

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRM(M) 22/2022 CRM(M) 336/2022
CRM(M) 363/2022 CRM(M) 527/2022

*Reserved on 26-08-2025
Announced on 30-09-2025*

Nimish Gupta.

... Petitioner(s)

Through: Mr. Varut Kumar Gupta, Advocate.
Mr. Sachin Gupta, Advocate.

Vs.

**UT Th. Drugs Inspector Zone VI
Srinagar.**

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy AG.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The issues involved in the instant petitions are akin and analogs to each other as such, are being considered and disposed of jointly hereunder.

(I) CRM(M) 22/2022

In the instant petition, the petitioner has invoked the inherent power of this Court enshrined in Section 482 CrPC (Now Section 528 BNSS) for quashing of proceedings in complaint titled as “***State through Drug Inspector Zone VI Srinagar vs Ambitious Medical Agency and Ors***” filed for the commission of offences under Section 18(a) (i) read with Section 27(d) of Drugs and Cosmetics Act, 1940, along with order dated 02-08-2019, passed by Chief Judicial Magistrate, Srinagar,

(II) CRM(M) 336/2022;

In this instant petition, the petitioner has invoked the inherent power of this Court enshrined in Section 482 CrPC (Now Section 528 BNSS) for quashing of proceedings in complaint titled as ***“State of J&K Th. Drug Control Officer Anantnag (HQ) vs Riyaz Ahmad Dar and Ors”*** filed for the commission of offences under Section 18(a) (i) read with Section 27(d) and Sections 18(A) read with Section 28 of Drugs and Cosmetics Act, 1940, including order dated 20-11-2019 passed by the court of Chief Judicial Magistrate, Anantnag.

(III) CRM(M) 363/2022;

In this instant petition, the petitioner has invoked the inherent power of this Court enshrined in Section 482 CrPC (Now Section 528 BNSS) for quashing of proceedings in complaint titled as ***“State of J&K Th. Drugs Control Officer Anantnag (HQ) vs Riyaz Ahmad Dar and Ors”*** pending before the Chief Judicial Magistrate, Anantnag along with order dated 20-11-2019 for the commission of offences under Section 18(a) (i) read with Section 27(d) and Sections 18(A) read with Section 28 of Drugs and Cosmetics Act, 1940, including order dated 20-11-2019 passed by the said court.

(IV) CRM(M) 527/2022;

The petitioner herein as well has invoked the inherent power of this Court enshrined in Section 482 CrPC (Now Section 528 BNSS) for quashing of proceedings in complaint titled as ***“State of J&K through Drugs Control Officer, Baramulla (HQ) vs Managing Director, Cachet Pharmaceuticals Private Limited and Ors”*** pending before

the court of Principal Sessions Judge, Baramulla for commissions of offences under Section 18(a) (i) read with Section 27(d) of Drugs and Cosmetics Act, 1940, including order dated 23-03-2015, passed by the said court.

Heard counsel for the parties and perused the record.

2. In CRM(M) 22/2022 CRM(M) 336/2022 and CRM(M) 363/2022 supra, the petitioners have urged that the impugned complaints have been filed by the respondent herein without impleading/arraying a Director or an Officer of the Parent Manufacturing Company as an accused, while alleging the commission of the offences covered in the impugned complaints on the premise that the drug in question has been manufactured by the Parent company SGS, M/S Pharmaceuticals Private Limited and M/S ELKOS Health Care Private Limited and the said Parent Manufacturing Companies have neither been arraigned as accused in the impugned complaint nor does the impugned complaints satisfy the requirement of Section 34(1) (2) of the Drugs and Cosmetics Act, 1940, thus, rendering not only the impugned complaints legally untenable, but also the proceedings initiated thereon including the impugned orders passed therein.
3. In CRM(M) 527/2022 (supra) the petitioner has maintained the same on the premise that besides non impleadment/arraying of the Parent Manufacturing Company as an accused in the impugned complaint, the complainant-respondent has also failed to adhere to the statutory right of re-analysis of the drug in question contemplated by Section 25(4) of Drugs and Cosmetics Act, 1940, before filing the impugned complaint, therefore, rendering the impugned complaint and proceedings initiated therein legally untenable.

4. Insofar, as the aforesaid issues and pleas raised by the petitioners in the petitions in hand qua the non-arranging of the Parent Manufacturing Company as an accused in a complaint are concerned, the same stand settled by this Court in case titled as **“Jagjit Singh vs Bhawana Bhat, Drugs Inspector Reasi”** being CRMC No. 513/2015 and decided on 05-09-2024, while taking cognizance of Section 34 of the Act of 1940 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"

5. Besides the apex court in case titled as **“Medicamen Biotech Limited and Anr vs. Rubina Bose Drug Inspector”** reported in 2008(7) SCC 196” in relation to the provision Section 25(3) supra has held as under:-

“A reading of the aforesaid provisions would reveal that they lay certain obligations as well as provide safeguards for a person from whom a drug has been seized for analysis or testing as Section 25(3) specifies that unless such a person controverts the correctness of the report submitted by the Government Analyst within 28 days in writing that he intends to adduce evidence to

controvert the report of the analyst, it would be deemed to be conclusive evidence of the quality of the drug whereas sub-section (4) of Section 25 obliges the Magistrate on the request of the complainant or the accused or on his own motion to send the fourth sample which has been disputed for fresh testing to the Director of the Central Drugs Laboratory.”

6. A deeper and closer examination of the record available on the instant files manifestly reveal that in the impugned complaints being CRM(M) 22/2022 supra CRM(M) 336/2022 and CRM(M) 363/2022, indisputably the above named Parent Manufacturing Companies have not been arraigned as an accused being a *sine qua non* under Section 34(1) (2) of the Act, 1940, whereas in CRM(M) 527/2022 (supra) besides non arranging of Parent Manufacturing Company as an accused in the impugned complaint being breach of the provisions of Section 34 (1) (2) of the Act of 1940, the complainant-respondent herein has also denied the statutory right of re-analysis of the drug in question to the accused-petitioner envisaged under Section 25(4) of the Act of 1940.
7. In view of the aforesaid position obtaining in the matters, inasmuch, as also the position of law laid down by this Court and the Apex court in the judgments supra, the only inescapable conclusions that could be drawn is that the instant petitions would succeeds.
8. Accordingly, the instant petitions are allowed and impugned complaints titled “*State through Drug Inspector Zone VI Srinagar vs Ambitious Medical Agency and Ors*”, “*State of J&K Th. Drug Control Officer Anantnag (HQ) vs Riyaz Ahmad Dar and Ors*”, “*State of J&K Th. Drugs Control Officer Anantnag (HQ) vs Riyaz Ahmad Dar and Ors*” and “*State of J&K through Drugs Control Officer, Baramulla (HQ) vs Managing Director, Cachet Pharmaceuticals Private Limited and*

Ors” along with impugned orders *02-08-2019, 20-11-2019, 20-11-2019*
and 23-03-2015 respectively challenged in *CRM(M) 22/2022, CRM(M)*
336/2022, CRM(M) 363/2022 and CRM(M) 527/2022 are *quashed*.

9. Registry to send down the record to the courts below.

10.A copy of this order shall be placed on the record file of each of the
petitions.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:
30.09.2025
Sarvar

