IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.10273 OF 2021

BETWEEN:

1. M/S. J.B. CHEMICALS AND PHARMACEUTICALS LTD.,
NO.128/1B, 129(1) GIDC
ANKALESHWAR, BHARUCH,
GUJARAT-393002.
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. SANJAY PATEL.

2. MR. JYOTHINDRA B. MODY,
(DECEASED AS ON 21.07.2020),
ERSTWHILE CHAIRMAN AND MANAGING DIRECTOR
M/S. J.B. CHEMICALS AND PHARMACEUTICALS LTD.,
NEELAM CENTER B-WING,
4TH FLOOR, HIND CYCLE ROAD,
WORLI, MUMBAI-400030.

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

3. MR. KAMLESH L UDANI,
AGED ABOUT 68 YEARS,
S/O SRI. LALITHKUMAR UDANI,
ERSTWHILE EXECUTIVE DIRECTOR
(TECHNICAL AND PRODUCTION)
M/S. J.B. CHEMICALS AND PHARMACEUTICALS LTD,
NEELAM CENTER, B-WING,
4TH FLOOR, HIND CYCLE ROAD, WORLI,
MUMBAI-4400030, MAHARASTRA.

NOW HAVING OFFICE
AT PLOT NO.D2/CH/376-377,
DAHEJ GIDC, BHARUCH-392130.

4. MR. SANJAY PATEL,
AGED ABOUT 56 YEARS,

S/O CHANDUBHAI PATEL
R/AT B-30, STREET No.4,
AVDHOOT NAGAR-1,
BHOLAV, BHARUCH-392015.

ALSO AT:
M/S. J.B. CHEMICALS AND PHARMACEUTICALS LTD.,
NO.128/1B, 129(1) GIDC,
ANKALESHWARI, BHARUCH,
GUJARAT-393002.

…PETITIONERS

(BY SRI. GANAPATI HEDGE, SENIOR COUNSEL FOR
SRI. GAURAV MANDAPPA, ADVOCATE)

AND:

1. UNION OF INDIA,
MINISTRY OF HEALTH AND FAMILY WELFARE,
REP. BY DRUGS INSPECTOR,
CDSCO, SUB ZONE,
BANGALORE-560001.

…RESPONDENT

(BY SRI. JAYAKARA SHETTY H., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 01.12.2021 PASSED IN CRL.RP.NO.408/2017 ON THE FILE OF THE 55TH ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DISMISSING THE PETITION UNDER SEC.397 OF CODE OF CRIMINAL PROCEDURE, (ANNEXURE-A) AND TO SET ASIDE THE ORDER DATED 18.02.2017 PASSED IN C.C.NO.89/2013 BY THE SPECIAL COURT FOR ECONOMIC OFFENCES, BANGLAORE, DISMISSING THE APPLICATION FILED BY THE PETITIONES U/S 258 OF CODE OF CRIMINAL PROCEDURE, 1973 (ANNEXURE-B) AND ALLOW THE SAID APPLICATION FILED BY THE PETITIONERS U/S 258 OF CODE OF CRIMINAL PROCEDURE, 1973 BY PASSING AN ORDER FOR STOPPING THE PROCEEDINGS OF THE CASE IN C.C.NO.NO.89/2013 INSTITUTED BY THE RESPONDENT ALLEGING VIOLATION OF SEC.18(a)(i),17(b) OF DRUGS BY THE PETITIONERS.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard the learned Senior Counsel appearing for the petitioners and the learned counsel appearing for the respondent.

2. This petition is filed under Section 482 of Cr.P.C. praying this Court to set aside the order dated 01.12.2021 passed in Crl.R.P.No.408/2017, on the file of 55th Additional City Civil and Sessions Judge, Bengaluru, dismissing the petition under Section 397 of Cr.P.C. and to set aside the order dated 18.02.2017 passed in C.C.No.89/2013 by the Hon'ble Special Court for Economic Offences, Bengaluru, dismissing the application filed under Section 258 of Cr.P.C. and to allow the said application by passing an order for stopping the proceedings of the case in C.C.No.89/2013.

3. The factual matrix of the case of the respondent/complainant is that the respondent filed a private complaint under Section 200 of Cr.P.C. alleging that the petitioner had indulged in selling the tablet "Dilcardia 30". The

Drug Inspector on 08.03.2011, drew a sample for test and analysis of the drug from the premises of C.G.H.S. and forwarded the same for test and analysis to the Government Analyst, Central Drugs Laboratory, Kolkata vide Memorandum No.ADC/BSZ/KTK/7-2/1795 dated 08.03.2011 and having received the report had filed the private complaint and the Trial Court took the cognizance. The same was challenged before this Court by initiating the proceedings under Section 482 of Cr.P.C. for quashing of cognizance for the offence punishable under Sections 17(b), 18(a)(i), 27(d) and 32(1) of Drugs and Cosmetics Act, 1940. This Court comes to the conclusion that the correctness or otherwise of the document cannot be decided in this proceeding and the same is required to be decided in a full fledged trial to be conducted before the Special Court and dismissed the criminal petition reserving liberty to the petitioner to approach the Special Court for economic offences either to seek his discharge or to participate in the proceeding and to demonstrate that no offences are made out against him in the proceeding pending before it. The said order was challenged before the Supreme Court in Special Leave to Appeal (Crl.) Nos.5954-5955/2014. The Hon'ble Apex Court also did not entertain the petitions. However, taking note of the

fact that the petitioner, being the Chairman and Managing Director of M/s. J.B. Chemicals and Pharmaceuticals Limited, is aged about 87 years and had undergone surgery for some ailment, granted exemption from personal appearance in the matter before the Trial Court and on his behalf his counsel may appear and prosecute the matter, till the trial is over. However, directed to appear before the Court to record his statement under Section 313 of Cr.P.C. and with the aforesaid liberty, special leave petitions were disposed of. This order was passed on 15.07.2016. Thereafter, the petitioner has filed an application under Section 258 of Cr.P.C. praying to stop the proceedings and the Trial Court passed the following order:

> *"The present case is registered on a complaint under Section 200 of Cr.P.C., but this Section 258 is applicable to the cases instituted otherwise than upon complaint under Section 200 of Cr.P.C. Thus Section 258 of Cr.P.C. cannot be made applicable here. Hence the application is dismissed."*

4. The said order is challenged before the Revisional Court. The Revisional Court by order dated 01.12.2021 passed an order on maintainability of the revision petition and comes to the conclusion that revision petition is not maintainable and particularly in paragraph No.7 made an observation that the

company is having perpetual succession and common seal. After the death of Jyothindra B. Mody, who is accused No.2, it was incumbent upon the revision petitioners to bring the next Managing Director on record to proceed with the matter. He is the legal representative of the company. He should have been brought on record, but just he got filed memo dated 24.08.2021 reporting the death of petitioner No.2 and asked to pass appropriate orders, but cleverly next Managing Director who has succeeded is not brought on record to prosecute the matter. As the cause of action survives for him, but without successor of petitioner No.2 on record, the petition cannot be proceeded with as against petitioner No.2. The Revisional Court also taken note of Section 258 of Cr.P.C. and observed that proceedings can be stayed by the Magistrate for the reasons recorded by him and without pronouncing the judgment and if the evidence of principal witness is recorded and if the proceedings are stayed, Magistrate would pronounce the judgment of acquittal and in other cases it is the effect of discharge. It is also observed that the substance of accusation is recorded by the Trial Court against petitioner Nos.3 and 4. They do not have any locus standi to seek discharge as contemplated under the provisions of Section 258 of Cr.P.C.

Hence, the petition against petitioner Nos.3 and 4 has become infructuous and comes to the conclusion that petition itself is not maintainable and dismissed the same as not maintainable.

5. Being aggrieved by both the orders of the Trial Court and the Revisional Court, the present petition is filed before this Court.

6. The main contention of the learned counsel for the petitioners in the present petition extracting the provisions of Section 258 of Cr.P.C. is that both the Courts have committed an error in not entertaining the application filed under Section 258 of Cr.P.C. and observation made by both the Courts leads to absurdity and ought not to be accepted. The Trial Court has erroneously dismissed the application on the ground that the present case is registered based on a complaint filed under Section 200 of Cr.P.C. The learned counsel would vehemently contend that the prosecution under the Drugs and Cosmetics Act is instituted based on a report filed by the Drugs Inspector and not on a complaint under Section 200 of Cr.P.C. The same is clear from the language of Section 32 of the Drugs and Cosmetics Act. The prosecution report under Section 32 of the Drugs and Cosmetics Act, would be akin to a police report

under Section 190(b) of Cr.P.C., upon which cognizance of an offence can be taken. Hence, the order passed by the Trial Judge as per Annexure-B is not sustainable in the eye of law.

7. The learned counsel also vehemently contend that both the Courts have failed to appreciate the powers of the Drugs Inspector under Section 22 of the Act and the procedure followed before initiating the prosecution. Both the Courts failed to take note of the said fact and fails to take note of Section 32 of the Act which defines taking cognizance of offences under the Act and that the same does not require cognizance to be taken only on the basis of the complaint filed. The learned counsel also brought to the notice of this Court Section 32 of the Drugs and Cosmetics Act and compared the same with Section 142 of the Negotiable Instruments Act and so also with Section 115 of the Trade Marks Act, 1999. Section 32 of the Drugs and Cosmetics Act speaks about institution of the prosecution for cognizance to be taken instead of the words "No Court shall take cognizance except on a complaint in writing", which can be found in other special enactments, such as the Negotiable Instruments Act, 1881 or the Trademarks Act, 1999. Hence, it is clear that it is the intention of the legislature that no written complaint is required to be filed by a Drugs

Inspector under the Drugs and Cosmetics Act to institute prosecution. Hence, the approach of the Trial Court is erroneous. The learned counsel brought to the notice of this Court, the finding that petitioner No.1 company was not represented. That is an observation made by the Sessions Court in revision and so also finding that accused Nos.3 and 4 have already recorded their plea. The learned counsel also brought to the notice of this Court that there is no prima facie basis for prosecuting the petitioners. Hence, prays this Court to set aside both the orders and allow the application filed under Section 258 of Cr.P.C.

8. The learned counsel for the petitioner in his arguments would contend that the report given by the analyst is not correct. The mode and method adopted is erroneous and no conventional test. Only modified release test and fails to take note of report given wherein clean chit was given and inspite of it, proceeded to file a complaint. The complaint was filed in 2013 after two years. The Trial Court has taken cognizance casually and there is an error on the part of the Revisional Court also. The modified release test would give correct test report. The very orders passed by both the Courts suffers from its infirmity.

9. Per contra, the learned counsel for the respondent would vehemently contend that no such clean chit is given as contended by the learned counsel for the petitioners. The invoking of Section 32 of the Drugs and Cosmetics Act does not arise and it is very clear that before initiating the proceedings, test was conducted by the analyst and the same is not barred by law. The learned counsel also vehemently contend that accused No.2 is the Chairman and he was the whole and sole and when he passed away, ought to have brought on record the next Managing Director and the same is rightly observed by the Revisional Court. The learned counsel also brought to the notice of this Court the order passed by the Supreme Court, wherein it is categorically held that accused No.2 was exempted due to his age as well as his ailment. A direction was given to appear before the Court while recording the statement under Section 313 of Cr.P.C. The order passed by this Court and also the Apex Court is very clear that it is a matter of trial and hence, there cannot be any setting aside of the order.

10. Having heard the learned counsel for the petitioners and the learned counsel for the respondent, the points that would arise for the consideration of this Court are:

(i) Whether the Trial Court committed an error in dismissing the application filed under Section 258 of Cr.P.C. and so also the Revisional Court committed an error in dismissing the revision petition as not maintainable?

(ii) What order?

Point No.(i):

11. Having heard the learned counsel for the respective parties, number of grounds are urged in the petition regarding finding given by the Revisional Court as well as the order passed by the Trial Court. No doubt, this Court has extracted the order of the Trial Court wherein the Trial Court comes to the conclusion that the application under Section 258 of Cr.P.C. is not applicable. The learned counsel for the petitioners in the petition has extracted Section 258 of Cr.P.C. in paragraph No.38 i.e., power to stop proceedings in certain cases – In any summons-case instituted otherwise than upon complaint, a Magistrate of the First Class or with previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witness has been recorded, pronounce a judgment of

acquittal and in any other case, release the accused, and such release shall have the effect of discharge. The provision is very clear that Section 258 of Cr.P.C. permits in any summons case instituted otherwise than upon complaint. The Trial Court comes to the conclusion that a private complaint is filed under Section 200 of Cr.P.C. and hence, Section 258 of Cr.P.C. cannot be made applicable here.

12. The learned counsel for the petitioners mainly brought to the notice of this Court Section 32 of the Drugs and Cosmetics Act. The same provides for cognizance of offences, wherein sub-clause (1) is clear that no prosecution under this Chapter shall be instituted except by an Inspector. No doubt, the proviso is very clear that the prosecution has to be instituted by an Inspector. But that does not mean that it is not a complaint under Section 200 of Cr.P.C., as contended by the learned counsel for the petitioners. The learned counsel brought to the notice of this Court, the provisions of Section 142 of the Negotiable Instruments Act, wherein the proviso is very clear that no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint. The learned counsel would contend that no such provision is made in Section 32 of the Drugs and Cosmetics Act even though no

such word is used that no Court shall take cognizance except on a complaint. But in the case on hand, it has to be noted that the proceedings is not initiated based upon any police report. The very contention that the report of the Inspector itself is akin to a police report cannot be accepted. Section 190(1)(a), (b) and (c) of Cr.P.C. is very clear that subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed. The complaint is filed by the Inspector invoking Section 200 of Cr.P.C. That does not mean that the report is akin to the police report. If that is the case, based on that report would have initiated the proceedings without invoking the provisions under Section 200 of Cr.P.C. The proviso of Section 200 of Cr.P.C. is invoked and the same is based on a private complaint and cognizance was taken. Hence, the first contention of the learned counsel for the petitioners cannot be accepted.

13. It is also to be noted that when the cognizance was taken based on the private complaint, the same was challenged before this Court in Crl.P.No.7332/2013, for the offence punishable under Sections 17(b), 18(a)(i), 27(d) and 32(1) of the Drugs and Cosmetics Act, 1940. When the said cognizance order was challenged, this Court made an observation that drug which was manufactured and sold by the petitioner company was subjected to chemical analysis and the report produced at Annexure-R1 would disclose that the drug, which is manufactured and sold by the petitioner is spurious. That the correctness or otherwise of this document cannot be decided in this proceeding and the same is required to be decided in a full-fledged trial to be conducted before the Special Court for economic offences. However, liberty was given to the petitioner to approach the Special Court for economic offences either to seek his discharge or to participate in the proceeding and to demonstrate that no offences are made out against him in the proceeding pending before it. The said order was challenged before the Apex Court and the Apex Court also held that the petitions are filed urging various legal grounds questioning the correctness. The main contention was taken that the petitioner was aged about 87 years and he underwent surgery for some

ailment and the same was taken on and exemption was given from personal appearance in the matter before the Trial Court. But directed the petitioner to subject for 313 statement. Hence, it is very clear that very cognizance was challenged and the same was dismissed and affirmed by the Apex Court. Under the circumstances, this Court cannot once again exercise the power under Section 482 of Cr.P.C. There is a fundamental defect by the petitioner by filing an application under Section 258 of Cr.P.C. The Trial Court rightly comes to the conclusion that the said provision cannot be invoked.

14. No doubt, the Revisional Court dealt with the matter on different grounds. When the petition was filed before the Revisional Court on behalf of the company as well as the person who earlier was the Chairman and Managing Director, who is no more and by petitioner Nos.3 and 4, the Revisional Court made an observation with regard to the maintainability of the revision petition and comes to the conclusion that it was incumbent upon the revision petitioners to bring the next Managing Director on record to proceed with the matter. He is the legal representative of the company. He should have been brought on record. In order to continue the proceedings on account of death of petitioner No.2, ought to have brought the

next Managing Director on record. The Revisional Court in paragraph Nos.8 and 9 taken note of factual aspects that the substance of the accusation is already recorded by the Trial Court against petitioner Nos.3 and 4. It is also observed that petitioner No.2 passed away when the matter was posted for judgment. When such being the case, the finding given by the Revisional Court is also with regard to the maintainability as well as locus standi of the petition and when the application under Section 258 of Cr.P.C. cannot be invoked in a case of private complaint, there is a fundamental defect and this provision is also invoked in a belated stage. Hence, I do not find any error on the part of both the Trial Court as well as Revisional Court in passing such an order. When both the orders are not suffers from its infirmity, the question of exercising the power under Section 482 of Cr.P.C. does not arise. This Court has taken note of the accusation made against the petitioner while dismissing the petition under Section 482 of Cr.P.C. and the same is confirmed by the Apex Court. Hence, no ground is made out by the petitioners to set aside the order as sought in the prayer and hence, I do not find any grounds to entertain this petition under Section 482 of Cr.P.C. Hence, point No.(i) is answered accordingly.

Point No.(ii):

15. In view of the discussions made above, I pass the following:

ORDER

The petition is dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

MD