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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1784 OF 2022

1. Neville Fernandes,
20 years,
Indian inhabitant residing at 2,
Ramesh House, Hans Bhugra Marg,
Kalina, Santacruz (E),
Mumbai – 400 098

2. Mangesh Ramchandra Wani,
Age-60 years,
Indian inhabitant,
residing at Maruti Complex, 3rd floor,
Flat No.19, Chaphekar Chowk,
Opp.Kunal Market, Bhoi Ali,
Chinchwadgaon, Pune -411033

3. Alkem Laboratories Ltd.,
A company incorporated under the
Companies Act, having its registered
office at Alkem House, S.B.Marg,
Lower Parel, Mumbai – 400 013.

-- PETITIONERS

VERSUS

The State of Maharashtra,
Shri Vilas Vishvanath Dusane,
Drugs Inspector, Beed,
Through the Drugs Inspector, Beed,
Food and Drugs Administration,
Maharashtra State, Shahu nagar,
Pangri Road,
Dist.Beed (Maharashtra)

-- RESPONDENT

Mr.Arun Siwach a/w Mr.Swapnil Joshi and Mr.Swapnil Patunkar h/f
J.P.Legal Associates for the petitioners.

Mr.S.B.Jadhav, APP for the respondent/State.

(CORAM : SUSHIL M. GHODESWAR, J.)

RESERVED ON : 4 OCTOBER, 2025
PRONOUNCED ON : 14 OCTOBER, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties.

2. The petitioner is praying for quashing and setting aside the impugned order passed in RCC No.233/2009 dated 30.03.2009 passed by the learned Chief Judicial Magistrate, Beed, thereby issuing summons against the petitioners herein. The petitioners also seeking quashing of the complaint bearing RCC No.233/2009, pending before the learned C.J.M, Beed for the addition of the offences u/s 18(a)(i) r/w Section 16 and 34 of the Drugs and Cosmetics Act, 1940 punishable u/s 32 of the said Act.

3. Petitioner Nos. 1 and 2 are the employees of petitioner No.3 M/s Alkem Laboratories Ltd.,. Whereas the original complaint

has been filed by the respondent against the petitioners. According to the learned Advocate for the petitioners, petitioner No.1 was Depot Manager of the Company. Petitioner No.2 was Depot Manager of M/S Reality Warehousing Pvt.Ltd., Gut No.2323/1, Property No.115, Pune Nagar Road, at Post Wagholi, Tal.Haveli, Dist.Pune-412207. On 04.04.2006, an agreement was executed between Respondent No.3 Alkem Laboratories Ltd., (for short Alkem) and Cachet Pharmaceuticals Pvt.Ltd. (for short Cachet). It was agreed between them that Cachet would manufacture medicinal formulations and Alkem would sell the same through their marketing network. On 30.08.2006, the then Drugs Inspector (Food and Drugs Administration, Beed), Maharashtra, visited the premises of M/s Priya Agencies situated at Dr.Vaidya Hospital, Jama Road, Beed. for the purposes for collecting samples for tests and analysis and obtained a sample of 'Hemfer Syrup'. Prior to that, on 17.03.2006, the license to manufacture the Hemfer Drug for sale and distribution was issued in the name of Cachet by the concerned Licensing Authority. On 31.08.2006, Drugs Inspector sent one sample of the Hemfer Drug to the Government Analyst, Maharashtra State Drug Control Laboratory, Mumbai. On 26.02.2007, the Drug Inspector received a certificate of test/analysis (Analysis Certificate) from the

Government Analyst certifying that that the sample of Hemfer Drug was not of a standard quality as the content of Cyanocobalamin in the sample was less than the permissible limit. On 13.03.2007, notices were issued to the petitioners. According to the petitioners, after the sample of Hemfer Drug was deposited, same was sent to the Central Drugs Laboratory, for re-analysis by the learned C.J.M. On 19.07.2007, the learned C.J.M. received a certificate dated 10.07.2007 from the Central Drugs Laboratory, Calcutta, which opined that the sample of Hemfer Drug was not of standard quality as the same did not conform to accepted limits of Cyanocobalamin content. Accordingly, on 12.01.2009, the Drug Inspector called upon petitioner No.1 to furnish information and other relevant documents regarding the Hemfer Drug.

4. Thereafter on 30.03.2009, the respondent filed impugned complaint before the learned Chief Judicial Magistrate, Beed and the summons came to be issued against the petitioners. However, after issuance of summons, there is lot of development took place in the matter. Then, Cachet (original accused No.4) and his Director (original Accused Nos. 5 to 8) challenged the impugned order before the learned Sessions Court, Beed vide Cri.Revision Application

No.115/2013. The said criminal revision application was rejected, therefore Criminal Writ Petition No.288/2015 was filed challenging the order passed in Criminal Revision Application. This Court, also dismissed the Criminal Writ Petition No.288/2015 vide judgment dated 25.06.2015. The said judgment was challenged before the Hon'ble Apex Court vide Criminal Appeal No.1757/2022. Vide judgment and order dated 11.10.2022, the said criminal appeal came to be allowed, which is the reported judgment on the issue titled as **Lalankumar Singh and others Vs. State of Maharashtra**. The Hon'ble Supreme Court was pleased to quash the impugned orders against the appellants therein.

5. On 17.12.2022, the learned C.J.M. took cognizance of the judgment passed in **Lalankumar** and directed to proceed further with the remaining accused/petitioners in the impugned complaint. Hence the petitioners are questioning the issuance of summons to them in view of the similar facts and circumstances, which were also before the Hon'ble Apex Court, while passing the judgment in **Lalankumar** (supra).

6. The learned Advocate for the petitioners has relied upon

the following authorities of the Hon'ble Supreme Court :-

1. Sunil Bharti Mittal Vs.CBI [(2015) 4 SCC 609]
2. Birla Corporation Ltd., Vs. Adventz Investment and Holdings Ltd., and others [(2019) 16 SCC 610].
3. Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd., and others [2021 SCC Online SC 806]
4. Satish Mehra Vs. State (NCT of Delhi) [(2012) 13 SCC 614]
5. Ravindra s/o Deoram Sonawane Vs. State of Maharashtra [2021 DGL (Bom.) 1035].
6. P. Sukumar Vs. State Represented by Senior Drugs Inspector Salem Zone, Salem [2009 SCC Online Mad.1644]
7. Abhijit Pawar Vs. Hemant Madhukar Nimbalkar [(2017) 3SCC 528].

7. On 17.10.2023, the learned C.J.M., Beed was pleased to pass the order stating therein that in view of the Hon'ble Apex Court order passed in the case of Lalankumar (supra), the complaints against accused Nos. 5 to 8 are dismissed and to proceed further in respect of the remaining accused.

8. It is submitted that petitioner No.1 is the Depot Manager of

respondent No.3 and petitioner No.2 is the Depot Manager of Alkem Laboratories' warehouse. Appellants are not involved in the process of manufacturing of the alleged drug. As such, they cannot be held to be guilty for the offences registered by the respondent/prosecution side. The learned Advocate for the petitioners has gone through the case of **Lalankumar** (supra), in which it is specifically averred that the appellants herein were neither the Managing Directors nor Full Time contractors of the Company. Here the appellants are also not the contractors of the Company. The another aspect which is relied by the learned Advocate for the petitioners is that the learned C.J.M. has passed the formal order of issuance of process in a mechanical manner. He has invited my attention to paragraph No.28 of the judgment, which reads as under :-

“28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation, which reads

thus:

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (ie the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused,

though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

9. However, in paragraph No.30 of the same judgment, it is observed that it was not specific as to whether even the order of issuance of process is passed or not. It was observed by the Hon'ble Apex Court that High Court might have presumed that there was an order of issuance of process. The learned Advocate for the petitioners submits that even in this case also, there is no order of issuance of process and no formal order of issuance of summons has been passed. The order to that effect only appears in the roznama. Therefore, the petitioners have approached this Court u/s 482 of the Cr.P.C. alongwith Article 227 of the Constitution of India praying for quashing and setting aside the impugned complaint and the orders passed therein.

10. According to the learned Advocate for the petitioners, in order to proceed against the accused persons, the Hon'ble Apex Court in **Sunil Bharti Mittal Vs. CBI [(2015) 4 SCC 609]** held that "sufficient ground for proceeding" are of immense importance and suggest that an opinion is to be formed only after due application of mind that there is

sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. Thus according to the Hon'ble Apex Court, there has to be proper satisfaction in this regard, which is required to be duly recorded while passing the order.

11. According to the learned APP for the respondent/State, the petitioners were involved in stocking the drugs in question, as such they are liable to be prosecuted against the provisions applied against them. Therefore he submits that the petition may kindly be dismissed.

12. In view of the judgments cited above and the judgment passed by the Hon'ble Apex Court in **Lalankumar** (supra), which is arisen out of the same crime, the facts of that case are squarely applicable to the instant petition. The appellants in **Lalankumar** (supra) were not manufacturers and moreover the order dated 30.03.2009 appearing on the roznama for issuance of process against the accused persons was under consideration. It is not the case of the respondent/informant that the petitioners are manufacturers of the alleged drug. Therefore, the said case is squarely applicable to the instant case.

13. Roznama dated 30.03.2009 discloses that there is no formal order of issuance of process, but it is only appearing on the roznama that summons be issued against the accused persons. As already held above that there is no formal order of issuance of process against the appellants/accused persons, the instant petition succeeds.

14. Therefore, the instant writ petition is allowed. The impugned order dated 30.03.2009 passed in RCC No.233/2009, by the learned Chief Judicial Magistrate is hereby quashed and set aside. The complaint only against the present petitioners is dismissed.

15. Rule is made absolute in the above terms.

(SUSHIL M. GHODESWAR, J.)