IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO Nos.305 & 707 of 2022

Reserved on: 20.03.2026
Date of Decision: 09.04.2026

---

1. Cr.MMO No.305 of 2022

Amit Kumar Bansal **.....Petitioner**

Versus

Union of India **.....Respondent**

2. Cr.MMO No.707 of 2022

Amit Kumar Bansal **.....Petitioner**

Versus

Union of India **.....Respondent**

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the Petitioner: Mr. N.S. Chandel, Senior Advocate, with Mr. Sidharth and Ms. Shwetima Dogra, Advocates, in both the petitions.

For the Respondent: Mr. Shashi Shirshoo, Central Government Counsel, in both the petitions.

Sandeep Sharma, J.

Since common question 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 No.305 of 2022

2. By way of instant petition filed under Section 482 Cr.P.C., prayer has been made on behalf of petitioner for quashing of complaint case

No.8/3 of 2022, titled as *Union of India Vs. M/s Theon Pharmaceuticals Limited and Others*, pending in the Court of learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, as well as order dated 10.01.2022, passed in afore complaint, thereby summoning petitioner as an accused.

3. Briefly summarised, the facts are that on 31.12.2021, Mr. Fahim Khan, Drug Inspector, Central Drug Standard Control Organisation, India, Sub-Zone Baddi, Himachal Pradesh, filed a complaint under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, ***(for short, 'the Act')*** against M/s Theon Pharmaceuticals Limited, Managing Director of afore company i.e. petitioner herein and Mr. Puran Chand Joshi, Wholetime Director, averring therein that Mr. V. Kaviyarasan, the then Drugs Inspector, CDSCO, Sub-Zone Baddi, Himachal Pradesh, had drawn the sample on Form No.17, dated 27.03.2018 of the drug "Diclofenac Sodium" with Thiocolchicoside tablet (Theomove-4), Batch No.GT171481, DoM-11-2017, DoE-10-2019, manufactured by M/s Theon Pharmaceuticals Ltd., village Saini Majra, Tehsil Nalagarh, District Solan, Himachal Pradesh – 174101, from the premises of Main Drugs Store, Govt. Multi-specialty Hospital, Sector 16, Chandigarh, under Section 23 of the Drugs and Cosmetics Act, 1940. Afore Drug Inspector divided the drug, so lifted as samples, into four portions and sealed them as per the procedure prescribed under the Drugs and

Cosmetics Act, 1940, in the presence of Mr. Anil Tanwar (Pharmacist of Main Drug Store, Govt. Multi-specialty Hospital, Sector 16, Chandigarh) and signatures of Mr. Anil Tanwar were taken on each of the sample portions.

4. After the receipt of report from the Regional Drugs Testing Laboratory, Chandigarh, on 23.08.2018 and after completing the codal formalities, as envisaged under the Act, complaint under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, was filed before the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan (Annexure P-1), impleading therein petitioner herein, who happens to be Managing Director of M/s Theon Pharmaceuticals Limited, as one of the accused.

5. After having found *prima facie* case against the accused, named in the complaint, learned Court below issued process vide order dated 10.01.2022 (Annexure P-2), thereby calling upon the accused, including petitioner herein, to appear in aforesaid complaint. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein to quash the complaint, detailed hereinabove, as well as summoning order dated 10.01.2022, for the reason that no case much less case under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Act is made out against him.

6. By way of instant petition filed under Section 482 Cr.P.C., prayer has been made on behalf of petitioner for quashing of complaint case No.13/3 of 2022, titled as *Union of India Vs. M/s Theon Pharmaceuticals Limited and Others*, pending in the Court of learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, as well as order dated 11.01.2022, passed in afore complaint, thereby summoning petitioner as an accused.

7. Perusal of record reveals that on 30.12.2021, Mr. Fahim Khan, Drug Inspector, Central Drug Standard Control Organisation, India, Sub-Zone Baddi, Himachal Pradesh, filed complaint under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Act against M/s Theon Pharmaceuticals Limited, Managing Director of afore company i.e. petitioner herein and Mr. Puran Chand Joshi, Wholetime Director, averring therein that Mr. V. Kaviyarasan, the then Drugs Inspector, CDSCO, Sub-Zone Baddi, Himachal Pradesh, had drawn the sample on Form No.17, dated 27.07.2018 of the drug "Montelukast Sodium" and "Levocetirizine Hydrochloride" tablet (Lookast-LC), Batch No.GT180886, DoM-07-18, DoE-06-2020, manufactured by M/s Theon Pharmaceuticals Ltd., village Saini Majra, Tehsil Nalagarh, District Solan, Himachal Pradesh – 174101, from the premises of M/s Theon Pharmaceuticals Limited, village Saini Majra, Tehsil Nalagarh, District Solan, Himachal Pradesh, under Section 23 of the

Drugs and Cosmetics Act, 1940. Afore Drug Inspector further divided the drug, so lifted as samples, into three portions and sealed them as per the procedure prescribed under the Drugs and Cosmetics Act, 1940, in the presence of Mr. P.C. Joshi (Plant Head). Signatures of Mr. P.C. Joshi were taken on each of the sample portions.

8. After the receipt of report from the Central Drugs Laboratory, 3 KYD Street, Kolkata, on 27.03.2019 and after completing the codal formalities, as envisaged under the Act, complaint under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, was filed before the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan (Annexure P-1), impleading therein petitioner herein, who happens to be Managing Director of M/s Theon Pharmaceuticals Limited, as one of the accused.

9. After having found *prima facie* case against the accused, named in the complaint, learned Court below issued process vide order dated 11.01.2022 (Annexure P-2), thereby calling upon the accused, including petitioner herein, to appear in aforesaid complaint. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein to quash the complaint, detailed hereinabove, as well as summoning order dated 11.01.2022, for the reason that no case much less case under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Act is made out against him.

10. In nutshell, case of the petitioner, as has been highlighted in both the petitions and further canvassed by Mr. N.S. Chandel, learned Senior Counsel representing the petitioner, is that bare perusal of complaint nowhere imputes role of the petitioner in day-to-day functioning of company's affair, especially manufacturing. Mr. Chandel submitted that once M/s Theon Pharmaceuticals Limited had appointed Mr. Puran Chand Joshi as Wholetime Director and authorised representative of the company, coupled with the fact that he is also made as an accused in the complaint, detailed hereinabove, there was no occasion, if any, for complainant to implead petitioner herein as one of the accused.

11. Mr. Chandel, learned Senior Counsel, submitted that learned trial Court, while taking cognizance under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Act failed to appreciate that where the company is an accused, cognizance can only be taken against the person, who at the time of commission of offence was in-charge and was responsible for conducting the business of the company. While referring to the resolution of the Company, placed on record, learned Senior Counsel further argued that Board of Directors of M/s Theon Pharmaceuticals Limited had passed a resolution dated 07.09.2017, thereby appointing Mr. Puran Chand Joshi, accused No.3, as its Wholetime Director, who is responsible for conducting the business of the company. He submitted that since copy of resolution was duly supplied to the

concerned authorities, there was no occasion, if any, to implead petitioner herein as an accused. Mr. Chandel, learned Senior Counsel, further argued that as per the case of prosecution, the samples were drawn on 27.03.2018/27.07.2018 and the Government analyst had supplied its report on 09.08.2018/27.03.2019, whereby it came to be opined that samples are of sub-standard quality. He submitted that as per complainant, he came to know on 09.08.2018/27.03.2019 that the drugs, samples whereof were drawn were not of standard quality. He submitted that as per Section 468 of Cr.P.C. (corresponding Section 514 of BNSS) no Court shall take cognizance of an offence beyond the period of limitation and where the punishment prescribed for the offence is above one year and upto three years, limitation for taking cognizance is three years, which shall be from the date of offence or from the date of knowledge. He submitted that since in the present cases, petitioner herein 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 two years, hence, the limitation for taking cognizance is three years, however, learned trial Court, while taking cognizance, completely ignored the afore legal position and has taken cognizance in a cyclostyled manner and as such, proceedings initiated against him deserve to be quashed on this sole ground. He further submitted that in terms of Section 23 of the Act, when a sample is drawn by an Inspector, he shall divide it into three parts and thereafter, third part of

the sample is to be sent to the person, whose name, address and other particulars have been disclosed under Section 18A of the Act to the Inspector. However, in the present cases, there is complete non-compliance of the aforesaid provision of law. He further submitted that Drugs in question were recovered from main drug store, Government Multi-specialty Hospital, Chandigarh and premises of M/s Theon Pharmaceuticals Limited, detailed hereinabove, under Section 19 of the Act, however, the person from whose possession the drug was recovered, has not been made accused. He further submitted that as per Drugs and Cosmetics and Rules, samples so sealed should be tested within sixty days of its receipt, however, as per the case of the prosecution, the samples were drawn on 27.03.2018/27.07.2018, which is violation of the Rules, as the same has not been done within the stipulated period. In support of his aforesaid submission, he placed reliance upon the judgment dated 04.07.2024 passed by this Court in Cr.MMO No.738 of 2021, titled as ***Anil Mediratta and Others Vs. State of Himachal Pradesh and Others*** and judgment dated 11.09.2023, passed by the Coordinate Bench of this Court in Cr.MMO No.109 of 2020, tilted as ***Prithi Pal Singh Vs. State of Himachal Pradesh***, wherein it came to be ruled that in the absence of specific averment in the complaint with regard to day-to-day functioning and over-all control of the person, proposed to be held vicariously liable, no

complaint is maintainable against such person and prosecution launched beyond prescribed period of limitation is also not tenable.

12. Pursuant to notices issued in the instant proceedings, respondent-UOI has filed reply in Cr.MMO No.305 of 2022, wherein facts, as have been noticed herein above, have not been disputed, rather stand admitted.

13. It is submitted at the behest of respondent that petitioner herein, being Managing Director of the company concerned is overall in-charge of the day-to-day business of the company and he is also responsible for the conduct of the affairs of the company. Reply filed by respondent is completely silent about question of limitation raised at the behest of the petitioner. Mr. Shashi Shirshoo, learned Central Government Counsel, argued that point sought to be raised through instant petition can only be adjudicated during trial and disputed facts cannot be adjudicated while invoking extraordinary jurisdiction under Section 482 Cr.P.C., hence, petitions filed by the petitioner are liable to be dismissed.

14. I have heard learned counsel for the parties and perused material available on record.

15. 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.

16. 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.

17. 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 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 be permitted to degenerate into a weapon of harassment or persecution.

18. In ***Amish Devgan vs Union of India and Ors***, (2021) 1 SCC 1, 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 scrutinise 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."

19. 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."

20. Recently, Hon'ble Apex Court in ***Abhishek Singh vs Ajay Kumar and Ors.***, (2025) SCC OnLine SC 1313, reiterated that:

"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."

21. Reliance is also placed upon judgments passed by the Hon'ble Apex Court in ***Prashant Bharti Vs. State (NCT of Delhi), (2013) 9 SCC 293, Rajiv Thapar and Others Vs. Madan Lal Kapoor, (2013) 3 SCC 330, Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi) Department of Home and Anr, AIR 2019 SC 210*** *and* ***Pramod Suryabhan Pawar v. The State of Maharashtra and Anr, (2019) 9 SCC 608.***

22. 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.

23. It is not in dispute that petitioner herein is Managing Director of M/s Theon Pharmaceuticals Ltd. It is also not in dispute that Drugs Inspector, CDSCO, had drawn the samples on Form No.17, dated

27.03.2018/27.07.2018 of the drugs in question manufactured by M/s Theon Pharmaceuticals Ltd. from the respective premises, as detailed in the preceding paragraphs, under Section 23 of the Act and designate the sample number as LS/V.K/CDG/17-18/114 and LS/V.K/CDG/18/41. It is also not in dispute that afore Drugs were found to be of "substandard quality", as a result thereof, complaints under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Act were filed before the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan (Annexure P-1).

24. Primarily, question which needs to be decided in the case at hand is that whether petitioner herein, being Managing Director of the company, named hereinabove, could also be prosecuted under aforesaid provision of law, especially when there is no specific averment with regard to his day-to-day functioning and control in the company, especially with regard to manufacturing.

25. It is not in dispute that as per mandate of Section 18 of the Act, requisite information was made available by M/s Theon Pharmaceuticals Limited, thereby informing Drug Inspector concerned that the company concerned has appointed Mr. Puran Chand Joshi as its Wholetime Director, enabling him to perform the day-to-day business of company (Annexure P-3).

26. At this stage, it would be apt to take note of Section 18a(i) of the Act, which reads as under:

> 18. Prohibition of manufacture and sale of certain drugs and cosmetics.—From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—
>
> (a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute—
>
> [(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;
>
> [(ii) any cosmetic which is not of a standard quality or is misbranded, adulterated or spurious;]]
>
> [(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities thereof];]
>
> (iv) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;
>
> [(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;
>
> (vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]
>
> (b) [sell or stock or exhibit or offer for sale,] or distribute any drug 9 [or cosmetic] which has been been imported or manufacutred in contravention of any of the provisions of this Act or any rule made thereunder;
>
> (c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:
>
> Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

> Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notifica tion, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

27. Perusal of afore provision of law makes it clear that no person can manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute any drug or cosmetic, which is not of standard quality or is misbranded, adulterous or spurious. Violation, if any, of aforesaid provision of law, would render person concerned, liable for punishment under Section 27 of the Act, which provides for penalty.

28. Admittedly, in the case at hand, drugs in question were found to be of sub-standard quality, as per Adverse Analysis Report given by the Drug Testing Laboratories and as such, no illegally can be said to have been committed by Drug Inspector, while instituting complaints, for commission of offence punishable under Sections 18(a)(i) and 18(a)(vi) punishable under Section 27(d) of the Act, against the accused No.1 & 3, named in the complaints, but the question which needs determination at this stage is, "whether case made out against the petitioner herein, being Managing Director of M/s Theon Pharmaceuticals Limited, is sustainable on account of certain immunities granted under Section 19(3) of the Act or not? Section19(3) reads as under:

> "19. Pleas.—(1)x x x x
>
> (2) x x x x

> (3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—
>
> (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;
>
> (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and
>
> (c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it."

29. Aforesaid provisions contained under Section 19(3) categorically provide that a person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof; (b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and (c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.

30. No doubt, report of Drug Testing Laboratories suggest that samples drawn were not of standard quality, hence, case under Sections 18(a)(i) and 18(a)(vi) read with Section 16 punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940, is maintainable against the manufacturer, stockiest and the trader, but question is, "whether petitioner, being Managing Director of the company, can be prosecuted, especially when nothing has been adduced on record to suggest that on the date of

drawing samples, petitioner, being Managing Director of the company, was responsible for day-to-day affairs of the company".

31. At this stage, it would be apt to take note of Section 34 of the unamended Act, 1940, 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 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.
>
> Explanation.—For the purposes of this section—
>
> (a) "company" means a body corporate, and includes a firm or other association of individuals; and
>
> (b) "director" in relation to a firm means a partner in the firm."

32. Aforesaid provision of law deals with offence, if any, committed by company. Aforesaid provision provides that 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.

33. 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 such offence.

34. Bare perusal of aforesaid law suggests that though company is primarily liable for the commission of an offence punishable under the Act, however, vicarious liability has been fastened upon the 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.

35. Hon'ble Apex Court in ***Susela Padmavathy Amma v. Bharti Airtel Ltd., 2024 SCC OnLine SC 311***, held that a person can be vicariously liable, if he is in charge and responsible to the company for the conduct of its business. Hon'ble Apex Court in the aforesaid judgment held 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-today 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) 2025:HHC:14089 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 needto 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.

36. While dealing with Section 141 of Negotiable Instruments Act, which is similar to Section 34 of the Drugs and Cosmetics Act, the Hon'ble Supreme Court considered the liability of the Company and its Directors in ***Pawan Kumar Goel v. State of U.P., 2022 SCC OnLine SC 1598,*** and ruled 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. Hon'ble Apex Court observed 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 in S.M.S 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)

37. In ***Rajesh Viren Shah v. Redington India Ltd., (2024) 4 SCC 305: 2024 SCC OnLine SC 143***, Hon'ble Apex Court reiterated the afore position, while observing as under:

"3. The position of law as to the liability that can be fastened upon a Director for non-realisation of a cheque is no longer res integra. Before adverting to the judicial position, we must also take note of the statutory provision — Section 141 of the NI Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under Section 138 of the NI Act, with exception thereto being that such an act if done without his knowledge or after him having taken all necessary precautions, would not be held liable. However, if it is proved that any act of a company is proved to have been done with the connivance or consent or may be attributable to (i) a Director; (ii) a Manager; (iii) a Secretary; or (iv) any other officer — they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

4. Coming to the judicial position, we notice a judgment of this Court in Monaben Ketanbhai Shah v. State of Gujarat [Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15: 2004 SCC (Cri) 1857] wherein it was observed that: (SCC pp. 18-19, para 6)

> 6. ... The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed, they were not in charge of and were not responsible to the firm for the conduct of the business of the firm would arise only when first the complainant makes necessary averments in the complaint and establishes that fact."

5. A Bench of three learned Judges in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975] observed: (SCC p. 102, para 18) "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 clear case should be spelt out in the complaint made 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."

6. We also notice this Court to have observed, in regard to the exercise of the inherent powers under Section 482CrPC, in cases involving negotiable instruments that interference would not be called for, in the absence of "some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. (Ashutosh Ashok Parasrampuriya case [Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., (2023) 14 SCC 770: 2021 SCC OnLine SC 915], SCC para 24)" This principle, as held in S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975], was followed in Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd. [Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., (2023) 14 SCC 770: 2021 SCC OnLine SC 915].

38. Most importantly, Hon'ble Apex Court recently in ***Siby Thomas v. Somany Ceramics Ltd., (2024) 1 SCC 348,*** observed 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. Hon'ble Apex Court observed in judgment supra, as under:

"9. Bearing in mind the averments made in the complaint in relation to the role of the appellant and sub-section (1) of Section 141, we will have to appreciate the rival contentions. Going by the decision relied on by the respondent in the S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] it is the primary responsibility of the complainant to make specific averments in the complaint, so as to make the accused vicariously liable. Relying on para 58.2 of the said decision the learned counsel appearing for the respondent would also submit that the complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be and he relied on mainly the following recitals thereunder : (SCC p. 716, para 58)

"58. ... 58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm, and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm."

10. We are of the considered view that the respondent has misread the said decision. Under the sub-caption "Specific averments in the complaint", in para 51 of S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] and paras 34.1 and 34.4 of Gunmala Sales case [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580] as also in para 52 of S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203], it was held in the decision in S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] thus : (SCC pp. 714-715, paras 51-52)

> "51. In Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103: (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580], this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarised its conclusion as under : (SCC pp. 126-27, para 34)

'34. ... 34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act, the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

34.2.-34.3. * * *

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard, and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini-trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances

into account which may lead it to conclude that no trial is necessary qua a particular Director.'

> 52. The principles of law and the dictum as laid in Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580], in our opinion, still holds the field and reflects the correct position of law.

11. In the light of the afore-extracted recitals from the decision in Gunmala Sales (P) Ltd. v. Anu Mehta [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580], quoted with an agreement in S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] and in view of sub-section (1) of Section 141 of the NI Act, it cannot be said that in a complaint filed under Section 138 read with Section 141 of the NI Act to constitute basic averment it is not required to aver that the accused concerned is a person who was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed. In para 53 of S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] it was held thus : (SCC p. 715)

> "53. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent."

It is thereafter that in the decision in S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] in para 58.1 it was held that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable.

12. Bearing in mind the afore-extracted recitals from the decisions in Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580] and S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203], we have carefully gone through the complaint filed by the respondent. It is not averred anywhere in the complaint that the appellant was in charge of the conduct of the business of the company at the relevant time when the offence was committed. What is stated in the complaint is only that Accused 2 to 6 being the partners, are responsible for the day-to-day conduct and business of the company. It is also

relevant to note that an overall reading of the complaint would not disclose any clear and specific role of the appellant.

39. Reliance is also placed upon a judgment rendered by Hon'ble Apex Court in ***K.S. Mehta v. Morgan Securities & Credits (P) Ltd., 2025 SCC OnLine SC 492***, wherein Hon'ble Apex Court held as under:

> "16. This Court has consistently held that non-executive and independent director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.
>
> 16.1. This Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 observed:
>
> "13. Section 141 is a penal provision creating vicarious liability, and 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.
>
> 22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear, and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company. 39. From the above discussion, the following principles emerge: (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to

make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction. (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company. (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 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 offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with. (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred. (v) If the accused is a Managing Director or a Joint Managing Director, then it is not necessary to make a specific averment in the complaint and by virtue of their position, they are liable to be proceeded with. (vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company, then also it is not necessary to make a specific averment in the complaint. (vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

16.2. In N.K. Wahi v. Shekhar Singh, (2007) 9 SCC 481, this Court in Para 8 observed:

> "To launch a prosecution against the alleged Directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be a clear and unambiguous allegation as to how the Directors are in charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced, and the court can always come to a conclusion in the facts of each case. But still, in the absence of any averment or specific evidence, the net result would be that the complaint would not be entertainable."

16.3. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, this Court laid down that mere designation as a director is not sufficient; a specific role and responsibility must be established in the complaint.

16.4. In Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1, this Court while taking into consideration that a non-executive director plays a governance role, they are not involved in the daily operations or financial management of the company, held that to attract liability under Section 141 of the NI Act, the accused must have been actively in charge of the company's business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.

16.5. In Ashok Shewakramani v. State of Andhra Pradesh, (2023) 8 SCC 473, this Court held:

> "8. After having considered the submissions, we are of the view that there is non-compliance on the part of the second Respondent with the requirements of Sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the Appellants who have been alleged to be the Directors of the Accused No. 1 company. We are not dealing with the cases of a Managing Director or a wholetime Director. The Appellants have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the Appellants."

16.6. In Hitesh Verma v. Health Care at Home India Pvt. Ltd., Crl. Appeal No. 462 of 2025, this Court held:

> "4. As the appellant is not a signatory to the cheque, he is not liable under Section 138 of the 1881 Act. "As it is only the signatory to the cheque who is liable under Section 138 unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable…."
>
> 5. There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of

> the company and a Director who was responsible for the company for the conduct of the business are two different aspects. The requirement of law is that both the ingredients of SubSection (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of the commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-Section (1) of Section 141 of the 1881 Act."

40. This Court in **Anil Mediratta (supra)**, had an occasion to deal with similar facts and circumstances, wherein, this Court held as under:

> "42. From the aforesaid exposition of law laid down by Hon'ble Apex Court, it is thus clear that, a company, being a juristic person, cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well. Therefore, it is not permissible to prosecute the petitioners without prosecuting the company. Since the company has not been arrayed as an accused, therefore, it is not permissible to prosecute the petitioners, being Directors of the Company, in view of the binding precedents of the Hon'ble Supreme Court.
>
> 43. Reliance is also placed upon judgment rendered by Hon'ble Apex Court in **Lalankumar Singh** v. **State of Maharashtra**, 2022 (Supp.) Shim. LC 260, wherein, Hon'ble Apex Court held as under:
>
> > "14. 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 incharge of and was also responsible to the company for the conduct of its business.

15. In the case of **S.M.S. Pharmaceuticals Ltd.** vs. **Neeta Bhalla and another**, 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-today functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint subcommittees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are 4 (2005) 8 SCC 89 matters which form part of 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. ….."

16. It was held that merely because a person is a director of a company, it is not necessary that he is aware about 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 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.

17. In the case of **Pooja Ravinder Devidasani** vs. **State of Maharashtra and another** 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 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 1314) 5 (2014) 16 SCC 1

"13. Section 141 is a penal provision creating vicarious liability, and 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 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 daytoday business of the Company."

44. There is another aspect of the matter, that once there is no dispute qua the fact, that M/s Generica India Limited had appointed Mr. Hem Raj Thakur as its authorized signatory, as is evident from Annexure P-1, (para 8 of complaint) and he was otherwise responsible for day-to-day functions of the company, there was otherwise no occasion, if any, for Drug Inspector concerned to implead petitioners, being Directors of company as accused.

45. Once, Mr. Hem Raj Thakur being authorized signatory was responsible for conduct of business of firm in question and invoice, vide which drug was sold to M/s Aar Kay Surgicals Sujanpur, contained his signatures, coupled with the fact that no material came to be adduced on record qua the fact that petitioners, being Directors of M/s Generica India Limited were looking after day-to-day affairs of the company, no case, if any, under S.18(a)(i), punishable under S.27(d) of the Act could be registered against petitioners being Directors of company

46. This court in similar circumstances, where company was not arrayed as an accused, straightway proceeded to quash the proceedings, vide order dated 16.9.2023 passed in CrMMO No. 111 of 2013, titled **Ashish Mittal** v. **State of Himachal Pradesh**, relevant paras whereof read as under:

> "11. A similar proposition was dealt with by the Apex Court in **Aneeta Hada** v. **Godhfather Travels and Tours Private Limited,** (2012) 5 SCC 661, while dealing with Section 141 of the Negotiable Instruments Act quoted above, held that when a person, which is a Company commits an offence, then certain categories of persons incharge as well as the Company would be deemed to be liable for the offences under Section 138 of the Negotiable Instruments Act. Thus, the statutory intendment is absolutely plain. The provision makes the functionaries and the Companies/ firms liable and that is by deeming fiction, which has its own significance.
>
> 12. Also on the comparative reading of the above Sections under the different statutes, it can safely be concluded that every person connected

with Company shall not fall within the ambit of Section 34 of the Act, which has a marked similarity with the similar provisions of Negotiable Instruments Act. The conclusion is obvious that only those persons, who are incharge of and responsible for the conduct of the business of the Company at the time of commission of the offence are liable for the criminal action. The explanation added to Section 34 ibid shows that the Company means a body corporate and includes a firm or other association of individuals and Directos in relation to a firm means a Partner.

13. In the instant case, the petitioner is alleged to be a Partner of "M/s. Legen Healthcare". The said firm has not been impleaded as an accused and also there is no allegation in the complaint that the petitioner in the capacity as a Partner was incharge of and responsible for the conduct-business of the said firm. Therefore, in my opinion, summoning of the petitioner for the alleged offence in his capacity as a Partner is wrong and illegal.

14. Thus, the logical conclusion is that the summoning of the petitioner as a Partner of the said firm as an accused is unsustainable, hence, quashed and set aside., but, however, it shall open to the Drug Inspector to implead the Company as an accused by moving an appropriate application before the learned trial Court and in case there is any evidence during the trial that a particular person is incharge of or responsible for the conduct of the business or the Company including the petitioner, he can also be impleaded as an accused. The record of learned trial Court be returned forthwith and shall reach before it on or before 21.10.2013."

47. In the aforesaid judgment, Coordinate Bench of this Court, having taken note of the fact that the firm, of which petitioner in that case was a partner, was not impleaded as an accused, coupled with the fact that there was no allegation against the petitioner, being partner or in charge or responsible for conduct of business of said firm, held summoning of petitioner in that case bad in law."

41. In the aforesaid judgment this Court held that once, an authorized person responsible for conduct of the business of the firm

concerned, is appointed and it is endorsed by the Department, no case under Sections 18(a)(i) and 18(a)(vi) punishable under Section 27(d) of the Act can be registered against the Directors of Company.

42. It is quite apparent from the judgment referred to hereinabove that the complainant is required to specifically aver in the complaint that the person, sought to be held vicariously liable, is not only in-charge of the company but is also responsible to the company for its affairs. However, such averment is totally missing in the complaint. There is no specific averment in the complaints that petitioner, being Managing Director of the company is responsible for day-to-day affairs of the company, especially manufacturing, hence, the complaints do not satisfy the requirement of law laid down by Hon'ble Apex Court in the judgments noted above.

43. In view of the discussion made hereinabove and law taken note hereinabove, this Court holds the proceedings against the petitioner to be not maintainable.

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 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 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.

46. Having scanned the entire material adduced on record, *vis-à-vis* prayer made in the instant petition, this Court is persuaded to agree with

learned Senior Counsel, appearing for the petitioner that this Court, while exercising power under Section 482 Cr.P.C. may proceed to quash the complaints against the petitioner, 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 petitioner in all probabilities. Otherwise also, in case prayer made on behalf of the petitioner is not accepted, he would be subjected to unnecessary ordeal of facing protracted trial, which otherwise is bound to fail.

47. Consequently, in view of detailed discussion made herein above and law taken into consideration, present petition is allowed. Complaints case No.8/3 of 2022 and 13/3 of 2022, tilted as *Union of India Vs. M/s Theon Pharmaceuticals Limited and Others*, pending in the Court of learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, as well as orders dated 10.01.2022/11.01.2022, are quashed and set aside qua the petitioner. The petitioner is discharged henceforth in both the cases.

All pending applications, stand disposed of.

April 09, 2026 **(Sandeep Sharma),**
Rajeev Raturi **Judge**