cosmetics Act, 1940 which, for facility of reference is reproduced as under:-

> ***"The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes It, and shall retain the remainder and dispose of the same as follows:-***
>
> ***(I) one portion or container he shall forthwith send to the Government Analyst for test or analysis;***

> ***(II) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug (or cosmetics); and***
>
> ***(III) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18 A."***

21. Relying upon the aforesaid statutory provisions, learned counsel for the petitioners submits that an offence by a company is said to have committed only where any person who, at the time of commission of offence, was in-charge of and responsible for the conduct of the business of a company as well as the company itself, shall be deemed to be guilty of the offence and only in such circumstances, punishment can be imposed. However, the provisions further stipulate that nothing contained in sub-section shall render any such person liable to punishment under the Act if it was proved that the offence was committed without his knowledge or that he had exercised all due diligence to prevent commission of such offence.

22. Learned counsel for the petitioners further submits that the respondent was also required to arrive at the twin satisfaction mentioned supra, before the process could be initiated by the competent court. However, he submits that from a bare perusal of the allegations made in the complaint, no such satisfaction has ever been done which could have given a justifiable cause to the learned trial court to issue process against the petitioners.

23. The petitioners further submits that had the respondent recorded the requisite twin satisfaction that the offence had been committed by the company with the active consent or connivance of or was attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company,

only in that eventuality, such Director, Manager, Secretary or other officer shall be deemed to be guilty of such offence and the proceedings could have been initiated. In absence of any such satisfaction having been recorded, learned counsel for the petitioners submits that the very initiation of process by the court below is bad in the eyes of law and liable to be set aside.

24. It is also the specific case of the petitioners that the respondent, without application of mind and without conducting any proper inquiry/investigation in terms of Section 34 of the Drugs and Cosmetics Act, has chosen to file the impugned complaint against the petitioners, who are neither connected in any way with commission of alleged offence nor have any role to play therein.

25. Relying upon the aforesaid statutory provision, learned counsel for the petitioners submits that the proceedings initiated against them are in direct conflict with the mandatory procedure envisaged under Section 34, and, therefore, suffer from non-application of mind and cannot withstand judicial scrutiny under criminal law and the proceedings initiated against the petitioners by way of issuing of process by the competent Court requires to be set aside.

26. Learned counsel for the petitioners further submits that the stand taken by the petitioners could be vindicated from a bare perusal of the Joint Inspection Report, which nowhere imputes any liability to the petitioners nor does it record any defect in respect of the test of Assay and uniformity of dosage units of Desogestrel and said report was concluded by the investigating team by holding that the drugs had been manufactured under GMP (Good Manufacturing Practices) norms and the firm has added the required quantity of bulk drug for manufacturing the said batch.

27. The further case of the petitioners is that the impugned complaint otherwise lacks *bona fides* on the ground that the same has been filed after more than one year from the date of receipt of permission by the Drug Controller General, New Delhi and no explanation has been furnished for such delay while filing the complaint before the competent court.

28. Learned counsel further submits that apart from the absence of the necessary allegations in the complaint, the impugned complaint also fails to satisfy the mandatory requirements of Section 23(4) of the Drugs and Cosmetics Act, as the respondent did not produce the sample of the drug before the competent court.

29. It is specifically pleaded that the complainant has failed to establish the specific role or responsibility played by the petitioners as required under Section 34 of the Drugs and Cosmetics Act. According to Learned Counsel, the petitioners have been sought to be held vicariously liable without following the mandatory procedure or attributing any specific role to them.

30. Since there is no allegation of any actual role played by the petitioners in the alleged offence, which is a mandatory requirement of law, no criminal proceedings could, accordingly, be initiated against the petitioners and, therefore, the prayer of the petitioners is required to be allowed.

31. Section 34 clearly stipulates that only persons shall be deemed to be guilty of the offence or proceeded against and punished, if the following conditions are satisfied:-

> (a) The principal accused company or as the case may be firm or other association of individuals.
>
> (b) Every person who at the time the offence was committed, was in-charge of and was responsible to the company for the conduct of business of the company.

> (c) Any director, manager, secretary or other officer of the company with whose consent and connivance, the offences were committed.
>
> (d) Any director, manager, secretary or any other officer of the company whose negligence resulted in the commission of the offence.

32. Therefore, according to the learned counsel, it follows that a person, who is responsible for the conduct of a company can be held vicariously liable only upon fulfilling the statutory requirements of Section- 34.

33. Relying upon the aforesaid principles of law, learned counsel for the petitioners submits that the complaint must contain the necessary and specific averments before a person can be subjected to criminal process, particularly in view of settled principle of criminal jurisprudence that, in the absence of a specific statutory provision vicarious criminal liability cannot be fastened upon a person. He further submits that it was incumbent upon the learned trial Court to have examined the averments contained in the complaint with due application of mind and ought to have issued process only upon being satisfied that the case falls within the ambit of the aforesaid statutory provision. According to the learned counsel, this exercise has not been undertaken and, therefore, the process initiated by the learned trial Court is liable to be set aside.

34. Thus, in light of what has been stated, learned counsel for the petitioners submits that the process initiated by the learned Magistrate is required to be set aside and it is a fit case where the Court can exercise the power under Section 482 of the Code of Criminal Procedure, for setting aside the order issuing process passed by the learned trial Court.

Submissions on behalf of the respondent:

35. In rebuttal, learned counsel for the respondent Mr. Prem Sadotra again drew the attention of this Court to Section 34 of the Drugs and Cosmetics Act, which deals with offences committed by Companies. It was submitted that Section 34(1) provides that where an offence under the Act has been committed by a Company, every person who, at the time the offence was committed, was in charge of and responsible to the Company for the conduct of its business shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished, accordingly.

36. Learned counsel laid much emphasis on the proviso to Section 34(1), which provides that nothing contained in said sub-section shall render any person liable to punishment under the Act, if such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. According to learned counsel, the proviso deals specifically with the question of punishment and comes into operation only after the accused appears before the Learned trial Court and is afforded an opportunity to establish either of the aforesaid two contingencies provided in the statutory provision. It was, therefore, argued that the accused is required to face trial before claiming the benefit of the proviso.

37. It was further submitted that, at this stage, it would be premature for this Court to record any finding as to whether the Directors were managing the affairs of the Company, whether they were in charge of and responsible for the conduct of its business, whether the offence was committed with their knowledge, or whether, they have exercised due

diligence to prevent the commission of such offence. According to learned counsel, these questions fall with the realm of questions of fact which can only be adjudicated upon during the course of trial after the accused are permitted to face the proceedings. Consequently, it was argued that the petitioners have prematurely approached this Court by challenging the issuance of process by the learned trial Court.

38. Learned counsel for the respondent has drawn the attention of this Court to the allegations levelled in the complaint filed by the Drug Inspector against the accused persons. It was submitted that the complaint specifically projects that the present petitioners, along with the other Directors, were responsible for the conduct of the day-to-day business of the Company at that relevant point of time. According to learned counsel, allegations levelled in the impugned complaint satisfies the mandatory requirement of Section 34(1) of the Act. Consequently, the contention of the petitioners that there was no specific allegation against them warranting issuance of process is wholly untenable. It was further argued that all the statutory requirements contemplated under Section 34 have been duly complied with and, therefore, the learned trial Court has rightly issued the process against the petitioners.

39. Learned counsel further submitts that the allegations contained in the impugned complaint relate to offences affecting public health and has direct impact on public at large. Therefore, the Directors who were managing the affairs of the Company cannot escape criminal liability by shifting the onus upon the employees of the Company. According to learned counsel, the Directors are infact responsible for the manufacturing

decisions of the company and are the beneficiaries of the profits arising from the manufacture and sale of the drugs. Hence, they cannot avoid their liability by attributing responsibility to subordinate employees.

40. Learned counsel for the respondent with a view to counter the allegations of the petitioners has drawn the attention of this Court to a statutory notice dated 22.09.2016 issued to the Company under Section 25(2) of the Drugs and Cosmetics Act, whereby the Company was informed that the batch of the Drug in question had been declared as *'Not of Standard Quality'* and that the sample did not conform to the prescribed assay content (70.0% of label claim), as reported by the Government Analyst.

41. The Company was also requested to furnish certified copies of the relevant documents required under the Drugs and Cosmetics Act and the Rules framed thereunder. By way of the said notice, the Company was categorically advised, in the interest of public health, to discontinue the use and sale of the subject batch since the same had been declared *'Not of Standard Quality'* by the Government Analyst, Regional Drugs Testing Laboratory, Chandigarh.

42. Learned counsel further referred to the reply submitted by the authorized signatory of the petitioner-company in response to the aforesaid notice. It was submitted that the authorized signatory acknowledged receipt of the notice and informed the authorities that the company had already stopped the sale of the batch in question and that no stock of the said product remained with it.

43. According to learned counsel, what assumes significance in the present case is that the Company accepted the findings of the Drug Inspector and honoured the decision communicated through the notice. It was submitted that nowhere in the reply did the petitioners dispute the allegations contained in the notice. On the contrary, they accepted the findings of the competent authority, namely the Drug Inspector.

44. Learned counsel further submitted that the petitioners, through their authorized signatory, even requested the authorities to take a lenient view in the instant matter, as reflected in the reply dated 03.11.2016. It was argued that once, the petitioners neither disputed the allegations contained in the notice nor challenged the findings recorded therein, but instead admitted their fault and sought leniency, they are now estopped under law from raising an altogether different stand in the present proceedings. Consequently, the plea raised in the petition that the procedure prescribed under Section 23(4) (iii) of the Drugs and Cosmetics Act was not followed is factually incorrect and deserves outright rejection.

45. Lastly, Mr. Sadotra has referred to the joint inspection report prepared by the inspecting team. Although, the remarks column recorded that the batch had been manufactured in accordance with Good Manufacturing Practices (GMP) and that the required quantity of bulk drug had been used in its manufacture but the operative part of the report was infact the conclusion drawn on the basis of the Government Analyst's findings. According to the inspecting team, action was required to be initiated in accordance with the applicable guidelines governing cases, where drugs are declared spurious or

'Not of Standard Quality' in the light of the enhanced penalties under the Drugs and Cosmetics Act.

46. Placing reliance upon the said report, learned counsel contended that the report nowhere exonerates either the petitioners or the Company. Rather, it reinforces the conclusion that the drug in question had been declared ***'Not of Standard Quality'*** on the basis of the Government Analyst's report and that appropriate action was required to be initiated under the Drugs and Cosmetics Act. Accordingly, it was submitted that the respondent were fully justified in proceeding against the petitioners and the other Directors in accordance with Section 34 of the Act after following the procedure prescribed under law.

47. In conclusion, learned counsel submitted that the entire procedure contemplated under the Drugs and Cosmetics Act had been followed in its letter and spirit and that there had been no procedural violation, as alleged by the petitioners. Consequently, it was urged that the cognizance taken by the learned trial Court is perfectly legal and valid and that the interim order passed by this Court deserves to be vacated so as to allow the respondent to proceed against the petitioners and other co-accused strictly in accordance with law.

Legal Analysis:

48. Having considered the rival submissions advanced at the Bar and upon perusal of the pleadings, the material placed on record and the statutory provisions governing the field, this Court proceeds to examine the controversy arising for consideration in the present petition. The questions which arise for determination are closely interlinked and, therefore, are being considered in the following sequence:

> **"(i) Whether the plea of the petitioners disputing their responsibility for the conduct of the Company and their involvement in the manufacture of**

the drug in question can be accepted at the threshold, or is a matter to be determined by the learned Trial Court under Section 34 of the Act?

(ii) Whether the petitioners, having accepted the findings of the respondent-Department and requested a lenient view of the matter, can subsequently challenge the very foundation of the proceedings by taking altogether a different stand before this Court?

(iii) Whether, having regard to the public-health object of the Drugs and Cosmetics Act, 1940, and the allegation that the drug was of "Not of Standard Quality", the proceedings against the petitioners can be quashed by adopting a technical approach at the threshold?

(iv)Whether the material placed on record discloses any such patent illegality, jurisdictional error or abuse of the process of law as would warrant exercise of the inherent jurisdiction of this Court under Section 561-A Code of Criminal Procedure (corresponding to Section 482 CrPC 1973), and akin to the newly enacted Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023?"

Question No. 1: Whether the plea of the petitioners disputing their responsibility for the conduct of the Company and their involvement in the manufacture of the drug in question can be accepted at the threshold, or is a matter to be determined by the learned Trial Court under Section 34 of the Act?

49. In order to examine the aforesaid question, it would be appropriate, at the outset, to notice the statutory scheme contained in Section 34 of the Drugs and Cosmetics 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."

50. A plain reading of the aforesaid provision makes it manifest that where an offence under the Act has been committed by a Company, every person who, at the relevant point of time, was in-charge of and responsible to the Company for the conduct of its business shall also be deemed to be guilty of such offence. Equally significant is sub-section (2), which further contemplates liability where 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. Whether the ingredients contemplated under either of the aforesaid provisions ultimately stand established is a matter which necessarily requires appreciation of evidence and cannot ordinarily be determined at the threshold while exercising jurisdiction under Section 561-A Code of Criminal Procedure (corresponding to section 482 CrPC 1973), and akin to the newly enacted section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023. The proviso to sub-section (1) also makes it evident that the defense of ***absence of knowledge or exercise of due diligence*** is a matter available to the accused to be established in accordance with law. The

said defense cannot be adjudicated merely on the basis of the pleadings while exercising inherent jurisdiction under Section 561-A Code of Criminal Procedure (corresponding to section 482 CrPC 1973), and akin to the newly enacted section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

51. The judgment of the Hon'ble Supreme Court in **'Dinesh B. Patel and Others v. State of Gujarat and Another', (2010) 11 SCC 125**, is of particular relevance to the present case. The said case also concerned prosecution of Directors under the Drugs and Cosmetics Act, where a contention was raised regarding the absence of specific averments as to their role. The Hon'ble Supreme Court declined to adopt a technical approach to the pleadings, having regard, *inter alia*, to the public-health implications of the offence, and left it open to the Directors to establish before the trial Court that they had no role in the manufacturing process. Paragraph 10 of the judgment reads as under:

> ***"10. Under the peculiar circumstances of this case and realising the seriousness of the allegations, we would not take a technical view based on pleadings in the complaint. Mr Raichura contended that as per the settled law by this Court in complaints under Section 138 of the Negotiable Instruments Act, 1881 against a company and its directors also specific averment about the active role of directors in running the company has to be made, failing which the directors cannot be proceeded against. The same logic should apply even in the present case. We cannot agree. Firstly, the language of Section 34(2) of the Act substantially differs from the language of Section 141 of the Negotiable Instruments Act. Secondly, here we are dealing with an offence which has a direct impact on public health. We, therefore, would choose not to interfere with the order of the High Court. It will be open for the Directors to show to the trial court that they had nothing to do with the manufacturing process and, therefore, they should not be held liable under Section 34(2) of the Act."***

52. At this stage, it would be profitable to notice the recent judgment of the Hon'ble Supreme Court in '**State of Kerala & another v. M/s Panacea Biotec Ltd. & another'**, **2026 INSC 200** wherein the Hon'ble Supreme Court had occasion to consider an identical issue arising under Section 34 of the Drugs and Cosmetics Act. For facility of reference, paragraph 59 of the said judgment is reproduced hereunder:

> ***"On the aspect of Section 34 of the Act, we are of the opinion that the High Court's view per se was premature. The Respondents-Directors were in the accused-Company's management. Whether or not, they were 'in charge of' and 'responsible to the company for the conduct of the business of the company' are questions of fact. To our mind, bearing in mind a holistic conspectus of the case, these questions are best left to be determined by the Trial Court, at the appropriate stage. Accordingly, the instant appeal also stands allowed by setting aside the impugned judgment."***

53. The submission of the petitioners that they were not personally involved in the manufacture of the drug in question or that the manufacturing process was carried out by technical personnel cannot, by itself, furnish a ground for quashing the proceedings at this stage. Section 34 of the Drugs and Cosmetics Act specifically contemplates circumstances in which persons in charge of and responsible for the conduct of the business of the Company may also be proceeded against. Whether the petitioners ultimately incur such vicarious liability is a matter to be determined by the learned Trial Court upon appreciation of the evidence that may be led by the parties during the trial.

54. Likewise, merely because the manufacturing activity was carried out under the supervision of qualified technical personnel does not, *ipso facto*, absolve the Directors from the rigour of Section 34 of the Act. The Directors cannot, merely by attributing the manufacturing activity to subordinate or

technical personnel, seek to completely disassociate themselves from the affairs and responsibilities of the Company. The extent of their responsibility, the nature of their control over the affairs of the Company and the question whether they satisfy the statutory requirements of Section 34 are matters requiring appreciation of evidence. Whether the petitioners can ultimately avoid liability by establishing that they had no role or responsibility in relation to the manufacture of the drug in question or the offence was committed without their knowledge or that they have exercised all due diligence to prevent the commission of such offence are matters which are required to be determined by the learned Trial Court once trial is allowed to commence in accordance with law.

55. Keeping the aforesaid statutory position in view, this Court has also examined the allegations levelled in the complaint. It is contended by the learned counsel for the respondent that the allegations levelled in the impugned complaint specifically vindicate that the present petitioners, along with the other Directors, were responsible for the conduct of the day-to-day business of the Company at the relevant point of time. The relevant extract of the complaint is reproduced as under:-

> ***"4. That the accused no.-2, accused no.-3, accused no.-4, accused no.-5, Accused no.-6, Accused no.-7 are the Directors of accused no.-1, i.e., M/s Corona Remedies Pvt. Ltd., Village Jatoli, Post Office Oachghat, Tehsil Solan, District-Solan (H.P)-173223 and accused no. 2 to 7 by virtue of holding the post/office of Director, all are responsible to conduct business of accused no.-1 at the time when the drug was manufactured, i.e., Sept. 2015. (Copy of Memorandum of Association and List of Directors as on 03.11.2016, is attached as Annexure-2)***
>
> ***16. That accused no.-1 is a Manufacturing Company which has manufactured for sale Not of Standard Quality drug declared by Government Analyst and accused no.-2, accused no.-3, accused no.-4,***

accused no.-5, accused no.-6 & accused no.-7 are the Directors of the Company and responsible persons for the conduct of the day-to-day business of the Company at the relevant time."

56. In view of the allegations levelled in the impugned complaint by the complainant, Drug Inspector this court is of the considered view that whether the petitioners were, in fact, in charge or responsible for the conduct of the day to day business of the Company and whether they can ultimately be held liable thereunder, are matters which require appreciation of evidence and are best left to be determined by the learned Trial Court in accordance with law if the trial is allowed to commence and issuance of process by the learned trial court is a step towards that.

57. On consideration of the complaint as a whole, this Court finds that the petitioners cannot, at this stage, avoid the operation of Section 34 of the Act merely by disputing their responsibility for the conduct of the Company's business or by asserting that they had no role in the actual manufacturing process. Whether such averment is ultimately established by leading evidence, whether the petitioners were in fact in charge and responsible for the conduct of the Company's business and whether their individual roles attract liability under Section 34 are matters requiring detailed adjudication upon evidence during trial.

Accordingly, the first question is, answered in favour of the respondent and against the petitioners.

***Question No. 2- Whether the petitioners, having accepted the findings of the respondent-Department and requested a lenient view of the matter, can subsequently challenge the very foundation of the proceedings by taking altogether a different stand before this Court*?**

58. Another significant aspect which cannot be overlooked by this Court in the instant matter is the stand adopted by the Company itself before the respondent-Department. The record reveals that upon receipt of the statutory notice dated 22.09.2016, the Company, through its authorized representative, submitted the following reply:

> ***"Sir, we acknowledge the receipt of your letter and find our compliance as follows:***
> ***1. We had stopped the sale of the batch in question.***
> ***2. As on date, we don't have stock of above said product. Find enclosed copy of Batch Distribution Record & Stock Transfer Note along with confirmation of stock from C & F.***
> ***We admire your findings and honor your judgment. Your esteemed Directorate is requested to take a lenient view in this concern."***

59. The aforesaid reply assumes considerable significance in the present case. Upon receipt of the statutory notice dated 22.09.2016, the Company, through its authorized representative, did not dispute the findings communicated by the respondent-Department. On the contrary, the Company informed the Department that it had already stopped the sale of the batch in question and that, as on the date of the reply, no stock of the said product remained with it. Thus, the response of the Company was not one of denial of the findings recorded by the Department or of questioning the very basis of the proceedings initiated against it, rather it tantamount to admission on their part and applauding the role of respondent department to have arrived at such finding and honoured the judgment while also seeking leniency.

60. What is of particular significance is the further stand expressly taken by the Company in the very same reply. After informing the Department that the sale of the batch had been stopped and that no stock remained with it, the Company stated, *"We admire your findings and honor your judgment"*, and thereafter

requested the Directorate to *"take a lenient view in this concern."* The request for a lenient view assumes considerable significance because the Company, instead of disputing the findings or asserting that the proceedings were without any basis, sought indulgence from the very authority which had communicated the adverse findings. The tenor of the reply, therefore, shows that, at the relevant stage, the Company proceeded on the basis of the findings communicated by the Department and sought a favourable or lenient consideration of the matter. The aforesaid conduct of the Company, and the inconsistent position now sought to be taken in the present proceedings, has to be considered in the light of the settled principle governing approbation and reprobation.

61. The petitioner, therefore, are estopped under law to challenge the compliant and the process issued by competent Court. After having accepted the finding and judgment of the respondent department, without any demur, the petitioners are estopped under law to question the findings, allegations or process issued by learned Court in compliant. The law of *"estoppel by conduct"* holds good against the petitioners.

62. The same principle has been reiterated by the Hon'ble Supreme Court in **'Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond & Gem Development Corporation Limited and Another', (2013) 5 SCC 470**, wherein the Hon'ble Supreme Court, while considering the doctrine of approbation and reprobation, observed as under:

> ***"10. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or***

silence when it is his duty to speak, from asserting a right which he would have otherwise had."

63. The aforesaid principle, therefore, makes it clear that a party cannot, by its own conduct, accept a position or seek the benefit arising therefrom and thereafter resile from the same position so as to challenge the very foundation of the proceedings. The principle assumes particular significance in the present case, where the stand adopted before the respondent-Department is sought to be departed from in the proceedings before this Court.

64. The principle governing such inconsistent stands is well settled by the Hon'ble Supreme Court in **'Union of India v. N. Murugesan', (2022) 2 SCC 25,** wherein the Hon'ble Supreme Court has held as under:

"Approbate and reprobate

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party…."

65. The contemporaneous stand adopted by the Company before the respondent-Department is a relevant circumstance while examining the challenge raised in the present proceedings. On the one hand, the Company accepted the findings communicated by the Department, acted upon the

consequential direction by discontinuing the sale and confirmed that no stock remained with it, while also seeking a lenient view of the matter. On the other hand, the petitioners now seek to question the very foundation of the proceedings and contend that the complaint was deficient for want of further particulars regarding their responsibility as Directors. The principle that a party cannot approbate and reprobate, or blow hot and cold at the same time, is attracted where the Company has adopted a particular stand before the Department and sought indulgence on that basis. Having adopted such a stand, it cannot subsequently seek to take an inconsistent position. The contemporaneous stand of the Company, therefore, cannot be ignored while considering the challenge raised in the present petition.

Accordingly, the second question is answered in favour of the respondent and against the petitioners.

66. The contention of the petitioners that the mandatory procedure contemplated under Sections 23 and 25 of the Act was not followed also does not, on the material presently available, furnish a ground for quashing the proceedings at this stage. The record *prima facie* reveals that the statutory notice was issued, the report of the Government Analyst was communicated to the Company and the Company submitted its reply thereto. Whether there has been complete compliance with every procedural requirement or whether any prejudice has been caused to the petitioners are matters which can appropriately be examined by the learned Trial Court upon appreciation of the material and evidence. *Prima facie*, therefore, it cannot be said that the respondent completely bypassed the statutory procedure prescribed under the Act.

67. In this context, it would be appropriate to notice the relevant statutory provisions governing the procedure for taking and dealing with samples and the evidentiary effect of the report of the Government Analyst. Section 23 of the Drugs and Cosmetics Act, 1940, provides as under:

> ***"23. Procedure of Inspectors.—***
> ***(1)Where an Inspector takes any sample of a drug or cosmetic under this Chapter, he shall tender the fair price thereof and may require a written acknowledgement therefor.***
> ***(2) Where the price tendered under sub-section (1) is refused or where the Inspector seizes the stock of any drug or cosmetic under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.***
> ***(3) Where an Inspector takes a sample of a drug or cosmetic for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:***
> ***Provided that where the sample is taken from premises whereon the drug or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only:***
> ***Provided further that where the drug or cosmetic is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.***
> ***(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—***
> ***(i)one portion or container he shall forthwith send to the Government Analyst for test or analysis;***
> ***(ii)the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug or cosmetic; and***
> ***(iii)the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.***

(5) Where an Inspector takes any action under clause (c) of section 22,—

(a)he shall use all despatch in ascertaining whether or not the drug or cosmetic contravenes any of the provisions of section 18 and, if it is ascertained that the drug or cosmetic does not so contravene forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b)if he seizes the stock of the drug or cosmetic, he shall as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof;

(c)without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug or cosmetic, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

(6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform a Judicial Magistrate and take his orders as to the custody there."

68. Section 25 of the Act further prescribes the evidentiary effect of the report of the Government Analyst and the statutory mechanism available to the person from whom the sample was taken or the person whose particulars have been disclosed under Section 18-A to controvert such report. Section 25 reads as under:

"25. Reports of Government Analysts. —

(1)The Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2)The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A, and shall retain the third copy for use in any prosecution in respect of the sample.

(3)Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the

sample was taken or the person whose name, address and other particulars have been disclosed under section 18A has, within twenty-eight days of the receipt of a copy of the report, notified in writing 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.

(4)Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused: cause the sample of the drug or cosmetic produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5)The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."

69. A conjoint reading of the aforesaid provisions makes it clear that the Act itself prescribes a specific statutory mechanism for dealing with the sample, the report of the Government Analyst and any proposed challenge thereto. The objection of the petitioners regarding non-compliance with the said procedure, therefore, cannot be examined merely on the basis of an alleged procedural omission. It would also require examination as to whether the statutory opportunity contemplated under Section 25 of the Act was availed of by the petitioners within the prescribed period and whether any prejudice has, in fact, been occasioned to them.

70. It is also necessary to notice the statutory consequence attached to the report of the Government Analyst under Section 25 of the Drugs and Cosmetics Act, 1940. Sub-section (3) thereof provides that a document

purporting to be a report signed by a Government Analyst shall be evidence of the facts stated therein and shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A, within twenty-eight days of receipt of a copy of the report, notifies in writing the Inspector or the Court before which proceedings in respect of the sample are pending of his intention to adduce evidence in controversion of the report. The statutory scheme further contemplates, in the circumstances prescribed therein, that the sample may thereafter be sent to the Central Drugs Laboratory for test or analysis, whose report is to have the evidentiary effect provided by the Act.

71. In the present case, the record does not, at this stage, disclose that the Company, upon receipt of the Government Analyst's report, exercised the statutory right of notifying the Inspector or the Court within the prescribed period of its intention to adduce evidence in controversion of the said report. On the contrary, the contemporaneous reply submitted by the Company referred to the findings communicated by the Department, stated that the sale of the concerned batch had been stopped and requested that a lenient view be taken. In these circumstances, the plea now raised by the petitioners that they were deprived of an opportunity to controvert the Government Analyst's report cannot, by itself, furnish a ground for quashing the proceedings at this stage. Whether the statutory requirements stood fully complied with and whether any prejudice was caused to the petitioners are matters which can be examined by the learned trial Court in accordance with law.

72. Much emphasis has also been laid by the petitioners upon the Joint Investigation Report. In the considered opinion of this Court, the said report

cannot be read in isolation. It has to be read together with the report of the Government Analyst, on the basis whereof the drug in question was declared to be *"Not of Standard Quality"*. Although the Joint Investigation Report records that the batch had been manufactured in accordance with Good Manufacturing Practices and that the requisite quantity of bulk drug had been used, the report does not exonerate either the Company or its Directors. Rather, it ultimately recommends initiation of action in accordance with the applicable statutory guidelines. The relevant remarks recorded in the Joint Investigation Report are reproduced as under:

> ***"On the basis of above observations the inspecting team is of opinion that said batch has been manufactured under GMP norms and the firm has added the required quantity of bulk drug for manufacturing of the said batch. However, considering the results as per the reports of Government Analyst, Inspecting team is of the opinion that action may be initiated as per 'Guideline for taking action on samples of drugs declared spurious or not of standard quality in the light of enhanced penalties under the Drugs and Cosmetics (Amendment) Act, 2008' as deemed fit."***

73. The Joint Investigation Report, therefore, cannot be construed as a document exonerating the petitioners at the threshold so as to warrant quashing of the complaint.

Question No. 3: Whether, having regard to the public-health object of the Drugs and Cosmetics Act, 1940, and the allegation that the drug was of "Not of Standard Quality", the proceedings against the petitioners can be quashed by adopting a technical approach at the threshold?

74. Having dealt with the statutory objections raised by the petitioners, it is also necessary to bear in mind the object sought to be achieved by the Drugs and Cosmetics Act, 1940. The enactment is intended to regulate the manufacture, import, sale and distribution of drugs and cosmetics and to ensure that the drugs made available to the public conform to the prescribed

standards of quality, safety and efficacy. The statutory scheme is thus directed towards preventing the manufacture and distribution of sub-standard, adulterated or otherwise unsafe drugs and, consequently, bears a direct and vital nexus with the protection of public health and safety. This legislative object assumes particular significance in the present case, where the allegation concerns a drug which has been declared to be of *"Not of Standard Quality"*.

75. The object of the enactment also has to be viewed in the context of the fundamental right to life guaranteed under Article 21 of the Constitution of India. The right to life is not confined to mere physical existence, but encompasses the right to live with dignity and includes within its ambit the protection of health and well-being. Every person, as a consumer of medicines, is entitled to expect that drugs made available for human consumption conform to the prescribed standards of quality and are not sub-standard or otherwise unsafe. The manufacture and distribution of drugs which fail to meet the prescribed standards, therefore, carries a direct bearing upon public health and, consequently, implicates the constitutional concern underlying Article 21. The statutory safeguards contained in the Drugs and Cosmetics Act must accordingly be understood as serving not merely a regulatory purpose, but also as an important legislative mechanism for protecting the health and life of persons who may be required to consume such drugs.

76. The public-health dimension of the enactment has also been noticed by the High Court of Judicature at Madras in **'Vikas Rambal vs. State'**, Crl.O.P. No.11184/2019, decided on 12.10.2022, wherein the Court observed as under:

> ***"21. The Drugs and Cosmetics Act, 1940 came into force on 10.04.1940. It is an existing law when the Constitution came into force. In the year 1982***

there was an amendment to this Act, the statement of Objects and Reasons for the said Amendment, explains the purpose of the Act as below:-

> ***"Amendment Act 68 of 1982- Statement of Objects and Reasons:-***
>
> ***The Drugs and Cosmetics Act, 1940, regulates the import into, manufacture, distribution and sale of drugs and cosmetics in the country. The problems of adulteration of drugs and also of production of spurious and sub-standard drugs are posing serious threat to the health of the community. It is, therefore considered necessary to amend the Drugs and Cosmetics, Act, so as to impose more stringent penalties on the anti- social elements indulging in the manufacture or sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievous hurt to the user. This opportunity is also being availed of to incorporate certain other provisions on the other aspects https://www.mhc.tn.gov.in/judis of effective control on the manufacture, distribution, sale of drugs and cosmetics on the basis of experience gained in the working of the Act."***

77. The aforesaid consideration assumes significance in the present case, as the allegations relate to a drug declared to be of *'Not of Standard Quality'*. The Hon'ble Supreme Court, in *Dinesh B. Patel* (supra), while dealing with a challenge by Directors under the very provisions of the Drugs and Cosmetics Act, also declined to adopt a technical approach to the pleadings, particularly having regard to the direct impact of such offences on public health. The Court, at the same time, left it open to the Directors to establish before the Trial Court that they had no role in the manufacturing process. Viewed in this background, this Court does not find that the proceedings against the petitioners can be quashed by adopting a hyper-technical approach at the threshold.

Accordingly, the third question is answered in favour of the respondent and against the petitioners.

Question No. 4: Whether the material placed on record discloses any such patent illegality, jurisdictional error or abuse of the process of law as would warrant exercise of the inherent jurisdiction of this Court under Section 561-A Code of Criminal Procedure (corresponding to section 482 CrPC 1973), and akin to the newly enacted Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023?

78. The scope of interference under Section 561-A Code of Criminal Procedure (corresponding to section 482 CrPC 1973), and akin to the newly enacted Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 is equally well settled. The Hon'ble Supreme Court in **'State of Karnataka v. M. Devendrappa and another', (2002) 3 SCC 89**, while delineating the scope and limitations of the inherent jurisdiction of the High Court under Section 482 of the Code, has held as under:

> ***"9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where***

the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

79. The aforesaid principles have been reiterated by the Hon'ble Supreme Court in **'Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others', 2021 SCC OnLine SC 315**, wherein it has been emphasized that, though the power under Section 482 Cr.P.C. is wide, its exercise calls for greater caution and that interference with criminal proceedings is warranted only in exceptional cases.

80. The aforesaid principles assume particular significance in the present case. The challenge raised by the petitioners requires this Court to examine, inter alia, their alleged non-involvement in the manufacturing process, the extent of their responsibility in the affairs of the Company, the effect of the Joint Investigation Report and the alleged deficiencies in the statutory procedure. Determination of such matters would necessarily involve an

examination and appreciation of the factual and evidentiary aspects of the case. Exercise of the inherent jurisdiction cannot be converted into a roving or fishing enquiry into the reliability, genuineness or otherwise of the material forming the basis of the complaint and these questions raised by the petitioners are capable of being adjudicated by the learned Trial Court in accordance with law. The petitioners cannot, therefore, seek a re-appreciation of the material or a determination of disputed questions of fact at this stage in proceedings under Section 561-A Code of Criminal Procedure (corresponding to section 482 CrPC 1973), and akin to the newly enacted Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

81. Examined from the aforesaid perspective, the complaint cannot be said to suffer from any such fundamental deficiency as would justify exercise of the inherent jurisdiction of this Court. The statutory objections raised by the petitioners, including the alleged non-compliance with the procedure contemplated under the Act and the reliance placed upon the Joint Investigation Report, do not, at this stage, demonstrate that the proceedings are legally barred or that the allegations in the complaint, even if taken at their face value, fail to disclose the alleged offences. No patent illegality, jurisdictional error or perversity, therefore, is discernible in the order dated 26.07.2018 passed by the learned Chief Judicial Magistrate, Jammu.

Accordingly, the fourth question is answered in favour of the respondent and against the petitioners.

Conclusion:

82. In view of the foregoing discussion and the findings recorded on the questions formulated hereinabove, this Court is of the considered opinion that

the petitioners have failed to make out any ground warranting interference with the impugned complaint or the order dated 26.07.2018 passed by the learned Chief Judicial Magistrate, Jammu. The objections raised by the petitioners, including those relating to their alleged non-involvement in the manufacturing process, the statutory procedure, the Joint Investigation Report and the sufficiency or effect of the material relied upon by the prosecution, either involve disputed questions of fact or matters which can appropriately be examined by the learned Trial Court while conducing trial in accordance with law. No patent illegality, jurisdictional error, perversity or abuse of the process of law is, therefore, discernible so as to warrant exercise of the inherent jurisdiction of this Court under Section 561-A Code of Criminal Procedure (corresponding to section 482 CrPC 1973), and akin to the newly enacted section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 of the Code.

83. Accordingly, the instant petition, being devoid of merit, is dismissed. The interim order dated 03.05.2019, whereby further proceedings before the learned Chief Judicial Magistrate, Jammu, were stayed, shall stand vacated. The learned Trial Court shall proceed with the matter in accordance with law and shall adjudicate the same in the trial independently on its own merits, uninfluenced by any observation made in the present judgment, which shall be construed as confined to the consideration of the petitioners' prayer for interference at the present stage.

84. It is, however, clarified that nothing contained in this judgment shall be construed as an expression of opinion on the ultimate guilt or innocence of the petitioners or on any issue which is required to be determined by the learned

Trial Court upon appreciation of the evidence. All such questions shall remain open for consideration by the learned Trial Court in accordance with law.

85. Disposed of accordingly, along with all connected applications, if any.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
12.08.2026
Mihul

Whether Judgment is Speaking? *Yes*
Whether Judgment is Reportable? *Yes*