



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CrMMO No. 1295 of 2024**  
**Reserved on: March 17, 2026**  
**Decided on: April 2, 2026**

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Paramjit Arora and another	Versus	.....Petitioners
State of Himachal Pradesh		....Respondent

Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup>Yes.

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**For the Petitioners** : Mr. Varun Kumar Gupta and Mr. Janesh Gupta, Advocates.

**For the Respondent** : Mr. Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan and Mr. Anish Banshtu, Deputy Advocates General

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**Sandeep Sharma, Judge**

By way of instant petition filed under S.528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter, 'BNSS'), prayer has been made on behalf of the petitioners for quashing of Cr. Complaint titled State of Himachal Pradesh through Drugs Inspector H.Q. Mandi, H.P. v. Health Biotech Limited and others, pending adjudication before learned Additional Chief Judicial Magistrate, Mandi (CNR No. HPMA020089392022 & Reg. No. 01/2022 & date of institution 30.7.2022). Besides above, petitioners, who are Directors of M/s Health Biotech Limited, have also prayed for quashing of summoning order as well as subsequent proceedings issued/initiated against the petitioners by the court concerned, while taking cognizance of offence

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<sup>1</sup> Whether the reporters of the local papers may be allowed to see the judgment?



under S. 18(a)(i) and S.27(d) of Drugs and Cosmetics Act, 1940 (hereinafter, 'Act').

2. Precisely, the facts of the case are that on 10.9.2021, complainant Mr. Abhilash Kumar, Drugs Inspector, H.Q. Mandi, Himachal Pradesh received a letter from the Senior Medical Superintendent, SLBSGMC & H, Mandi at Nerchowk through the Chief Medical Officer, Mandi, regarding sampling and testing of the product namely Local Anaesthesia 2% xylocaine with adrehanline available in OT. Thereafter, the complainant drew a sample of "Lignocaine and Adrenaline Injection I.P. (A-CAINE ADR)' (Batch No. HILR2006F, Mfg. date Nov. 2020, Expiry Date Oct.2022, Mfd. by M/s Health Biotech Limited) on Form-17 and Form 17-A from the In-charge, Central Store, SLBSGMC & H Mandi for the purpose of test and analysis and on 13.9.2021, the said sample was referred to the Government Analyst, RDTL Chandigarh, Sector 39-C, Chandigarh-160036 on Form-18. On 24.11.2021, complainant received test and analysis report from the Government Analyst, RDT Chandigarh on Form-13 whereby the said sample of the drug was declared as "Not of Standard Quality" for the reason that the sample does not conform to the claim as per IP 2018 in respect to the assay of Adrenaline Bitartrate calculated as adrenaline.

3. After receipt of the said sample analysis report, vide letter dated 24.11.2021, the Chief Pharmacist, Central Drugs Store, SLBSGMC&H Mandi, was called upon to disclose the name and address of the firm from whom he purchased the above said drug and simultaneously a letter dated 24.11.2021 was also sent to the manufacturing firm i.e. M/s



Health Biotech Limited to recall and stop further distribution of the said drug. On 13.12.2021, complainant received a letter dated 8.12.2021 from the Chief Pharmacist, Central Drugs Store through the Senior Medical Superintendent SLBSGMC & H Mandi, which disclosed that the said drug was purchased from the firm M/s Pradhan Mantri Bhartiya Jan Aushdhi Kendra SLBSGMC&H Mandi at Nerchowk, Mandi, H.P, whereafter, notice was issued to M/s Pradhan Mantri Bhartiya Jan Aushadhi Kendra, SLBSGMC & H Mandi to disclose the name and address of the firm from where the product was procured. M/s Pradhan Mantri Bhartiya Jan Aushadhi SLBSGMC& H disclosed vide letter dated 18.12.2021 that it had procured the above said product from firm M/s Pradhan Mantri Bhartiya Jan Audhadhi Kendra, Bhangrot, Tehsil Balh, District Mandi, HP vide bill dated 5.4.2021 and as such, notice was issued to Jan Aushadhi Kendra, Bhangrot.

4. In response to the inquiry letter, M/s Pradhan Mantri Bhartiya Jan Aushadhi Kendra, Bhangrot, Tehsil Balh, District Mandi disclosed that it had procured the above said product from the firm M/s Gupta Medical & General Mart, NH-21 near Veterinary Salha Sundernagar, H.P. vide invoice dated 5.4.2021. On 20.12.2021, M/s Gupta Medical & General Mart was directed to disclose the name and address of the firm from which the said product was procured and they disclosed that they had procured the said product from the firm M/s Ajay Medical Agency, 15<sup>th</sup> Floor Bachan Niwas, near Telephone Exchange, Sanjauli, Shimla vide invoice dated 2.4.2021. Upon seeking clarification, M/s Ajay Medical Agency disclosed that they had procured the above said



product from the firm M/s Health Biotech Limited, Village Sandoli, Nalagarh Road, Baddi, District Solan, Himachal Pradesh vide invoice dated 27.3.2021.

5. On 3.1.2022, M/s Health Biotech Limited was informed about adverse report and copy of report was sent alongwith sample portion and they were also directed to notify the complainant in writing of the report of the Government Analyst but no response was given by the said firm. Again on 9.2.2022, a reminder was sent to M/s Health Biotech Limited but again no reply was given by said firm. Again on 15.3.2022, second reminder was sent and on 17.3.2022, firm submitted its reply, which was found incomplete and unsatisfactory by the complainant and no explanation, whatsoever, was given in writing with regard to the report of Government Analyst.

6. On 23.3.2022, entire case alongwith all relevant documents was referred to the State Drugs Controller-cum-Controlling Authority, Himachal Pradesh at Baddi and thereafter the said authority, vide communication dated 7.5.2022, accorded sanction to institute prosecution in the court of law under S.18(a)(i) of the Act punishable under S.27(d) of the Act, for selling, distributing and manufacturing for sale of said drug, which was "not of standard quality". In the aforesaid background, complaint as well as consequential proceedings, sought to be quashed, came to be institute against the p.s.

7. In nutshell, grouse of the petitioners, as has been highlighted in the petition and further canvassed by Mr. Varun Kumar Gupta and Mr. Janesh Gupta, learned counsel for the petitioners, is that the complaint



is liable to be quashed on the ground that a criminal complaint against any Director or officer of a company does not lie in the absence of specific averments and role mentioned, as such, in the present case, the complainant has failed to establish extent of vicarious liability and role played by the petitioners in terms of S.34 of the Act in the commission of alleged offence, committed by the parent company and in this regard petitioners cannot be held vicariously liable for the commission of offence allegedly committed by parent company i.e. M/s Health Biotech Limited.

8. Learned counsel for the petitioners further submitted that it is settled position of law that a complaint under the Act is liable to be dismissed in case statutory right of getting the drug re-analyzed from the Director, Central Drugs Laboratory under S.25(4) of the Act is denied to a person, who has shown his clear disagreement and intention to controvert the report of Government Analyst. They further submitted that the intention of legislature to incorporate S.25(3) and (4) is only to provide an opportunity to controvert findings of Government Analyst so that fourth sample portion retained by Drugs Inspector under S.23(4) could be forwarded to Director, Central Drugs Laboratory being the appellate laboratory, for second opinion and Hon'ble Apex Court has again and again held that any attempt to deny statutory right must result into dismissal of complaint.

9. Learned counsel for the petitioners further argued that the parent manufacturing company i.e. M/s Health Biotech Limited had appointed Mr. Rohini Raman Pathak as Technical Director and, his appointment is



also notified through Form No. 32/DIR-12 to the Registrar of Companies and said Technical Director was subsequently appointed by the company to be the person responsible and in-charge of manufacturing affairs of drugs under S.34 of the Act. Learned counsel for the petitioners further submitted that even the Licensing Authority has also endorsed name of above said Technical Director as person responsible for the affairs of the company.

10. Learned counsel for the petitioners, further submitted that as required under the Act and Drugs and Cosmetics Rules, 1945 (hereinafter, 'Rules'), M/s Health Biotech Limited had also appointed competent technical staff under whose direct supervision, all kinds of pharmaceutical drugs and formulations were being manufactured and their appointment is also endorsed and accepted by the statutory licensing authorities. They further submitted that appointment of competent technical persons is a statutory requirement under rule 69, rule 71 and rule 76 of the Rules.

11. Learned counsel for the petitioners further submitted that petitioners came to be appointed as Directors in 2001 and 2007, respectively, and it is evident from the perusal of manufacturing license that they have no active role to play in manufacturing of the drugs and being Directors, their role is restricted to management of the financial affairs of the company. It is further argued on behalf of the petitioners that only persons mentioned in the licence are involved and responsible for the manufacturing activities being conducted by parent company.



12. In support of their contentions, learned counsel for the petitioners placed reliance upon certain judgments, which shall be discussed in latter part of this judgment.

13. By way of filing reply to the petition, prayer made on behalf of the petitioners has been opposed by the respondent-State. It is averred in the reply filed by the respondent-State that the petition filed by the petitioners is not maintainable in view of settled legal position as settled by Hon'ble Apex Court in **Dinesh B. Patel v. State of Gujarat**, (2010) 11 SCC 125, which is with regard to liability of Director(s). Mr. Rajan Kahol, learned Additional Advocate General appearing for the respondent-State, while referring to the above judgment, submitted that if it is alleged that the Directors were privy to manufacturing of medicine concerned by the company, then they are responsible for affairs of the company and, therefore, when a drug manufactured by the company is found to be defective, all the Directors could be prosecuted and complaint filed against such Directors cannot be disposed of under S.482 CrPC (now S.528 BNSS) as it requires appreciation of facts on the basis of evidence to be led before trial court. Mr. Kahol further submitted that the petitioners, who claim themselves to be the Directors of the company, must prove that they have nothing to do with manufacturing process and, therefore, they should not be held liable under S.34(2) of the Act. Mr. Kahol further submitted that since the drug namely Lignocaine and Adrenaline Injection I.P. (A-CAINEADR) Batch No. HILR2006F Mfg. date Nov/2020, Exp. Date Oct/2022, manufactured by M/s Health Biotech Limited, was not found to be of



'standard quality', petitioners being Directors of the company, are liable to be prosecuted under relevant provisions of law.

14. Mr. Kahol further argued that complaint has been filed after due sanction for prosecution by the competent authority and after completing investigation, including statutory reports of two Government Laboratories confirming the drug in question to be 'not of standard quality'. Mr. Kahol further contended that the complaint discloses violation of S.18(a)(i) and (vi) of the Act, punishable under S.27(d) of the Act, as accused manufactured, sold and distributed a sub-standard drug i.e. Lignocaine and Adrenaline Injection I.P. (A-CAINEADR).

15. Lastly, Mr. Kahol submitted that instant petition is an abuse of process of law and there is clear violation of the Act and Rules and affects public health, therefore the matter requires full trial on merits.

16. I have gone through the records minutely and heard learned counsel for the parties

17. In nutshell the case of the petitioner is that since the complaint is completely silent with regard to the role of the petitioners in day-to-day functioning of the company coupled with the fact that accused No. 4 is an authorized representative of the Company, there was no occasion to implead the petitioners as accused.

18. 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.

19. 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.

20. 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 case bearing 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 to be permitted to degenerate into a weapon of harassment or persecution.

21. The Hon'ble Apex Court in **Prashant Bharti v. State (NCT of Delhi)**, (2013) 9 SCC 293, relying upon its earlier judgment titled as



**Rajiv Thapar and Ors v. Madan Lal Kapoor**, (2013) 3 SCC 330, reiterated that High Court has inherent powers under Section 482 Cr.PC., to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC, Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled as Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293, the Hon'ble Apex Court has held as under:-

“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been



dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor* wherein this Court *inter alia* held as under: (2013) 3 SCC 330, paras 29-30)

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-



30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

22. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings.

23. Hon'ble Apex Court in case titled **Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi)** Department of Home and Anr, AIR 2019 SC 210, has held that abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.PC. The relevant paras of the judgment are as under:



16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows: -

“482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court ( G. Sagar Suri and Anr. V. State of U.P. and Others, (2000) 2 SCC 636 (para 7), Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10 SCC 591 (para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

24. Hon'ble Apex Court in case titled **Pramod Suryabhan Pawar v. The State of Maharashtra and Anr**, (2019) 9 SCC 608, has elaborated the scope of exercise of power under Section 482 Cr.PC, the relevant para whereof reads as under:-

“7. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently



followed and re-iterated by this Court. In *Inder Mohan Goswami v State of Uttaranchal*<sup>5</sup>, this Court observed.

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 CrPC. Every High Court has inherent powers to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

8. Given the varied nature of cases that come before the High Courts, any strict test as to when the court’s extraordinary powers can be exercised is likely to tie the court’s hands in the face of future injustices. This Court in *State of Haryana v Bhajan Lal*<sup>6</sup> conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The court in *Bhajan Lal* noted that quashing may be appropriate where, (2007) 12 SCC 1 1992 Supp (1) SCC 335

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2).

.....

(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior



motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in *Dhruvaram Murlidhar Sonar v State of Maharashtra*, 2018 SCC OnLine SC3100 (“*Dhruvaram Sonar*”) :

“13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.”

25. Aforesaid law, clearly stipulates that court can exercise power under S.482 of the Code of Criminal Procedure, to quash criminal proceedings, in cases, where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

26. Recently, Hon'ble Apex Court in **B.N. John v. State of U.P.**, 2025 SCC OnLine Sc 7 has held as under:

“7. As far as quashing of criminal cases is concerned, it is now more or less well settled as regards to the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana Vs. Ch. Bhajan Lal and Ors.*, 1992 Supp. (1) SCC 335 wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of



the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.” (emphasis added)

8. Of the aforesaid criteria, clauses no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case



against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings is instituted, such proceeding can be quashed.”

27. 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.

28. Since, in nutshell, case of the petitioners is that they being Directors of the Company, cannot be prosecuted for statutory violations, if any, especially, qua manufacture and marketing of the drug in question, because, they are not involved in the day-to-day functioning of the company, especially manufacturing activities, for which purpose the Company has appointed an authorized representative i.e. accused No.4 namely Mr. Rohini Raman Pathak, it would be apt to take note of S.34 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 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.”

29. 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.

30. 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-to-day 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-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 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 need to 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.

31. 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)

32. 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 advertent 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].

33. 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.

34. 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 in charge 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.*, CrI. 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.”

35. This court in **Anil Mediratta and others v. State of Himachal Pradesh and others**, CrMMO No. 738 of 2021, decided on 4.7.2024, 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 Sujapur, 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. Godfather 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."

36. 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 Department, no case



under S. 18(a)(i) punishable under S.27(d) of the Act can be registered against the Directors of Company.

37. 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 for its day-to-day affairs. However, such averment is totally missing in the complaint. There is no specific averment in the complaint that petitioners, being Directors of the company are/were responsible for day-to-day affairs of the company, especially manufacturing, hence, the complaint does not satisfy the requirement of law S.34 of the Act as well as laid down by Hon'ble Apex Court in the judgments noted above.

38. At this stage, it would be apt to take note of a judgment passed by High Court of Judicature at Madras in Cr. Original Petition No. 22130 of 2023 & Cr.I.M.P. Nos. 15388 & 15389 of 2023 titled **Mr. Paramjit Arora v. State Rep. by The Drugs Inspector, Kottivakkam**, decided on 1.2.2024, wherein, in similar facts and circumstances, proceedings initiated against petitioner No.1 herein, (who was sole petitioner in the afore case) for violation of S.18(a)(i) of the Act were quashed, holding that Mr. Rohini Raman Pathak, Technical Director was responsible for the conduct of business of the company under S.34 of the Act. High Court further observed that there was no averment in the complaint as to how and in what manner, petitioner therein was responsible for the conduct of business of the company.



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

40. 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 S.482 CrPC (now S.528 BNSS) may proceed to quash the complaint against the petitioners, 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 petitioners in all probabilities.

41. Otherwise also, in case prayer made on behalf of the petitioners is not accepted, he would be subjected to unnecessary ordeal of facing protracted trial, which otherwise is bound to fail.

42. In view of detailed discussion made herein above and law taken into consideration, present petition is allowed. Cr. Complaint titled State of Himachal Pradesh through Drugs Inspector H.Q. Mandi, H.P. v. Health Biotech Limited and others, pending adjudication before learned Additional Chief Judicial Magistrate, Mandi (CNR No. HPMA020089392022 & Reg. No. 01/2022 & date of institution 30.7.2022) as also summoning order and subsequent proceedings issued/initiated against the petitioners by the court concerned, are quashed and set aside qua the petitioners (accused Nos. 3 and 2, respectively). The petitioners are discharged henceforth.



The petition stands disposed of. All pending applications, stand disposed of.

**(Sandeep Sharma)**  
**Judge**

**April 2, 2026**  
*(vikrant)*