HIGH COURT OF TRIPURA
AGARTALA

Crl.Petn. No.63 of 2025

1. **M/s. Innova Captab,**
   Represented by its Authorized Signatory Plot No.81-B, EPIP Phase-1, Jharmajri, Baddi Distt., Solan, Himachal Pradesh
2. **Gian Parkash Aggarwal**
   S/o. Om Prakash Aggarwal,
   Partner of M/s Innova Captab,
   Plot No.81-B, EPIP Phase-1,
   Jharmajri, Baddi Distt.,
   Solan, Himachal Pradesh
3. **Mr. Manoj Kumar Lohariwala,**
   S/o Nand Kishor Lohariwala,
   Partner of M/s. Innova Carp Tab,
   Plot no.81-B, EPIP Phase-1,
   Jharmajri, Baddi Distt.,
   Solan, Himachal Pradesh
4. **Vinay Lohariwala,**
   S/o Nand Kishor Lohariwala,
   Partner of M/s. Innova Carp Tab,
   Plot no.81-B, EPIP Phase-1,
   Jharmajri, Baddi Distt.,
   Solan, Himachal Pradesh
5. **Jitender Singh Narula,**
   S/o Jswant Singh Vrindaban
   Gardens, Peer Machalla, Zirakpur,
   Mohali, Punjab

----Petitioner/Accused(s)

Versus

Union of India,
Through Drugs Inspector,
Office of the Assistant Central Drugs Standard Control Organization, Sub-Zonal Office,
RDTL Campus, Six Mile, Panjabari Road,
Guwahati-781022

---- Respondents (s)

For Petitioner(s)	:	Mr. Debalay Bhattacharya, Sr.Adv. Mr. Agniva Chakrabarti, Adv. Mr. Nitin Bashin, Adv.
For Respondent(s)	:	Mr. Bidyut Majumder, D.S.G.I.
Date of Hearing	:	08.07.2026
Date of delivery of Judgment and Order	:	20.07.2026
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned Senior Counsel Mr. D. Bhattacharya assisted by Mr. Nitin Bashin and Learned Counsel Mr. A. Chakrabarti appearing on behalf of the accused persons and also heard Learned D.S.G.I. Mr. B. Majumder appearing on behalf of the respondent-Union of India.

02. The petitioner has filed this petition under Section 528 of BNSS corresponding to Section 482 of Cr.P.C. for quashing of the complaint bearing Case No.CR 302 of 2022 dated 22.11.2022 which is now pending before the Court of Learned J. M. 1st Class, Court No.1, Agartala, West Tripura under Section 18(a)(i) punishable under Section 27(d) of Drugs and Cosmetics Act, 1940

03. Taking part in the hearing Learned Senior Counsel first of all drawn the attention of the Court that on the basis of a complaint laid by one Pranab Jyoti Das, Drugs Inspector, Central Drugs Standard Control Organization (C.D.S.C.O.), Sub-Zone, Guwahati, this case was registered against the petitioner-accused persons. Referring the entire complaint filed by Dr. Pranab Jyoti Das Learned Senior Counsel appearing for the petitioners first of all drawn the attention of the Court that this petition is not maintainable as because the statutory provisions as contained in the Drugs and Cosmetics Act, 1940 was not followed in filing the complaint against the petitioner-accused persons by the

complainant. First of all he drawn the contents of the complaint petition filed by the complainant and submitted that the complainant visited the alleged shop of M/s. Innova Captab on 29.01.2021. But he filed the complaint on 01.02.2021. Thus there was a delay of four days. In this regard he drawn the attention of the Court referring the Provision of Section-23(4)(i) of the Drugs and Cosmetics Act, 1940 wherein it is specifically mentioned that it was the duty of the Inspector to restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as per law and in sub-clause (i) it is specifically mentioned that one portion or container he shall forthwith send to the Government Analyst for test or analysis.

Referring the same he submitted that the sample was sent to the Government Analyst on 01.02.2021 which appears from the certificate of the Government Analyst [Annexure-3]. Thus according to Learned Senior Counsel there was clear violation of the said provision of law by the complainant in sending the sample to the Government Analyst. He intended to say that the sample was not sent forthwith. He further drawn attention of the Court that in this case the Government Analyst had received the sample for testing on 01.02.2021 which appears from Annexure-3, but the report was submitted on 12.10.2021 which also transpires from the said report and in this regard nothing

has been explained by the complainant in the complaint petition which is violative of Rule-45 of the Drugs and Cosmetics Rules, 1945 wherein it says that the Government Analyst shall cause to be analysed or tested such sample of drugs in accordance with the rule within a period of sixty days of the receipt of the sample. But here in this case the report was submitted almost after the aforesaid statutory period as prescribed by law and no extension of time was sought for by the analyst in this regard and there is also no such evidence of record like that. It was further submitted that the complainant also failed to comply with the mandatory provision of sub-Section 3 of Section 25 of the said Act as because in pursuance of the said provision it was the duty of the complainant to supply a copy of the report to the respondent-petitioner to allow him to adduce evidence in controversion of the report. But no such scope was given to the respondent-petitioner by the complainant for which the complaint filed by the complainant against the petitioner was not maintainable.

04. Learned Senior Counsel thereafter drawn the attention of the Court referring Annexure-6, a copy of letter dated 21.04.2017 by State Drug Controller to M/s Innova Captab mentioned that Jitender Singh Narula was endorsed as a person responsible to the company for the conduct of business of company under Section-34 of Drugs and Cosmetics Act, 1940 and further referring form-26 the certificate issued by the Drugs Controller it is specifically

mentioned that for the purpose of manufacturing one Shilendra Kumar and Apoorva Mistry and for testing one Praveen Kumar Jain were entrusted to look after the job of the company. But unfortunately those persons were not implicated as accused in this case which is in violation of Section-34 of the Drugs and Cosmetics Act, 1940. He also drawn the attention of the Court that the present complaint was filed on 10.01.2023 by this time the date of the sample was expired. So legally there was no scope to file the complaint. In addition to that Learned Senior Counsel has further drawn the attention of the Court referring Annexure-R/5 wherein explanation given by the respondent-department was wholly unsustainable as per law. He further drawn the attention of the Court referring Annexure-R/5 wherein the respondent has also annexed three accelerated stability study report wherein the batch number, the manufacturing date and the expiry date shown are totally different which does not match with the batch number of the present complaint. Thus it appears that the explanation given was not in accordance with law and urged for dismissal of the complaint petition. In support of the contention Learned Senior Counsel referred few citations.

05. Learned D.S.G.I. Mr. B. Majumder appearing for the Union of India submitted that the present petition was filed by only five accused persons and accordingly they have given their signature but the respondent P.K. Jain and Shaktipada Debnath did not come forward to challenge the

petition. Thus it appears they have/had no grievance against the present complaint filed by the complainant. In addition to that referring Annexure-R/2 Learned D.S.G.I. submitted that clear explanation has been given that due to COVID-19 the report could not be submitted on time and Hon'ble the Apex Court also extended the period for filing prosecution during COVID pandemic which he urged for taken into consideration at the time of disposal of the matter.

06. Finally Learned D.S.G.I. drawn the attention of the Court referring para-24 of the counter-affidavit which provides as under:

> **"24. The offences and the offenders in the case of this nature is manufacturing and distribution of sub-standard drugs by a Company which is managed by its Board of Directors. The decision to manufacture the drugs is the collective decision of the Board of Directors. Therefore, the Directors cannot claim that they are not directly involved in the product of the drugs, when the decision to produce the drugs itself is the outcome of their decision. Therefore, the case of Directors signing the cheque on behalf the Company and the case of Directors participating in the decision to produce sub-standard drugs are not one and the same to hold that these petitioners are not involved in day-to-day affairs of the Company."**

He also submitted that on 22.11.2021 the authorized signatory on behalf of Innova Captab stated that they were not going to challenge the Government Analyst report. So according to Learned D.S.G.I. at this stage there is no scope for the present petitioner-accused to challenge the validity of the report before this Court and urged for dismissal of this complaint petition filed before the Learned Trial Court by invoking the jurisdiction of the Court under Section 528 of BNSS.

07. The brief facts of the complaint filed by the complainant Dr. Pranab Jyoti Das, Drugs Inspector, Central Drugs Standard Control Organization (C.D.S.C.O.), Sub-Zone, Guwahati to C.J. M. with the allegation was that a drug sample namely 'Rabeprazole Sodium and Itopride (Sustained release) Capsules' bearing Batch no.14200001, Mfg. date 02/2020, Exp. Date 01/2022, manufactured by M/s Innova Captab, situated at 81-B, EPIP Phase-I, Kharmajri, Baddi, District: Solan, Himachal Pradesh was found to be 'not of standard quality' as defined under Section 16 of the Drugs and Cosmetics Act, 1940. The said sample was drawn on 29.01.2021 by the complainant Drugs Inspector during a joint surprise check conducted along with the State Drugs Inspector, Agartala, Tripura. The sample was taken from the premises of M/s S.B. Pharma, H.G.B. Road, Agartala which was engaged in the sale of the said drug. The sample was drawn in accordance with Section 23(3) and (4) of the Act and Rule 57 of the Drugs and Cosmetics Rules, 1945.

08. It was the further case of the complainant that the sample was divided into four portions and sealed in four containers vide Sample No.ACT/PJD/GHY/68/2021 in the presence of proprietor of M/s S.B. Pharma. One portion was sent to the Regional Drugs Testing Laboratory (RDTL), Guwahati for testing along with duly filled Form-18 on 01.02.2021, while another Form-18 containing the specimen seal was separately sent to the Government Analyst. The

Government Analyst, RDTL, Guwahati vide report dated 12.10.2021 declared the said batch of drug 'Not of standard Quality' on the ground that the sample did not conform to the assay test. After that the complainant vide letter dated 13.10.2021 forwarded a copy of the Government Analyst's report to M/s S.B. Pharma under Section 25(2) of the Act directing it to disclose the name and address of the manufacturer from whom the said drug was purchased.

09. In response to the said communication M/s S. B. Pharma, Agartala vide its letter dated 22.10.2021 informed the complainant that the said batch was manufactured and supplied by M/s Innova Captab, having its manufacturing unit at 81-B, EPIP Phase-I, Jharmajri, Baddi, Himachal Pradesh. Later on, vide letter dated 27.10.2021 the complainant forwarded a copy of the Government Analyst's report and a sealed portion of the sample to M/s Innova Captab, Baddi. After that M/s Innova Captab through its authorized signatory vide its letter dated 22.11.2021 informed the complainant that upon internal analysis of the control sample of the said batch stored under proper storage conditions at their manufacturing premises conformed to the standard specifications. It was further stated that the product was manufactured strictly in accordance with the approved formula and procedures under controlled environmental conditions as per Good Manufacturing Practices(GMP). After that a joint investigation was conducted by Deputy Drugs Controller

along with the Licensing Authority. The joint investigation report was forwarded to the complainant's office vide letter dated 17.12.2021. Thereafter, after the investigation, the complainant's office sought prosecution sanction from the Drugs Controller General (India) vide letter dated 28.12.2021 and accordingly sanction was accorded by the competent authority vide letter F.No.04/Prosecution/2022 dated 13.10.2022. After that the complaint was filed. This is the gist of the complaint.

10. The present petitioners have challenged the entire prosecution i.e. the complaint filed by the complainant before this Court invoking jurisdiction of Section 528 of BNSS. Now let us at first mention herein below the procedure to be followed by the Inspector as mentioned in Section-23 of the Drugs and Cosmetics Act, 1940. Sub-Section 4(i),(ii) and(iii) of Section-23 are reproduced as under:

> **"(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows-**
>
> **(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;**
>
> **(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug and;**
>
> **(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A."**

From the aforesaid sub-section 4 it appears that after collection of sample the Inspector concerned shall sent one portion or container forthwith to the Government Analyst for test or analysis.

11. Here from the report of Government Analyst [Annexure-3] it appears that the sample was received by the office of the Government Analyst on 01.02.2021 and the sample was procured on 29.01.2021, in this regard no explanation has been offered by the complainant in the complaint petition. Now for the sake of convenience, let us reproduced Rule-45 of the Drugs and Cosmetics Rules, 1945 which provides as under:

> **"45. Duties of Government Analysts.-(1) The Government Analyst shall cause to be analysed or tested such samples of drugs [and cosmetics] as may be sent to him by Inspector or other persons under the provisions of Chapter IV of the Act and shall furnish reports of the results of test or analysis in accordance with these rules [within a period of sixty days of the receipt of the sample:**
> **Provided that where it is not possible to test or analyse the sample within the specified period, the Government Analyst shall seek extension of time from the Government giving specific reasons for delay in such testing or analysis.]**
> **(2) A Government Analyst shall from time to time forward to the Government reports giving the result of analytical work and research with a view to their publication at the discretion of Government."**

From the aforesaid provision it appears that the Government Analyst shall furnish report of the result of test or analysis within a period of sixty days of the receipt of the sample. Here in the case at hand, the sample was received on 01.02.2021 but the report was submitted on 12.10.2021 i.e. after the statutory period as prescribed in Rule-45. In this regard no satisfactory explanation is given although Learned D.S.G.I. at the time of hearing referring Annexure-R/5 i.e. the memorandum dated 08.12.2025 drawn the attention of this Court wherein it was mentioned during COVID-19 the then Government Analyst Dr. P. J. Gogoi passed away in October 2020 and no such person was

there. Referring the same he tried to draw the attention of the Court that due to non-availability of the analyst the report was not submitted on time. In this regard said Rule further provides that if it is not possible to test or analyse the sample within the specified period in that case the analyst shall seek extension of time from the Government giving specific reason for delay. Here in this case at the time of hearing Learned D.S.G.I. could not place any material that the said mandatory provision was complied with from the office of the Government Analyst seeking extension of time. So the explanation offered in Annexure-5 appears to be non-compliance of Rule-45 of the Drugs and Cosmetics Rule, 1945.

12. Learned D.S.G.I. although tried to draw the attention of the Court referring the order passed by the Hon'ble Supreme Court on 10.01.2022 in Miscellaneous Application No.21 of 2022 and Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C)No.3 of 2020 wherein that period of extension with effect from 15.03.2020 to 28.02.2022 was extended for the purpose of limitation in respect of filing cases not in respect of submitting any report. So, on the basis of the said order of Hon'ble Supreme Court this Court is of the considered opinion that the explanation offered by the respondent Union of India referring Annexure-R/5 cannot be accepted and legally sustainable in the eye of law.

13. Now regarding non-compliance of provision of sub-section (2),(3) and (4) of Section 25. Let us reproduce hereinbelow the provision of Section-25 of the said Act which provides as under:

> **(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken [and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A], and shall retain the third copy for use in ay prosecution in respect of the sample.**
>
> **(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken [or the person whose name, address and other particulars have been disclosed under section 18A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.**
>
> **(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (30 notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused: cause the sample of the drug [or cosmetic] produced before the Magistrate under sub-section(4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."**

From the aforesaid provision it appears that after receipt of the sample the Inspector shall communicate a copy of the report of the analyst to the person from whom the sample was taken to allow him to adduce evidence in controversion of the report within a period of twenty eight days. But here in this case nothing has been complied with by the complainant before filing of prosecution before the Court. It has already been decided the report was not submitted within the statutory period as provided in Rule-45 of the Drugs and Cosmetics Rules, 1945.

14. Now regarding filing of prosecution let us reproduced herein below the relevant provision of Section-34 of the said Act which provides 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 shall be deemed to be guilty of the offence and shall be liable to the 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.**
>
> **(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."**

From the aforesaid provision it appears that the prosecution shall be launched against the person who was in-charge of and was responsible to the company for the conduct of the business of the company shall be deemed to the guilty of the offence. Referring the said provision Learned Senior Counsel for the petitioner tried to draw the attention of this Court that the prosecution was not launched against the person who were responsible for the business manufacturing, testing of the company rather prosecution was launched against some other persons. In this regard in sub-section 2 of Section-34 it has been specifically provided that notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance

of, or it attributes to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Since no evidence has yet been recorded in this case, so on this sole point I do not find any scope to extend any benefit to the present petitioner accused persons. Furthermore, on perusal of the Annexure-R/5 and it's connected accelerated stability report it appears that the batch number mentioned on those documents does not match with the batch number as mentioned in the report of the Government Analyst. The respondent-Union of India at the time of hearing also failed to explain anything in this regard.

15. At the time of hearing Learned Senior Counsel relied upon one citation of Hon'ble Gauhati High Court in **Pratyay Majee and Others vs. Union of India and Ors.** reported in **2025 SCC OnLine Gau 2441** wherein in para-19 Hon'ble Gauhati High Court observed as under:

> **"19. It is, therefore, obvious that it is the clear legislative intent that the process of taking a sample of the drug, getting it tested by a notified Analyst and sending a copy of the report to the persons responsible, are to be undertaken with a sense of urgency so that the cloud of suspicion hanging on the drug is resolved promptly."**

Referring the same Learned Senior Counsel appearing for the petitioners has drawn the attention of the Court that the present case is squarely covered by the said judgment.

16. Mr. D. Bhattacharya, Learned Senior Counsel further referred another citation of the Bombay High Court

in **Writ Petition No.2777 of 2024** dated 24.03.2026 in **M/s. C.B. Healthcare and Ors. vs. Union of India** wherein in para No.47, 51, 52 Hon'ble the Bombay High Court observed as under:

> **"47. Section 34(1) of the Drugs Act, 1940 provides that where an offence has been committed by a company, every person who at the time of 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.**
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> **51. In regard to the invocation of the vicarious liability of Petitioner Nos.2 to 6 under Section 34, in the complaint, the allegation qua Petitioner Nos.2 to 6 is that, they were directors of M/s. C.B. Healthcare (P1) and at the time of the manufacturing of drug in question were responsible to day to day activities of the business of the firm and release for distribution of the said drug batch number. In paragraph 19 of the complaint, it is further urged that Accused Nos.2 to 6 (P2 to P6) did manufacture the subject drug for sale and distribution and sold, "not of standard quality" drug and they were in charge of and responsible to the conduct of the business at the premises of Accused No.1 at the relevant time when the subject drug was manufactured.**
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> **52. The aforesaid averments do not strictly satisfy the requirement of spelling out the role of the Petitioner Nos.2 to 6; as to how and in what manner the Petitioners Nos.2 to 6 were responsible for the conduct of the business of the firm. Yet, whether the aforesaid allegations in the complaint are sufficient to invoke the principle of constructive criminality under Section 341(1) of the Drugs Act, 1940, in the light of the view this Court has taken on the substantive challenge to the prosecution, need not be answered definitively. De hors the challenge to the initiation of the prosecution qua Petitioner Nos.2 to 6 by invoking the provisions under Section 34(1) of the Drugs Act, 1940, this Court has come to the conclusion that the prosecution of Petitioner No.1-firm itself would amount to an abuse of process of the Court."**

17. Reliance was placed upon another judgment of Himachal Pradesh High Court in **Cr.MMO No.929 of 2023** dated 07.05.2026 in **M/s Salus Pharmaceuticals and Others vs. Union of India** wherein in para No.33 Hon'ble Himachal Pradesh High Court observed as under:

> **"33. Besides above, the Court finds that adverse report in Form 13 was issued on 05.12.2019, despite receipt of sample on 02.09.2019, 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 place 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.**
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> **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.**
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> **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."**

18. He also relied upon another citation of the High Court of Punjab and Haryana in **S.S. Fertililizer and Another vs. State of Punjab** reported in **2017 SCC OnLine P&H 6106** wherein in para-4 the said High Court observed as under:

> **4. Learned counsel for the petitioners submitted that sample was taken from the original sealed containers, therefore, petitioners were not liable in terms of protection granted under Section 30(3) of the Insecticides Act. No prosecution could be launched against the petitioners as the petitioners were selling the insecticides in sealed containers in the original form as obtained from the registered manufacturers. In the complaint, there was no averment that the samples were not in the sealed containers. Section 33 of the Insecticides Act is to the following effect:— "Section 33 - Offences by companies— (1) Whenever an offence under this Act has been committed by a company, every per son who, at the time the offence was com mitted, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the com pany, shall be deemed to be guilty of the of fence 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 if he proves that he offence was committed without his knowledge or that he exercised all due diligence to prevent such offence.**
> **(2) Notwithstanding anything contained in sub section (1) SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd. Page 4 Wednesday, July 15, 2026 where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other offi cer of the company, such Director, Manager, Secretary or other office shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.**
> **Explanation - For the purposes of this section—**
> **(a) "company" means anybody corporate, and includes a firm or other association of individuals; and**
> **(b) "director" in relation to a firm means a partner in the firm."**

Finally Learned Senior Counsel relied upon another citation of the Hon'ble Apex Court of India in **Lalankumar Singh and Others vs. State of Maharashtra** reported in **2022 SCC OnLine SC 1383** wherein in para-24 and 28 Hon'ble the Supreme Court observed as under:

"24. It is further to be noted that, in accordance with the provisions of Rule 76 of the said Rules read with Form 28, the Accused Nos. 9 and 10 have specifically been approved by the licensing authority in Form 28. Accused No.9 was approved as a person under whose active direction and personal supervision the manufacture would be conducted as required under subrule (1) of Rule 76 of the said Rules. Similarly, Accused No.10, who was approved as a head of the testing unit, was to be in-charge for carrying out the test of the strength, quality and purity of the substances as may be required under the provisions of Part X of the said Rules. We are therefore of the considered view that the complaint is totally lacking the requirement of Section 34 of the said Act.

28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation9, which reads thus:

> **On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate 9 (2015) 4 SCC 609 taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.**
>
> **A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.**
>
> **However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance.**
>
> **It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."**

19. I have gone through all the aforesaid citations and after going through the petition along with the connected documents as well as the counter-affidavits filed by the respondents Union of India. It appears to this Court that in the instant case the complainant has failed to comply with the mandatory provision of Section 23(4)(i), sub-section (3) and (4) of Section 25 and Rule 45 of the Drugs and Cosmetics Act and also Rule 45 of the Drugs and Cosmetics Rule, 1945 for launching prosecution against the petitioner accused persons and as such the order dated 10.01.2023 passed by Learned J.M. 1st Class, Court No.1, West Tripura, Agartala in Case No.302 of 2022 appears to be bad in law and the same cannot be sustained in the eye of law and accordingly the same needs to be interfered with and dismissed.

20. In the result, the petition filed by the petitioner-accused persons is allowed and the order dated 10.01.2023 passed by Learned J.M. 1st Class, Court No.1, West Tripura, Agartala in Case No.302 of 2022 stands quashed and further proceeding of this case accordingly stands quashed. The petitioner accused-persons are discharged from the liability of this case.

Send down the LCR to the Learned Trial Court along with a copy of this judgment.

JUDGE

Moumita