IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-640-2021 (O&M)
Reserved on : 21.01.2026
Date of Pronouncement : 04.02.2026
Uploaded on : 10.02.2026
Pronounced in Full

Ajay Kumar and another

... Petitioner(s)

Versus

State of Punjab

.. Respondent

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. B.S. Bhalla, Advocate for the petitioners.

Mr. P.S. Pandher, AAG, Punjab.

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H.S. Grewal, J.

1. This petition has been preferred by the petitioners under Section 482 Cr.P.C. seeking quashing of the complaint bearing No.COMA/65/2019, CNR No.PBMN030032252019 dated 19.12.2019 (Annexure P-1), titled as "State through Drugs Inspector Vs. Ajay Kumar & another", under Sections 18(a)(i) and 27(d) of the Drugs and Cosmetics Act, 1940 (hereinafter referred as 'the Act') and the summoning order dated 19.12.2019 (Annexure P-2) passed by the learned CJM, Mansa and all consequential proceedings arising therefrom.

2. The brief facts of the case are that on 01.09.2015, Sh. Gundeep Bansal, the Drugs Inspector, Mansa inspected the firm M/s Sharma Medical Hall, Gurudwara Road, Bhikhi, District Mansa where Kapil Dev Sharma s/o Sh. Jagdish Chand proprietor of firm was present as Incharge of the shop.

During inspection following two types of allopathic drugs were taken for testing and analysis on Form 17 :–

> *"1. **Sample No. MN/76/GB/2015**:– Four sample portions, each containing 4×10 Tables of Zepcare-D, Batch number ZPD-104, Manufacturing Date-07/2015, Expiry Date-06/2017, Manufactured by: Ocean Organics Pvt. Ltd. P.O. Khanna Nagar, Amritsar-143001.*
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> *2. **Sample No. MN/77/GB/2015**: Four sample portions, each containing 4×10 Tablets of OBIG, Batch number OBG-1401, Manufacturing Date: 11/2014, Expiry Date: 10/2016, Manufactured By: Apple formulations Pvt. Ltd. Plot No. 208, Kishanpur, Roorkee-247667 (UK)."*
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> The present case is pertaining to sample No.**MN/76/GB/2015,** being manufactured by petitioner No.2/Company. One sealed sample portion of MN/76/GB/2015 to MN/77/GB/2015 taken for test and analysis along with one copy of the Form 17 was handed over to Kapil Dev Sharma at the spot and the receipt of the same was obtained on the Form-17 itself.

3. On 07.09.2015, the Drug Inspector sent one sealed sample portion of each sample to the Government Analyst, Punjab, along with a memorandum in Form 18 vide no.Drugs/2015/821 dated 07.09.2015 through registered parcel. The Government Analyst, Punjab declared the drug sample number MN/76/GB/2015 of tablet Zepcare-D, Batch Number ZPD-104, Manufacturing Date: 07/2015, Expiry Date: 06/2017; manufactured by M/s Ocean Organics Pvt. Ltd. (petitioner No.2) as 'Not of Standard Quality', vide test report No.2438 dated 09.10.2015, as content of drug Pantoprazole was found to be 32.5 mg/tab. (81.25%) against the labeled claim of 40 mg/tablet.

4. Upon receipt of the said report, on 23.10.2015, a notice bearing No.Drugs/2015/941 along with a copy of test report, was delivered to M/s Sharma Medical Hall, Gurudwara Road, Bhikhi, District Mansa to disclose source of acquisition of the drug in question. A copy of the same was also forwarded to the State Drugs Controller, Punjab and to M/s Ocean Organics Pvt. Ltd., P.O. Khanna Nagar, Amritsar (petitioner No.2) vide office No.Drugs/2015/941-46 dated 23.10.2015 along with a copy of test report.

5. In response to the said notice, reply was filed by M/s Sharma Medical Hall, on 02.11.2015 stating that the drug in question was purchased from M/s Patiala Medical Hall, Thana Road, Bhikhi, Distt. Mansa vide invoice number R-03452 dated 31/8/2015. Thereafter, a registered notice letter No/Drugs/15/1019 dated 20/11/2015 alongwith a copy of the test report and a sealed sample portion, was sent to M/s Patiala Medical Hall, Thana Road, Bhikhi, Distt. Mansa, seeking disclosure of the source of acquisition of drug in question. Answering thereto, it was submitted that the drug in question was purchased from manufacturing firm M/s Ocean Organics Pvt. Ltd. vide invoice No.206 dated 08.07.2015.

6. On 11.03.2016, petitioner No.2 challenged the test report. On 29.03.2017, the then Drug Inspector submitted an application before the Chief Judicial Magistrate, Mansa seeking retesting and re-analysis of drug sample in question from Central drugs Laboratory Kolkata. The trial Court sent the drug sample to the Director, Central Drugs laboratory, Kolkata for test and analysis under Section 25(4) of the Act.

7. On 27.07.2017, the Central Drugs Laboratory Kolkata issued test report of the sample in question vide letter no. 2-1/2017-SS/CC-55/519 dated

27.07.2017, wherein the drug sample was again declared 'Not of Standard quality' as the content of drugs Pantoprazole was found to be 17.53 (43.83%) mg against the label claim of 40 mg against the label claim of 10 mg. After completion of investigation and obtaining sanction from the Joint Commissioner (Drugs), Food and Drugs Administration, Punjab, the impugned complaint was filed on 19.12.2019.

8. Learned counsel for the petitioners submitted that the learned trial Court erred in summoning the petitioners, as the complaint was instituted after the expiry of the shelf life of the drug in question. It is further submitted that the initiation of prosecution at such a belated stage deprived the petitioners of their valuable and statutory right of re-analysis under Section 25(4) of the Drugs and Cosmetics Act, 1940, thereby causing serious prejudice to their defence. It is further argued that the summoning order has been passed in a mechanical manner and without recording any finding with regard to existence of a *prima facie* case. In support of his submissions, he has relied upon the judgments of Hon'ble the Supreme Court in the cases of **State of Haryana versus Unique Farmaid P. Ltd. 1999(4) RCR (Criminal) 540; M/s Medicamen Biotech Ltd. and another versus Rubina Bose, Drug Inspector, 2008(2) RCR (Criminal) 496**; the judgment of this Court in the case of **State of Haryana and another versus Avanindra Kumar Bansal, 1995(2) RCR (Criminal) 194** and the judgment of the Himachal Pradesh High Court in the case of **M/s Unital Formulation and another versus Union of India, 2025 NCHHC 6953.**

9. On the other hand, learned State counsel, while referring to the reply filed by way of an affidavit of Drugs Control Officer, Mansa, submitted

that petitioner No.2 being the manufacturer and petitioner No.1 being the person responsible for its conduct are vicariously liable for the alleged offence. It is further submitted that in terms of Section 469(1)(b) Cr.P.C., the period of limitation would commence from the date of the Central Drugs Laboratory report, i.e. 27.07.2017 and the period of limitation would extend upto 26.07.2020. Since the complaint was filed on 19.12.2019, it is, therefore, within limitation and the argument raised by the petitioners is wholly unsustainable. It is also contended that the sample was tested by the Central Drugs Laboratory before the expiry of its shelf life. On these grounds, it is, therefore, submitted that a *prima facie* case is made out against the petitioners and the trial Court has rightly summoned them for the alleged offence.

10. I have considered the submissions made by the learned counsel for the parties and have carefully gone through the material on record as well as the judgements cited by the petitioners in support of their contentions.

11. The first and foremost issue which arises for consideration is with regard to limitation. Before examining the same, it would be necessary to examine the relevant provisions of law applicable in this case : -

(i) Section 18 of the Act is reproduced hereunder:-

> ***"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 3 [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 imported or manufactured 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

Xxxxxx"

(ii) Section 25 of the Act is reproduced hereunder:-

*"**25. Reports of Government Analysts**.—*

(1) The Government Analyst to whom a sample of any drug [or cosmetic] has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken [and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A], and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken [or the person whose name, address and other particulars have been disclosed under section 18A] has, within twenty - eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a

Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug [or cosmetic] produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."

(iii) Section 27 of the Act is reproduced hereunder:-

***"27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.**—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—*

(a) any drug deemed to be adulterated under section 17A or spurious under section 6 [17B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grevious hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860) solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be [punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more]:

[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause: Provided further that where the use of the adulterated or, spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

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(iv) Section 468 of the Cr.P.C. reads 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 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."

(v) Section 469 of the Cr.P.C. reads as under:-

"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."

12. The Hon'ble Supreme Court in the case of **M/s Cheminova India Ltd.**(supra), has held as under:-

"10. In the present case, it is not in dispute, the complainant-2nd respondent has received the report of analysis on 14.03.2011 from the Insecticide Testing Laboratory, Ludhiana and the complaint was lodged on 25.03.2014 which is beyond a period of three years from 14.03.2011. The only submission of the learned counsel for the State is that further report from the Central Insecticide Testing Laboratory was received on 09.12.2011 which is the conclusive evidence of the facts, as such, the complaint is within the period of limitation. We are not convinced with such submission made by learned counsel for the State.

When it is clear from the language of Section 469, Cr.PC that the period of limitation shall commence on the date of offence, there is no reason to seek computation of limitation only from the date of receipt of report of the Central Insecticide Testing Laboratory, Faridabad. As per the procedure prescribed under the Statute, i.e., Insecticide Act, 1968 and the rules made thereunder, the Insecticide Testing Laboratory, Ludhiana was the competent authority to which the sample was sent on 17.02.2011, after drawing on 10.02.2011, and the report of analysis was received on 14.03.2011, as such the said date is said to be the crucial date for commencement of period of limitation. By virtue of the said report received on 14.03.2011 which states that the active ingredient of the sample was only to the extent 34.70% as against the labelled declaration of 40%, it is clear that it is the date of offence allegedly committed by the accused. Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation. The report of analysis received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011 itself indicates misbranding, as stated in the complaint, thus, the period of limitation within the meaning of Section 469, Cr.PC commences from 14.03.2011 only. In that view of the matter, we are clearly of the view that the complaint filed is barred by limitation and allowing the proceedings to go on, on such complaint, which is ex facie barred by limitation is nothing but amounts to abuse of process of law. Though the learned counsel has also raised other grounds in support of quashing, as we are persuaded to accept his submission that complaint filed is barred by limitation, it is not necessary to deal with such other grounds raised."

(emphasis supplied)

13. Hon'ble the Supreme Court in the case of **State of Haryana versus Unique Farmaid P. Ltd. (supra)** made following observations:-

"It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub- section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample

had already expired and no purpose would have been served informing the court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence.

In these circumstances, High Court was right in concluding that it will be an abuse of the process of court if the prosecution is continued against the respondents - the accused persons. High Court rightly quashed the criminal complaint. We uphold the order of the High Court and would dismiss the appeals."

14. Similarly, the Hon'ble Supreme Court in the case of **M/s Medicamen Biotech Ltd. and another versus Rubina Bose(supra),** emphasized as under**:-**

***"**We find that this judgment helps the case of the appellant rather than that of the respondent because in spite of two communications from the appellant that it intended to adduce evidence to controvert the facts given in the report of the Government Analyst, the fourth sample with the Magistrate had not been sent for re-analysis. The observations in Amery Pharmaceuticals's case (supra) are also to the same effect. We find that the aforesaid interpretation supports the case of the appellants inasmuch they had been deprived of the right to have the fourth sample tested from the Central Drugs Laboratory. It is also clear that the complaint had been filed on the 2nd July 2002 which is about a month short of the expiry date of the drug and as such had the accused appellant appeared before the Magistrate even on 2nd July 2002 it would have been well nigh impossible to get the sample tested before its expiry. In the affidavit filed to the petition by Dr. D. Rao, Deputy Drugs Controller, and in arguments before us, it has been repeatedly stressed that the delay in sending of the sample to the Central Drugs Laboratory had occurred as the appellant had avoided service of summons on it till 9th May 2005. This is begging the question. We find that there is no explanation as to why the complaint itself had been filed about a month before the expiry of the shelf life of the drug and concededly the filing of the complaint had nothing to do with the appearance of the accused in response to the notices which were to be issued by the Court after the complaint had been filed. Likewise, we observe that the requests for retesting of the drug had been made by the appellant in August/September 2001 as would be clear from the facts already given above and there is absolutely no reason as to why the complaint could not have been filed earlier and the fourth sample sent for retesting well within time. We are, therefore, of the opinion that the facts of the case suggest that the appellants have been deprived of a valuable right*

> *under Section 25(3) and 25(4) of the Act which must necessitate the quashing of the proceedings against them.*"

15. From the aforementioned provisions of law and the judgments of the Hon'ble Supreme Court, it is apparent that the period of limitation under Section 469 Cr.P.C. begins from the date on which the offence is first disclosed, and not from the date of any subsequent or confirmatory report.

16. In the case in hand, the Government Analyst, Punjab examined the drug sample and declared it to be *"Not of Standard Quality"* vide report dated **09.10.2015**. However, the complaint was filed on **19.12.2019**, which is clearly beyond the prescribed period of limitation. Consequently, the learned trial Court was barred from taking cognizance of the offence, and the very institution of the complaint is legally unsustainable.

17. Insofar as the statutory right of re-analysis is concerned, it is evident that the shelf life of the drug expired in June, 2017, whereas the complaint was filed after an inordinate and unexplained delay. The right to seek re-testing from the Central Drugs Laboratory under Section 25(4) of the Drugs and Cosmetics Act is a valuable and substantive right, intended to safeguard the accused against erroneous or doubtful analysis, as specifically held by the Hon'ble Supreme Court in **Unique Farmaid Pvt. Ltd.** and **Medicamen Biotech Ltd.**(supra). Therefore, the delay attributable to the prosecution has deprived the petitioners of this statutory safeguard, thereby causing irreparable prejudice to their defence.

18. Moreover, the contention of the State that the period of limitation should be computed from the date of the Central Drugs Laboratory report dated 27.07.2017 is devoid of merit. The subsequent report merely confirmed what

had already been disclosed in the earlier report dated 09.10.2015 and cannot be treated as the starting point for the purpose of limitation. Acceptance of such an argument would defeat the very object of limitation laws and allow prosecution to be initiated even after long and unreasonable delays.

19. In light of the above, this Court is of the considered view that the impugned complaint is clearly barred by limitation, and continuation thereof would amount to a gross abuse of the process of law.

20. Consequently, the instant petition is allowed and the Complaint bearing No.COMA/65/2019, CNR No.PBMN030032252019 dated 19.12.2019 (Annexure P-1), titled as "State through Drugs Inspector Vs. Ajay Kumar & another", under Sections 18(a)(i) and 27(d) of the Drugs and Cosmetics Act, 1940 and the summoning order dated 19.12.2019 (Annexure P-2) passed by the learned CJM, Mansa, along with all consequential proceedings arising therefrom, are hereby quashed qua the petitioners.

21. Pending applications, if any, shall stand disposed of accordingly.

(H.S.GREWAL)
JUDGE

04.02.2026
A.Kaundal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No