

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 115/2019

Kamlesh Patel & anr.

.... Petitioner

Through:- Mr. Pranav Kohli, Sr. Advocate with
Ms. Avantika Sharma, Advocate

V/s

State of J&K

.....Respondent(s)

Through:- Mr. Bhanu Jasrotia, G. A.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

30.03.2026

1. The petitioners have invoked the inherent jurisdiction of this Court under Section 561-A of the Code of Criminal Procedure, seeking quashment of complaint titled *State through Drug Inspector, Leh vs. Kamlesh Patel & Anr.*, pending before the Court of Chief Judicial Magistrate, Leh, wherein the petitioners stand summoned for alleged contravention of Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940.
2. Petitioner No. 1 is stated to be the Director of M/s West Coast Pharmaceuticals Works Pvt. Ltd., a company engaged in the manufacture of pharmaceutical products, whereas petitioner No. 2 is its dealer, from whose premises the sample of the drug in question was lifted by the respondent–Drug Inspector.
3. The factual matrix, shorn of unnecessary detail, reveals that a sample of *Iron Folic Acid Suspension* bearing Batch No. WL13190, manufactured in October, 2013 and having expiry in September, 2015, was lifted in accordance with the statutory procedure. The sample was divided into four parts, and one portion was forwarded to the Government Analyst, Combined Food and Drug Laboratory, Jammu, which, vide report dated 06.05.2015, declared the sample as “not of standard quality”.

4. The petitioners, availing their statutory right, disputed the said report and sought re-analysis by the Central Drugs Laboratory, Kolkata. It is an admitted position that the said laboratory, upon receipt of the sample on 09.09.2015, sought specification and method of analysis from the manufacturer vide communication dated 18.09.2015.
5. The petitioners supplied the requisite information on 07.10.2015, which was received by the Central Drugs Laboratory only on 16.10.2015. However, the prosecution rests its case upon a report purportedly issued by the Central Drugs Laboratory dated 06.10.2015 declaring the sample “not of standard quality”.
6. Learned senior counsel for the petitioners has, with considerable vehemence, contended that the entire prosecution is vitiated by manifest procedural illegality. It is argued that once the Central Drugs Laboratory itself had requisitioned the specification and method of analysis, any testing prior to receipt thereof is legally impermissible and scientifically untenable.
7. It is further contended that the report dated 06.10.2015 is ex facie improbable, as the requisite material was supplied only on 07.10.2015 and received by the laboratory on 16.10.2015.
8. Learned counsel has also urged that the shelf life of the drug expired in September, 2015 and, therefore, any re-analysis conducted thereafter defeats the valuable statutory right of the petitioners and renders the report unreliable.
9. Additionally, it has been argued that the complaint does not disclose specific allegations qua the role of the petitioners and, thus, continuation of proceedings would amount to abuse of process of law, reliance being placed upon the judgment of the Hon’ble Supreme Court in *Neelu Chopra & Anr. vs. Bharti*, (2009) 10 SCC 184. Respondent on the other hand despite repeated opportunities have chosen not to file any objections.
10. I have heard the learned counsel for the parties and perused the record. It is noticed that the complaint was initially pending before Chief Judicial Magistrate, Leh, who had taken cognizance of the matter against the petitioners. However, subsequently, on a separate petition filed by the petitioners, this Court

transferred the said complaint to the Court of Chief Judicial Magistrate, Jammu, where it is presently pending. It is further noted that the proceedings therein have been stayed vide order dated 08.03.2019 passed by this Court.

11. Section 25 of the Drugs and Cosmetics Act, 1940, confers a valuable statutory right upon an accused to challenge the report of the Government Analyst and to seek re-analysis by the Central Drugs Laboratory, whose report is treated as conclusive evidence of the facts stated therein. This right is not illusory but substantive in nature and must be meaningfully preserved.
12. In the present case, the admitted chronology assumes decisive significance. The Central Drugs Laboratory sought specification and method of analysis on 18.09.2015. The same was supplied by the petitioners only on 07.10.2015 and received by the laboratory on 16.10.2015. Despite this, the prosecution relies upon a report dated 06.10.2015.
13. The aforesaid sequence is not merely irregular; it strikes at the root of the prosecution. Once the laboratory itself acknowledged the necessity of obtaining specification and method of analysis, it could not have validly undertaken the test prior to receipt thereof. The issuance of a report dated 06.10.2015, therefore, renders the prosecution case inherently doubtful and legally unsustainable.
14. Equally significant is the admitted fact that the shelf life of the drug expired in September, 2015. It is well settled that the accused has a valuable right to have the sample tested within its shelf life. Denial of this right, whether by delay or procedural lapse attributable to the prosecution, causes irreparable prejudice and vitiates the prosecution.
15. The Hon'ble Supreme Court, in a catena of decisions, has consistently held that where the right of re-analysis is frustrated, continuation of prosecution would amount to abuse of process of law.
16. In the instant case, the combined effect of (i) doubtful authenticity of the Central Drugs Laboratory report, and (ii) frustration of the statutory right of re-analysis within shelf life, renders the continuation of criminal proceedings wholly unjustified.

17. The contention regarding absence of specific allegations also merits consideration. It is trite that criminal prosecution cannot be sustained on vague and omnibus allegations without delineating the role of each accused. The complaint, as it stands, does not appear to satisfy this fundamental requirement.
18. This Court is conscious that the power under Section 561-A Cr.P.C. is to be exercised sparingly. However, where the material on record itself demonstrates that continuation of proceedings would result in manifest injustice and abuse of the process of Court, the inherent jurisdiction must be exercised to secure the ends of justice.
19. The present case squarely falls within such parameters.
20. In view of the foregoing analysis, this Court is of the considered opinion that the complaint in question suffers from fundamental legal infirmities and that continuation of proceedings would amount to abuse of process of law.
21. Accordingly, the petition is allowed. Complaint titled *State through Drug Inspector, Leh vs. Kamlesh Patel & Anr.*, pending before the Court of Chief Judicial Magistrate, Jammu along with all consequential proceedings arising therefrom, is hereby quashed.
22. The petition stands **disposed of**. The court below be notified with this order.

(SANJAY PARIHAR)
Judge

JAMMU
RAM MURTI
30.03.2026