EHIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 453/2018

Reserved on: 27.02.2026
Pronounced on: 09 .03.2026
Uploaded on: 10..03.2026

Whether the operative part or full judgment is pronounced: Full

Sudhir Kumar, Managing Director, Jacksons Laboratories Pvt. Ltd.

Petitioner

Through: - Mr Varut Gupta Advocate

vs

Peerzada Tasaduq Hussain Drug Inspector Pulwama Srinagar

Respondents

Through: - None.

CORAM: **HON'BLE MR. JUSTICE SANJEEV KUMAR,JUDGE**

JUDGMENT

1 By way of the present petition filed under Section 561-A CrPC, the petitioner, namely Sudhir Kumar, Managing Director of Jacksons Laboratories Private Ltd., seeks quashing of criminal proceedings in the complaint titled '*State through Drug Inspector, Pulwama, Drugs & Food Control Organisation vs. M/s J.M. Traders and Pharmaceutical Distributors and others*, filed by the respondent under Section 18(a)(i) read with Section 28 of the Drugs and Cosmetics Act, 1940 [" Act"), as well as the order of cognizance passed therein.

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2 Before I advert to the grounds of challenge urged and pleaded by the petitioner, it is necessary to first set out few facts which are necessary for disposal of this petition.

3 On 07.12.2013, the respondent inspected the business premises of M/S J.M. Traders, Pharmaceutical Distributors, Pulwama, and lifted sample of medicines including that of Molcin plus, Batch No. T-3498 M having date of manufacture as April, 2013 and expiry date March, 2016. The drug was purportedly manufactured by Jacksons Laboratories Private Ltd. The sample was lifted for the purpose of test and analysis as per the provisions of the Act and the Rules framed thereunder.The sample picked up was divided into four portions and one portion thereof was sent to the Government Analyst, Drug Laboratory, Srinagar for test and analysis. The Government Analyst submitted its report dated 27.12.2013 to the respondent in which the drug tested/analysed was reported to be not of standard quality.The proprietor of M/S J.M. Traders Pharmaceutical Distributors from whom the sample was picked up was called upon to disclose the source of purchase of the drug. In reply, M/S Traders Pharmaceutical Distributors disclosed the name of Atlantic Distributors, Srinagar as the distributor from whom he had purchased the drug in question. During further investigation, Atlantic Distributors, Srinagar disclosed the name of J.K. Pharma Agencies, and finally it came to be disclosed that the drug in question was manufactured by Jacksons Laboratory Private Ltd.

4 Having found thus, the respondent issued a statutory notice under Section 25(2) of the Act dated 16.01.2014 to the manufacturing company Jacksons Laboratories Pvt. Ltd., and also

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informed it about the report issued by the Government Analyst, Drug Laboratory, Srinagar. The manufacturer was also supplied a copy of the report of the Government Analyst and a portion of the sample of the drug which had failed in the Laboratory. The notice was responded to by the manufacturing company through its reply dated 11.02.2014 wherein, while acknowledging the receipt of the report of the Government Analyst and one sealed portion of the sample, the petitioner in his capacity as Managing Director of the manufacturing company disputed the report and claimed that the drug in question manufactured by them met all the standards and that the report of the Government Analyst was not correct. This was followed by another communication of the petitioner dated 22.02.2014 wherein the petitioner again disputed the correctness of the report submitted by the Government Analyst. The petitioner issued a third communication on 24.02.2014 conveying to the respondent specifically that the petitioner intended to adduce evidence in controversion of the report of the analyst in terms of Section 25(4) of the Act.

5 The respondent, after completing the legal formalities, filed a formal complaint before the Court of Chief Judicial Magistrate, Pulwama for initiating criminal prosecution against the petitioner herein and three others. The cognizance of the complaint was taken by the CJM on 16.11.2015 and simultaneously the process was issued for securing the presence of the petitioner herein and three others before the Court.The petitioner herein was served with the summons issued by the CJM on 16.05.2016 and he caused appearance in the Court on 15.06.2016. Admittedly, by the time the petitioner appeared, the shelf

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life of the drug in question had already expired with effect from March 2016.The petitioner, though caused his appearance before the Court in response to the summons issued, decided to challenge the proceedings in the complaint and the order of taking cognizance by the CJM by way of this petition by invoking the inherent jurisdiction of this Court vested by Section 561-A CrPC on the ground that the CJM Pulwama had taken the cognizance of the complaint which, on the face of it, was not maintainable. It is submitted that the right of the petitioner to seek re-examination/re-testing of the drug in question vested in him under Section 25(3) and 25(4) of the Act was denied.It is further submitted that the petitioner, upon receipt of the report of the Government Analyst, had by a written communication intimated the respondent within the prescribed period his intention to adduce evidence in controversion of the report. The respondent, despite having acknowledged the aforesaid communication, failed to get the sample re-tested/re-analysed from the Central Drugs Laboratory as is mandated by the provisions of sub-section (4) of Section 25 of the Act.It is also submitted that the CJM failed to consider that the complaint against the petitioner, Managing Director of the company incorporated under the Companies Act, was not maintainable without the company being arraigned as an accused. It is further submitted that the CJM failed to appreciate that the liability of the Directors, if any, is vicarious and cannot be fastened unless the company whose liability with regard to manufacturing of the drug is direct and strict is also made an accused. It has also been contended that the CJM failed to appreciate the mandatory provisions of Section 34 of the Act which unequivocally prescribe that

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where an offence under the Act has been committed by a company, the Director or any other person who is in charge of and responsible to the company for the conduct of its business along with the company shall be deemed to be guilty of the offence.

6 The complaint, as is apparent from its reading, does not contain any averment to demonstrate that the petitioner was such a person in charge of and responsible to the company for the conduct of its business and, in the absence thereof, the petitioner could not have been proceeded against by the respondent by filing the complaint.

7 Having heard learned counsel for the parties and perused the material on record, the following questions arise for determination in the present petition:

> (i) Whether it is obligatory for the complainant to have the drug sample, lifted under Section 23 of the Drugs and Cosmetics Act, tested or analysed in the Central Drugs Laboratory in terms of sub-section (4) of Section 25 of the Act, where the person from whom the sample was taken or the manufacturer disclosed under Section 18-A of the Act, within twenty-eight days of receipt of the report of the Government Analyst, notifies in writing to the complainant that he intends to adduce evidence in controversion of the report; and whether failure on the part of the complainant to send the sample for such analysis vitiates the proceedings in the complaint.
>
> (ii) Whether, in a case where an offence under the Act is alleged to have been committed by a company, a complaint against the Managing Director alone is maintainable without arraying the company itself as an accused.

8 In support of his submissions with regard to question No. 1, Mr. Varut Gupta, learned counsel appearing for the petitioner, has placed strong reliance upon the judgment of the Supreme Court in ***Medicamen Biotech Ltd. v. Rubina Bose***. He submits that once the

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accused notifies the Drug Inspector within the stipulated period that he intends to adduce evidence in controversion of the report of the Government Analyst, the Drug Inspector is under a statutory obligation to have the sample sent to the Central Drugs Laboratory for re-analysis and failure to do so, it is argued, deprives the accused of a valuable statutory right.Learned counsel further submits that in the instant case the petitioner had, through written communications, specifically informed the respondent that he intended to challenge the report of the Government Analyst and adduce evidence in controversion thereof. Despite such intimation having been given within the prescribed period, the respondent failed to send the sample to the Central Drugs Laboratory for re-testing. It is further submitted that by the time the petitioner appeared before the trial Court, the shelf life of the drug had already expired in March 2016 and, therefore, the petitioner was deprived of his valuable right to seek re-analysis of the sample. According to learned counsel, such denial of the statutory right vitiates the entire prosecution and renders the continuation of criminal proceedings an abuse of the process of law.

9 Before adverting to the rival contentions, it would be appropriate to set out Sections 23 and 25 of the Act herein-below:

> **Procedure of Inspectors:**
>
> (1) Where an Inspector takes any sample of a drug [1][or cosmetic] under this Chapter, he shall tender the fair price thereof and may require a written acknowledgment therefor.
>
> (2) Where the price tendered under sub-section *(1)* is refused, or where the Inspector seizes the stock of any drug or cosmetic under clause *(c)* of section 22, he shall tender a receipt therefor in the prescribed form.

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(3) Where an Inspector takes a sample of a drug [1][or cosmetic] for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug [1][or cosmetic] is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug or cosmetic is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably ma rking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:-

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;

(ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug or cosmetic; and

(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A.

(5) Where an Inspector takes any action under clause *(c)* of section 22,-

(a) he shall use all despatch in ascertaining whether or not the drug [1] or cosmetic contravenes any of the provisions of section 18 and, if it is ascertained that the drug or cosmetic does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the drug or cosmetic he shall as soon as may be inform a Judicial Magistrate and take his orders as to the custody thereof;

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(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug [4][or cosmetic]; he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

(6) Where an Inspector seizes any record, register, document or any other material object under clause *(cc)* of sub-section *(1)* of section 22, he shall, as soon as may be, inform [6][a Judicial Magistrate] and take his orders as to the custody thereof

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 4 [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

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> 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.

10 From a reading of Section 23, it clearly comes out that a sample of a drug taken by the Drug Inspector from any premises wherein any drug or cosmetic is being manufactured, sold or stocked or exhibited or offered for sale or distributed is required to be divided into four portions and effectively sealed and suitably marked in the presence of a person from whom it has been taken, provided that where the sample has been taken from the premises whereon the drug or cosmetic is being manufactured, the sample would be divided into three portions only. As is evident from sub-section (4) of Section 23 of the Act, the four portions of a sample so provided shall be disposed of in the following manner:

> (i) one portion of the drug shall be sent to the person from whom it has been taken.
>
> (ii) the second portion shall be sent to the Government Analyst for test or analysis;
>
> (iii) the third portion shall be produced before the Court before which proceedings, if any, are instituted in respect of the said drug;
>
> (iv) the fourth portion shall be sent to the person, if any, whose name, address or other particulars have been disclosed under Section 18-A of the Act i.e. the manufacturer.

11 Obviously there is some object or purpose in handing over a portion of the sample to the person from whom it has been taken and to the manufacturer whose name has been disclosed under Section 18-A of the Act. There could be no better reason except that the person

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from whom the sample has been taken or the manufacturer as the case may be are in a position to get the portion of sample tested or analysed from an independent drug laboratory and make an informed decision for proceeding further in terms of Section 25 of the Act.

12 As is evident from reading of Section 25 of the Act in its entirety, the Government Analyst to whom a portion of the sample has been sent for test analysis shall deliver to the Inspector concerned a signed report of test or analysis in triplicate in the prescribed format. One copy of the report shall be served upon the person from whom the sample was taken and one copy of the report shall be given to the person whose name, address or particulars are disclosed under Section 18-A of the Act i.e. the manufacturer. The third copy, of course, would be retained by the Inspector for use in any prosecution in respect of the sample. Sub-section (3) of Section 25 makes the report of the Government Analyst conclusive evidence of the facts stated therein unless the person from whom the sample was picked up and the manufacturer whose name was disclosed under Section 18-A has, within 28 days of receipt of a copy of the report, notified in writing his intention to adduce evidence in controversion of the report.

13 It is thus abundantly clear that in case such person does not signify his intention to adduce evidence in controversion of the report of the Government Analyst within the prescribed period, the report of the Government Analyst shall be conclusive evidence of the facts stated therein. However, if he/she notifies in writing his/her intention to adduce evidence in controversion of the report, such person shall be well within his right to controvert the report by leading

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evidence in defence. Such evidence could be a report of some other registered and standard Drug Laboratory or some other form of scientific evidence holding contrary to what has been found by the Government Analyst. Sub-section (4) of Section 25 is a significant provision which requires careful reading and proper interpretation keeping in view the context of the preceding sub-section and Section 23. A careful reading of sub-section (4) would throw out the following position:

> "If the sample has already been tested or analysed in the Central Drugs Laboratory, then there is no requirement to send it again to the same laboratory for testing and analysis and such report shall be taken as conclusive evidence of the facts stated therein. However, where the initial report is by the Government Analyst and the person from whom the sample has been lifted or the manufacturer, as the case may be, has signified his intention in writing to adduce evidence in controversion of the report within the stipulated period, the Inspector (complainant), shall have the option to make a request to the Court for sending the sample retained for the Court for testing and analysis by the Central Drugs Laboratory".

14 The retesting or re-analysis of the sample which stood already tested or analysed by the Government Analyst is always on the request of either the complainant or the accused. The Court before which the prosecution is launched is also empowered to act *suo motu* and get the sample produced before it tested or analysed by the Central Drugs Laboratory.To say that the moment the accused notifies his intention in writing to the Inspector or the Court concerned that he intends to adduce evidence in controversion of the report, it becomes obligatory on the Drug Inspector (complainant) to pray to the Court to have the sample produced before it retested or re-analysed by the

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Central Drugs Laboratory is an interpretation not supported by the plain language of sub-section (4) of Section 25. The words "request" and "discretion" used in sub-section (4) are not redundant and convey a definite meaning. Even if a request is made by the complainant or the accused for seeking retesting or re-analysis of the sample produced before the Court, it always lies in the discretion of the Court to accede to or decline such request. Undoubtedly, the exercise of discretion by the Court would be tested on the touchstone of the parameters laid down for the exercise of judicial discretion.

15 Be that as it may, the plain language of Section 25, understood in the context, makes it abundantly clear that retesting or re-analysis of the drug sample produced before the Court by the prosecution can only be on the request of either the accused or the complainant. The accused to whom the portion of the sample lifted from the concerned premises has been sent is well within his right to get that portion of the sample tested or analysed from a competent Drug Laboratory so as to make an informed decision as to whether he should request the Court for retesting or re-analysis of the portion of the sample with the Court by the Central Drugs Laboratory or to controvert the report of the Government Analyst by leading evidence in defence.If the accused makes a choice of getting it retested or re-analysed, he definitely runs the risk of the sample being found not of standard by the CDL and concurring with the report of the Government Analyst and, therefore, closing all doors of defence for such accused, for the report of the Central Drugs Laboratory would be conclusive evidence of the

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facts stated therein and the accused would be left with nothing to offer in defence to controvert such report.

16 It is, therefore, obvious that in case the accused, after having got the portion of the sample supplied to him tested or analysed by a competent Drug Laboratory, is of the view that the report of the Government Analyst suffers from lacunae and is not correct, he may take the risk of requesting the Court to get the portion of the sample produced before the Court tested or analysed by the Central Drugs Laboratory. Similarly, the complainant can also make a choice because if he, without application of mind, seeks retesting or re-analysis of the portion of the drug produced before the Court from the Central Drugs Laboratory, it may be possible that the Central Drugs Laboratory gives a report contrary to the one given by the Government Analyst. In such situation the prosecution would fail at its inception. The provisions of sub-section (4) of Section 25 are, thus, required to be understood in the aforesaid manner.

17 In view of the aforesaid discussion, my answer to Question No. 1 is that it is not obligatory for the complainant (Inspector) to have the sample of the drug lifted under Section 23 of the Act retested or re-analysed by the Central Drug Laboratory in terms of sub-section (4) of Section 25 of the Act where the person from whom the sample was taken or the manufacturer has merely notified his intention to adduce evidence in controversion of the report of the Government Analyst.

18 In the instant case it is seen that the petitioner had not only notified to the Inspector that he intends to lead evidence in

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controversion of the report but he had, by his communication dated 24.02.2014, also made an indirect request to the Drug Inspector concerned for getting the portion of the sample retained for production before the Court to be retested or analysed by the Central Drug Laboratory. There is, however, no direct request made either to the Drug Inspector or to the Court but the lines in the communication dated 24.02.2014 "also please note that we have rebutted the report of the Government Analyst under Section 25(4) of the Act and shall revert back after receipt of the test report from CDL Calcutta" clearly signify not only the intention of the petitioner to controvert the report of the Government Analyst but also a latent request to have the test conducted by CDL Kolkata.

19 In the instant case the Drug Inspector did not act with promptitude and did not immediately and without any waste of time launch prosecution before the Court, nor did the Drug Inspector take any step to request the Court for causing the portion of the drug retained for the Court to be tested or analysed by the Central Drugs Laboratory. The shelf life of the drug expired in March 2016. The petitioner could appear before the trial Court upon being served with the summons only on 15.06.2016 and, therefore, was deprived of his right to make a request to the Court for getting the retained portion of the sample of the drug tested or analysed from the Central Drug Laboratory.In these circumstances, it can be said that the petitioner, who intended to have the sample of the drug retained for the Court to be tested or analysed by the Central Drug Laboratory, could not get that opportunity. The Drug Inspector concerned, who had already been

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intimated and requested in this regard, failed to ensure that the retained portion of the sample for the Court is put to test or analysed by the Central Drugs Laboratory during the currency of its shelf life.

20 For the foregoing reasons, this petition succeeds on this solitary ground, which obviates the necessity of determining Question No. 2 formulated in paragraph 7 of the judgment. Consequently, the criminal proceedings in the complaint titled *State through Drug Inspector, Pulwama v. J.M. Traders and Pharmaceutical Distributors and Others*, pending before the Court of the learned CJM, Pulwama under Section 18(a)(i) of the Act, along with the order dated 16.11.2015 taking cognizance and issuing process thereon, are hereby quashed.

(SANJEEV KUMAR)
JUDGE

Srinagar
09 .03.2026
Sanjeev

Whether the order is speaking: ***Yes***
Whether the order is reportable: ***Yes***