

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

CRM(M) No.449/2019

CM No.4651/2019

Date of Order: 20.02.2026

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1. Associated Biotech,

(Partnership Firm)

Village Kishanpur, Gura Majra Road,
Tehsil Nalagarh, District Solan,
Himachal Pradesh, Through its
partner cum authorized representative,
namely, Sandeep Saraswat, Age, 44 years,
S/O Late Sh. Kanti Chand Sharma.

2. Sandeep Saraswat, Age 44 years,
S/O Late Sh. Kanti Chand Sharma (partner),
M/S Associated Biotech,
Village Kishanpur, Gura Majra Road,
Tehsil Nalagarh, District Solan,
Himachal Pradesh.

.....Petitioners/Appellants

Through: Mr. Sachin Gupta, Advocate.

Vs.

Rakesh Singh Slathia,
Drugs Inspector, Zone-Samba,
C/O Office of Deputy Controller,
Drugs and Food Control
Organization, Muthi, Jammu, J&K.

..... Respondent

Through: Mr. Pawan Dev Singh, Dy. AG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

**(ORDER)
20.02.2026**

1. Petitioners-Associated Biotech, through its partner-Sandeep Saraswat, invoking inherent jurisdiction of this Court, in terms of Section 561-A of J&K Cr.P.C, 1898 (akin to Section 482 Central Cr.P.C and Section 528 of BNSS), have filed this petition seeking quashment of complaint No.473/Complaint titled

“Drugs Inspector vs. Sandeep Kumar & Ors.” and the order dated 08.09.2011 passed by the Court of learned Judicial Magistrate (Additional Munsiff, Samba), whereby the learned Magistrate has taken cognizance of offences punishable under Section 18(a)(i) read with Section 27(d) of Drugs and Cosmetics Act, 1940 (hereinafter referred to as ‘*the Act*’) and issued process and summons against the petitioners who are partners of the firm.

2. The petitioners plead and assail the complaint and the impugned order of cognizance on the ground that the complaint has been filed without any ground and the cognizance order has been taken without application of mind; that the complaint is liable to be dismissed as statutory rule of getting drugs analyzed from the Central Drugs Laboratory under Section 25(3) of the Act has been denied to the petitioners; that the statutory notice was issued by the respondent to the petitioners on 20.04.2011 under Section 25(2) of the Act informing him about the report issued by the Government Analyst under form 13 and on receipt of the notice the petitioners through their reply dated 17.05.2011 immediately disagreed to the report issued by the Government Analyst and intended to adduce evidence in contravention of the findings of the Government Analyst, however, the respondent in its utter disregard to the law and procedure prescribed under Section 25(3), failed to appreciate the stand of the petitioners of getting the seized and sampled drugs re-analyzed from Central Drug Laboratory and by the time summons were received by the petitioners, shelf life of the drugs got expired, thus leading to denial of statutory right; that the complaint is also liable to be quashed

in view of the Scheme of *the Act* and the Rules envisaging the authorities to exercise powers and jurisdiction, in accordance with the provisions stated therein and once law envisages an act to be done in a particular way, then the same has to be done in that way alone and not otherwise. The impugned order taking cognizance by the learned Magistrate has been assailed on the ground that the order was passed in a mechanical manner without application of mind to the law under subject.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners has argued that the complaint and the impugned order passed thereon taking cognizance against the petitioners for the commission of offences under the Act, are liable to be quashed in view of the ground pleaded by the petitioners in this petition and prayed that the petition be allowed and the complaint and the order impugned be quashed.

5. Learned State counsel appearing for the respondent, on the other hand, submits that the mixed questions of facts and law have been raised in this petition, which cannot be gone into by this Court and this Court is not expected to conduct a mini trial to short circuit the trial of the petitioners, who are stated to have committed offences punishable under *the Act*. He has further argued that the petitioners have approached this Court not with clean hands and do not deserve any misplaced sympathy, so as to scuttle the legal process initiated by the respondent in his official capacity to prosecute the petitioners for the commission

of offences punishable under *the Act* and lastly, it has been prayed that the petition being misconceived be dismissed.

6. The petitioners were accused in the complaint to have committed offences punishable under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetic Act, 1940 as the complainant on a routine inspection visited M/S Shrikul Medical Agency and lifted the sample of various drugs including Rabiwok DSR capsules and Rancold and Zefort-MR tablets. The Rabiwok DSR capsules had been manufactured by petitioner's company/firm Associated Biotech at Guru Majra Road Tehsil Nalagarh and on analyzing the samples of the drug 'Rabiwok DSR' capsule by the Government Analyst at CDFL Jammu, the same was certified and declared 'not of standard quality' as defined in *the Act* and Rules thereunder and the report further declared that contents of Rabiprozole were found less than the claim made. Based on the Analyst report, the complaint was filed against the petitioners herein before the Court below, who vide order dated 08.09.2011 took cognizance and issued process against the accused-petitioners.

7. The Court below is under an obligation to consider the charge against them and pass appropriate orders. The petitioners instead of availing that remedy, have approached this Court, to seek quashing of the complaint as well as the cognizance order. In the considered opinion of this Court, in view of the facts pleaded in the complaint by the petitioners herein with regard to the drug being

not of standard quality, the petitioners owe an explanation to that, and as such, the complaint cannot be stated to be misconceived in any manner, so as to be quashed. The petitioners have a valuable legal right to be heard at the time of framing of charge by the Court below and all the points that petitioners have raised in this petition can be agitated before the Court below at the time of consideration of charge/discharge.

8. Thus, without expressing any opinion on the merits of the case, this Court is of the opinion that no case is made out to seek quashing of the complaint and the impugned order of cognizance taken therein.

9. Viewed thus, the petition being misconceived is hereby dismissed with the observations that the petitioners shall be entitled to raise all the relevant points that they have raised in this petition before the Court below at the time of consideration of charge/discharge.

10. The petition is, thus, **dismissed** along with application(s) and interim direction, if any, shall stand vacated.

(M A Chowdhary)
Judge

JAMMU
20.02.2026
Surinder

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No