

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 965 OF 2021

1. M.R. Wani .. Petitioners
Age.65 Years, Occ. Erstwhile Branch Manager,
M/s. Alkem Laboratories Ltd., situated at
c/o. Reality Warehousing Pvt. Ltd.,
Gat No.2323/1, Pune Nagar Road,
At Post Wagholi, Taluka – Haveli,
Pune – 412207.

2. Mayureshwar Singh,
Age.47 years, Occ. Erstwhile Branch Manager,
Warehouse, M/s.Alkem Laboratories Ltd.,
Situated at Village. Sundran, Tahsil. Derabassi,
District – Mohali, Punjab,
Residing at Sikhar Apartment,
Mansadevi Complex, Panchkula,
Haryana.

Versus

The State of Maharashtra .. Respondent
Through Pramod Vitthalrao Radke,
Drugs Inspector, Food & Drugs Administration,
Aurangabad, having address at :
2nd Floor, Nath Market, Aurangpura,
Aurangabad.

**WITH
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| <ol style="list-style-type: none"> 1. The State of Maharashtra
Through Pramod Vitthalrao Radke,
Drugs Inspector, Food & Drugs Administration,
Aurangabad, having address at :
2nd Floor, Nath Market, Aurangpura,
Aurangabad. 2. M/s. Galpha Laboratories Ltd.,
Through its authorized signatory
Mr. Lekh Narayan Karna,
Age.59 years, Occ. Service,
Office at 610, Shah and Nahar,
Dr. E. Moses Road, Worli,
Mumbai – 400 018. 3. Shri Dilip Abhayraj Thole (Jain)
Partner of M/s. Jain Pharmaceuticals,
Shop No.1, AMC Market, Behind Sadiya T.
New Dalalwadi Road, Aurangabad. 4. Mr. O N Vaishya,
R/o. 103B, GH 60, Sector 20,
Panchkula 134 112, AVP QA and Factory,
Operations of M/s. Galpha Laboratories
Limited, Village Thana (Baddi). | <p>..</p> | <p>Respondents</p> |
|---|-----------|--------------------|

5. Mr. Rajeev Ranjan,
R/o. Flat No. 101, Platinum Tower,
Peer Muchalla Zirapur,
The Dera Bassi, Sas Nagar, Mohali
(Punjab), Deputy General Manager of
Production of M/s. Galpha Laboratories
Limited, Village Thana (Baddi) Tehsil
Baddi, Dist. Solan (HP) 173 205.
6. Mr. Surya Kant Dutta,
House No. 142/B, Model Town,
Nalagarh Road, Pinjor, Haryana,
Assistant Manager,
Production of M/s. Galpha Laboratories
Limited, Village Thana (Baddi) Tehsil
Baddi, Dist. Solan (HP) 173 205.
7. Desh Bandhu Jha,
R/o. House No.1022, Sector 7, Panchkula,
Naryana, Manager Quality Control,
of M/s. Galpha Laboratories
Limited, Village Thana (Baddi) Tehsil
Baddi, Dist. Solan (HP) 173 205.
8. Mr. Jalal Dwivedi,
R/o. Davinder Verma, House No.1001B2,
Vishwakarma Colony, Pinjor,
Naryana, Officer Quality Control,
of M/s. Galpha Laboratories
Limited, Village Thana (Baddi) Tehsil
Baddi, Dist. Solan (HP) 173 205.
9. Mr. Kamlesh Maurya,
R/o. House No.1031 B-2, Bitna Colony
of M/s. Galpha Laboratories
Limited, Village Thana (Baddi) Tehsil
Baddi, Dist. Solan (HP) 173 205.

Mr.Rajendra Deshmukh, Senior Advocate a/w. Mr. Arun Siwach, Mr. Swapnil Joshi, Mr. Mahesh Swami, Mr. Sanket Jadhav i/b. J.P. Legal Associates, Advocate for the petitioners.

Mr.PN. Kutti, APP for the respondent/State.

Mr.Mr. Rahul Totla, Advocate for the respondents (WP No.966 of 2021)

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	27.02.2023
PRONOUNCED ON	:	10.04.2023

J U D G M E N T :-

01. Rule. Rule made returnable forthwith. The petitions are heard finally at the stage of admission by consent of the parties.

02. These criminal writ petitions are filed by Ex. Branch Manager and Exh. Manager, Warehouse of a company, namely, M/s. Alkem Laboratories Ltd.

03. Criminal Writ Petition No. 965 of 2021 is filed challenging the judgment and order passed by the learned Sessions Judge, Aurangabad dated 02.03.2021 in Criminal Revision Application No.276 of 2019, whereby the revision application came to be dismissed. The Revisional Court thereby confirmed the order passed by the learned JMFC, Corporation Court, Aurangabad dated 15.12.2012, issuing summons to the accused.

04. Criminal Writ Petition No. 966 of 2021 is filed challenging the judgment and order passed by the learned Sessions Judge, Aurangabad in Criminal Revision Application No.172 of 2019 dated 23.01.2020, whereby the learned Sessions Court had remanded the matter back to the Court of learned JMFC for the reason that the order of issuance of process was without following procedure under section 202 of the Cr.P.C.

05. A complaint was filed by the Drug Inspector, Food and Drug Administration, Aurangabad for offences punishable under sections 18(a)(i) and 16 (1)(a) and section 34 punishable under section 27(d) of the Drugs and Cosmetics Act.

06. It is a case of the respondent – Drug Inspector that one Mr. R.M. Bajaj, a Drug Inspector, purchased a drug, namely, Ferrous Ascorbate & Folic Acid tablets “SOLUFER – XT”, Batch No.SLXT1039GB, having manufacturing date as 08/2013 and expiry date as 08/2013, manufactured by Galpha Laboratories Ltd. After purchasing the said drug, the drug was sent to Government Analyst, Drug Control Laboratory, Mumbai for analysis of the

sample, along with letter dated 03.02.2012. The Drug Analyst vide report dated 26.03.2012 declared that the said drug was not of standard quality. It was found that the sample found containing 132.4 mg of free metallic iron particles per tablet. This is more than permissible limit by 143.69% of the labeled amount. The Drug Inspector immediately handed over one copy of test report under section 18-A to the shop owner and asked him to declare name of the supplier. The shop owner – accused No.1 disclosed by letter dated 17.04.2012 that he has purchased the said drug from Alkem Laboratories Ltd., Reality Warehousing Pvt. Ltd. The Drug Inspector after following procedure lodged a complaint on 14.12.2012.

07. The learned JMFC passed an order issuing summons to the accused as “Issue summons to accused”. Thus, the petitioners after receiving summons filed revision in the Sessions Court bearing Criminal Revision Application No.276 of 2019. The manufacturer M/s. Galpha Laboratories Ltd. also filed Criminal Revision Application No.172 of 2019. The revision filed by the manufacturer came to be allowed vide judgment and order dated 23.01.2020 by the learned Sessions Judge, on the ground of non-observance of procedure under section 202 of the Cr.P.C., as the revision applicants in that

revision were residing at a place outside territorial jurisdiction of the learned JMFC.

08. So far as Criminal Revision Application filed by these petitioners is concerned, same came to be dismissed holding that the Court has already exercised jurisdiction while deciding Criminal Revision Application No.172 of 2019 and same need not be exercised again and rejected the revision application. So far as prayer of quashing of complaint of the petitioners is concerned since the matter was remanded back to the learned Trial Court for following the procedure under section 202 of the Cr.P.C. The petitioners are therefore before this Court against both the order passed by the learned Sessions Judge, Aurangabad. These petitions are now considered to the extent of relief of quashing of proceeding in SCC No.12 of 2012, pending before the learned JMFC, Corporation Court, Aurangabad.

09. As regards Criminal Writ Petition No.966 of 2021 is concerned, it is submitted that the order is bad in law as regards present petitioners. It ought to have been held by the learned Sessions Judge that even after remanding the matter, if process is issued against the petitioners, it would be

bad in law. It was necessary for the learned Sessions Court to consider that no averments are made in the complaint so as to attract any legal liability on the petitioners. It was necessary to consider that the company, namely, Alkem Laboratories Ltd., is not a party to the complaint. Since the revision preferred by the petitioners is rejected for the reason that already order of issuance of process is quashed in the order impugned in this petition and that necessitated the petitioner to challenge the impugned order even in another revision application.

10. The learned Senior Counsel for the petitioners submitted that in the complaint itself it is averred that accused No.10 i.e. M/s. Galpha Laboratories Ltd., is the manufacturer of the drug. No role of these petitioners is mentioned in the entire complaint. All the averments in the complaint are against accused No.10 i.e. the manufacturer. In the complaint, there is no averment to show that as to how and in what matter the present petitioners are responsible, so as to fasten vicarious liability. When there is no allegation against the petitioners, there is no question of filing complaint against them. Section 18 is only in respect of the manufacturer, who is accused No.10 in this case. Petitioner No.1 was only a Branch Manager of M/s. Alkem Laboratories

Ltd., and petitioner No.2 was also only a Manager of Warehouse of M/s. Alkem Laboratores Ltd. The drug is manufactured in Himachal Pradesh by a company for which these petitioners were never working. There is nothing in the report to show that merely by using more contents, the drug was in contravention of Rule 76 of the Drug Control Rules. It is requirement that a drug is to be manufactured under active and personal supervision of a competent technical staff having prescribed technical qualifications. The petitioners were never part of the said technical staff. He submits that though in the prayer of complaint itself one of the prayers was to send the sample for retesting, said prayer was not considered by the Trial Court. The petitioners are shown to be Manager and Warehouse Manager of Alkem Laboratores Ltd., whereas said company is not shown as accused, so as to vicariously held these accused responsible. On the date of Sessions Court's order, shelf life of the drug had already expired.

11. The learned APP opposes both the petitions. He submits that the learned Sessions Court has rightly passed the order in Criminal Revision Application No.172 of 2021 and had remanded the matter back to the Trial Court. Said exercise was rightly done. He submits that in the complaint there

is reference of section 34 of the Drugs and Cosmetics Act. Going by the wording of said section it is clear that the person who is responsible for the affairs of the company is vicariously liable and therefore the petitioners are rightly added as accused. They are working as a Manager and Manager of Warehouse of M/s. Alkem Laboratories Ltd., respectively. He submits that though M/s. Alkem Laboratories Ltd., is not a manufacturer, however, since they have stored the drug and are also involved in selling of the drug, they are liable under section 16(9) of the Act. He submits that the contention of the petitioners that now they have lost right to get sample re-tested is not available to the petitioners as they were served with summons well before the date of expiry of the drug. It is their failure to approach the Court within time and to pray for the re-testing. He, therefore, prays for rejection of both the criminal writ petitions.

12. While considering the liability of the petitioners, it is to be considered as to whether there is sufficient averment about their role in the complaint, so as to attract section 34 of the said Act. While going through the complaint, what appears is that the only averment about role of the petitioners is that they are Manager and Warehouse Manager of M/s. Alkem

Laboratories Ltd. On going through the title clause and also averemnts in the complaint M/s. Alkem Laboratores Ltd., is not shown as accused. Secondly, there is no averment in the complaint against M/s. Alkem Laboratores Ltd. In the complaint itself it is clearly stated that M/s. Galpha Laboratories Ltd., is the manufacturer of the drug, who is made accused No.10 in the complaint. There is nothing further to indicate, if Alkem was to be responsible for offence under any of the provisions, then it was necessary to add it as an accused.

13. By now it is well settled that to hold the accused vicariously liable, it is necessary to add company or its associates or juristic person as an accused. Secondly, there is substance in the argument of learned Senior Advocate that by the time revisional Court passed an order, the shelf life of the sample had already expired. His averment that in the complaint itself it was mentioned that the shelf life of the accused was till 08/2013. So, it was necessary for the learned Sessions Judge to appreciate the submissions before passing the said order. It is clear that under such circumstances even if now the Magistrate passes an order holding inquiry under section 202 of the Cr.P.C., still the fact cannot be changed. Still looking to the facts, the exercise to the extent of these petitioners would be a futile exercise.

14. The petitioners have relied upon various judgments. In the judgment in the case of **Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and Anr., reported in 2011 AIR SCW 341**, the Hon'ble Apex Court has held that issuance of summons is serious thing. In that case process was issued even against Directors of the company, without making sufficient averments to the role and responsibility of the said directors. The Hon'ble Apex Court in that view of the matter was pleased to hold that issuance of process was bad in law and had quashed the proceedings.

15. In the judgment in the case of **Laborate Pharmaceuticals India Ltd. & Ors. Vs. State of Tamil Nadu reported in (2018) 15 SCC 93**, the Hon'ble Apex Court has considered provisions of sections 25(3), 23(4) and 18-A of the Act. It was held that after expiry of shelf life of sample, no re-testing can be ordered by the Court.

16. Further in the judgment in the case of **Satish Mehra Vs. State (NCT of Delhi) and Anr., reported in (2012) 13 SCC 614**, though it was a case where question before Hon'ble Apex Court was mainly of framing of charge,

the Court had also considered necessity of specific and definite allegation against the accused. It was held that it is necessary to incorporate or make inquiry and make specific averments in the complaint about the role of the accused.

17. In a recent judgment in the case of **Lalankumar Singh & Ors. Vs. State of Maharashtra, reported in 2022 SCC OnLine SC 1383**, the Hon'ble Apex Court after considering various judgments has held that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground so exists in the case.

18. In the present case, it is clearly seen from the order that the Magistrate has issued process without any application of mind. Considering the legal position, this Court finds that case is made out to allow the petitions. Hence, following order :-

ORDER

- i) Criminal Writ Petition No.965 of 2021 is allowed in terms of prayer clauses (D) & (E).
- ii) Criminal Writ Petition No. 966 of 2021 is allowed in terms of prayer clause (D).

- iii) It is made clear that the order passed by the learned Sessions Court dated 23.01.2020 in Criminal Revision Application No.172 of 2019 is quashed and set aside only to the extent of the petitioners.
- iv) It is made clear that the learned Trial Court shall not be influenced by observations made or opinion expressed in this judgment.
- v) Rule made absolute accordingly.

[KISHORE C. SANT, J.]