HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 618/2024

Reserved on:07.08.2026
Pronounced on:18.08.2026
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Whether the operative part or full judgment is pronounced: ***Full***

Albert David Limited, Registered Office: Block "D",
3rd Floor, Gillander House, 8 Netaji Subhas Road,
Kolkata Through Jammu Regional Sales Manager,
Sh. Dileep Ganjoo, Aged 66 years
S/O Late Shri Hirday Nath Ganjoo, R/o H. No.38,
Subash Nagar Extn.-2 Opp. Petrol Pump, Jammu .....Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Shivam Mahajan, Advocate
Mr. Sachin Shukla, Advocate
[Through Virtual Mode]
Mr. Shubham Sharma, Advocate

vs

1. Union Territory of J&K, Through Drugs Inspector, Kathua.
2. Prop. Krishan Kumar, M/s Hare Rama Hare Krishna Situated at College Road, Kathua. Through Proprietor.
3. Pradeep Pharmaceutical, 111 Raghunath Pura Jammu Through its Proprietor.
4. A.H. Enterprises, 3rd Floor, 17, Raghunath Pura Jammu Through its Proprietor.
5. Sunrise Pharmaceuticals, 25 HSIDC Sector 3 Industrial Estate Karnal.132001

.....
Respondent(s)

Through: Mr. Raman Sharma, AAG for R-1

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

Prayer:

01. The petitioner, through the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 akin to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ***(for short 'the BNSS')*** seeks quashment of:

a) *Complaint under section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 titled Drugs Inspector, Kathua vs. Prop. Krishan Kumar and others pending trial before the Court of Ld. Chief Judicial Magistrate, Kathua;*

b) *Order dated 18.02.2020 passed by the Court of Ld. Chief Judicial Magistrate, Kathua in the impugned Complaint under section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 titled Drugs Inspector, Kathua vs. Prop. Krishan others and Kumar cognizance of the whereby impugned complaint has been taken and process, amongst others, against the Petitioner Company has been issued;*

c) *Order dated 27.04.2024 passed by the Court of Ld. Chief Judicial Magistrate, Kathua in the impugned Complaint under section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 titled Drugs Inspector, Kathua vs. Prop. Krishan Kumar and others whereby the Ld. Chief Judicial Magistrate, Kathua accepted the personal bond submitted representative on behalf of petitioner company. However, by same order warrant of arrest was issued against Petitioner Company by the Ld. Chief Judicial Magistrate, Kathua.*

d) *All Subsequent orders/proceedings (after taking cognizance) being conducted by the Ld. Chief Judicial Magistrate, Kathua in the impugned complaint under section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 titled Drugs Inspector, Kathua vs. Prop. Krishan Kumar and others, being totally illegal, in utter contravention of the Drugs and Cosmetics Act, 1940 and rules framed thereunder and complete misuse and abuse of process of law.*

Brief Facts:

02. The brief facts of the case, as pleaded by the petitioner, are that the petitioner is a pharmaceutical company engaged in the manufacture of pharmaceutical formulations and other pharmaceutical products. The

petitioner has invoked the inherent criminal jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the impugned complaint, the order dated 18.02.2020 whereby cognizance was taken, the subsequent proceedings arising therefrom and the order dated 27.04.2024 passed by the learned Chief Judicial Magistrate, Kathua.

03. It is the case of the petitioner Company that respondent No.1, Drug Inspector, Kathua, conducted a routine inspection on 27.04.2011 of the premises of respondent No.2, namely, M/s Hare Rama Hare Krishna, a chemist/drug outlet situated at Kathua and lifted samples of four drugs, namely, (i) ACCFENAC-P, (ii) Serazo, (iii) Foligem and (iv) ADISTM. The sample of ADISTM, comprising needles bearing Batch No. 4752, manufacturing date 2007/08, expiry date 2012/07 and Manufacturing Licence No. 28/14/90, manufactured by the petitioner Company, was divided into four portions and duly sealed by the Drug Inspector. A copy of Form No. 17 along with a sealed portion of each sample, including the sample of ADISTM, was handed over to respondent No.2 against proper receipt.

04. It is further pleaded that on 28.04.2011, the Drug Inspector filled up Form No. 18, namely, the memorandum to the Government Analyst, and forwarded one sealed portion of the sample of ADISTM to the Government Analyst, CFDL, Kathua, for testing. The Drug Inspector thereafter received Test Report No. CFDL/LS/Act/Tests/NC/40/A-11 dated 30.11.2011 from the Government Analyst, CFDL, Kathua,

wherein the sample was reported to have failed the test for sterility and was accordingly declared not to be of standard quality.

05. It is also contended that after receipt of the report of the Government Analyst declaring the drug/needles to be not of standard quality, the Drug Inspector, vide letter dated 13.12.2011, sought from respondent No.2 the details of the dealer from whom the drug in question had been purchased, along with the relevant records, including the purchase record, balance of stock and the list of institutions to which the drug had been supplied. A copy of the test report was also furnished to respondent No.2. In response, respondent No.2 disclosed that the drug in question had been purchased from respondent No.3, a wholesaler of pharmaceuticals at Raghunath Pura, Jammu.

06. Thereafter, vide letter dated 22.12.2011, the Drug Inspector forwarded the report of the Government Analyst to respondent No.3 and called upon him to furnish the details of the dealer from whom the drug had been purchased, together with the stock position and purchase and sale records relating to ADISTM manufactured by the petitioner Company. Respondent No.3, vide letter dated 22.12.2011, informed the Drug Inspector that the drug in question had been purchased from respondent No.4, who, in turn, disclosed that the same had been purchased from respondent No.5, the petitioner Company. Thereafter, the Drug Inspector, vide letter dated 08.02.2012, directed the petitioner Company to furnish its manufacturing and testing records, stock position and purchase and sale records relating to ADISTM.

07. The further case of the petitioner is that upon receipt of the communication dated 08.02.2012 from the Drug Inspector, it furnished the requisite details to the Assistant Controller, Drugs and Food Control Organization, Kathua, vide communication dated 21.02.2012. The petitioner Company also informed the Drug Inspector that, upon receipt of the aforesaid communication, it had, as a precautionary measure, informed respondent No.5 through telegram and registered letter to withdraw the stocks of the drug from the market. It was further stated that the petitioner Company had checked the inputs, manufacturing process and control samples through its Quality Assurance Department and that the samples had passed all tests, including the sterility test. The petitioner Company, therefore, disputed the findings of the Government Analyst and, vide communication dated 21.02.2012, notified the Drug Inspector of its intention to adduce evidence in controversion of the Government Analyst's report in terms of Section 25(3) of the Drugs and Cosmetics Act, 1940, with a request that the sample be retested by the Director, Central Drugs Laboratory, Kolkata.

08. Thereafter, the Screening Committee of the office of the Deputy Controller, Drugs and Food Control Organization, J&K, recommended that the sample be sent to the Central Drugs Laboratory, Kolkata, for reanalysis/retesting. Based upon the said recommendation, respondent No.1 filed the impugned complaint on 14.05.2012 before the Court of learned Chief Judicial Magistrate, Kathua under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 against

respondent Nos.2 to 4 as well as the petitioner Company. In the said complaint, the Drug Inspector also prayed that the sample portion of the drug in question be sent to the Central Drugs Laboratory, Kolkata, for reanalysis under Section 25 of the Act, stating that the concerned accused had notified his intention to have the sample retested.

09. It is submitted that despite institution of the impugned complaint on 14.05.2012, no effective order was passed thereon. On 14.01.2013, the learned Magistrate called for a report from the concerned Court Clerk and observed that, as per the record, the complaint appeared to have been presented on 14.05.2012 and that one of the samples had been referred for retesting, for which the report was awaited. Accordingly, a direction was issued to the concerned Court Clerk to send a reminder in that regard. Thereafter, no effective proceedings took place except the issuance of reminders to the Director, Central Drugs Laboratory, Kolkata. Eventually, the Director-in-Charge, Central Drugs Laboratory, Kolkata, submitted a report dated 25.10.2016, which was received by the Court on 11.11.2016, stating that, upon verification of the records of the Laboratory, no such sample had been received from the Court of the learned Chief Judicial Magistrate, Kathua.

10. In view of the aforesaid report of the Director-in-Charge, Central Drugs Laboratory, Kolkata, the learned Magistrate, vide order dated 06.07.2017, directed the Drug Inspector, who was present in Court, to take necessary steps in light of the report dated 25.10.2016 so that appropriate orders could thereafter follow in the matter. Despite the aforesaid direction, the impugned complaint remained pending without

any effective proceedings, and it was only on 18.02.2020 that the learned Magistrate passed the impugned order whereby cognizance of the complaint was taken against all the accused persons, including the petitioner Company, notwithstanding the absence of any report of reanalysis/retesting from the Central Drugs Laboratory, Kolkata.

11. It is borne out from the record that, along with the impugned complaint, a sample portion of the drug in question was stated to have been produced before the learned Magistrate and a prayer was made by the complainant for its transmission to the Central Drugs Laboratory, Kolkata for reanalysis. However, the report dated 25.10.2016 issued by the Director-in-Charge, Central Drugs Laboratory, Kolkata, records that no such sample had been received by the Laboratory from the Court of the learned Chief Judicial Magistrate, Kathua. Thus, while the sample was stated to have been produced before the learned Magistrate, the record does not disclose that the same was ultimately received by the Central Drugs Laboratory for reanalysis.

12. During the pendency of the aforesaid proceedings, the petitioner Company, through its authorized representative, appeared before the learned Magistrate on 27.04.2024 and furnished a personal bond in the sum of Rs.50,000/-, which was accepted by the learned Magistrate. By the same order, however, the learned Magistrate directed issuance of warrants of arrest against accused Nos. 3, 4 and 5, including the petitioner Company, in the sum of Rs.10,000/- each, to secure their presence. The petitioner Company, being arrayed as accused No.5, has also called in question the aforesaid order in the instant petition. The petitioner has

further referred to the subsequent order dated 29.06.2024 whereby its appearance through an authorized representative was questioned by the learned Magistrate.

13. It is submitted that the learned Magistrate failed to appreciate that the Director-in-Charge, Central Drugs Laboratory, Kolkata, had categorically informed the Court, vide report dated 25.10.2016, that upon verification of the records of the Laboratory, no sample had ever been received from the Court of the learned Chief Judicial Magistrate, Kathua for re-testing. It is, therefore, the specific case of the petitioner Company that, in the absence of any report of re-testing/reanalysis from the Central Drugs Laboratory, Kolkata, the learned Magistrate ought to have proceeded further in accordance with law instead of taking cognizance of the complaint and issuing process against the accused persons. The petitioner Company further submits that the learned Magistrate thereafter continued with the proceedings in the impugned complaint despite the absence of any report of re-testing/reanalysis from the Central Drugs Laboratory, Kolkata, which, according to the petitioner, was contrary to the statutory scheme contemplated under the Drugs and Cosmetics Act, 1940.

14. It is further submitted that the petitioner Company has challenged the impugned complaint on the ground that the same is illegal, fundamentally defective and contrary to the provisions of the Drugs and Cosmetics Act, 1940 and the settled principles of law. The petitioner has also assailed the order dated 18.02.2020 whereby, despite the aforesaid position having been noticed on the record, the learned

Magistrate proceeded to take cognizance of the complaint and issue process against the petitioner Company. It is contended that cognizance was taken after an unexplained delay of nearly eight years from the date of institution of the complaint on 14.05.2012, without the report of reanalysis/retesting from the Central Drugs Laboratory, Kolkata, and without addressing the material irregularities and alleged statutory non-compliance pointed out by the petitioner. According to the petitioner Company, continuation of the proceedings in such circumstances amounts to abuse of the process of law and, therefore, the impugned complaint, the order dated 18.02.2020 and the subsequent proceedings arising therefrom, including the order dated 27.04.2024, deserve to be quashed in the interest of justice.

Arguments on behalf of the petitioner:

15. Mr. Sunil Sethi, learned Senior Counsel appearing for the petitioner, at the outset, has drawn the attention of this Court to the impugned order dated 18.02.2020 passed by the learned Chief Judicial Magistrate, Kathua in the complaint under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940. Learned Senior Counsel submitted that the complaint was instituted on 14.05.2012 and that cognizance came to be taken only on 18.02.2020, despite the fact that no report of reanalysis/retesting had been received from the Central Drugs Laboratory, Kolkata.

16. It is also submitted that Section 25(3) of the Drugs and Cosmetics Act, 1940 makes it clear that a report of the Government Analyst constitutes evidence of the facts stated therein and becomes conclusive unless the

person from whom the sample was taken, within twenty-eight days of receipt of a copy of such report, notifies in writing the Inspector or the Court before which the proceedings are pending of his intention to adduce evidence in controversion of the report.

17. Relying upon the aforesaid statutory provision, learned Senior Counsel drew the attention of the Court to the communication dated 21.02.2012 placed on record, the perusal whereof reveals that the petitioner Company had, within the aforesaid statutory period, notified the concerned Drug Inspector in writing of its intention to adduce evidence in controversion of the report of the Government Analyst under Section 25(3) of the Act. The petitioner Company had also specifically expressed its intention to have the sample retested by the Director, Central Drugs Laboratory, Kolkata and to obtain the report thereof in accordance with the provisions of the Act.

18. It is further submitted that the petitioner Company had itself tested its control samples through its Quality Assurance Department and the samples had passed the sterility test. The petitioner, therefore, disputed the findings of the Government Analyst and sought retesting in accordance with the statutory mechanism. According to learned Senior Counsel, the sample portion produced before the learned Magistrate was required to be dealt with in accordance with Section 25(4) of the Act so as to enable the petitioner to avail its valuable statutory right of obtaining a report from the Central Drugs Laboratory.

19. It is also contended that, despite the aforesaid position, the sample was never received by the Central Drugs Laboratory, Kolkata. Reference was

made to the report dated 25.10.2016 of the Director-in-Charge, Central Drugs Laboratory, Kolkata, which categorically recorded that, upon verification of the records, no such sample had been received by the Laboratory from the Court of the learned Chief Judicial Magistrate, Kathua. It was, therefore, contended that the petitioner was deprived of the opportunity of having the sample tested by the Central Drugs Laboratory and thereby lost a valuable statutory right available under Section 25 of the Act.

20. Mr. Sunil Sethi, learned senior counsel for the petitioner, has submitted that where an accused is deprived of the valuable statutory right conferred by Sections 25(3) and 25(4) of the Act to have the sample tested by the Central Drugs Laboratory, despite having duly notified his intention to controvert the report of the Government Analyst, such deprivation causes serious prejudice to the defence and continuation of the criminal proceedings in such circumstances would amount to an abuse of the process of law.

21. Learned senior counsel has further submitted that where the accused has exercised the statutory right to have the sample tested by the Central Drugs Laboratory within the prescribed period, but the sample is not sent or tested before expiry of its shelf life on account of delay attributable to the prosecution or the authorities, the accused is effectively deprived of the valuable right of re-testing and is thereby seriously prejudiced in his defence. It is, therefore, contended that the prosecution cannot be permitted to proceed on the basis of the earlier report when the statutory opportunity to challenge the same has been

rendered incapable of exercise.

22. From a bare perusal of the order taking cognizance passed by the Court below, it is apparent that the complaint was instituted on 14.05.2012 and that cognizance was taken after a gap of nearly eight years, on 18.02.2020, despite no such report having been received from the Central Drugs Laboratory, Kolkata. In the absence of any such report having been received by the Court, learned Senior Counsel contended that the learned Magistrate ought not to have proceeded to take cognizance and issue process under the Drugs and Cosmetics Act, 1940.

23. It is further submitted that the impugned order dated 18.02.2020 does not adequately deal with the fact that the Central Drugs Laboratory had not received the sample for retesting and nevertheless proceeded to take cognizance on the basis of the Government Analyst's report. According to learned Senior Counsel, once the petitioner had exercised its statutory right to controvert the Government Analyst's report and the sample was thereafter not subjected to the contemplated retesting, continuation of the prosecution without addressing the resultant prejudice to the petitioner would amount to abuse of the process of law.

24. The learned Senior Counsel for the petitioner further submits that the sample in question had a manufacturing date of 2007/08 and an expiry date of July 2012. The shelf life of the sample had, therefore, expired long before the impugned order dated 18.02.2020, and the sample could no longer be subjected to meaningful retesting at this stage. It is thus contended that the very purpose of preserving the petitioner's statutory

right to have the sample tested by the Central Drugs Laboratory has been rendered incapable of fulfillment and that continuation of the prosecution would cause serious prejudice to the petitioner.

Reply on behalf of the Official Respondent:

25. Mr. Raman Sharma, learned AAG appearing for the official respondent, has filed objections wherein it is contended that the impugned complaint has been instituted under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940, on the basis of the report of the Government Analyst declaring the drug in question to be not of standard quality on account of its having failed the sterility test. It is submitted that the allegations contained in the complaint prima facie disclose commission of the offences alleged against the petitioner Company and the other accused persons.

26. Learned AAG has further submitted that the allegations in the complaint pertain to the manufacture, sale and distribution of a drug allegedly not conforming to the prescribed standards and, therefore, involve a matter concerning public health. It is contended that the petitioner has raised disputed questions of fact which cannot appropriately be adjudicated in proceedings invoking the inherent jurisdiction of this Court and are matters which ought to be considered by the learned trial Court in the course of the trial.

27. With regard to the petitioner's contention regarding re-testing of the sample, learned AAG has submitted that, along with the complaint, the complainant had produced the sample portion of the drug before the learned Magistrate and had specifically prayed for its being sent to the

Central Drugs Laboratory, Kolkata, for reanalysis under Section 25 of the Act. It is contended that Section 25(4) confers discretion upon the Court to cause the sample produced before the Magistrate to be sent to the Central Drugs Laboratory for test or analysis. Learned AAG has further submitted that the petitioner did not appear before the learned Magistrate after institution of the complaint and had also not responded to the communications issued by the Drug Inspector seeking the relevant manufacturing, stock, purchase and sale records.

28. Learned AAG has also submitted that the report dated 25.10.2016 issued by the Director-in-Charge, Central Drugs Laboratory, Kolkata, stating that no such sample had been received by the Laboratory, was not received by the office of the complainant. It is further contended that the proceedings cannot be quashed merely on the basis of the assertions made by the petitioner, particularly when the allegations concern an offence having a bearing upon public health. The learned counsel has, accordingly, prayed for dismissal of the present petition and for permitting the prosecution to proceed before the learned trial Court in accordance with law.

<u>Legal Analysis</u>:

29. Heard learned Senior Counsel appearing for the petitioner and learned AAG appearing for the official respondent and perused the record.

30. Before adverting to the issues which arise for determination in the instant matter, it would be appropriate to notice certain facts emerging from the record which are not in dispute. The sample of ADIS Needles, Batch No. 4752, manufactured by the petitioner Company, was drawn by the Drug

Inspector and was subjected to analysis by the Government Analyst, whose report dated 30.11.2011 declared the sample to be not of standard quality on account of failure of the sterility test. The said report was thereafter communicated to the petitioner Company, which, vide its communication dated 21.02.2012, within the prescribed period of twenty-eight days, notified its intention to controvert the report and specifically sought re-testing of the sample by the Director, Central Drugs Laboratory, Kolkata, in terms of Section 25(3) and (4) of the Act.

31. It is also borne out from the record that the complaint came to be instituted on 14.05.2012 and that the complainant itself sought transmission of the sample to the Central Drugs Laboratory, Kolkata, for re-analysis. The record further indicates that the sample was stated to have been sent by the learned Trial Court for such re-testing, but the report of the Central Drugs Laboratory was not received for more than four years. Eventually, vide communication dated 25.10.2016, the Director-in-Charge, Central Drugs Laboratory, Kolkata, informed the learned Court that no such sample had been received from the Court of the learned Chief Judicial Magistrate, Kathua. Despite the aforesaid position, no report of re-analysis was thereafter obtained and the learned Magistrate ultimately proceeded to take cognizance and issue process vide order dated 18.02.2020 on the basis of the earlier report of the Government Analyst.

32. Thus, the controversy before this Court essentially arises from the manner in which the statutory mechanism under Section 25 of the Drugs and Cosmetics Act was dealt with after the petitioner exercised its right to

controvert the Government Analyst's report. The questions that arise for consideration are, therefore, not merely whether such right was exercised, but also whether the subsequent statutory procedure was duly followed, whether the earlier report could still be relied upon after the failure of re-analysis, whether the limited shelf life of the sample and the delay in the proceedings had any legal consequence, and whether the manner in which the proceedings were thereafter continued can be sustained in law. These aspects discussed hereinabove are required to be dealt in detail. Upon consideration of the pleadings, the material placed on record and the submissions advanced by learned counsel for the parties, the following questions arise for determination:

> **"Question No. 1: Whether the petitioner was deprived of its statutory right under Sections 25(3) and 25(4) of the Drugs and Cosmetics Act, 1940, upon timely seeking re-analysis of the sample by the Central Drugs Laboratory?**
>
> **Question No. 2: Whether, after the petitioner exercised its statutory right to have the sample re-tested by the Central Drugs Laboratory, the learned Trial Court could proceed on the basis of the earlier report of the Government Analyst?**
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> **Question No. 3: What procedure were the learned Magistrate and the Drug Inspector required to follow under Section 25 of the Drugs and Cosmetics Act, 1940, after the petitioner had notified its intention to controvert the Government Analyst's report and sought re-analysis/re-testing of the sample by the Central Drugs Laboratory?**
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> **Question No. 4: Whether a drug sample, after expiry of its shelf life, can be meaningfully re-tested or relied upon for sustaining the prosecution?**
>
> **Question No. 5: Whether the learned Trial Court failed to ensure timely and effective compliance with the statutory procedure under the Drugs and Cosmetics Act, having regard to the object of the Act and its serious public health implications?**

Question No. 6: To whom is the delay of almost eight years, from the institution of the complaint on 14.05.2012 till the passing of the impugned order dated 18.02.2020, attributable, and what consequence follows therefrom?

Question No. 7: Whether the prolonged pendency of the prosecution, violates the requirement of a fair and speedy trial under Article 21 of the Constitution of India, particularly when the prosecution concerns a matter having serious ramifications for public health?

Question No. 8: Whether, in the facts of the present case, continuation of the prosecution amounts to abuse of the process of law warranting exercise of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 akin to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ***(for short 'the BNSS')*****?**

Questions No. 1 - Whether the petitioner was deprived of its statutory right under Sections 25(3) and 25(4) of the Drugs and Cosmetics Act, 1940, upon timely seeking re-analysis of the sample by the Central Drugs Laboratory?

33. Before examining the facts of the present case, it would be apposite to notice the statutory scheme contained in Section 25 of the Drugs and Cosmetics Act, 1940, which prescribes a specific mechanism governing the evidentiary value of the report of the Government Analyst and the procedure to be followed where the person concerned intends to adduce evidence in controversion of such report. For facility of reference, Section 25 of the Drugs and Cosmetics Act, 1940 is reproduced as under:

"25. Reports of Government Analysts.—

(1) The Government Analyst to whom a sample of any drug 3 [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 4 [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 to the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken 5 [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 analyzed 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 3 [or cosmetic] produced before the Magistrate under subsection (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."

34. The significance of the aforesaid statutory mechanism is that the report of the Government Analyst is not to attain conclusiveness where the person concerned, within twenty-eight days of receipt of a copy thereof, notifies in writing his intention to adduce evidence in controversion of the same. The statute consequently provides a further mechanism for analysis of the sample by the Central Drugs Laboratory, whose report is

accorded conclusive evidentiary value under sub-section (4). The right so conferred upon the person concerned is, therefore, a substantive statutory safeguard and not a mere procedural formality.

35. In the present case, the Government Analyst, vide report dated 30.11.2011, declared the sample of ADIS Needles, Batch No. 4752, to be not of standard quality on account of failure of the sterility test. The petitioner Company, upon receipt of the said report, responded vide communication dated 21.02.2012 and, within the prescribed period of twenty-eight days, expressly notified the Assistant Controller, Drug & Food Control Organisation along with the Drug Inspector of its intention to adduce evidence in controversion of the Government Analyst's report and sought re-testing of the sample through the Director, Central Drugs Laboratory. The relevant part of the said communication reads as under:

> ***"2. Further we investigated samples in our QA department which passes in sterility test hence we do not agree with the findings of the Govt. Analyst and wish to challenge the report.***
>
> ***3. Be that as it may, we intend to adduce evidence in contravention of the said report U/S 25(3) of the Drugs and Cosmetic Act, 1940, within the prescribed period as laid down therein based on our receipt of the report. Such adducing is done to get the sample re-tested through the Director, CDL and not the Govt. Analyst and the report there upon to be sent in Form-2 as per provision of law.***
> ***This intimation may please be considered as is 'notified in writing' to concerned Inspector of Drugs as per provision laid down U/S 25(3) of the said Act."***

36. The aforesaid communication leaves little scope for doubt that the petitioner had not merely disputed the findings of the Government Analyst, but had consciously and expressly invoked the statutory mechanism under Section 25(3) and sought re-testing of the sample by the Director, Central Drugs Laboratory. The subsequent record also

demonstrates that this request was acted upon by the complainant side, as the Screening Committee of the Drugs and Food Control Organization recommended that the sample be sent to the Central Drugs Laboratory, Kolkata, for reanalysis/retesting. The complaint instituted on 14.05.2012 itself contained a specific prayer for sending the sample to the Central Drugs Laboratory under Section 25 of the Act. Thus, the statutory right exercised by the petitioner was duly recognised in the proceedings.

37. The Hon'ble Supreme Court in **M/s. Medicamen Biotech Ltd. & Anr. v. Rubina Bose, (2008) 7 SCC 196**, while dealing with the consequence of failure to facilitate timely re-testing of a drug sample and deprivation of the valuable right available under Sections 25(3) and 25(4) of the Act, has held as under:

> ***"18. We find that this judgment helps the case of the appellant rather than that of the respondent because in spite of two communications from the appellant that it intended to adduce evidence to controvert the facts given in the report of the Government Analyst, the fourth sample with the Magistrate had not been sent for re-analysis. The observations in Amery Pharmaceuticals's case (supra) are also to the same effect. We find that the aforesaid interpretation supports the case of the appellants inasmuch they had been deprived of the right to have the fourth sample tested from the Central Drugs Laboratory. It is also clear that the complaint had been filed on the 2nd July 2002 which is about a month short of the expiry date of the drug and as such had the accused appellant appeared before the Magistrate even on 2nd July 2002 it would have been well nigh impossible to get the sample tested before its expiry. In the affidavit filed to the petition by Dr. D. Rao, Deputy Drugs Controller, and in arguments before us, it has been repeatedly stressed that the delay in sending of the sample to the Central Drugs Laboratory had occurred as the appellant had avoided service of summons on it till 9th May 2005. This is begging the question. We find that there is no explanation as to why the complaint itself had been filed about a month before the expiry of the shelf life of the drug and concededly the filing of the complaint had nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after the complaint had been filed. Likewise, we observe that the requests for retesting of the drug had been made by the appellant in August/September 2001 as would be clear from the facts already given above and there is absolutely no reason as to why the complaint could not have been filed earlier and the fourth sample sent for***

retesting well within time. We are, therefore, of the opinion that the facts of the case suggest that the appellants have been deprived of a valuable right under Section 25(3) and 25(4) of the Act which must necessitate the quashing of the proceedings against them."

38. The Hon'ble Supreme Court, while dealing with the analogous statutory mechanism under the Insecticides Act, 1968, in **State of Haryana v. Unique Farmaid (P.) Ltd. & Ors., (1999) 8 SCC 190**, has also held that 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."

39. The principle emerging from the aforesaid decisions is that once the statutory right to controvert the analyst's report is exercised within the prescribed period, the accused cannot subsequently be deprived of the corresponding opportunity of having the sample examined by the Central Laboratory on account of a failure in the statutory process. In the present case, the petitioner exercised the right on 21.02.2012, while the sample was still within its shelf life and as recorded by the Court of the learned Chief Judicial Magistrate, Kathua the sample had already been sent to the Central Drugs Laboratory, Kolkata. However, the report of the Central Drugs Laboratory was not received which is evident from a bare perusal of communication dated 25.10.2016, the

Director-in-Charge informed the Court that no such sample had been received from the Court of the learned Chief Judicial Magistrate, Kathua. The statutory process, therefore, remained incomplete.

40. The failure to obtain the report of the Central Drugs Laboratory cannot, in the circumstances of the present case, be attributed to any failure on the part of the petitioner to exercise the right available under Section 25(3). On the contrary, the petitioner had expressly exercised that right within the prescribed period and had specifically sought re-testing by the Central Drugs Laboratory. The subsequent failure to secure the report, despite the sample having been sent by the Court, allegedly, resulted in deprivation of the very statutory safeguard which the petitioner had timely invoked. This assumes greater significance as the sample expired in July, 2012 and therefore, the opportunity of obtaining a meaningful re-analysis was itself time-sensitive.

41. In view of the aforesaid statutory scheme, the communication dated 21.02.2012 and the principles laid down by the Hon'ble Supreme Court in Medicamen Biotech and Unique Farmaid, this Court is of the considered view that the petitioner had duly exercised the statutory right under Section 25(3) and had invoked the mechanism contemplated under Section 25(4). The failure thereafter to secure the report of the Central Drugs Laboratory deprived the petitioner of the valuable opportunity which the statute had specifically conferred upon it. The statutory mechanism, having been invoked within time, could not be allowed to fail to the prejudice of the petitioner.

Accordingly, Question No. 1 is, answered in favour of the petitioner and

against the official respondent.

Question No. 2: Whether, after the petitioner exercised its statutory right to have the sample re-tested by the Central Drugs Laboratory, the learned Trial Court could proceed on the basis of the earlier report of the Government Analyst?

42. Section 25 of the Drugs and Cosmetics Act prescribes a specific statutory mechanism for dealing with a Government Analyst's report once the person concerned notifies, within the prescribed period, his intention to adduce evidence in controversion thereof. Under Section 25(4) of the Act, upon such notification, the sample is required to be sent to the Central Drugs Laboratory for test or analysis and the report of the said Laboratory is made conclusive evidence of the facts stated therein. The legislative scheme and intent thus clearly contemplates that, once the statutory right of re-testing has been invoked, the report of the Central Drugs Laboratory assumes overriding and conclusive significance and the earlier report of the Government Analyst cannot be treated as the final basis for determining the controversy.

43. The Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Ghisa Ram, AIR 1967 SC 970**, while considering an analogous statutory mechanism under the Prevention of Food Adulteration Act, recognized the importance of the right of the accused to have the sample analyzed by the superior laboratory and held as under:

> ***"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."***

44. In the present case, the petitioner had, within the prescribed period, notified the Drug Inspector of its intention to controvert the Government Analyst's report and specifically sought re-testing of the sample by the Central Drugs Laboratory, Kolkata. The sample was allegedly, thereafter, sent by the learned Trial Court to the Central Drugs Laboratory. Once this statutory course had been adopted, the earlier report of the Government Analyst could not thereafter be treated as the report upon which the prosecution could finally proceed, particularly when, the very purpose of sending the sample to the Central Drugs Laboratory was to obtain the report contemplated under Section 25(4) of the Act. The Learned Trial Court was required to obtain the said report before proceeding on the merits of the allegation against the petitioner.

45. The record, however, shows that the report of the Central Drugs Laboratory was never received. After waiting for more than four years, the learned Trial Court received the communication dated 25.10.2016 from the Director-in-Charge, Central Drugs Laboratory, Kolkata, stating that no such sample had been received from the Court. The relevant part of the communication has been reproduced here as under:

> ***"With reference to above regarding test report of ADIS Needles, Batch No. 4752, D/M:08/2007, D/E:07/2012, Manufactured by M/s Albert David Ltd., 207, New Industrial Area No. 2, Manideep – 462046, Near***

> ***Bhopal (M P.), it is to inform you that our records have been carefully checked and found that no such sample was received by this laboratory for testing from your Hon'ble Court."***

46. The said communication could not have resulted in the Court simply reverting to the earlier Government Analyst's report, because the statutory process of re-testing had already been invoked and the sample had been sent for that very purpose. The appropriate course for the Learned Trial Court was to ascertain what had happened to the sample and to take effective steps in accordance with law. The mere non-receipt of the CDL report did not restore the earlier Government Analyst's report to the position which it occupied before the petitioner exercised its statutory right.

47. The position becomes even more significant in view of the limited shelf life of the sample, which expired in July, 2012. By the time the learned Trial Court ultimately proceeded to take cognizance and issue process on 18.02.2020, the sample had long ceased to be available for meaningful re-testing. Thus, the very statutory mechanism through which the petitioner was entitled to controvert the Government Analyst's report had been rendered incapable of completion, while the Court nevertheless proceeded on the basis of the very report which the petitioner had lawfully chosen to controvert. Such a course would, in effect, defeat the statutory right conferred under Section 25 and permit the earlier report to operate as conclusive in circumstances in which the statutory process had already moved beyond it.

48. Therefore, in the peculiar facts of the present case, the earlier report of the Government Analyst could not have been treated as a substitute for,

or as superseding, the report contemplated under Section 25(4) of the Act. Once the petitioner had exercised its statutory right and the sample had been sent for re-testing, the learned Trial Court could not validly issue process against the petitioner on the basis of the earlier report without first obtaining the report of the Central Drugs Laboratory or otherwise addressing the failure of the statutory re-testing mechanism. The issuance of process on the basis of the earlier Government Analyst's report, after the statutory mechanism had been invoked and the sample had become incapable of re-testing, therefore had no legal sanctity in the peculiar facts of the present case.

Accordingly, Question No. 2 is answered in favour of the petitioner and against the official respondent.

Question No. 3: What procedure were the learned Magistrate and the Drug Inspector required to follow under Section 25 of the Drugs and Cosmetics Act, 1940, after the petitioner had notified its intention to controvert the Government Analyst's report and sought re-analysis/re-testing of the sample by the Central Drugs Laboratory?

49. It would be profitable to refer to Section 25 of the Drugs and Cosmetics Act, 1940, which prescribes a specific procedure to be followed once the person concerned notifies his intention to controvert the report of the Government Analyst. In the present case, once the petitioner had exercised its right under Section 25(3) of the Act, the procedure contemplated under Section 25(4) was required to be duly followed.

50. The principles laid down by the Hon'ble Supreme Court in **M/s. Medicamen Biotech Ltd. & Anr. v. Rubina Bose, (2008) 7 SCC 196**, as noticed hereinabove, are equally apposite to the present issue wherein it was held as under:

> ***"13…A reading of the aforesaid provisions would reveal that they lay certain obligations as well as provide safeguards for a person from whom a drug has been seized for analysis or testing as Section 25(3) specifies that unless such a person controverts the correctness of the report submitted by the Government Analyst within 28 days in writing that he intends to adduce evidence to controvert the report of the Analyst, it would be deemed to be conclusive evidence of the quality of the drug whereas sub-section (4) of Section 25 obliges the Magistrate on the request of the complainant or the accused or on in his own motion to send the fourth sample which has been disputed for fresh testing to the Director of the Central Drugs Laboratory.***
>
> ***14. It is the case of the appellant that despite the fact that the appellant had repeatedly controverted the accuracy of the report of the Government Analyst the fourth sample had still not been sent to the Director for re-testing and analysis. We find that the argument raised by the learned counsel for the respondent that the appellant had never expressed a desire to controvert the report of the Drug Analyst is not correct as is clear from the letter dated 28th August 2001 addressed to the Assistant Director General, Government Medical Stores Depot…"***

51. Similarly, the Hon'ble Apex Court in **"Northern Mineral Ltd. v Union of India and Anr.", 2010 (7) SCC 726,** while considering the statutory mechanism governing the testing of the sample and the consequence of failure to follow the prescribed procedure, held as under:

> ***"23. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before Court where proceeding in respect of the samples is pending. Further the Court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused.***
>
> ***24. No proceeding was pending before any Court, when the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. Appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory."***

52. The Court was required to ensure that the sample produced before it was effectively transmitted to the Central Drugs Laboratory and that the test or analysis contemplated by the statute was carried out. The duty did not end by merely mentioning that the sample had been sent

for re-testing. The statutory procedure was required to be completed in substance and within a period in which the sample could still be meaningfully analysed.

53. In the present case, as recorded by the learned Chief Judicial Magistrate, Kathua, the Court had sent the sample to the Central Drugs Laboratory, Kolkata for re-testing. Once the sample had been sent, it was the bounden duty of the Court to ensure that the sample reached the laboratory timely and the report was received within the period during which the validity and shelf life of the sample subsisted. The Court could not merely continue awaiting the report indefinitely, particularly when the sample was due to expire in July, 2012 and the entire statutory mechanism was dependent upon timely analysis of the very sample in question.

54. The record, however, reveals that the Court continued to await the report for more than four years and issued reminders to the Central Drugs Laboratory. When the Laboratory ultimately informed the Court on 25.10.2016 that no such sample had been received, the matter required immediate and effective scrutiny. The question which naturally arose was as to what had happened to the sample after it had been sent by the Court, at what stage it was lost or failed to reach the Laboratory and who was responsible for such failure. Such inquiry was necessary not only for ensuring compliance with the statutory procedure but also for fixing responsibility for the failure, instead of allowing the consequences of that failure to fall upon the accused.

55. The learned Magistrate, instead of undertaking such an exercise, vide

order dated 06.07.2017 merely directed the Drug Inspector to take necessary steps in light of the report dated 25.10.2016. Thereafter, nothing effective appears to have been done. The order dated 18.02.2020 which is impugned in the instant petition also does not disclose what steps were taken after the communication regarding non receipt of the sample from the Central Drugs Laboratory was received, nor does it disclose any inquiry into the whereabouts of the sample or the circumstances in which it failed to reach the Laboratory.

56. The duty in such circumstances was not confined to the Court alone. The Drug Inspector, being the complainant and the officer responsible for setting the statutory machinery in motion, and to ensure that the procedure contemplated by Section 23 and Section 25 of the Act was effectively complied with. If the sample had not reached the Central Drugs Laboratory, it was incumbent upon the complainant and the Court to ensure that the sample was again dealt with in conformity with the statutory provision, subject of course to its availability and condition.

57. The clerical machinery of the Court also had a corresponding role in ensuring compliance with the directions issued by the Court. The statutory procedure could not be reduced to a paper exercise, where reminders were issued for years while the sample's shelf life continued to run out.

58. The learned Magistrate, however, did not undertake such an exercise and, after allowing a further period to lapse, ultimately proceeded to issue process on 18.02.2020 on the basis of the earlier Government

Analyst's report. Thus, the very procedure which had been initiated to protect and give effect to the petitioner's statutory right was not brought to its logical conclusion. The Court, the clerical staff and the Drug Inspector in unison were required to act with greater diligence, particularly because the sample had a limited shelf life and the statutory scheme itself attached importance to timely testing.

59. The failure to ensure timely transmission, receipt and analysis of the sample, followed by the failure to ascertain the circumstances in which the sample did not reach the Central Drugs Laboratory, has resulted in the statutory procedure being rendered ineffective. The Court, therefore, could not proceed as though no request for reanalysis had ever been made.

Question No. 3 is answered accordingly, with the finding that the statutory procedure required active and timely compliance by the Court and the complainant machinery, which was not undertaken in the present case.

Question No. 4: Whether a drug sample, after expiry of its shelf life, can be meaningfully re-tested or relied upon for sustaining the prosecution?

60. The question of shelf life assumes significance in the context of the statutory right of re-analysis under Section 25 of the Drugs and Cosmetics Act. The said provision necessarily contemplates that the sample remains available and capable of being meaningfully tested when the accused invokes the statutory mechanism. The right to re-analysis cannot be preserved in papers while the sample, by passage of time, becomes incapable of being subjected to the very test for which such right was exercised. In the present case, the drug sample ('ADISTM', Batch No. 4752) had an expiry date of 07/2012, which

lapsed long before cognizance was taken in 2020.

61. The Hon'ble Apex Court, in **"Laborate Pharmaceuticals India Ltd. v. State of Tamil Nadu [(2018) 15 SCC 93]"** while considering the significance of shelf life in the context of the statutory right of re-analysis, held as under:

> ***"8. The cognizance of the offence(s) alleged in the present case was taken on 4th March, 2015 though it appears that the complaint itself was filed on 28th November, 2012. According to the appellant the cough syrup had lost shelf life in the month of November, 2012 itself. Even otherwise, it is reasonably certain that on the date when cognizance was taken, the shelf life of the drug in question had expired. The Magistrate, therefore, could not have sent the sample for reanalysis by the Central Laboratory***
>
> ***9. All the aforesaid facts would go to show that the valuable right of the appellant to have the sample analyzed in the Central Laboratory has been denied by a series of defaults committed by the prosecution; firstly, in not sending to the appellant-manufacturer part of the sample as required under Section 23(4)(iii) of the Act; and secondly, on the part of the Court in taking cognizance of the complaint on 4th March, 2015 though the same was filed on 28th November, 2012. The delay on both counts is not attributable to the appellants and, therefore, the consequences thereof cannot work adversely to the interest of the appellants. As the valuable right of the accused for re-analysis vested under the Act appears to have been violated and having regard to the possible shelf life of the drug we are of the view that as on date the prosecution, if allowed to continue, would be a lame prosecution"***

62. The same principle finds support from the judgment of the Punjab and Haryana High Court in '**Shiv Narain Bansal and Anr. v. State of Haryana and Anr.', 1996 Cri LJ 338**, while considering the consequence of failure to send the sample to the Central Drugs Laboratory within its shelf life, the Court held as under:

> **"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."**

63. The principle emerging from the aforesaid decisions is squarely attracted to the present controversy. The statutory right of the petitioner was exercised while the sample was still within its shelf life. Once the sample was required to be sent for re-analysis pursuant to such exercise of the statutory right, it was incumbent upon the authorities concerned and the Court to ensure that the process was completed before the expiry of the sample. The subsequent expiry of the sample could not render the right so exercised incapable of enforcement.

64. In the present case, the sample had an expiry date of July, 2012, whereas the report of the Central Drugs Laboratory, Kolkata was not received within that period. Rather, after more than four years, the Central Drugs Laboratory informed the Court on 25.10.2016 that no such sample had been received by them. The consequence was irreversible, as by then the shelf life of the sample had expired and the opportunity to obtain the statutory re-analysis had been lost. Such loss of opportunity cannot be treated as a mere procedural lapse, since it directly affects the petitioner's ability to controvert the Government Analyst's report through the mechanism specifically provided by the statute.

65. The expiry of the sample also assumes significance because the inability to undertake re-analysis at this stage cannot be attributed to the petitioner, who had already exercised its statutory right before expiry of the sample. The subsequent passage of time, during which the sample was not received by the Central Drugs Laboratory and no effective steps were taken to secure its timely examination, cannot operate to the prejudice of the petitioner. To permit the prosecution to rely upon the earlier report in such circumstances would effectively deprive the petitioner of a statutory safeguard which was available to it when the right was exercised.

66. The statutory scheme of the Drugs and Cosmetics Act assumes particular significance in this regard, as the procedure contemplated thereunder is inherently time-bound and the efficacy of the statutory right of re-analysis is closely connected with the shelf life of the drug. Timely action by the authorities is therefore essential to preserve the sample for meaningful examination and to ensure that the statutory right of the accused is not rendered illusory by the passage of time. Furthermore, the judgments referred in the preceding questions have also emphasized the importance of ensuring that the drug is tested within its prescribed shelf life.

67. Therefore, once the sample expired in July, 2012 without its having been subjected to the re-analysis contemplated under Section 25(4), the statutory opportunity of obtaining the Central Drugs Laboratory's report stood irreversibly lost. A sample whose shelf life has expired cannot, in the peculiar facts of the present case, be treated as capable of

meaningful re-testing, nor can the consequence of the lost opportunity be fastened upon the petitioner.

Accordingly, Question No. 4 is answered in favour of the petitioner and against the official respondent.

Question No. 5: Whether the learned Trial Court failed to ensure timely and effective compliance with the statutory procedure under the Drugs and Cosmetics Act, having regard to the object of the Act and its serious public health implications?

68. The Drugs and Cosmetics Act, 1940 is intended to regulate the import, manufacture, distribution and sale of drugs and to ensure that drugs made available to the public conform to the prescribed standards of quality and safety. The object of the legislation has a direct bearing upon public health and the statutory procedure prescribed thereunder is, therefore, required to be complied with diligently and within the time contemplated by the Act. The public-health dimension of the enactment has also been judicially recognised in **Vikas Rambal v. State**, Crl.O.P. No.11184/2019, decided on 12.10.2022, wherein the High Court of Madras, while referring to the Statement of Objects and Reasons of the Drugs and Cosmetics (Amendment) Act, 1982, 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/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."

69. 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.

70. The aforesaid object assumes particular significance in the facts of the present case. Once the petitioner had disputed the report of the Government Analyst and the sample was sent by the Court to the Central Drugs Laboratory for re-testing as recorded by the learned Chief Judicial Magistrate in January, 2013, it was incumbent upon the

Court to ensure that the sample actually reached the Laboratory and that the statutory process was completed expeditiously. This was all the more necessary as the sample had a limited shelf life and was due to expire in July, 2012. The statutory mechanism could not, therefore, have been allowed to remain in abeyance merely by awaiting the report of the Central Drugs Laboratory.

71. The record, however, discloses that the complaint was instituted on 14.05.2012 and the matter thereafter remained pending awaiting the report of the Central Drugs Laboratory. The learned Trial Court itself noticed that the sample had been referred for re-testing and that the report was awaited and directed the concerned clerk to send a reminder. Thereafter, instead of taking effective measures to ascertain whether the sample had actually reached the Laboratory and, if not, to ensure its transmission, the matter continued to linger through reminders.

72. The matter was permitted to remain pending until 18.02.2020, when the learned Trial Court proceeded to issue process on the basis of the earlier report of the Government Analyst, without securing the report of the Central Drugs Laboratory or examining the circumstances leading to the non-receipt of the sample.

73. In the considered view of this Court, such an approach was contrary to the mandate and spirit of the Drugs and Cosmetics Act. Where the very object of the legislation is to protect public health by ensuring the quality and safety of drugs, the Court is required to ensure that the statutory process is carried forward with due expedition and effectiveness. In prosecutions under this Act, where time is strictly of

the essence, mere issuance of reminders, without ensuring that the sample reached the Central Drugs Laboratory within its shelf life, defeated the very purpose of the re-testing mechanism and ultimately rendered the statutory process incapable of achieving its object. ***Question No. 5 is answered accordingly.***

Question No. 6: To whom is the delay of almost eight years, from the institution of the complaint on 14.05.2012 till the passing of the impugned order dated 18.02.2020, attributable, and what consequence follows therefrom?

74. The chronology of the present case reveals a delay which cannot be treated as an ordinary or inconsequential delay. The complaint was instituted on 14.05.2012, whereas cognizance was taken only on 18.02.2020. Thus, nearly eight years elapsed between institution of the complaint and issuance of process. During this entire period, the material issue concerning reanalysis of the sample remained unresolved, despite the sample having a limited shelf life and despite the petitioner having exercised its statutory right to seek reanalysis.

75. The impugned order dated 18.02.2020 itself records that after the complaint was presented on 14.05.2012, no order appeared to have been recorded and, when the matter subsequently came before the then learned Chief Judicial Magistrate, a report was obtained from the concerned clerk. The learned Magistrate noticed that the complaint appeared to have been presented on 14.05.2012, that one of the samples had been referred for retesting and that the report was awaited, whereafter a direction was issued to the concerned clerk to send a reminder. The relevant part of the impugned order reads as under:

> ***"Today during proceedings it revealed that complaint in question came to be presented before the court on 14.05.2012 but no order appears to have been recorded after presentation of the complaint and it was only on 19.01.2013 when the matter came up before the then CJM who obtained report from the concerned clerk on 14.01.2013 and thereafter observed that as per the file, the complaint appears to have been presented on 14.05.2012 and one of the sample stands referred for retesting and the report is awaited and the direction was issued to the concerned clerk to send reminder. The order of the court dated 14.01 2013 reads as under:"***

76. Significantly, however, the same order refers to the order of the Court dated 14.01.2013, thereby creating an apparent inconsistency with the preceding reference to the matter having come up before the learned CJM on 19.01.2013. Further, the said order dated 14.01.2013, which is relied upon in the impugned order, has itself not been reproduced or otherwise brought on record. More importantly, there is no corresponding official judicial order on record evidencing that the sample was, in fact, directed to be sent for re-testing to the Central Drugs Laboratory, Kolkata.

77. Assuming that the sample had been sent when the complaint was instituted, and considering that its shelf life was only up to July, 2012, it was incumbent upon the Court and the concerned authorities to ensure that the sample reached the Central Drugs Laboratory within the period when it could still be tested. Instead, several years passed with the Court merely awaiting the report and issuing reminders. The statutory timeline inherent in the nature of the sample was thus allowed to lapse without any effective measure being taken to secure compliance.

78. The position became even more serious when the Central Drugs Laboratory, after more than four years, communicated vide report dated 25.10.2016 that no such sample had been received from the Court. This was such a response which could not have been easily digested by the Learned Trial Court. Since the record of the trial Court indicated otherwise that the sample had been sent to the Central Drugs Laboratory and the Learned Trial Court ought to have dived deep into the issue by conducting an inquiry into the actual circumstances in which the sample failed to reach the Laboratory.

79. However, to the contrary, the Learned Magistrate vide order dated 06.07.2017, merely directed the Drug Inspector to take necessary steps in light of the report dated 25.10.2016. The record does not disclose any effective follow-up thereafter. The impugned order dated 18.02.2020 passed by the Court below is conspicuously short of any reasoning as to what measures were adopted after the report of the Director, Central Drugs Laboratory, was received in 2016, why the sample had not reached the Laboratory and what steps were taken to ascertain the responsibility for such failure.

80. The responsibility in such a situation could not have been placed upon the petitioner. The petitioner had exercised its statutory right within the prescribed period and had sought reanalysis while the sample was still within its shelf life. This Court therefore is of the view that the delay occurred within the machinery responsible for giving effect to the statutory procedure. The Drug Inspector, being the complainant, was also under an obligation as to why the sample had not reached the

Central Drugs Laboratory and to ensure compliance with the statutory requirements.

81. The Learned Trial Court including the concerned clerical machinery, also had a bounden duty to ensure that the directions for transmission and follow-up of the sample were effectively complied with. Once, the Court had sent the sample, and the Central Drugs Laboratory subsequently stated that it had not received it, it was the bounden duty of the Court to ascertain what had happened in between, where the sample had been lost and on whose account the same has been lost. These questions were required to be gone into in detail and responsibility, if found, was required to be fastened rather than allowing the consequences of such failure to fall upon the accused.

82. The fact that the learned Court of Chief Judicial Magistrate, Kathua continued to await the report for more than four years and after receiving the Laboratory's response, allowed a further period of four years to pass until 2020, leading to an inordinate delay of about eight long years in total, without effectively resolving the issue, **shocks the conscience of this court**.

83. The learned trial Court, the clerical staff and the Drug Inspector were required to ensure compliance with the statutory procedure, which this Court is afraid to observe was not done. The delay is therefore not attributable to conduct of the petitioner which could justify denying the petitioner the benefit of the statutory mechanism it had invoked. The manner in which the matter proceeded is a stark instance where the statutory timeline was allowed to become meaningless. A sample

having shelf life only up to July, 2012 was followed up for years, the Central Drugs Laboratory ultimately stated that it had never received the sample and yet the prosecution was permitted to proceed in 2020 on the basis of the earlier report. This Court is **deeply perturbed to note the casual manner in which the whole exercise has been done**.

84. Therefore, this Court is of the considered view that this issue cannot end merely with setting aside the entire process but the circumstances disclosed by the record warrant examination of the entire case threadbare with a view to fix the responsibility for such inordinate delay and the failure in transmission of the sample so that, such incidents do not recur, particularly in matters concerning drugs where the statutory timelines and shelf life have a direct bearing upon public health.

Question No. 6 is accordingly answered by holding that the conduct of the prosecution machinery, the Drug Inspector and the Court authorities requires examination for fixing responsibility in accordance with law.

Question No. 7: Whether the prolonged pendency of the prosecution, violates the requirement of a fair and speedy trial under Article 21 of the Constitution of India, particularly when the prosecution concerns a matter having serious ramifications for public health?

85. It goes without saying that the right to a fair and speedy trial forms an important component of the guarantee of life and personal liberty under Article 21 of the Constitution of India. The requirement assumes particular significance in a criminal prosecution where the accused is subjected to the continuing burden of criminal proceedings for a prolonged period and where the passage of time has a direct bearing upon the right of the accused to effectively defend the prosecution.

86. In the present case, admittedly the complaint was instituted on 14.05.2012, whereas process was issued only on 18.02.2020. During this period, the central issue concerning the reanalysis of the sample remained unresolved. The delay was not merely a delay in conclusion of trial. It resulted in the destruction of the very evidentiary opportunity which the petitioner had sought to avail under Section 25 of the Act.

87. Such a consequence cannot be viewed in isolation from the conduct of the proceedings. The Court continued to await the report for approximately eight years and issued only reminders, while the matter remained without effective resolution until 2020. Besides, the impugned order also does not disclose any satisfactory explanation for this prolonged inaction.

88. The fact that the prosecution concerns public health does not dilute the requirement of a fair and speedy procedure. Indeed, where the allegation concerns the quality of a drug, it becomes all the more important that the statutory testing mechanism be completed promptly and correctly. The interests of the public require a reliable determination regarding the quality of the drug, while the interests of the accused require that the statutory opportunity to contest such determination be preserved.

89. The present case demonstrates how delay can affect both sides of the statutory scheme. On one hand, prolonged delay defeats the timely determination of whether the drug was actually of substandard quality; on the other, it deprives the accused of the opportunity to obtain an independent statutory determination from the Central Drugs

Laboratory. The statutory object cannot be served by allowing both consequences to follow from an unexplained failure in the process.

90. The requirement of a fair and speedy procedure cannot be satisfied by keeping the prosecution alive for years and thereafter proceeding on the basis of an earlier report after the statutory opportunity to test that report has ceased to exist.

Question No. 7 is accordingly answered by holding that, in the peculiar facts of the present case, the prolonged delay and resultant deprivation of the statutory right of defense have materially affected the fairness of the proceedings and attracted the guarantee of Article 21 of the Constitution.

Question No. 8: Whether, in the facts of the present case, continuation of the prosecution amounts to abuse of the process of law warranting exercise of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 akin to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS')?

91. This Court is conscious of the fact that the power under Section 482 of the Code of Criminal Procedure [akin to Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)] is an extraordinary jurisdiction and is to be exercised with care and circumspection. However, where the continuation of a criminal proceeding would result in abuse of the process of law or where the foundational circumstances necessary for a fair prosecution have been rendered impossible by the manner in which the statutory procedure has been dealt with, the inherent jurisdiction of the Court can be invoked to secure the ends of justice.

92. The Hon'ble Apex Court in **"State of Karnataka v. M. Devendrappa & Anr.", (2002) 3 SCC 89** while delineating the scope and purpose of the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, has held as under:

> ***"6…It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice….. It is to be exercised exdebite justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice…"***

93. Similarly, the Hon'ble Supreme Court in **"Hasmukhlal D. Vora & Anr. Vs. The State of Tamil Nadu", [2022] 16 S.C.R. 113** , held as under :

> ***"28. It must be noted that the High Court while passing the impugned judgment, has failed to take into consideration to the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice…."***

94. This High Court in **"Cipla Limited v. State of Jammu & Kashmir and anr.", CRMC No.614/2016** decided on 30.09.2022 while relying upon *Medicamen Biotech Limited v. Rubina Bose*, (2008) 7 SCC 196, also held as under:

> ***"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."***

95. In the present case, the entire exercise undertaken by the learned Magistrate, commencing with transmission of the sample for reanalysis,

followed by waiting for years, receipt of a communication that the sample had not reached the Central Drugs Laboratory, failure to inquire into the circumstances leading to such delay and ultimately issuance of process on the basis of the earlier report, vitiates the mandate and spirit of the Act. The process issued thereafter cannot be permitted to sustain.

96. Thus, continuation of the prosecution would therefore require the petitioner to face criminal proceedings even though the statutory mechanism for testing the disputed sample was never effectively completed and the possibility of such testing has since been lost due to circumstances not attributable to the petitioner. This is a case where interference under the inherent jurisdiction of this Court is warranted to prevent abuse of the process of law and to secure the ends of justice.

Accordingly, Question No. 8 is answered in favour of the petitioner and against the official respondent.

<u>Lapses</u>:

97. The record discloses serious lapses at different stages of the proceedings which require to be examined separately. At the very inception, the order passed by the learned Magistrate itself reflects an apparent inconsistency, inasmuch as the complaint was instituted on 14.05.2012, whereas the order records that the complaint appeared to have been presented on that date and that one of the samples had already been referred for retesting, for which the report was awaited. Be that as it may, the sample in question had a limited shelf life and was to expire in July, 2012. Once the petitioner had exercised its statutory right under

Section 25 and the sample was required to be sent to the Central Drugs Laboratory for re-analysis, it was incumbent upon the concerned authorities and the learned Court to ensure that the sample reached the Laboratory within the period during which it could have been meaningfully tested. Instead, the matter was allowed to linger by merely awaiting the report and issuing reminders, without any effective measure being taken to ascertain whether the sample had actually reached the Central Drugs Laboratory.

98. This aspect assumes significance in the light of the statutory scheme under Section 23 of the Act, whereby the sample is required to be divided into prescribed portions, including a portion to be produced before the Court. It therefore needs to be ascertained as to where the sample was after it was sent by the learned Court, at what stage it ceased to be traceable and who was responsible for ensuring compliance with the statutory procedure. For facility of reference section 23 of the Drugs and Cosmetics Act 1940 is reproduced hereunder:

> ***"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 acknowledgment 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 willfully 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 the 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 thereof.

99. The lapse becomes more serious after the communication dated 25.10.2016 was received from the Central Drugs Laboratory, Kolkata,

categorically stating that no such sample had been received from the Court of the learned Chief Judicial Magistrate, Kathua. At that stage, the learned Court was confronted with a fundamental failure in the very statutory mechanism which had been set in motion for protecting the petitioner's right of re-analysis. The Court was therefore required to ascertain at that stage how the sample had gone missing and at what stage it had failed to reach the Laboratory and on whose account, such failure had occurred, so as to take effective measures for securing compliance with the statutory procedure.

100. The Learned Magistrate instead, vide order dated 06.07.2017, merely directed the Drug Inspector to take necessary steps, without any further effective action being reflected from the record. No inquiry was undertaken as to the whereabouts of the sample, no responsibility was fixed and no effective or coercive measure was taken to ascertain why the report had not been received. The role of the Drug Inspector also requires examination, particularly as he was the complainant and the officer through whom the statutory process had commenced, as to whether he had taken all steps required of him under the statutory scheme and whether, after the sample was sent for re-analysis, he had taken appropriate steps to ensure that the statutory process was brought to its logical conclusion.

101. The position becomes still more inexplicable when the subsequent conduct of the learned Court is examined. Despite having been informed in the year 2016 that the Central Drugs Laboratory had not received the sample and despite the order dated 06.07.2017 directing

the Drug Inspector to take necessary steps, no effective proceedings were undertaken till the year 2020. The learned Magistrate ultimately passed the impugned order dated 18.02.2020 and took cognizance on the basis of the earlier report of the Government Analyst, although by then the sample had already expired in July, 2012 i.e. almost eight years earlier. The impugned order does not disclose what steps were taken between 2016 and 2020 to ascertain the fate of the sample, why the failure of the sample to reach the Central Drugs Laboratory was not investigated, or how the prosecution could meaningfully proceed once the sample had lost its shelf life.

102. Once the sample had expired, the question whether it had actually been sent to Central Drugs Laboratory, Kolkata or lost midway, assumed even greater significance, because the opportunity for meaningful re-analysis had become irretrievably lost. The matter thus discloses lapses both before and after the year 2016, which falls exclusively within the domain of learned Court and its clerical staff and also the Drug Inspector, which requires to be specifically examined and responsibility is also required to be fixed. Such examination is all the more necessary as the proceedings concern the quality and safety of a drug and any serious lapse in ensuring timely compliance with the statutory mechanism may have direct and serious ramifications for public health.

103. This is a rare case which shocks the judicial conscience of this Court, where a sample stated to have been sent by the Court to the Central Drugs Laboratory was not received by the said Laboratory for almost eight years, while the Court continued to await the report without

taking any effective or coercive measures to secure the same or examining the circumstances in which the sample had failed to reach the Laboratory. After waiting for such an inordinate period, the learned trial Court proceeded to rely upon the earlier report of the Government Analyst and issued process on the basis thereof, notwithstanding that the said report had lost its significance in the peculiar facts and circumstances of the case. Equally significant is the fact that the sample had a limited shelf life and had already expired in July, 2012, yet the proceedings continued for several years thereafter without any effective determination as to how and why the statutory process remained incomplete. Once the validity of the sample had expired in July, 2012, the question as to how and under what circumstances the proceedings before the learned trial Court continued for almost eight years thereafter, and what legal sanctity could attach to such proceedings in the absence of the very sample being available for re-analysis, requires a thorough examination. The matter, therefore, warrants a threadbare inquiry into the circumstances leading to the non-receipt of the sample by the Central Drugs Laboratory, the prolonged inaction thereafter, and the responsibility for permitting the proceedings to continue despite the expiry of the sample.

Conclusion:

104. In view of the foregoing discussion, the impugned order dated 18.02.2020 passed by the learned Chief Judicial Magistrate, Kathua, whereby cognizance was taken and process was issued against the petitioner, along with the consequential proceedings arising therefrom,

cannot sustain and are accordingly quashed qua the petitioner. However, having regard to the serious lapses noticed in the handling and transmission of the sample, and the fact that time is of the essence under the statutory scheme governing Drugs and Cosmetics Act, 1940 this Court deems it appropriate that the matter be examined on the administrative side so that such lapses do not recur.

105. Accordingly, the learned Registrar General of this Court shall place the judgment passed by this Court alongwith the complete paper-book of the instant case and the entire scanned record of the Learned Trial Court before Hon'ble the Chief Justice on the administrative side for appropriate action.

106. In addition, the Drug Controller, Drugs and Food Control Organization, J&K, Jammu shall also constitute a Committee within one week from today headed by him and he will be at liberty to co-opt two members having requisite expertise in the Drugs and Cosmetics Act and the statutory procedure governing testing and analysis of drug samples.

107. The said Committee shall examine the lapses noticed in the present case and fix the responsibility for the same, whether there was any lapse or negligence on the part of the Drug Inspector or any other officer concerned with the matter and also to ascertain the reasons why the sample once dispatched by the competent Court has not reached the Central Drugs Laboratory, Kolkata. The committee shall also inquire whether there was any mischief or role played by any official of the petitioner-Company in manipulating the record with the intention that

the sample should not reach before the Central Drugs Laboratory, Kolkata by providing an opportunity of being heard to all the stakeholders. The entire exercise shall be undertaken within four weeks from the date of the constitution of the Committee so that such lapses do not recur in future, particularly as time is of the essence under the statutory scheme and any serious lapse in matters concerning the testing of drugs may have a direct bearing upon public health. The Drug Controller shall submit its report in a sealed cover before the Registrar Judicial of this Court thereafter.

108. The Registry shall place the said report of the Drug Controller before this Court by way of index for further appropriate action.

109. The petition is, accordingly, allowed in the aforesaid terms.

110. Registry is directed to provide complete paper book of the instant case along with the entire scanned record of the learned Trial Court before Learned Registrar General of this Court and also to Drug Controller, Drugs and Food Control Organization, J&K, Jammu forthwith.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
18.08.2026
Vijay

Whether the judgment is speaking : Yes
Whether the judgment of reportable: Yes