

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO Nos.1336 and 472 of 2024

**Reserved on: 02.07.2026
Date of Decision: 10.07.2026**

1. Cr.MMO No.1336 of 2024

M/s Crystal Pharmaceuticals and Another	Petitioners
Versus	
State of Himachal Pradesh	Respondent

2. Cr.MMO No.472 of 2024

M/s Crystal Pharmaceuticals and Another	Petitioners
Versus	
State of Himachal Pradesh	Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Sanjay Jain, Mr. Akshay Jain (*through video conferencing*), Mr. Anuj Nag and Mr. Hakam Bhardwaj, Advocates, in both the petitions.

For the Respondents: Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General, for State.

Sandeep Sharma, J.

By way of instant petitions filed under Section 528 of B.N.S.S/Section 482 Cr.P.C., prayer has been made on behalf of petitioner(s) for quashing of Complaint Case registered under Drugs and Cosmetics Act/ 0000001/2023 (CNR No. HPMA 020126592023), titled **State of H.P**

¹*Whether the reporters of the local papers may be allowed to see the judgment?*

Through Drugs Inspector v. M/s Crystal Pharmaceuticals and Ors. along with all other consequential proceedings pending in the Court of learned Additional Chief Judicial Magistrate, Mandi, District Mandi and Complaint Case Drugs Act/2/2023 (CNR No. HP38010015182023) pending in the Court of learned Additional Chief Judicial Magistrate, Nurpur, District Kangra.

2. Since common questions of facts and law are involved in both the above captioned cases, this Court after having clubbed the same, heard them together and are now being disposed of vide common judgment.

Cr.MMO 1336 of 2024

3. Precisely facts of the case are that on 15.06.2017, the then Drug Inspector received a letter from the Medical Superintendent, Zonal Hospital, Mandi, through the Chief Medical Officer, Mandi regarding sampling and testing of the Propin 40, Batch No. OP-812, Manufacturing Date- September, 2016, Expiry Date- August, 2018, whereafter the Drug Inspector on 17.06.2017 drew samples of same from the Pharmacist, Hospital Dispensary, Zonal Hospital, Mandi for the purpose of test and analysis. On the same day i.e. 17.06.2017, Drug Inspector referred the sample to Government Analyst, CDL 3 Kyd Street, Kolkata for the purpose of test and analysis on Form-18.

4. However, after receipt of report on 28.09.2017 of Government Analyst, Kolkata on Form-13, drugs in question were found 'Not of Standard Quality' for the reason stated under the test of 'Clarity of Solution', 'Particulate Matter' and 'Sterility'. After the receipt of said report from the

Government Analyst, a letter was written to the Pharmacist, Hospital Dispensary, Zonal Hospital, Mandi, to disclose the name and address of the firm from where the drug in question was procured. Another letter dated 10.10.2017 was written to the Medical Superintendent, Zonal Hospital, Mandi, whereby he was also asked to disclose the name and address of the firm from where the drug in question was procured.

5. In response to the afore letter, Medical Officer, Zonal Hospital, Mandi informed vide letter dated 16.11.2017 that the drug in question was purchased from the firm- Crystal Pharmaceuticals, Shop No. 44, N.A.C. Building, Gagret, Una. Thereafter, a letter dated 17.11.2017 was written to the firm- Crystal Pharmaceuticals, Shop No. 44, N.A.C. Building, Gagret, Una, whereby it asked to disclose the name and address to the firm from where the said drug was purchased, however, response to the said letter was received from the manufacturing firm- M/s Crystal Pharmaceuticals, 365, Model Town, Ambala City, Haryana vide letter dated 07.12.2017.

6. On 20.12.2017, a letter along with Form 13 in original and one sealed sample portion of the drug in question was sent to manufacturing firm M/s Crystal Pharmaceuticals, 365, Model Town, Ambala City and in response the manufacturer replied vide letter dated 09.01.2018 that it intend to challenge the Government Analyst report.

7. Upon completion of investigation, the entire case record along with relevant documents was forwarded to the State Drugs Controller, Himachal Pradesh, Baddi, District Solan vide communications dated 17.01.2018 and 09.03.2018 seeking permission to launch prosecution under Section 18(a)(i), punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940. However, the State Drugs Controller, Himachal Pradesh vide communication dated 23.04.2018 directed that action be taken under Section 25(4) of the Drugs and Cosmetics Act, 1940 for obtaining re-analysis of the sample through the Central Drugs Laboratory, Kolkata.

8. On 05.05.2018, an application was moved before the learned Chief Judicial Magistrate, Mandi for re-testing of the sample portion. Thereafter, vide communication dated 11.05.2018, the manufacturing firm was requested to depute its authorized representative to appear before the Court on 21.05.2018. Similarly, vide communication dated 19.05.2018, the Pharmacist of Zonal Hospital, Mandi was also directed to remain present before the learned Additional Chief Judicial Magistrate, Court No. 1, Mandi.

9. Subsequently, vide communication dated 24.05.2018, the manufacturing firm was again requested to appear before the Court on 22.06.2018. Thereafter, vide Memorandum dated 22.06.2018, the learned Additional Chief Judicial Magistrate, Court No. 1, Mandi forwarded the sample to the Central Drugs Laboratory, Kolkata for testing and analysis. Since

no report was received from the Central Drugs Laboratory, Kolkata, a communication dated 03.01.2019 was addressed to the Director, CDL, Kolkata seeking information regarding the test report. In response, the Central Drugs Laboratory vide letter dated 21.01.2019 informed the State Drugs Controlling Authority, Baddi, with a copy to the then Drugs Inspector, Mandi, that the report had already been dispatched to the Court of the learned Additional Chief Judicial Magistrate, Mandi.

10. Thereafter, on 30.01.2019, an application was submitted before the Court below seeking a certified copy of the test report. However, vide communication dated 04.02.2019, the Court informed that no such report pertaining to the drug in question was available on the judicial record and, therefore, a certified copy could not be supplied. In view of the aforesaid position, vide communication dated 21.10.2019, the Deputy Drugs Controller, Himachal Pradesh, Baddi was apprised of the matter. Consequently, the Deputy Drugs Controller vide letter dated 19.11.2019 addressed the Central Drugs Laboratory, Kolkata seeking a copy of the test and analysis report of the drug in question.

11. Thereafter, on 22.03.2021, the then Drugs Inspector again applied for a certified copy of the test report before the Court below. However, vide reply dated 23.03.2021, the Court informed that no such report had been received in respect of the drug in question. On 26.03.2021, the matter

was again reported to the State Drugs Controlling Authority through e-mail with a request to take further necessary action.

12. Thereafter, vide communication dated 16.03.2022, the then Drugs Inspector directly approached the Director, Central Drugs Laboratory, Kolkata and requested a certified copy of the report dated 09.08.2018 whereby the sample had been declared 'Not of Standard Quality'. In response, vide letter dated 31.03.2022, the Director-in-Charge, Central Drugs Laboratory, Kolkata supplied Form-2 along with the aforesaid report declaring the sample portion as 'Not of Standard Quality'.

13. Thereafter, the entire case along with all relevant documents was again referred to the State Drugs Controller-cum-Controlling Authority, Himachal Pradesh, Baddi. Upon consideration of the material placed on record, the State Drugs Controller-cum-Controlling Authority accorded sanction vide letter dated 07.05.2022 for institution of prosecution under Section 18(a)(i) punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 for manufacture, sale and distribution of a drug found to be 'Not of Standard Quality'.

14. Subsequently, on 24.05.2022, the State Drugs-cum-Licensing Authority, Panchkula, Haryana was requested to furnish the constitution details of M/s Crystal Pharmaceuticals, Ambala City, including particulars of

the persons responsible for day-to-day affairs of the firm. As no response was received, reminders were issued on 08.06.2022 and again on 22.06.2022, however, no information was furnished.

15. Thereafter, the then Drugs Inspector approached the State Drugs Controlling Authority, Himachal Pradesh vide communication dated 12.07.2022 requesting intervention with the concerned authority in Haryana. Accordingly, the matter was taken up with the State Drugs Controller, Food and Drugs Administration, Haryana. However, no response was received. Further reminders were issued on 02.08.2022 and 09.12.2022 through the State Drugs Controlling Authority, Himachal Pradesh to the concerned authority in Haryana.

16. Ultimately, on 10.04.2023, the then Drugs Inspector received communication from the State Drugs Controller, Himachal Pradesh enclosing the constitution details of M/s Crystal Pharmaceuticals, 365, Model Town, Ambala City, Haryana, as furnished by the Assistant Drugs Controller, Food and Drugs Administration, Panchkula, Haryana.

17. Thereafter, notices under Section 22(1)(cca) of the Drugs and Cosmetics Act, 1940 were issued on 26.04.2023 to Shri Pawan Kumar, son of late Shri Jagdish Chand, stated to be the Plant In-charge of M/s Crystal

Pharmaceuticals, at Ambala City and Delhi. However, both notices were returned unserved.

18. Subsequently, vide communication dated 09.05.2023, information was sought from the Drugs Inspector, Amb regarding the constitution of M/s Crystal Pharmaceuticals, Shop No. 44, N.A.C. Building, Gagret, District Una. In response, it was revealed that Shri T.C. Kansal, proprietor of M/s Crystal Pharmaceuticals, Ambala City, was also the proprietor of M/s Crystal Pharmaceuticals, Gagret, District Una.

19. After completing the codal formalities, as envisaged under the Act, complaint under Sections 18(a)(i) and 18(a)(vi) read with Section 27(d) and Section 18(c) read with Rules 76(2) and 76(8) of the Drugs and Cosmetics Act, 1940 and Rules, 1945, was filed before the Additional Chief Judicial Magistrate, Mandi, District Mandi. After having found prima facie case against the accused, named in the complaint, learned Court below issued process vide order dated 17.09.2021, thereby calling upon the accused to appear in aforesaid complaint.

20. In the afore background, petitioners have approached this Court in the instant proceedings, praying therein to quash the complaint, detailed hereinabove, as well as summoning order dated 17.09.2021, for the reason that no case much less case under Sections 18(a)(i) and 18(a)(vi) read with

Section 27(d) of the Drugs and Cosmetics Act, 1940 and Section 18(c) read with Rule 76(2) and 76(8) of the Drugs and Cosmetics Rules, 1945 is made out against them.

CrMMO 472 of 2024

21. Precisely facts of the case are that on 22.07.2017, Drugs Inspector drew samples of Injection Dexamethasone Sodium Phosphate IP, Batch No. DX-436, Manufacturing Date- January, 2017, Expiry Date- December, 2018 and manufactured by petitioner no. 1-M/s Crystal Pharmaceuticals, 365, Model Town, Ambala, Haryana, from the Government Medical Supply, Drugs Store Incharge, Primary Health Centre, Jassur, Tehsil Nurpur, District Nurpur for the purpose of test and analysis. On 01.01.2018, Drug Inspector sent the sample to Government Analyst, Regional Testing Laboratory, RDTL, Chandigarh for the purpose of test and analysis on Form-18.

22. However, after receipt of report on 26.04.2018 of Government Analyst, Chandigarh on Form-13, drugs in question were found 'Not of Standard Quality' for the reason 'The sample does not conform to claim as per IP 2014 addendum 2016, in respect to the Particulate matter and the Assay of Dexamethasone Sodium Phosphate calculated as Dexamethasone Phosphate' which was found 50% as per claim of the manufacturing firm. After the receipt of said report from the Government Analyst, one intact

sealed portion was sent to the manufacturing firm M/s Crystal Pharmaceuticals, 365, Model Town, Ambala, Haryana.

23. Thereafter, a letter dated 14.08.2018 alongwith afore adverse report was sent to Mr. Balwinder Singh, Incharge, Drugs Store, PHC, Jassur for the production of purchase invoice of drug in question. Consequently, reply of the Pharmacist was received, whereby it was informed that the drug in question was supplied by the office of Block Medical Officer, Gangath and the purchase invoice is not in his possession.

24. A letter dated 11.06.2019 was sent to the Block Medical Officer, CHC Gangath for production of the purchase invoices, however, vide reply dated 11.06.2019, it was disclosed that drug in question was supplied by the Chief Medical Officer, Dharamshala and therefore they do not have the invoice.

25. Further, a letter dated 27.06.2019 was sent to the office of Chief Medical Officer, Dharamshala for production of the purchase invoices, whereby vide reply dated 03.07.2019, it was disclosed that the drug in question was supplied by the wholesale firm- M/s Crystal Pharmaceuticals, VPO Gagret, Tehsil and District Una, vide invoice no. CP-837 dated 13.03.2017.

26. Thereafter, a letter dated 10.07.2019 was issue to the afore mentioned wholesaler for production of purchase invoice, however no reply was received. A reminder dated 21.08.2019 was issued and reply from the

office of Drugs Inspector, Una was received which disclosed that said wholesale firm has been closed since the license of firm has expired on 13.06.2018. After not receiving reply from manufacturing firm, reminder letters dated 25.07.2022 and 17.11.2022 were sent to Commissioner cum Licensing Authority, Panchkula for providing certain documents of M/s Crystal Pharmaceuticals, 365, Model Town, Ambala, however, no reply was received.

27. Subsequently, vide communication dated 13.06.2023 information was sought from the office of State Drugs Controller, Baddi regarding constitutional details of M/s Crystal Pharmaceuticals. It was disclosed in the reply that the said firm is a proprietary firm of Mr. Tarsem Chand Kansal, resident of 365, Model Town, Ambala City, Harayana.

28. After completing the codal formalities, as envisaged under the Act, complaint under Sections 18(a)(i) punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 and Rules, 1945, was filed before the Additional Chief Judicial Magistrate, Nurpur, District Kangra, Himachal Pradesh.

29. In the afore background, petitioners have approached this Court in the instant proceedings, praying therein to quash the complaints, detailed hereinabove, as well as summoning order dated 17.09.2021, for the reason that no case much less case under Sections 18(a)(i) and 18(a)(vi) read with

Section 27(d) of the Drugs and Cosmetics Act, 1940 and Section 18(c) read with Rule 76(2) and 76(8) of the Drugs and Cosmetics Rules, 1945 is made out against them.

30. Precisely, the grouse of the petitioner(s), as has been highlighted in the grounds of petitions and further canvassed by Mr. Sanjay Jain, learned counsel representing the petitioner(s) is that complaint filed by the respondent(s) is without jurisdiction and patently illegal and as such, same being an abuse of process of Court, deserves to be quashed and set aside. Mr. Jain, learned counsel representing the petitioner(s), vehemently argued that entire prosecution instituted by the Drugs Inspector is without jurisdiction and without lawful authority. He submitted that complaints are barred by limitation as it was to be filed within a period of 3 years as Section 27(d) is punishable for imprisonment which may extend to 2 years. He submitted that otherwise also, in terms of Section 469(1)(b) of Code of Criminal Procedure, period of limitation would be reckoned from the first day when offence came to the knowledge of the Drugs Inspector i.e. when report of Government Analyst was received, which in the cases at hand are on 20.09.2017/26.04.2018, however, the complaints were filed on 08.06.2023/21.08.2023 respectively, much after limitation period as provided under Section 468 of Code of Criminal Procedure. In this regard, learned counsel for the petitioners placed reliance upon judgment of Hon'ble

Apex Court in ***Cheminov (India) Ltd. v. State of Punjab, (2021) 8 SCC 818***, wherein Hon'ble Apex Court quashed the complaint under the Insecticides Act, which is para-materia to the 1940 Act, on the ground of limitation.

31. Mr Jain submitted that Section 25 of the Act mandates immediate filing of complaint whereas in the present case complaints were filed on 08.06.2023/21.08.2023, much after the expiry of shelf life of the said drug in August 2018/December 2018. In this regard he placed reliance upon ***Food Inspector Erankulam v. PS Sreenivasa Shennoy, (2000) 6 SCC 348, Northern Mineral Ltd. V. Union of India, (2010) 7 SCC 726***. It has also been averred in the petition that mandate under sub section (4) of Section 23 has not been complied with which states that sample should be forwarded to the Government Analyst 'forthwith'. He submitted that the intention of the legislature is clear by using the term 'forthwith', however in Cr.MMO No.472 of 2024 the sample was drawn on 22.07.2017, and same was forwarded on 06.02.2018, i.e. after a period of 6 months.

32. Mr. Jain further argued that Section 34 of the Drugs Act encapsulate the concept of vicarious liability on the persons, who are In-charge of, and were responsible to the company for the conduct of the business of the company, as well as the company for making them guilty of the offences committed by the company, which terms indubitably includes the partnership firms. He submitted that though petitioner No. 2 is proprietor of petitioner No.1-firm, but he could neither be termed as In-charge nor

responsible for the conduct of the business of the firm so as to fasten vicarious liability. While making this Court peruse complaint, which is sought to be quashed, Mr. Jain strenuously argued that no role has been assigned to petitioners No.2 in the firm. Complaint has been filed in a casual and mechanical manner without ascertaining the true and correct facts rendering the entire prosecution as a nullity. He submitted that petitioners No.2 has nothing to do with the day-to-day affairs of the firm. For that matter, the manufacturing and analysis are done under the supervision of technical staff duly endorsed on the licenses issued by the competent authority.

33. While referring to Rule 45 of the 1945 Rules, Mr. Jain submitted that test and analysis of the sample is necessarily required to be conducted within a period of sixty days in terms of amendment vide GSR 103(E) dated 02.02.2017. He submitted that further proviso to the aforesaid Rule would make it abundantly clear that in case the sample could not be analysed within such period, the Government Analyst shall seek extension of time from the Government giving specific reasons for delay in such retesting or analysis. The insertion of the period, within which the test is to be carried out by the Government Analyst by virtue of afore amendment, is mandatory, and not directory. However, in the instant case, afore mandate of provision of Rule 45 has been violated with impunity. He submitted that drugs in question were manufactured in September, 2016/January, 2017, samples were drawn on 17.06.2017/22.07.2017 and adverse reports on Form 13 were received on

20.09.2017/26.04.2018. During this period of little over three/nine months, it does not come on record as to under what circumstances, the subject drugs were stored, more so, when the product is highly unstable and has specified storing condition. He submitted that there is nothing in the complaints or documents annexed with the complaints to establish that the subject drugs were properly stored. Lastly, Mr. Jain argued that principles of natural justice were not adhered to by the Court concerned before issuing process because no opportunity of being heard was afforded to the petitioners, rather simply on the basis of complaint, Court concerned without verifying the correctness of the averments proceeded to issue summons, which being totally contrary to law deserves to be interfered with. He further submitted that afore Rule is applicable to reports furnished by Central Drugs Laboratory, Kolkata/Government Analyst, RDTL, Chandigarh as well.

34. Pursuant to notices issued in the instant proceedings, respondent-State has filed reply, wherein facts, as have been noticed hereinabove, have not been disputed, rather stands admitted. Mr Ravi Chauhan, learned Deputy Advocate General while supporting the registration of complaints by Drugs Inspectors against the petitioner(s), vehemently argued that petitioner(s) no. 2 being proprietor of petitioner(s) no. 1- firm, is liable and responsible for conduct of business of the firm. He further submitted that firm was directed to furnish the details of the responsible persons, but no response was received. He further submitted that there is no

timeline for sending the samples to the Drugs Testing Laboratory for testing the samples by the laboratory. The references to the specific tests or analysis have already been made in the reports. The samples were not found to be of the prescribed standard, and the complaints were rightly filed before the learned Courts below.

35. I have heard learned counsel representing the parties and gone through the record of the case.

36. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC.

37. In this regard, reliance is place upon ***Amish Devgan vs Union of India and Ors, (2021) 1 SCC 1***, wherein the Hon'ble Apex Court held as under:

“(vii) Conclusion and relief

116. At this stage and before recording our final conclusion, we would like to refer to decision of this Court in Pirthi Chand [State of H.P. v. Pirthi Chand, (1996) 2 SCC 37 : 1996 SCC (Cri) 210] wherein it has been held : (SCC pp. 44-45, paras 12-13)

“12. It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the

FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance with the provisions which are considered mandatory and effect of its non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance issue of process under Criminal Procedure Code is availed of. A reading of a [Vide Corrigendum dated 20-3-1996 issued from Residential Office of Hon'ble Mr Justice K. Ramaswamy.] complaint or FIR itself does not disclose at all any cognizable offence — the court may embark upon the consideration thereof and exercise the power.”

38. In the case of **Kaptan Singh vs State of Uttar Pradesh and Ors., (2021) 9 SCC 35**, the Supreme Court held as under :

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has

quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to

be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.”

39. Recently, Hon’ble Apex Court in ***Abhishek Singh vs Ajay Kumar and Ors., (2025) SCC OnLine SC 1313***, held as under:

“9. The scope of the Court's power to quash and set aside proceedings is well-settled to warrant any restatement. While the arguments advanced have the potential to raise many issues for consideration, we must first satisfy ourselves as to the propriety of the exercise of such power by the High Court. The task of the High Court, when called upon to adjudicate an application seeking to quash the proceedings, is to see whether, prima facie, an offence is made out or not. It is not to examine whether the charges may hold up in the Court. In doing so, the area of action is circumscribed. In *Rajeev Kourav v. Baisahab*, it was held:

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the

High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

15. In that view of the matter, we hold that the High Court had improperly quashed the proceedings initiated by the appellant. It stands clarified that we have not expressed any opinion on the matter, and the guilt or innocence of the respondents has to be established in the trial, in accordance with the law. The proceedings out of the subject FIR, mentioned in paragraph 2 are revived and restored to the file of the concerned Court.”

40. A three-Judge Bench of the Hon’ble Apex Court in case titled ***State of Karnataka v. L. Muniswamy and others***, 1977 (2) SCC 699, held that High Court while exercising power under Section 482 Cr.PC is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

41. Subsequently, in case titled ***State of Haryana and others v. Bhajan Lal and others***, 1992 Supp (1) SCC 335, the Hon’ble Apex Court

while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled **Vineet Kumar and Ors. v. State of U.P. and Anr.**, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution.

42. Reliance is placed upon judgment of Hon'ble Apex Court in **Prashant Bharti v. State (NCT of Delhi)**, (2013) 9 SCC 293, relying upon its earlier judgment titled as **Rajiv Thapar and Ors v. Madan Lal Kapoor**, (2013) 3 SCC 330.

43. Reliance in this regard is also placed upon judgment passed by the Hon'ble Apex Court in **B.N. John Vs. State of U.P., 2025 SCC OnLine SC 7**, which reads as under:

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarized some of the principles under which

FIR/complaints/criminal cases could be quashed in the following words:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.” (emphasis added)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

44. Reliance is further placed upon the judgment passed by the Hon’ble Apex Court in ***Ajay Malik v. State of Uttarakhand, 2025 SCC OnLine SC 185***, which reads as under:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, inter alia, contemplate the following situations : (i) the criminal complaint has been filed with mala fides; (ii) the FIR represents an abuse of the legal process; (iii) no prima facie offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335)

45. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon’ble Apex Court from time to time that where a criminal

proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings.

46. Now being guided by the aforesaid proposition of law laid down by the Hon'ble Apex Court, this Court would make an endeavor to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

47. It is apparent from the bare perusal of the Section 34 of the Act that a Company is primarily liable for the commission of an offence punishable under the Act. As per afore provision of law, vicarious liability has been fastened upon a person who, at the time the offence was committed, was in charge of and responsible to the Company for the conduct of its business. Section 34 of the Act reads as under:

“34. Offences by companies.—

(1)Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves

that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

48. Aforesaid provision of law deals with offence, if any, committed by company. Aforesaid provision of law provides that where an offence under this Act has been committed by a company, every person who at the time of commission of offence, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to the aforesaid section provides that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. Since, it is apparent from bare perusal of Form 28 and affidavits on record that Mr. M.K. Bhat, Ms. Shuchi Chhabra, Mr. Gaurav Bhardwaj, Mr. Pawan Kumar and Mr. Raj Kumar were in-charge of and were responsible to, the firm for the conduct of the business of the firm, liability cannot be fastened on Petitioner No. 2, being the proprietor of Petitioner No. 1- firm.

49. In this regard, reliance is placed upon judgment of Hon'ble Apex Court in ***Susela Padmavathy Amma v. Bharti Airtel Ltd., 2024 SCC OnLine SC 311*** wherein it has been held that a person can be vicariously

liable if he is in charge and responsible to the Company for the conduct of its business. Relevant paras of the judgment reads as under:

“18. In the case of State of Haryana v. Brij Lal Mittal (1998) 5 SCC 343, this Court observed thus:

“8. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act, which reads as under:

“34. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if, at the material time, he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director, a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question, we, however, find that except for a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima

facie, that they were in charge of the company and also responsible to the company for the conduct of its business.”

19. It could thus be seen that this Court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in charge of and was also responsible to the company for the conduct of its business.

20. In the case of S.M.S. Pharmaceuticals Ltd. (supra), this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word “director” as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

“8. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company, but he may not know anything about the day-to-day functioning of the company. As a director, he may be attending meetings of the Board of Directors of the company, where they usually decide policy matters and guide the course of business of the company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-today functions of the company. These are matters which form part of the resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word,

be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company.”

21. It was held that merely because a person is a director of a company, it is not necessary that he is aware of the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary to aver as to how the director of the company was in charge of the day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

22. In the case of Pooja Ravinder Devidasani v. State of Maharashtra (2014) 16 SCC 1, this Court observed thus:

“17. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of the commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed : (SCC p. 336, paras 13-14)

“13. Section 141 is a penal provision creating vicarious liability, which, as per settled law, must be strictly construed. It is therefore not sufficient to make a bald, cursory statement in a complaint that the

Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with a strict interpretation of penal statutes, especially where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.”(emphasis in original)

18. In *Girdhari Lal Gupta v. D.H. Mehta* [*Girdhari Lal Gupta v. D.H. Mehta*, (1971) 3 SCC 189: 1971 SCC (Cri) 279: AIR 1971 SC 2162], this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see *State of Karnataka v. Pratap Chand* [*State of Karnataka v. Pratap Chand*, (1981) 2 SCC 335: 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

21. In *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 (2007) 1 SCC (Cri) 621], it was held by this Court that: (SCC pp. 584-85, para 7)

“7. ... It is not necessary for the complainant to specifically reproduce the wordings of the section, but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for the commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company.” (emphasis supplied) By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.”

23. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable.

24. A similar view has previously been taken by this Court in the case of *K.K. Ahuja v. V.K. Vora* (2009) 10 SCC 48.

25. In the case of *State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana* (2010) 11 SCC 469, this Court reiterated the position thus:

“17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an

accused was in charge of the business of the company or responsible for the conduct of the company's business. Every Director does not need to be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of the business of the company and how and in what manner he is responsible or liable.”

26. In the case of Ashoka Mal Bafna (supra), this Court observed thus: “9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of the commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378: AIR 2015 SC 675].)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.”

27. A similar view has been taken by this Court in the case of Lalankumar Singh v. State of Maharashtra 2022 SCC OnLine SC 1383, to which one of us (B.R. Gavai, J.) was a party.”

50. Reliance is also placed upon ***Pawan Kumar Goel v. State of U.P., 2022 SCC OnLine SC 1598*** wherein it has been held that only a person, who is in charge of and responsible to the Company for its affairs can be summoned and punished for the acts of the Company. Relevant paras of the judgment reads as under:

“22. A two-judge Bench of this Court in the case of K.K. Ahuja v. V.K. Vora(2005) 8 SCC 89, after analysing the provisions contained in Section 141 of the Act, observed as under:—

“16. Having regard to section 141, when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonoured, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished:

- i every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company;
- ii any Director, Manager, Secretary or other officer of the company with whose consent and connivance, the offence under section 138 has been committed; and
- iii any Director, Manager, Secretary or other officer of the company whose negligence resulted in the offence under section 138 of the Act being committed by the company. While the liability of persons in the first category arises under sub-section (1) of Section 141, the liability of persons mentioned in categories (ii) and (iii) arises under sub-section (2). The scheme of the Act, therefore, is that a person who is responsible to the company for the conduct of the business of the company and who is in charge of the business of the company is vicariously liable by reason only of his fulfilling the requirements of subsection (1). But if the person responsible to the company for the conduct of

business of the company, was not in charge of the conduct of the business of the company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.

17. The criminal liability for the offence by a company under section 138 is fastened vicariously on the persons referred to in sub-section (1) of section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly. When conditions are prescribed for extending such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of section 141 is imperative. As pointed out in *K. Srikanth Singh v. North East Securities Ltd.* - (2007) 12 SCC 788, the mere fact that at some point of time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability under section 141 of the Act. 18. Sub-section (2) of section 141 provides that a Director, Manager, Secretary or other officer, though not in charge of the conduct of the business of the company will be liable if the offence had been committed with his consent or connivance or if the offence was a result of any negligence on his part. The liability of persons mentioned in subsection (2) is not on account of any legal fiction but on account of the specific part played-consent and connivance, or negligence. If a person is to be made liable under sub-section (2) of section 141, then it is necessary to aver consent and connivance, or negligence on his part.”

23. The scope of Section 141 of the NI Act was again exhaustively considered by this Court *Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89.:

“10.What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence

was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of the business of the company at the time of the commission of an offence who will be liable for criminal action. It follows from this that if a director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of the business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager, or Secretary was enough to cast criminal liability, the Section would have said so. Instead of “every person”, the section would have said “every Director, Manager or Secretary in a Company is liable”,..etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action...

18. To sum up, there is an almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelt out in the complaint against the

person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelt out. A complaint has to be examined by the Magistrate in the first instance on the basis of the averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what the case is which is alleged against him. This will enable him to meet the case at the trial.”(emphasis supplied)

51. Reliance is also placed upon judgment of Hon'ble Apex Court in case titled ***Rajesh Viren Shah v. Redington India Ltd., (2024) 4 SCC 305: 2024 SCC OnLine SC 143, K.S. Mehta v. Morgan Securities & Credits (P) Ltd., 2025 SCC OnLine SC 492.*** Similarly, in yet another judgment of Hon'ble Apex Court in ***Siby Thomas v. Somany Ceramics Ltd., (2024) 1 SCC 348*** held that the primary responsibility to make the averment, that the accused is in charge and responsible for the firm for its affairs lies upon the complainant, in the absence of which the accused cannot be held liable.

52. From the aforesaid exposition of law it is quite apparent that primary responsibility to make the averment, that the accused is in charge and responsible for the firm for its affairs lies upon the complainant, in the absence of which the accused cannot be held liable. In the case at hand also,

the complaint is completely silent regarding role of Petitioner No.2, being in-charge and his responsibility towards Petitioner No.1-firm. These averments do not satisfy the parameters laid down by the Hon'ble Supreme Court in the aforesaid judgments.

53. No doubt, Petitioner No.2 is the proprietor of the Petitioner No. 1-firm, but the question which needs to be determined is whether he being in the capacity of proprietor of the accused-firm could be prosecuted in the given facts and circumstances, especially when accused-firm has appointed competent Technical Staff/authorized representative-Mr. M.K. Bhat, Ms. Shuchi Chhabra, Mr. Gaurav Bhardwaj, Mr. Pawan Kumar and Mr. Raj Kumar as is evident from Form 28 and affidavits placed on record. Though Mr. Ravi Chauhan, learned Deputy Advocate General, attempted to argue that there is no mention, if any, of name of afore persons in the record, but after having carefully perused Annexure P-4/8, this Court is persuaded to agree with Mr. Jain, learned counsel representing the petitioners, that requisite information on Form 25 was given to competent authority with regard to authorized/capable persons. Pursuant to information furnished by petitioner-firm, State Drugs Controller, Baddi, Himachal Pradesh, issued licenses to M/s Crystal Pharmaceuticals, for manufacture of categories of drugs specified in Schedule C, C(1), and X to the Drugs and Cosmetics Act, 1945, at 365, Model Town Ambala City, Haryana.

54. Besides above, as has been observed hereinabove, there is no specific mention with regard to role of petitioner no. 2, being proprietor of the petitioner no. 1-firm, as far as manufacturing is concerned. Careful perusal of averments contained in the complaint nowhere suggest that petitioner no. 2 was responsible for day-to-day affairs of the petitioner no. 1-firm, especially manufacturing, which otherwise was done under the supervision of technical team.

55. Besides above, this Court finds that adverse report in Form 13 was issued on 20.09.2017/26.04.2018, despite the dispatch of sample on 17.06.2017/06.02.2018, which is beyond period of sixty days, as per mandate under Rule 45 of 1945 Rules. On afore count only, complaint sought to be quashed shall not pass the test of judicial scrutiny and as such, no fruitful purpose would be otherwise served in permitting complaint sought to be quashed to sustain. Reliance in this regard is placed upon **M/s G.G. Nutrition and Others Vs. State of Maharashtra and Another**, decided by the High Court of Judicature at Bombay, in Criminal Writ Petition No.1659 of 2022, which read as under:

“6. The next judgment is in the case of M. Sea Pharmaceuticals Pvt. Ltd. & anr. Vs. The State of Maharashtra and anr. reported in 2018 ALL MR (Cri.) 3946. In that case also, the accused had replied the notice issued by the authority. The sanction obtained by the complainant was not legal. It was contended that the report of the Analyst was received by the complainant on 20.07.2015 and reply was given on 31.08.2015 and complaint was filed on 04.03.2016. When there was knowledge that the sample was to expire in May 2016 whereas, process was issued on 31.03.2016 and the summons was made returnable on 29.06.2016 that is after date of expiry of the

sample. Though the accused were not served on the first date and they were served after the returnable date and they were required to appear before the Court on 03.07.2017, it is held that, by that time, the vital right of the accused to get sample re-analyzed and to challenge the report of the Government Analyst was lost. In this view, it was held that, continuance of complaint would be an abuse of process of law and the proceeding was quashed.

7. Learned advocate for the petitioner further relied upon the judgment delivered by this Court in the case of M/s. Quixotic Healthcare & Ors. Vs. State of Maharashtra & Anr. reported in 2020 ALL MR (Cri) 1880 wherein, there is violation of Rule 45 and in that view of the matter the proceeding of the complainant was quashed. In that case, the sample was taken just before when the same was to expire on 31.08.2010. The report was received on 02.02.2010 by the complainant. The accused wanted to get the sample re-checked, however, the complainant lodged the report only on 30.08.2010. There was no averment in respect of this time period. It was also held in the said judgment that, the main point was agitated was that the sample was drawn on 17.11.2009 and the same was sent for analysis on 18.11.2009. The report was received on 02.02.2010. However, the testing of the sample was beyond statutory period prescribed under Rule 45 which is required to be decided within 60 days. For non compliance of this the proceeding was quashed.

8. After considering the submissions and the judgments cited above, this Court finds that, the valuable right to controvert the test report of the Chemical Analyst is lost. There is also violation of Rule 45 that the sample was not tested within 60 days from the date it was drawn. By the time, the summons was received, the drug had already expired and under such circumstances now proceeding with the complaint would be a futile exercise and therefore, continuance of proceeding would clearly be an abuse of process of law. Therefore, this Court finds that, the petition deserves to be allowed.”

56. Having scanned entire material adduced on record, vis-à-vis prayer made in the instant petition, this Court is persuaded to agree with Mr. Jain, learned counsel representing the petitioners, that this Court, while exercising power under Section 482 of Code of Criminal Procedure may proceed to quash the complaint against the petitioners, because continuance thereof would be sheer abuse of process of law, since, for the reasons stated

herein above, case of prosecution is bound to fail against the petitioners in all probabilities.

57. Otherwise also, in case prayer made on behalf of the petitioners is not accepted they would be unnecessarily subjected to ordeal of facing protracted trial, which otherwise is bound to fail.

58. In view of detailed discussion made herein above and law taken into consideration, present petitions are allowed. Complaint Case Drugs and Cosmetics Act/ 0000001/2023 (CNR No. HPMA 020126592023) and Complaint Case Drugs and Cosmetics Act/2/2023 (CNR No. HP38010015182023), along with all other consequential proceedings pending in the Court of learned Additional Chief Judicial Magistrate, Mandi, District Mandi and learned Chief Judicial Magistrate, Nurpur, District Kangra, are quashed and set aside qua the petitioner(s). The petitioner(s) are discharged henceforth.

All pending application(s), if any, shall also stand disposed of.

July 10, 2026

Rajeev Raturi/ SS

**(Sandeep Sharma),
Judge**