

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
JAMMU**

Reserved on: 02.07.2026

Pronounced on: 10.07.2026

Uploaded on: 10.07.2026

*Whether the operative part or full
judgment is pronounced: **Full***

CRM(M) No.113/2023

ANITA KUKREJA & ANR.

...PETITIONER(S)

Through: - Mr. Varut Kumar Gupta, Advocate.

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - Mr. Hakeem Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners, through the medium of present petition, have challenged the complaint filed by respondent Drugs Control Officer alleging commission of offences under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short "the Act"), which is stated to be pending before the Court of learned Chief Judicial Magistrate, Srinagar (hereinafter "the trial Magistrate"). Challenge has also been thrown to order dated 20.12.2020 passed by the trial Magistrate, whereby cognizance of offences has been taken and process has been issued against the petitioners.

2) It appears that the respondent Drugs Control Officer, Zone-1, Srinagar, filed a complaint against the petitioners

and co-accused before the learned trial Magistrate. In the complaint it was alleged that on 04.06.2018, the complainant lifted a sample of the drug “Wetolol-25 XR tablets, Batch No.AMT18010, manufacturing date 5/2018, expiry date 4/2020”, manufactured and marketed by Astraazin Pharmaceuticals Pvt. Ltd. The sample was lifted from the premises of M/S B.I. Traders Pharmaceutical Distributors, Bhan Mohalla, Fateh Kadal, Srinagar. After lifting the sample, its one portion was sent to the Government Analyst, Drugs Laboratory, Srinagar, for analysis. Vide report dated 15.02.2019, the Government Analyst declared the sample of the drug to be not of standard quality. It is further alleged in the impugned complaint that a copy of the test report was provided to the co-accused M/S B. I. Traders Pharmaceutical Distributors vide communication dated 15.02.2019. Vide communication dated 20.02.2019, the said accused disclosed that the drug in question has been purchased by it from co-accused M/S Aazin Pharmaceutical Distributors situated at Khayam Chowk, Srinagar.

3) The matter was taken with the aforesaid co-accused who, vide its communication dated ‘nil’ intimated that the drug in question was supplied to it by M/S Astraazin Pharmaceuticals Pvt. Ltd., Samalkha, New Delhi. Upon taking up the matter with M/S Astraazin Pharmaceuticals Pvt. Ltd.,

the said company, vide communication dated 15.04.2019, provided the procurement details of the drug in question. As per the said reply, the drug in question was procured from M/s Mascot Health Series Pvt. Ltd., situated at Plot No.79-80 Sector-6A, SIDCUL, Haridwar, but the label of the drug sample claimed that M/s Astraazin Pharmaceuticals Pvt. Ltd. is the manufacturer of the product.

4) The complainant vide communication dated 25.04.2019, took up the matter with M/s Mascot Health Series Pvt. Ltd. and sought details of the drug in question. Vide communication dated 10.05.2019, the aforesaid company provided the procurement details of the drug sample in question as also the constitution of the company. However, the company did not provide any details with regard to the manufacturing of the product. It has been averred in the complaint that reminders were sent to M/s Mascot Health Series Pvt. Ltd. for furnishing the complete details and vide communication dated 05.12.2019, M/S Mascot Health Series Pvt. Ltd. acknowledged that the product was manufactured at their premises situated at Plot No. 79-80, Sector-6A, SIDCUL, Haridwar, under loan license of M/S Astraazin Pharmaceuticals Pvt. Ltd.

5) After receiving permission for prosecuting the accused, the complainant proceeded to file the impugned complaint. It

is alleged in the impugned complaint that the petitioners, who have been impleaded as accused 1(a) and 1(b) in the impugned complaint, are Managing Directors of M/S Mascot Health Series Pvt. Ltd, which is the manufacturer of the drug in question, and, as such, responsible under the Act for manufacture, sale and distribution of the drug in question. It is being contended that the petitioners have, thus, committed offences under Section 18(a)(i) punishable under Section 27(d) of the Act.

6) The learned trial Magistrate has, vide order impugned dated 20.12.2020, proceeded to record satisfaction that there exist sufficient grounds for proceeding against the accused, including the petitioners. Accordingly, the process has been issued against them.

7) The petitioners have challenged the impugned complaint and the proceedings arising therefrom on the grounds that there are no specific allegations against them in the impugned complaint, ascribing any role to them. It has been further contended that vicarious liability cannot be fastened upon the petitioners without there being any specific allegations in the complaint against them. It has been contended that M/S Mascot Health Series Pvt. Ltd. is not the manufacturer of the drug in question as the same has been manufactured by M/S Astraazin Pharmaceuticals Pvt. Ltd under a loan license

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agreement and that M/S Mascot Health Series Pvt. Ltd. has no role in manufacturing the drug in question. It has been further contended that before issuing process against the petitioners, the learned trial Magistrate has not undertaken any inquiry in terms of Section 202 of the Cr. P. C, which is mandatory in nature because the petitioners are residing beyond the beyond territorial jurisdiction of the learned trial Magistrate.

8) Heard and considered.

9) The first and foremost contention that has been raised by the learned counsel for the petitioners for challenging the impugned proceedings is that the learned trial Magistrate has not conducted the inquiry/investigation of the case under Section 202 of the Cr. P. C before issuing process against the petitioners who are, admittedly, residing beyond the territorial jurisdiction of the learned trial Magistrate.

10) In the above context, if we have a look at the provisions contained in Section 202 of the Cr. P. C, it provides that a Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance, may, if he thinks fit, and shall in a case where accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into

the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus, provisions of Section 202 of Cr. P. C make it optional for a Magistrate to hold an inquiry into a case before deciding whether or not there is sufficient ground for proceeding in a situation where the accused is residing within his territorial jurisdiction, but in a case where the accused is residing beyond his territorial jurisdiction, the Magistrate has no option but to inquire into the case before proceeding to decide whether or not there are sufficient grounds for proceeding against the accused. Thus, in a case where the accused is residing beyond the territorial limits of a Magistrate, holding of an inquiry under Section 202 of Cr.P.C is mandatory.

11) In the present case, admittedly, the petitioners/accused, are residing beyond the territorial limits of the learned trial Magistrate. Record of the trial court clearly suggests that the learned trial Magistrate has not conducted any inquiry in terms of Section 202 Cr. P. C before proceeding to issue process against the petitioners. Thus, the impugned order dated 20.12.2020 is not sustainable in law.

12) Accordingly, without going into the merits of other contentions raised by the petitioners, the petition is allowed

and the impugned order dated 20.12.2020 passed by the learned Chief Judicial Magistrate, Srinagar, is quashed. The matter is remanded to the learned trial Magistrate with the direction to hold an inquiry in terms of Section 202 Cr. P. C. before proceeding to decide whether or not the process is required to be issued against the petitioners. While considering the matter afresh, the learned trial Magistrate shall also take into consideration the contentions raised by the petitioners in the present petition.

13) A copy of this order be sent to the learned trial Magistrate for information and compliance.

SRINAGAR

10.07.2026

"Bhat Altaf-Secretary"

(Sanjay Dhar)
Judge

Whether the **judgment** is reportable: **YES/NO**