HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT JAMMU

CRMC 17/2017 CrlM(1746/2020) IA(1/2017)

Reserved on: 10.09.2026
Pronounced on: 22.09.2026
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Whether the operative part or
full judgment is pronounced: **Full**

1) Maxmed Life Sciences Pvt.ltd. and ors.
Plot No.5, Sector -2, D.C.SIDCUL,
Rudrapur, Uttarakhand
(Company under Companies Act,)
2) Sanjeev Wasan age 47 years,
s/o Kulbushan Kumar Wasan,
Director, Maxmed Life Sciences Pvt. Ltd. and ors.
Plot No.5, Sector -2, D.C.SIDCUL,
Rudrapur, Uttarakhand
3) Kulbushan Kumar Wasan, age 76 years
s/o Sh. Amar Nath Wasan
Director, Maxmed Life Sciences Pvt. Ltd. and ors.
Plot No.5, Sector -2, D.C.SIDCUL,
Rudrapur, Uttarakhand

...Petitioner(s)

Through: Mr. Varut Gupta, Advocate.

VERSUS

State of Jammu and Kashmir,
Through Drug Inspector Jammu Zone-IV,
C/o Office of Deputy Controller,
Drugs and Food Control Organization,
Muthi, Jammu, J&K

...Respondent(s)

Through: Mr. Raman Sharma, AAG. With Ms. Salika Shiekh, AC

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

JUDGEMENT

Prayer:

1. The petitioners, through the medium of the instant petition, have called in question the complaint preferred by the complainant before the Court of learned Chief Judicial Magistrate, Jammu, and the proceedings arising therefrom, which complaint has been filed under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940

(hereinafter referred to as "the Act"), as also all subsequent orders passed therein. Learned counsel for the petitioners has vehemently argued that the complainant has filed a complaint under Section 18(a)(i) read with Section 27(d) of the Act against the petitioners, who are the Directors of the petitioner-company, and also against other persons, the details whereof have been referred to in the impugned complaint. Since the petitioner No. 3 has already left for heavenly abode, therefore, the instant petition survives only insofar as petitioner Nos. 1, 2 are concerned as petitioner No.3 has already been deleted from the array of parties vide order dated 28.12.2020. The instant petition has been filed by the petitioners under Section 561-A of the Code of Criminal Procedure (section 528 of BNSS), challenging the legality as well as the maintainability of the proceedings arising out of the complaint filed before the Court of learned Chief Judicial Magistrate, Jammu, by virtue of which process of summons was issued against the petitioners.

Brief Facts:

2. The brief facts arising out of the case are that on 16.01.2014, the respondent/complainant lifted the sample of the drug "Amzone" from the premises of M/s Chest and Disease Hospital, Bakshi Nagar, Jammu, and the details of the drug in question are as under:

Drug in Question	Amzone
Batch No.	MLI-386
Date of Manufacture	12/2013
Expiry Date	11/2015
Manufactured by	Maxmed Life Sciences Pvt. Ltd.

3. Further, the fact of the matter is that one sample portion of the drug in question was sent to the Government Analyst, Jammu, for test and analysis vide Form No. 18, in conformity with Rule 56 of the Drugs and Cosmetics Rules, 1945. The Government Analyst, Jammu, vide report dated 11.02.2014, issued in Form No. 13 under Rule 46, declared the drug in question as "Not of Standard Quality" on the ground that the sample failed the test for particulate matter.

4. It is the further case of the petitioners that the respondent/complainant thereafter, as alleged in the impugned complaint, directed the Medical Officer, Chest and Disease Hospital, Jammu, to disclose the source of purchase of the drug in question, and in reply thereto, the Medical Officer disclosed the name of M/s Hussain Brothers, Srinagar, as the source of purchase and distribution. In reply thereto, the said firm disclosed the name of the petitioner-company as the source of distribution and manufacturer of the drug in question. Learned counsel for the petitioners further submits that the respondent issued a statutory notice bearing No. DIJ/AB/NSQ/03-14/167-170 dated 01.03.2014 under Section 25(2) of the Act, informing the petitioner-company of the test report issued by the Government Analyst, Jammu.

5. The petitioner-company immediately replied to the said notice and objected to and expressed its disagreement with the report issued by the Government Analyst, Jammu, and intimated its intention to adduce evidence against the said report, requesting the respondent to re-analyse the sample of the drug in question. It is further submitted that the

intention to get the drug re-analyzed was conveyed within the statutory period prescribed under the Act, i.e. 28 days, as mandated under Section 25(3) of the said Act.

6. The petitioner-company, through its reply, informed the respondent that the mandatory control samples of the drug "Amzone" lying in its manufacturing unit had been tested in its in-house laboratory as well as in a Government-approved laboratory and, in both laboratories, the drug was found to conform to the prescribed standards. The further fact of the matter is that after communicating with the petitioner-company, the respondent issued a communication dated 28.04.2014 to the Deputy Controller, Drugs and Food Control Organization, Jammu, and informed her about the investigation conducted in the matter in hand and also sought necessary directions in view of the disagreement shown by the petitioner-company with the report of the Government Analyst, as well as its request for re-analysis of the drug.

7. It is further pleaded that vide communication dated 19.05.2014, the office of the Controller, Drugs and Food Control Organization, accorded prosecution permission in favour of the respondent to file the complaint against the petitioner-company and others, and it was further pleaded that the sample of the drug in question be also sent for re-analysis/re-testing under the provisions of Section 25(4) of the aforesaid Act.

Submissions on behalf of the petitioners:

8. Mr. Varut Gupta, learned counsel for the petitioners, has vehemently argued and placed reliance upon Sections 25(3) and 25(4) of the Act and submits that when a person intimates his intention to adduce evidence against the

report of the Government Analyst in terms of the aforesaid statutory provisions, then, in that eventuality, the Drug Inspector is under a legal obligation to institute a complaint before the competent Court along with an application for sending the drug for re-analysis and has to produce the fourth sample portion of the drug lifted under Section 23(4) before the said Court. The said Court is under a legal obligation to forward the fourth sample portion to the Director, Central Drugs Laboratory, for his opinion, which opinion would constitute the conclusive evidence as to whether the drug conforms to the prescribed standards or otherwise.

9. Learned counsel for the petitioners further submits that, in utter disregard of the aforesaid statutory provisions invoked by the petitioners, the respondent-Drug Inspector chose to file the criminal complaint against the petitioners but failed to approach the competent Court with an application for getting the drug re-analysed in conformity with Section 25(4) of the aforesaid Act.

10. The wrong, according to the petitioners, has not only been committed by the complainant, but the Court has also fallen into error while acting contrary to the law and procedure envisaged under the Act. The Court below, without going into the contents of the complaint and the documents annexed thereto and without due application of mind, took cognizance of the offence and issued process against the petitioners. The Court, while issuing the process, failed to appreciate the intention of the petitioner-company to have the sample of the drug re-analysed in terms of Section 25 and, therefore, caused grave prejudice to the statutory rights of the petitioners. By the time the

summons were received by the petitioners, it has been submitted by learned counsel that the shelf life of the drug had expired.

11. Therefore, aggrieved and dissatisfied with the initiation and continuation of the impugned proceedings pending before the Court of learned Chief Judicial Magistrate, Jammu, and the subsequent orders passed therein, the petitioners were left with no other option but to file the instant petition invoking the inherent powers of this Court in terms of Section 561-A Cr.P.C.

12. The Court, after feeling prima facie satisfied, by virtue of an interim order dated 10.01.2017, has already stayed the proceedings before the Court of learned Chief Judicial Magistrate, Jammu, in the case titled "State through Drug Inspector, Jammu v. Hussain Brothers and Ors.", which, according to Learned counsel, is continuing as on date. The Learned counsel, in the aforesaid backdrop, submits that the impugned complaint, the order of issuance of summons and all subsequent orders are without due application of mind and are illegal and cannot withstand the test of law and, therefore, are required to be quashed/set aside. Learned counsel further submits that the complaint preferred under the Act is liable to be dismissed in the eventuality that the statutory rights guaranteed under Section 25 of the aforesaid Act are denied to a person who has shown his intention to adduce evidence in controversion of the report in terms of Section 25(3) of the Act.

13. According to the learned counsel, the Court has also fallen into error, as the Court below, without due application of mind, took cognizance prematurely and issued summons

against the petitioners in the light of the admitted fact of intimation of the right of re-analysis and, instead of getting the drug in question re-tested/re-analysed from the Central Drugs Laboratory, as envisaged under Sections 25(3) and 25(4) of the Act, allowed the proceedings to continue and issued process. Such process, according to learned counsel, cannot withstand the test of law, as the same is violative of the statutory rights of the petitioners and the provisions of the Act itself.

14. Learned counsel for the petitioners submits that the issue is no more *res integra* and *that the statutory right to challenge the report of the Analyst is effectively invoked once the person concerned, within the prescribed period, notifies in writing his intention to adduce evidence in controversion of the report.* Such intimation does not require a separate or specific request for sending the sample to the Central Laboratory. Once, such intention is duly notified, the conclusiveness attached to the report of the Analyst stands displaced and the statutory mechanism for re-analysis of the sample under the corresponding provision is required to be followed. The right so conferred is a substantive statutory safeguard and cannot be defeated by treating the requirement of re-analysis as a mere procedural formality.

15. Thus, learned counsel further submits that the action on the part of the respondent in filing the impugned complaint and the cognizance taken thereafter by the competent Court cannot withstand the test of law and are liable to be set aside. The record reveals that this Court, after feeling prima facie satisfied, has granted an interim order staying the aforesaid proceedings.

16. When a specific query was put to learned counsel for the petitioners as to whether, in the peculiar facts and circumstances of the case, where the petitioner-company had already expressed its intention for re-testing of the drug within the statutory period and the respondent had failed to comply with the statutory mechanism, the earlier report, which had lost its significance, could subsequently be relied upon. Learned counsel submits that the said report had already lost its significance, particularly when the petitioner had opted for re-testing/re-analysis from the Central Drugs Laboratory, as envisaged under the Act. Another query was raised with regard to the shelf life of the drug, to which learned counsel replied that, once the shelf life of the drug had expired, no subsequent order could be passed either by this Court or by the Court below for re-testing of a drug which had already lost its validity. According to learned counsel, the only course left for this Court was to quash the proceedings arising out of the complaint. He, therefore, submits that the entire proceedings, commencing from the filing of the complaint and all proceedings emanating therefrom, are liable to be set aside, as the procedure prescribed under the Act had not been followed by the respondent.

17. Learned counsel, in the aforesaid backdrop, lastly submits that, in the peculiar facts and circumstances of the case, the petitioner-company has been deprived of its valuable statutory right to have the drug in question re-analysed/re-tested by the Central Drugs Laboratory, notwithstanding the admitted fact that the petitioner had, within the stipulated period, intimated the respondent of its intention to adduce evidence in controversion of the report of the

Government Analyst. It is further submitted that the Controller, Drugs and Food Control Organization, had granted permission not only to file the complaint but also to send the sample for re-testing. Learned counsel further emphasizes that, under Section 25(4) of the Act, the report of the Central Drugs Laboratory alone could constitute conclusive evidence in the circumstances of the present case, particularly when the petitioner had already exercised its option for such re-testing. However, admittedly, the sample was not sent to the Central Drugs Laboratory and, consequently, no report was received from the said Laboratory which could be relied upon by the respondent against the petitioners or treated as conclusive evidence against them.

18. The aforesaid principle also assumes significance in the present case in view of the submission of learned counsel that the plea of the respondent, as pleaded in paragraph 16 of the complaint, that the petitioners have lost their statutory right merely because their communication referred to an NABL-accredited laboratory, is not tenable in law. He submitted that the only requirement under the statute on the part of the petitioners was to controvert the said report and, once such controversion had already been made and the intention had been conveyed to the respondent within the statutory period, the respondent was under a legal obligation, qua the petitioners, to refer the sample to the Central Drugs Laboratory, even if the petitioners had asked for testing by a particular laboratory. This aspect of the matter, according to learned counsel for the petitioners, has already been dealt with by the Hon'ble Apex Court in the judgments relied upon by him.

Submissions on behalf of respondent:

19. Mr. Raman Sharma, learned AAG, per contra, has drawn the attention of the Court to the scheme and mandate of Section 25 of the Act, which deals with the report of the Government Analyst. In advancing his argument, learned counsel appearing on behalf of the respondent has relied upon Sections 25(3) and 25(4) of the aforesaid Act. A perusal thereof reveals that any document purporting to be a report signed by the Government Analyst shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom the sample was taken has, within 28 days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceeding in respect of the sample is pending that he intends to adduce evidence in controversion of the report.

20. The Learned counsel for the respondent has also placed reliance upon Section 25(4) of the aforesaid Act, which provides that 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 at its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by or under the authority of the Director of the Central Drugs Laboratory, the result thereof, and such report shall be conclusive evidence of the facts stated therein.

21. Thus, according to learned counsel for the respondent, a conjoint reading of both the statutory provisions makes it abundantly clear that the only laboratory recognized under law is the Central Drugs Laboratory, where the sample can be sent and the report of the said laboratory shall constitute conclusive evidence in a particular case. However, the petitioners, by virtue of the communication placed on record, have shown their intention to have the drug re-tested or re-analyzed from a reputed NABL-accredited testing laboratory to verify their claim, which, according to the respondent, is not recognized by law.

22. It was further argued that since the petitioners had shown their intention to re-analyze the sample from a particular laboratory, i.e. NABL, which has no legal recognition in terms of the aforesaid provision, the sample was rightly not sent to the said laboratory. Therefore, no fault can be attributed to the action on the part of the respondents. Had there been any intention on the part of the petitioners to have the sample re-tested or re-analyzed from the Central Drugs Laboratory, then perhaps the petitioners would have been right in saying that the respondent had not exercised the option which the statute permits them to follow. Since a demand was made for testing by a particular laboratory which has no legal recognition in terms of the statute, the sample was not sent to the said laboratory. Therefore, no fault can be found with respect to the action on the part of the respondents.

23. The petitioners admittedly, in the instant case, have not chosen to exercise the option for re-testing/re-analysis from the designated laboratory, i.e. Central Drugs Laboratory, and instead have chosen re-analysis of the sample from

NABL (National Accreditation Board for Testing and Calibration of Laboratories),. The learned counsel for the respondent has vehemently argued that once the petitioners have chosen to exercise their option for re-analyzing/re-testing from a laboratory which is not recognized by law, the respondent was not obliged to act in furtherance of the same, as the petitioners had not exercised their option strictly in tune with the mandate of law prescribed under Section 25(3) of the Act. Since there was no such demand from the petitioners for re-testing/re-analysis from the designated laboratory recognized under law, the respondents did not send the said sample to the said laboratory which was never asked for. Having not done that, learned counsel for the respondent submits that since the petitioners have failed to exercise their option as envisaged under law, the only report which had already been submitted by the State Drug Laboratory, whereby the sample had been declared as not of standard quality, has to be relied upon. Therefore, the interim direction passed by this Court, which is harshly operating against the respondent, is liable to be vacated so that the proceedings, which have been stalled on the strength of the aforesaid order, are allowed to proceed and the Court below is permitted to proceed against the petitioners in accordance with law, as the initial report has to be relied upon in the instant facts and circumstances of the case.

24. Lastly, learned counsel for the respondent submits that even if the prayer of the petitioners, as mentioned in paragraph 5 of the said communication, were complied with and the sample could have been sent to the laboratory as asked for, i.e. NABL, then what would be the sanctity of the

report of the said laboratory, which is not recognized under law, and whether the said report could be treated as conclusive evidence of the drug being standard or otherwise, when the statute recognizes only that if the sample has been declared as standard or otherwise by the Central Drugs Laboratory, then, and only then, the same shall constitute conclusive evidence of the quality of the said drug. Since the petitioners had requested the respondent to test the sample from a laboratory not recognised under law, no fault can be attributed to the respondent for not acting in accordance with the mandate of the statute when the petitioners themselves are at fault and have not acted in consonance with the statutory scheme.

Legal Analysis:

25. Having heard learned counsel for the parties and having gone through the record, the controversy which falls for consideration in the present petition is a narrow one. The question is as to whether, in the facts and circumstances of the present case, the petitioners, having within the statutory period of twenty-eight days disputed the report of the Government Analyst and expressed their intention to adduce evidence in controversion thereof, stood deprived of their statutory right under Section 25(3) and (4) of the Act merely because, while seeking re-analysis, they referred to an NABL-accredited laboratory instead of specifically mentioning the Central Drugs Laboratory.

26. Before examining the rival submissions, it would be apposite to notice the scheme of Section 25(3) and (4) of the Drugs and Cosmetics Act,1940 which read as under:

25. Reports of Government Analysts.

"(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 analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analysts 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."

27. A bare perusal of the aforesaid provision attaches conclusiveness to the report of the Government Analyst subject to the statutory exception carved out therein. The report does not attain such conclusiveness where the person from whom the sample was taken, or the person whose particulars have been disclosed under Section 18-A, within twenty-eight days of receipt of a copy of the report, notifies in writing the Inspector or the Court before which the proceedings are pending that he intends to adduce evidence in controversion of the report.

28. Sub-section (4) of Section 25 provides the mechanism which follows such intimation. Where a person has notified

his intention under sub-section (3), the sample produced before the Magistrate under Section 23(4) may be caused to be sent to the Central Drugs Laboratory for test or analysis and the report of the Director of the said Laboratory is made conclusive evidence of the facts stated therein.

29. In the present case, it is significant to note that the respondent has not disputed that the petitioner-company, upon receipt of the report of the Government Analyst, expressed its disagreement with the said report and conveyed its intention to have the sample re-analysed. The respondent's case, as set out in the complaint itself, is that the petitioner-company sought re-analysis from an National Accreditation Board for Testing and Calibration Laborites NABL- and, therefore, according to the respondent, forfeited its right of re-analysis from the Central Drugs Laboratory. The very stand taken by the respondent, therefore, proceeds on the admitted premise that the petitioners had disputed the report of the Government Analyst and had sought re-analysis.

30. The mere fact that the petitioners, in their communication, referred to “any NABL accredited laboratory” cannot, by itself, be construed as an abandonment or waiver of the statutory right available to them under Section 25(3) of the Act. The fact that the petitioners may have used an expression different from the statutory terminology while requesting re-analysis may render the request imperfect in form, but the substantive requirement under Section 25(3) is whether they had communicated, within the prescribed period, their intention to controvert the Government Analyst's report. On the admitted facts, such intention was clearly communicated.

31. The distinction between the statutory requirement under Section 25(3) and the procedure contemplated under Section 25(4) assumes significance. The petitioners were not required, as a condition precedent under Section 25(3), to correctly identify or nominate the Central Drugs Laboratory. Once their intention to controvert the report was duly communicated within the prescribed period, the statutory mechanism under Section 25(4) was available for obtaining the conclusive opinion of the Director, Central Drugs Laboratory. The respondent, therefore, could not have treated the reference to an NABL-accredited laboratory as, by itself, resulting in forfeiture of the statutory right.

32. The Hon'ble Supreme Court, in **Northern Mineral Ltd. v. Union of India & Anr., (2010) 7 SCC 726**, held as under:

> ***"From the language and the underlying object behind Section 24(3) and (4) of the Act as also from the ratio of the decisions aforesaid of this Court, we are of the opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis."***

33. Furthermore, the expression "may" occurring in Section 25(4) of the Drugs and Cosmetics Act, 1940 cannot be construed as conferring an unfettered discretion upon the learned Trial Court. Though the provision employs the word "may", its true import has to be determined having regard to the scheme of Section 25, the legislative intent and, most importantly, the statutory right conferred upon the person from whom the sample was taken to controvert the Government Analyst's report.

34. The Hon'ble Supreme Court in **Rakesh RanjanShrivastava v. State of Jharkhand, (2024) 4 SCC 419**, has expressly held that the use of the word "may" does not invariably make a provision discretionary. The Court observed:

> ***"There is no doubt that the word "may" ordinarily does not mean "must". Ordinarily, "may" will not be construed as "shall". But this is not an inflexible rule. The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may". It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word "may" has been used is also relevant."***

35. The same principle was recognized in Hari **Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104**, wherein the Hon'ble Supreme Court observed as under:

> ***"It is well established that an enactment in form mandatory might in substance be directory and that the use of the word 'shall' does not conclude the matter."***

36. Likewise, in **State of U.P. and Others v. Babu Ram Upadhya, 1960 SCC OnLine SC 5**, Hon'ble Supreme Court observed as under:

> ***"The word "shall" in its ordinary import is "obligatory"; but there are many decisions wherein the courts under different situations construed the word to mean "may".***

37. Applying the aforesaid principle to the statutory provision as envisaged under Section 25(4), there are cogent reasons to construe "may" as "shall" in the circumstances contemplated by the statutory provision mentioned supra which are enumerated as under:-

i) *From the bare reading of Section 25(3) it is apparently clear that it creates a specific statutory right. Ordinarily, the report of the Government Analyst is made conclusive evidence of the facts stated therein. The legislature, however, expressly carves out an exception where the person from whom the sample was taken, within twenty-eight days of receiving the report, notifies his intention to adduce evidence in controversion of that report. The legislature has*

therefore consciously recognized a right to challenge the Government Analyst's report.

ii) *Section 25(4) provides the mechanism through which that right is to be made effective. Once the person has exercised the right under sub-section (3), the sample is capable of being tested or analyzed by the Central Drugs Laboratory and the report of that Laboratory is itself made conclusive evidence. Thus, the provision is not merely procedural; it is the statutory mechanism for resolving the conflict between the Government Analyst's report and the defence of the person affected by that report.*

iii) *The Hon'ble Supreme Court has repeatedly treated the right under Section 25 as a valuable statutory right. The importance of that right is particularly evident because, if the sample is not sent to the Central Drugs Laboratory while it remains capable of being tested, the person may permanently lose the opportunity of obtaining an independent analysis. The Hon'ble Supreme Court has recognized that where delay attributable to the prosecution deprives the accused of this statutory right, the consequences can be fatal to the prosecution.*

iv) *A construction which treats "may" as an entirely discretionary power would defeat the very right which Section 25(3) expressly preserves. The legislature cannot reasonably be taken to have created a right to controvert the Government Analyst's report while simultaneously conferring an unrestricted discretion to refuse the statutory mechanism necessary for*

exercising that right. Such an interpretation would make the protection contained in sub-section (3) largely illusory.

v) The expression "may" must therefore be read in the context of the consequence of its exercise. Where the person has complied with Section 25(3) by notifying his intention to controvert the Government Analyst's report, and the statutory conditions for resorting to Section 25(4) are otherwise satisfied, refusal to facilitate examination of the sample by the Central Drugs Laboratory would deprive that person of the very statutory safeguard which the legislature intended to provide.

vi) *The principle is therefore not that the word "may" must invariably be substituted with "shall". Rather, in the particular statutory context of Section 25(3) and (4), the legislative intent, the nature of the right conferred and the consequences of non-exercise of the power justify construing "may" as "shall". Such an interpretation gives effect to the provision by way of purposive interpretation rather than rendering the statutory right to controvert the Government Analyst's report ineffective.*

38. Accordingly, this Court is of the opinion that once the statutory conditions under Section 25(3) are fulfilled and the person entitled under the provision has duly exercised his right to controvert the Government Analyst's report, the Court's power under Section 25(4), though expressed as "may", assumes a mandatory character where its exercise is necessary to preserve and give meaningful effect

to that statutory right as the Court has to give weightage to the purpose, object and legislative intention behind the provision so that interpretation advances the object of law.

39. The aforesaid view also finds support from the judgment of the Hon'ble Supreme Court in **'M/s. Medicamen Biotech Ltd. and Another v. Rubina Bose, Drug Inspector'**, **(2008) 7 SCC 196,** wherein the Hon'ble Supreme Court, while examining the very provisions of Section 25(3) and (4) of the Act, recognized the right of the accused to have the disputed sample tested by the Central Drugs Laboratory once the statutory requirement of notifying the intention to controvert the Government Analyst's report had been fulfilled. The Court further held that deprivation of such valuable right, in the facts of that case, necessitated quashing of the proceedings. 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….***

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' 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."***

40. 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."***

41. 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."

42. The principle that emerges from the aforesaid judgments is not merely that a fresh report from the Central Drugs Laboratory is desirable, but that the statutory right afforded to the accused to have the disputed sample subjected to the conclusive test contemplated under Section 25(4) constitutes a valuable safeguard in the prosecution under the Act. The importance of the right becomes even more pertinent where the shelf life of the drug expires and the sample can thereafter no longer be subjected to a meaningful statutory re-analysis.

43. In the present case, the petitioners have specifically pleaded that the summons in the impugned complaint were received by them in November, 2016, whereas the shelf life of the drug in question had expired in November, 2015. Thus, by the time the petitioners were called upon to appear before the learned Magistrate, the sample had already crossed its prescribed shelf life. Consequently, the petitioners could not, upon their appearance before the learned Magistrate, effectively seek an order for sending the sample for re-analysis to the Central Drugs Laboratory in terms of Section 25(4) of the Act. The opportunity contemplated under Section 25(4), therefore, had already become practically unavailable by the time the petitioners came before the learned Magistrate.

44. The fact that the shelf life of the drug had expired assumes significance in the present case. The purpose of re-analysis or re-testing is to ascertain, through the statutory mechanism, the quality and conformity of the drug which is

the subject matter of the prosecution. Once the prescribed shelf life of the drug has expired, the purpose of subjecting the sample to a fresh analysis is substantially defeated. The opportunity for such re-analysis, therefore, cannot be regarded as effectively available merely because the physical sample may have continued to exist.

45. The importance of the shelf life of the drug has also been considered by this Court in **"Albert David Limited v. Union Territory of J&K &Ors."**, CRM(M) No. 618/2024, decided on 18.08.2026, wherein, while examining the statutory mechanism for re-analysis under the Drugs and Cosmetics Act, this Court observed as under:

> ***"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…."***

46. The Hon'ble Supreme Court in **"M/s. Gupta Chemicals Pvt. Ltd. and Others v. State of Rajasthan and Another", (2010) 7 SCC 735**, while examining the valuable statutory right of the accused to have the sample examined by the Central Insecticides Laboratory upon timely communication of his intention, and the consequence of failure to facilitate such examination before expiry of the shelf life of the sample, has held as under:

> ***"12….. As noted earlier in the present case the appellants had intimated the***

> ***insecticide inspector their intention to have the sample tested in the central insecticides laboratory within the prescribed period of 28 days of receipt of the copy of the state analyst report, yet no step was taken by the inspector either to send the sample to the central insecticides laboratory or to file the complaint in the court with promptitude in which case the appellants would have moved the magistrate for appropriate order for the purpose. The resultant position is that due to sheer inaction on the part of the inspector, it has not been possible for the appellants to have the sample examined by the central insecticides laboratory and in the meantime, the shelf-life of the sample of insecticide seized had expired and for that reason no further step could be taken for its examination. In the circumstances, we are of the view that continuing this criminal prosecution against the appellant will be a futile exercise and abuse of the process of court. The High Court was not right in dismissing the petition filed under Section 482 of Cr.P.C."***

47. 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**, wherein, 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."***

48. The aforesaid principle has to be considered in conjunction with the conduct of the petitioners in the instant case, who immediately upon receipt of the report of the Government Analyst, have, within the prescribed period, disputed the report and communicated their intention to adduce evidence in controversion thereof. The petitioners, therefore, did not accept the report as final and had expressly sought an opportunity to have the correctness of the report subjected to further examination. Once such intention had been communicated within the statutory period, the report of the Government Analyst could not, merely by passage of time, be treated as conclusive against the petitioners while simultaneously denying them an effective opportunity of having the sample subjected to the further statutory examination.

49. The position becomes more significant because the expiry of the shelf life occurred before the petitioners could approach the learned Magistrate for the exercise of the power contemplated under Section 25(4). The petitioners cannot

be faulted for not seeking an order which, by the time they received the summons, could no longer have resulted in a meaningful re-analysis of the drug. The statutory right to controvert the report and the statutory mechanism for giving effect to that right have to be viewed together. A right which has been exercised within the prescribed period cannot be rendered ineffective merely because the sample was allowed to reach the end of its shelf life before the person exercising that right could obtain the benefit of the further procedure contemplated by the statute.

50. The contention of the respondent that the petitioners had referred in their communication to re-testing of the drug from "any NABL accredited laboratory" also does not, in the facts of the present case, absolve the respondent of its obligation under the statutory scheme. The reference to an NABL accredited laboratory may indicate the manner in which the petitioners, at that stage, expressed their desire for an independent re-testing of the drug. However, such reference cannot be construed to mean that the petitioners had abandoned or waived the statutory right available to them under Section 25(3) read with Section 25(4) of the Act.

51. Once the statutory right had been invoked, the question of sending the sample for re-analysis was to be considered in accordance with the mechanism prescribed under Section 25(4) of the Act. The reference to an NABL-accredited laboratory, therefore, could not have the effect of relieving the respondent of the obligation to take the necessary steps for placing the sample before the competent Court for consideration of re-analysis by the Central Drugs Laboratory in accordance with the Act.

52. It is also relevant that the record, as noticed hereinbefore, shows that the Controller, vide communication dated 19.05.2014, had permitted prosecution and had directed that the sample be sent for re-analysis/re-testing under Section 25(4). Thus, the question of re-analysis was not wholly alien to the proceedings or raised for the first time before this Court. The statutory mechanism for further examination of the sample had itself been noticed at the departmental level. Yet, the sample was not ultimately subjected to examination by the Central Drugs Laboratory before the expiry of its shelf life.

53. In these circumstances, the respondent cannot take advantage of the petitioners' reference to an "NABL accredited laboratory" and contend that such reference brought the statutory mechanism to an end. The substance of the petitioners' communication was that they disputed the Government Analyst's report and intended to controvert the same by adducing evidence and by seeking re-testing of the drug. The respondent, having knowledge of such intention, could not treat the form in which the petitioners expressed their request as sufficient to deprive them of the statutory safeguard available under the Act.

54. In ***Northern Mineral Ltd.*** **(supra),** the Hon'ble Supreme Court considered, in particular, the very contention that the accused had merely notified its intention to adduce evidence in controversion of the Analyst's report but had not specifically requested that the sample be sent to the Central Insecticides Laboratory. While examining the scope of the corresponding provisions, the Hon'ble Supreme Court held as under:

"11. .... Further intention of adducing evidence in controversion of the Insecticide Analyst report clothes the Magistrate the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds but accused can not be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.

12. The decisions of this Court in the cases of National Organic Chemical

Industries Ltd. (Supra), Unique Farmaid (P) Ltd. &Ors. (Supra) and M/s. Gupta Chemicals Pvt. Ltd. (Supra), in our opinion do support Mr. Nehra's contention. True it is that in first two cases, the accused, besides sending intimation that they intend to adduce evidence in controversion of the report accused persons have specifically demanded for sending the sample for anlaysis by the Central Insecticides Laboratory. However, the ratio of the decision does not rest on this fact. While laying down the law, this Court only took into consideration that accused had intimated its intention to adduce evidence in controversion of the report and that conferred him the right to get sample tested by Central Insecticides Laboratory. The decision of this Court in the case of M/s Gupta Chemicals (supra) is very close to the facts of the present case. In the said case "on receipt of the information about the State Analyst report the appellants sent intimation to the Inspector expressing their intention to lead evidence against the report" and this intimation was read to mean "their intention to have the sample tested in the Central Insecticides Laboratory". From the language and the underlying object behind Section 24(3) and (4) of the Act as also from the ratio of the decisions aforesaid of this Court, we are of the

opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis."

55. The aforesaid principle makes it clear that mere communication of the intention of the accused to adduce evidence in controversion of the report of the Government Analyst is sufficient to clothe the Magistrate with the jurisdiction to cause the sample to be sent for test or analysis to the Central Drugs Laboratory in terms of Section 25(4) of the Act. No specific or particular form of request for sending the sample to the Central Drugs Laboratory is contemplated once the intention to controvert the report has been duly communicated within the prescribed period.

56. The role of the learned Magistrate, therefore, assumes significance in the present case. Section 25(4) contemplates a further statutory mechanism once the report of the Government Analyst is sought to be controverted. The Court is not required to treat the report of the Government Analyst as conclusively determinative in a case where the

statutory condition contemplated under Section 25(3) has been duly fulfilled. The Court, upon being seized of the complaint and being apprised of the petitioners' earlier communication disputing the Government Analyst's report, was required to examine the effect of such communication and the availability of the sample for the purpose of the further examination contemplated under Section 25(4).

57. The learned Magistrate was, therefore, required to examine whether the petitioners had exercised their statutory right within the prescribed period and, if so, whether the procedure contemplated under Section 25(4) could still be effectively given effect to. This was particularly necessary because the petitioners' right to controvert the Government Analyst's report had already been communicated before the complaint was instituted. The Court could not proceed on the assumption that the Government Analyst's report had retained its conclusive character without first considering the effect of the petitioners' timely communication.

58. The subsequent expiry of the shelf life of the drug is also a circumstance which could not be ignored while considering the continuation of the proceedings. Once the sample had ceased to be valid for meaningful re-analysis, the statutory safeguard available to the petitioners could no longer be effectively implemented. The Court, therefore, had to examine the matter in the context of the actual availability of the statutory remedy and not merely its theoretical availability on the date when the complaint was instituted.

59. Thus, the issue is not merely whether the petitioners had used the expression “NABL accredited laboratory” instead of expressly referring to the Central Drugs Laboratory. The more fundamental question is whether, after the petitioners

had timely disputed the Government Analyst's report and expressed their intention to controvert it, the statutory mechanism for giving effect to that right was duly pursued before the sample lost its validity. In the backdrop of aforesaid facts and circumstances, the answer to the said question, in the considered view of this Court, is clearly in the negative.

60. The petitioners had done what was required of them at the stage contemplated under Section 25(3), as they had communicated within the prescribed period their intention to controvert the report of the Government Analyst. Thereafter, the failure to have the sample subjected to the statutory re-analysis cannot be placed entirely upon the petitioners, particularly when the summons itself reached them only after the shelf life of the drug had expired. By that stage, the opportunity which the petitioners were entitled to avail before the learned Magistrate under Section 25(4) had ceased to be of any practical value.

61. In such circumstances, this Court has no hesitation in holding that the earlier report of the Government Analyst cannot be permitted to operate as a conclusive basis against the petitioners as the petitioners had not accepted that report and they had timely expressed their intention to controvert it. The further statutory opportunity contemplated for resolving such dispute was not effectively availed before the sample expired. To nevertheless treat the earlier report as conclusive would, in effect, deprive the petitioners of the very statutory safeguard which they had sought to invoke.

62. The Hon'ble Supreme Court in ***Northern Mineral Ltd.* (supra),** while considering the effect of such intimation,

observed that the report of the Insecticide Analyst loses its conclusive character once the accused notifies his intention to controvert the same, and held as under:

> ***"11. From a plain reading of* Section 24(3) *of the Act, it is evident that an accused within 28 days of the receipt of the copy of the report of the Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the Court before which the proceeding is pending that it intends to adduce evidence in controversion of the report.* Section 24(4) *of the Act provides that when an accused had notified its intention of adducing evidence in controversion of the Insecticide Analyst report under* Section 24(3) *of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report looses its conclusive character. The Legislature has used similar expression i.e. the "intention to adduce evidence in controversion of the report" in both sub-section (3) and sub- section (4) of* Section 24 *of the Act, hence both the expression has to be given one and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the***

> ***report of the Insecticide Analyst from the class of "conclusive evidence" contemplated under sub-section (3) of* Section 24 *of the Act."***

63. Similarly, in **"Municipal Corporation of Delhi v. Ghisa Ram", AIR 1967 SC 970**, the Hon'ble Supreme Court 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 analyzed 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."***

64. The cumulative effect of the aforesaid circumstances is that the petitioners had timely disputed the report of the Government Analyst; as they had expressed their intention to adduce evidence in controversion thereof and the sample was not sent for examination to the Central Drugs Laboratory before expiry of its shelf life; and the petitioners received the summons only in November, 2016, much after the drug had expired in November, 2015. Consequently, when the petitioners came before the learned Magistrate, the statutory remedy of meaningful re-analysis had already become unavailable.

65. In view of the above, the reference made by the petitioners to re-testing from "any NABL accredited laboratory" cannot be treated as a waiver of their statutory right, nor can it absolve the respondent of its obligation to proceed in accordance with Section 25(4) of the Act. Equally, the learned Magistrate, while dealing with the complaint, was required to take into consideration the fact that the petitioners had already expressed their intention to controvert the Government Analyst's report and that such right could be meaningfully protected only if the statutory mechanism for re-analysis was pursued before the expiry of the shelf life of the drug.

66. Once the sample had expired and could no longer be meaningfully re-tested, the petitioners could not be placed in the position of having to face prosecution solely on the basis of a Government Analyst's report which they had timely elected to controvert. The subsequent expiry of the sample could not operate to the prejudice of the petitioners so as to restore conclusiveness to a report which had already been disputed in accordance with the statutory scheme. The

failure to preserve an effective opportunity for re-analysis has, in the facts of the present case, resulted in substantive prejudice to the petitioners.

67. Therefore, the Government Analyst's report, in the peculiar facts of the present case, cannot be treated as conclusive against the petitioners for sustaining the impugned prosecution, particularly when the petitioners had timely communicated their intention to controvert the same and the opportunity for statutory re-analysis was lost before they even received the summons from the learned Magistrate. The failure to subject the sample to re-analysis before expiry of its shelf life, coupled with the subsequent reliance upon the very report which the petitioners had sought to controvert, has rendered the statutory safeguard contemplated under Sections 25(3) and 25(4) ineffective.

Conclusion:

68. In view of the foregoing discussion, this Court is of the considered view that the petitioners had, within the prescribed period of twenty-eight days, duly disputed the report of the Government Analyst and communicated their intention to adduce evidence in controversion thereof. Once such intention was communicated in terms of Section 25(3) of the Act, the conclusiveness attached to the report of the Government Analyst stood displaced and the statutory mechanism contemplated under Section 25(4) became available. The petitioners could not be deprived of such statutory safeguard merely because, in their communication, they had referred to re-testing by an NABL-accredited laboratory instead of specifically mentioning the Central Drugs Laboratory.

69. The substance of the communication made by the petitioners was that they disputed the Government Analyst's report and sought an independent re-analysis of the sample. The reference to an NABL-accredited laboratory, therefore, could not be construed as a waiver or abandonment of the statutory right available to them under the Act, in the light of the law laid down by the Hon'ble Apex Court wherein it has been held that reference to a particular laboratory will have no effect on the statutory right as provided under the Act, when the accused has shown his inclination for retesting. The subsequent procedure for obtaining the conclusive report was to be governed by Section 25(4), and not by the particular terminology employed by the petitioners in their communication.

70. It is also significant that the respondent was admittedly aware of the petitioners' intention to controvert the report and that the competent authority itself, vide communication dated 19.05.2014, permitted re-analysis/re-testing under Section 25(4) of the Act. However, the sample was not sent to the Central Drugs Laboratory before the expiry of its shelf life. By the time the petitioners received the summons in November, 2016, the drug had already expired in November, 2015, thereby rendering the statutory right available to the petitioner nugatory.

71. In these circumstances, the petitioners cannot be made to suffer the consequences of the loss of an opportunity which they had sought to exercise within the statutory period. The Government Analyst's report, having been timely controverted, cannot be permitted to regain its conclusiveness merely because the sample subsequently

lost its shelf life. To allow the prosecution to continue solely on the basis of such report would result in substantive prejudice to the petitioners and defeat the statutory safeguard contemplated under Sections 25(3) and 25(4) of the Act.

72. Accordingly, this Court finds that continuation of the impugned proceedings against the petitioners would cause manifest prejudice and would amount to permitting the prosecution to proceed without affording the petitioners the statutory safeguard available to them under the Act. The petition is, therefore, allowed. The impugned complaint titled State through Drug Inspector, Jammu v. Hussain Brothers and Ors., pending before the learned Chief Judicial Magistrate, Jammu, insofar as the present petitioners are concerned, the same is dismissed and all consequential proceedings arising therefrom, are hereby quashed.

73. The writ petition is allowed in the manner indicated above.

(Wasim Sadiq Nargal)
Judge

Srinagar:
22.09.2026
Mubashir/ JS

Whether order is speaking : Yes
Whether order is reportable: Yes