Union of India Vs. M/s Neptune Life Sciences (P) Ltd. & Ors

29.10.2026

Present:- Sh. R.S Thakur, Advocate, for complainant
Accused No. 2, also representing Accused No.1 company, as well as accused No. 3, with Sh. Akshay Jain, Sh. Sanjay Jain, and Sh. Manoj Bansal, Advocates

1. This complaint for the offence punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as '**Act'** for the sake of convenience) against the accused persons has been received by committal from the court of learned Additional Chief Judicial Magistrate, Nalagarh.

2. Precisely, the case set up by the complainant can be summed up as under:-

2(i) Mr. V. Kaviyarasan was working as Drugs Inspector, Central Drugs Standard Control Organization (hereinafter referred to as **'CDSCO'** for the sake of convenience), for Sub Zone, Baddi, Himachal Pradesh. On 19.02.2018, he inspected the premises of M/s Park Pharmaceuticals at Baltana in Punjab, and collected sample of Chlorhexidine Gluconate Mouth Wash I.P. 100 ml (Dento Fresh), bearing batch No. NFE458, with manufacturing date 04-17, expiry date 03-19, purported to be manufactured by the accused No.1 company. The sample was divided into four portions, and sealed in accordance with the prescribed procedure. A copy of Form No. 17, along with a sealed portion of the sample, was supplied to Mr. Karan Kakkar, who was operating the business of M/s Park Pharmaceuticals. The fair price of the collected drugs was accordingly paid.

2(ii) A sealed sample portion in Form No. 18 was sent for analysis to the Regional Drugs Testing Laboratory, Chandigarh, on 23.02.2018. According to the test report dated 24.05.2018, the sample was not found to be of standard quality. The statutory notice

as required under Section 25(2) of the Act, along with the test report, was accordingly sent to the occupier of M/s Park Pharmaceuticals, named Mr. Karan Kakkar, on 30.05.2018. Mr. V. Kaviyarasan (Drugs inspector), accompanied by Sh. Kamlesh Naik (Drugs inspector), during investigation, visited the premises of accused No. 1 company, on 04.06.2018, and handed over the analyst report, along with sealed sample, to the occupier of accused No. 1 company in compliance of Section 25(2) of the Act.

2(iii) After completion of entire codal formalities, the present complaint for the offence punishable under Section 27(d) of the Act had been present by Central Government, through its Drugs Inspector, before the court of learned Additional Chief Judicial Magistrate, Nalagarh

3. The learned Additional Chief Judicial Magistrate, Nalagarh, took cognizance against the accused persons for the commission of the said offence, supplied copies of complaint and annexed documents to them, and committed the same for trial to this court.

4. The case has been taken up today on consideration of charge.

5. Sh. Akshay Jain, Advocate, along with Sh. Sanjay Jain and Sh. Manoj Bansal, Advocates, representing the accused persons, relying upon a decisions of the Hon'ble High Court of Himachal Pradesh in ***M/s Salus Pharmaceuticals and Others Vs Union of India (Decision dated 07.05.2026 in Cr.MMO No. 929 of 2023)*** affirmed by the Hon'ble Supreme Court of India by ***decision dated 15.09.2026 in Special Leave Petition (Criminal) No. 50645 of 2026***, and a decision in ***Amit Kumar Bansal Vs. Union of India (Decision dated 09.04.2026 in Cr.MMO No. 305 & 707 of 2022)*** made following submissions:

5(i) The offence punishable under Section 27(d) of the Act falls in Chapter-IV of the Act and the prosecution under this provision cannot be launched by the Central Government.

5(ii) The sample was sent for analysis on 23.02.2018. It was received in the laboratory on 05.03.2018. In terms of Rule 45 of the Drugs Rules, 1945, amended w.e.f. 02.02.2017, the Government Analyst was required to furnish the test report within a period of 60 days of the receipt of the sample. However, the report was issued on 24.05.2018. The complaint is bound to fail on this score alone.

5(iii) The cognizance in this complaint is barred under Section 468 of the Code of Criminal Procedure (hereinafter referred to as **'Cr.P.C'** for the sake of convenience). The offence punishable under Section 27(d) of the Act is punishable with maximum imprisonment for a period of two years and Section 468(2)(c) of the Cr.P.C prescribes limitation period of three years for taking cognizance in such matters.

6. On the other hand Sh. R.S Thakur, Advocate, learned counsel representing the complainant, fairly conceded the proposition of law settled by the Hon'ble High Court of Himachal Pradesh in ***M/s Salus (Supra)*** which has also been affirmed by the Hon'ble Supreme Court of India in ***Special Leave Petition (Criminal) No. 50645 of 2026.***

7. I have given my best consideration to the submissions made on behalf of the parties. I have also carefully gone through the entire record.

8. This complaint for the offence punishable under Section 27(d) of the Act has been filed by the Central Government. Section 27 (d) of the Act falls in Chapter-IV of the the Act. In ***M/s Salus (Supra),*** the Hon'ble High Court of Himachal Pradesh has categorically held that the prosecution under Chapter-IV of the Act can only be launched by the State Government and not by the Central Government. The relevant extract from the decision of the the Hon'ble High Court of Himachal Pradesh is produced as under:

> 32. Section 18, reproduced hereinabove, prohibits any person from manufacture for sale or for distributing, or selling, or stocking or exhibiting any drug which is not of a standard quality, or is misbranded, adulterated or spurious and is not in

accordance with the condition of licence issued for such purpose. However, such notification shall be issued by the State Government in official gazette. Chapter IV includes manufacture, sale and distribution of drugs and cosmetics. The executive power essentially lies with the Drugs Inspector appointed by the State Government. Article 256 of the Constitution of India and statement of objects and reasons to Drugs Act, in no uncertain terms, renders the exercise of authority by the Drugs Inspector appointed by the Central Government completely without jurisdiction for want of executive power, which power exclusively lies with the Drugs Inspector appointed by the State Government. Neither the Constitution nor any Act made by the Parliament, including the Drugs Act and the Drugs Rules, provide for exercise of the executive functions in relation to Chapter IV by any authority of the Central Government, including the Drugs Inspector appointed by it, rather Drugs Inspector appointed by the Central Government shall, to the exclusion of the State Government, exercise executive functions in relation to Chapter III relating to import of drugs and cosmetics, but constitutionally not in relation to Chapter IV. The licensing, and overall control, in relation to manufacture, sale, or exhibit or offer for sale forming part of Chapter IV, essentially lies with the State Government, and to the exclusion of the Central Government, in the absence of any constitutional mandate or the mandate of any Act of Parliament. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **Union of India Vs. V. Sriharan alias Murugun, AIR 2016 SC (Supp) 739**, which reads as under:

> "17. Pithily stated under the proviso to Article 73(1)(a) where there is an express provision in the Constitution or any law is made by the Parliament, providing for specific Executive Power with the Centre, then the Executive Power referred to in sub-clause (a) of sub-article (1) of Article 73 would be available to the Union and would also extend in any State to matters with respect to which the Legislature of the State has also

> powers to make laws. In other words, it can be stated that, in the absence of any such express provision in the Constitution or any law made by the Parliament in that regard, the enormous Executive Power of the Union stipulated in Article 73(1)(a), would not be available for the Union to be extended to any State to matters with respect to which the Legislature of the State has also powers to make laws. To put it differently, in order to enable the Executive Power of the Union to extend to any State with respect to which the Legislature of a State has also got power to make laws, there must be an express provision providing for Executive Power in the Constitution or any law made by the Parliament. Therefore, the said prescription, namely, the saving clause provided in the proviso to Article 73(1)(a) will be of paramount consideration for the Union to exercise its Executive Power while examining the provision providing for the extent of Executive Power of the State as contained in Article 162."

9. Indisputably, the decision of the Hon'ble High Court of Himachal Pradesh in ***M/s Salus (Supra)*** has attained finality. As such this court is satisfied with submissions of the learned counsels representing the accused persons that the Central Government could not launch the prosecution under Section 27(d) of the Act against the accused persons.

10. It is crystal clear from paragraph-5 of the complaint that a sample portion of the collected drug was sent for analysis to the Regional Drugs Testing Laboratory, Chandigarh, on 23.02.2018. The report of Government Analyst shows that the sample was received on 05.03.2018. Indisputably, the Government Analyst had issued the test report on 24.05.2018. Rule 45 of the Drugs Rules, 1945, mandates the Government Analyst to furnish the report of the result of test or analysis within a period of 60 days of receipt of the sample, until the Government Analyst did not seek extension of the time from

the Government in terms of proviso appended to Rule 45(1) of the ibid rule. In ***M/s Salus (Supra)***, interpreting Rule 45 aforesaid, the Hon'ble Himachal Pradesh High Court held as under:

> 33.Besides above, this 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 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."

11. As such, it is clear that the present complaint is also not going to stand in terms of Rule 45 of the Drugs Rules, 1945.

12 The Government Analyst had made clear in his report dated 24.05.2018 that the analyzed sample was not of standard quality. The offence punishable under Section 27(d) of the Act is prescribing maximum imprisonment for a period of two years. Section 468(2)(c), read with Section 469 of the Cr.P.C prescribes a limitation period of three years for taking cognizance from the date of detection of offence in such a case, unless the delay is properly explained in terms of Section 473 of the Cr.P.C. The offence in the matter has been detected with issuance of report dated 24.05.2018 by the Government Analyst. The Central Government had presented

this complaint on 01.01.2022 i.e. after a period of around three years and seven months from the date of report of Government Analyst. Even the test report had been supplied to the occupier of M/s Park Pharmaceuticals on 30.05.2018. In such facts and circumstances of the matter, this court has no hesitation to conclude that the cognizance in this complaint for the offence punishable under Section 27(d) of the Act is barred in view of provision of Section 468 (2)(c), read with Section 469 of the Cr.P.C. With respect to applicability of Section 468 of the Cr.P.C, the Hon'ble High Court of Himachal Pradesh in ***Amit Kumar Bansal (Supra)*** held as under :

> 44. There is another aspect of the matter that as per case of the prosecution, samples were drawn on 27.03.2018/27.07.2018 and the Government analyst had supplied its reports on 09.08.2018/27.03.2019, whereby it came to be opined that samples are of sub-standard quality. As per complainant, he came to know on 09.08.2018/27.03.2019, the Drugs, samples whereof were drawn, were not of standard quality. As per Section 468 Cr.P.C. (corresponding Section 514 of BNSS) no Court shall take cognizance beyond the period of limitation and where the punishment prescribed for the offence is above one year and is upto three years,limitation for taking cognizance is three years, which shall be from the date of offence or from the date of knowledge. In the present cases, petitioner is being prosecuted for the offence punishable under Section 27(d) of the Act and maximum punishment for the offence under Section 27(d) of the Act is of two years, hence, the limitation for taking cognizance is three years. At this stage, it would be apt to take note of Sections 468 and 469 of Cr.P.C., which read as under:
>
> > **468. Bar to taking cognizance after lapse of the period of limitation.**
> >
> > (1)Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2)The period of limitation shall be -

(a)six months, if the offence is punishable with fine only;

(b)one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c)three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3)[For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.] [Inserted by Act of 1978, Section 33 (w.e.f. 18-12-1978).]

469. Commencement of the period of limitation.

(1)The period of limitation, in relation to an offender, shall commence,

(a)on the date of the offence; or

(b)where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c)where it is not known by whom the offence was committed, the first day on of which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2)In computing the said period, the day from which such period is to be computed shall be excluded."

45. Keeping in view the punishment, as provided for the offence punishable under Section 27(d) of the Act, the complaint has to be filed within a period of three years and as per provisions contained under Section 468 of the Cr.P.C., the period of limitation in the present case, commenced from

> the date of the offence i.e. 09.08.2018/27.03.2019, when the reports of Government analyst were received. However, in the instant cases, Court took cognizance on 10.01.2022/11.01.2022 i.e. beyond the prescribed period of three years of limitation. While issuing notice, learned Court below failed to take cognizance of aforesaid aspect of the matter, as a result thereof, great prejudice has been caused to the petitioner".

13 Keeping in view my discussion above, this court has no hesitation to conclude that charge against the accused persons for commission of the said offence punishable under Section 27(d) of the Act cannot be framed in this case. Accordingly, they are discharged for the offence aforesaid.

14. The case file after due completion be consigned to the record room.

Announced
29.10.2026

sd/-
(Dr. Pankaj Gupta)
Additional Sessions Judge,
Nalagarh, District Solan, H.P

Digitally signed by RAJESH KUMAR
Date: 2026.10.30 17:38:35 UTC