



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.78 OF 2023
WITH
CRIMINAL WRIT PETITION NO.58 OF 2025

CRIMINAL WRIT PETITION NO.78 OF 2023

1. M/s. CMG Biotech Pvt Ltd.,
Through the Director Manoj Kumar
Gupta, Age 50 years,
Plot No.58, Phase-III,
Industrial area, Sansarpur Terrace,
Tehsil-Jaswan, Dist. Kangra (H.P.).

2. Manoj Kumar Gupta
Director of M/s. CMG Biotech Pvt Ltd,
Aged 50 years, Resident of G-64,
Arena Park, Shakarpur Delhi 92.

3. Mrs. Chandrakala Gupta
Director of M/s. CMG Biotech Pvt Ltd,
Resident of G-64, Arena Park,
Shakarpur Delhi 92.

4. GLOBUS CARE PHARMA,
through its Partner Manoj Kumar
Gupta, age 50 years, Industrial area,
Sansarpur Terrace, Tehsil-Jaswan, Dist.
Kangra (H.P.).

..... PETITIONERS

VERSUS

State of Goa

At the instance of Mrs. Swati Lad,

Assistant Drugs Controller,

(The then Inspector, Directorate of

Food and Drugs Admn) Bambolim,

Goa.

..... RESPONDENT

Mr. Hanumant D. Naik, Advocate for the Applicant.

Mr. Somnath Karpe, Additional Public Prosecutor for the Respondent.

WITH

CRIMINAL WRIT PETITION NO.58 OF 2025

1. M/s. CMG Biotech Pvt Ltd.,

Through its Director Manoj Kumar

Gupta, Age 50 years,

Plot No.58, Phase-III,

Industrial area, Sansarpur Terrace,

Tehsil-Jaswan, Dist. Kangra (H.P.)-176

501.

2. Manoj Kumar Gupta

Aged 50 years, Director of M/s. CMG

Biotech Pvt Ltd,

S/o. Subhash Chandra Gupta,

A-102, Ground Floor, Madhuban,

Nirman Vihar, East Delhi,

Delhi-110092.

.... PETITIONERS

VERSUS

Union of India,
Ministry of Health and Family Welfare
Director General of Health Services,
Represented by Drugs Inspector
Deepak Kumar,
Earlier at Office of the Assistant Drugs
Controller (India), Ground Floor, Port
Users Complex (Old A.O Building),
Mormugao Harbour, Near to
Mormugao Sub Post Office,
Mormugao, Goa.

And Now at
Office of the Assistant Drugs
Controller (India), CDSCO Sub-
Zone/Port Offices, Room No.07 & 08,
First Floor, Air Cargo Terminal
Building, Manohar International
Airport, Dadachiwadi Road, Nagzar,
Taluka Pernem, Mopa, Goa-403512 RESPONDENT

Mr. Hanumant D. Naik, Advocate for the Applicant.

Ms. Susan Linhares, Central Government Standing Counsel for the
Respondent.

CORAM:- VALMIKI MENEZES, J.

DATED :- 2nd September, 2025

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.

2. Heard learned Counsel for the parties.
3. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned Counsel parties.
4. By this common judgment, I propose to dispose of these two Writ Petitions. In Criminal Writ Petition No.78 of 2023, the order challenged is dated 05.04.2021 passed by the JMFC, Margao in Criminal Case No.AOA/601/DCA/2020/II while in Criminal Writ Petition No. 313 of 2024 the order challenged is dated 21.09.2022 passed by the JMFC, Pernem in Criminal Case No.AOA/21/2022. Both these orders issue process against the Petitioners, on a complaint filed by the State of Goa through the Drugs Inspector, Directorate of Foods and Drugs Administration, seeking prosecution of the Petitioners under Section 32(2) and 36 of the Drugs and Cosmetics Act, 1940.
5. The two main contentions pressed in this petition are that the impugned order of issuance of process has been passed by the Magistrate without supplying any reasons for issuing process and, the order issuing process has been passed without conducting a mandatory inquiry under Section 202 of the CrPC, considering that the Petitioners reside or have their registered office at a place beyond the area in which the Magistrate exercises jurisdiction.

6. On a plain reading of the impugned order, the Magistrate has mechanically passed an order stating “cognizance taken, issue summons to the Accused”; the order is totally devoid of any reasoning or reference to the allegations made in the complaint. The order does not reflect the application of mind by the Magistrate to the facts stated in the complaint, before issuing process; even if the Petitioners were residing within the territorial jurisdiction of the Magistrate concerned, the order must contain reasons demonstrating application of mind to the facts stated in the complaint. Absence of such reasons would render the order contrary to Section 200 of the Act and would have to be quashed and set aside.

7. In **Kirti Kumar Jayantilal Patel and others v/s. State of Maharashtra** reported in [2023 All MR (Cri) 1623], the Supreme Court has held that the order of issuance of process which is devoid of reasons reflects non application of mind to the averments made in the complaint and is contrary to the provisions of Section 200 of the Code. On this count itself the order is quashed and set aside.

8. There is a second reason why the impugned order cannot be sustained. Section 202 of the Code requires that, where the accused resides at a place beyond the area in which the Magistrate exercises its jurisdiction, it is mandatory on the part of the Magistrate to conduct an inquiry or investigation before issuing process. In the present

case, admittedly the accused reside or have their registered office beyond the jurisdiction of the JMFC at Margao / Pernem. In both these cases, the JMFC has not followed the mandatory procedure laid down under Section 202 before issuing process, thus vitiating its order. This Court, in **Akums Drugs and Pharmaceuticals Limited and Ors v/s. The State of Maharashtra and ors.** reported in MANU/MH/0573/2021 has considered a similar case where process was issued contrary to the provisions of Section 202. The relevant portions of the judgment are quoted below:

7. The legislative purpose and the binding nature of the provision is elaborately considered by the Supreme Court, inter alia in Abhijit Pawar v. Hemant Madhukar Nimbalkar & Anr. 2017 ALL SCR (Cri) 236 and it would be apposite to note the following articulation in the said decision:

"21. Basic facts which need to be recapitulated for deciding this issue are that A-1 is the Managing Director of Sakal newspapers whereas A-2 is the Chairman of the Company. Further, insofar as declaration under Section 7 of the Press Act is concerned, name of the other accused persons are mentioned except these two accused persons. Therefore, we have to examine the matter keeping in view non-existence of such a presumption against these two accused persons. It is also an admitted fact that both the accused persons are not residents of

Kolhapur and are outside his jurisdiction. Having regard to these facts, we proceed to examine the matter in the light of the provisions of Section 202, Cr.P.C. as well as Section 7 of the Press Act.

22. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in Vijay Dhanuka Vs. Najima Mamtaj, (2014) 14 SCC 638: [2014 ALL MR (Cri) 1924 (S.C.)] in the following words:

"11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at faroff places in order to harass them. The note for the amendment reads as follows:

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall

enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

23. For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the

complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman Vs. Khazir Mohammad Tunda, (2016) 1 SCC (Cri) 124:[2015 ALL SCR 2242] in the following words:

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is

alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting

one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

24. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been explained in Vijay Dhanuka (2014) 14 SCC 638: [2014 ALL MR (Cri) 1924 (S.C.)] case, which is reproduced hereunder:

"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:

"2. (g) 'inquiry means every inquiry, other than a trial, conducted under this Code by a Magistrate or court, "

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code,

the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

25. When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of complainant and after perusing the copies of documents filed on record, i.e., FIR translation of complaint, affidavit of advocate who had translated the FIR into English etc. the operative portion reads as under

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 50 read with 34 of the Indian Penal Code. Hence issue process against the accused for the above offences returnable on 23.12.2009 case be registered as Summary Case."

8. The complaint is preferred by a public servant, and therefore, the Magistrate was not required to examine the complainant and the witnesses under Section 200 of the Code. However, the learned Magistrate was nonetheless

required to postpone the process and to comply with the provisions of Section 202 (1) of the Code. Such a view is taken by a learned Single Judge in Shishir Joshipura v. State of Maharashtra & Anr. 2018 LawSuit(Bom) 1551. I am inclined to respectfully agree with the said view.

9. For the reasons stated above, the impugned order dated 05.04.2021 passed by the JMFC, Margao in Criminal Case No. AOA/601/DCA/2020/II and order dated 21.09.2022 passed by the JMFC Pernem in Criminal Case No.AOA/21/2022 are quashed and set aside. The Criminal Cases /complaints shall be considered by the respective Magistrates afresh on the point of issuance of process, after considering the provisions of Sections 200 and 202 and in the light of the observations made herein above.

10. Rule is made absolute in the above terms.

11. All contentions of all parties are left open.

VALMIKI MENEZES, J.