IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 36 OF 2025

1. M/s STADMED PRIVATE LIMITED,

A private limited company incorporated under the Companies Act, Having factory at 15, Jawpore Road, Kolkata-700074, Having Corporate Office at"Kumud Apartment', 14A, Manohar Pukur Road, Kolkata-700026, As represented herein by its Director and Authorized signatory Mr.Amit Kumar Ray Son of Late Gour Gopal Saha, Aged 72, Indian National, Address 84, Chowringhee Road, Kolkata-700020.

2. Mr. Ashish Roy,

S/o Late Mr. Gour Gopal Saha,

Aged 76, Indian National, Director M/S Stadmed Private Limited Resident of 84, Chowringhee Road, LRSarani, Circus Avenue, Kolkata-700020.

3. Mr.Anjan Roy,
S/o Late Mr. Gour Gopal Saha,
Aged 73, Indian National,
Director M/S Stadmed Private Limited,
Resident of 95-A, Street No.4, Krishna Nagar,
Safdarjung Enclave, South West Delhi, Delhi-
110029.

4. Mr. Amit Kumar Ray,
S/o Late Mr. GourGopalSaha,

Aged 72, Indian National,
Director M/S Stadmed Private Limited, Resident
of 84, Chowringhee Road, Kolkata-700020.

5. Mr.Sushil Kumar Roy,
S/o Late Mr.Rai Mohan Roy,
Aged 86, Indian National,
Director M/S Stadmed Private Limited,
Resident of Raibhawan, 48,
Gangapuri, PO-Purbaputiary,
S.O.Kolkata, West Bengal-700093. ... Petitioners

Versus

1. UNION OF INDIA
Ministry of Health and Family Welfare
Directorate General of Health Service,
Represented by Drugs Inspector,
Office of the Assistant Drugs Controller(India),
Goa 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. ... Respondents

Mr. Desu Reddy along with Mr.Salil Saudagar, Ms. Dolorosa Chiquita and Ms. Joann D'Costa, Advocates for the Petitioner.

Mr. Susan Linhares, Central Government Standing Counsel for Respondent No.1.

CORAM	**:**	**VALMIKI MENEZES, J.**
Reserved on	**:**	**11th July,2025**
Pronounced on	**:**	**18th July, 2025**

JUDGMENT:

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

2. Heard learned Counsel for the parties.

3. Rule. Rule is made returnable forthwith with the consent of the parties.

4. The Petition challenges an order dated 18.03.2024 of the JMFC, Mapusa, passed in Criminal Case No. AOA/107 of 2024 taking cognizance of a complaint filed by the Respondent, Drug Inspector, alleging commission of offences by the Petitioners. Under Section 18(a)(i) of the Drugs and Cosmetics Act (hereinafter referred to as **"the Drugs Act"**), punishable under Section 27(d) of the said act and Rules 1945.

5. The main contentions raised in the Petition are that the Order taking cognizance and issuing process is cryptic, mechanical and with non-application of mind. It is further contended that the complaint filed before the Magistrate, does not incorporate a single allegation therein against the Petitioners No.2 to 5 who are Directors of the Petitioner No.1/Company, to the effect that these Directors were responsible to the Company for the conduct of the business of the Company and in the process of manufacture of the particular drug. It is contended that the vicarious liability of a Director, specifically referred to in Section 34 of the Act, is required to be sufficiently

pleaded in the complaint, to demonstrate the role of each of the directors and how that role, in commission of the offence, is attributable to each one of them.

The contents of the Complaint were referred to along with the Impugned order, and reliance was placed on the following case law to support his submissions:

i. ***J. M. Laboratories & Ors. v. State of Andhra Pradesh & Anr.,*** 2025 SCC OnLine SC 208.
ii. ***Lalankumar Singh & Ors. v. State of Maharashtra***, 2022 SCC OnLine SC 1383
iii. ***Ramprakash Gulati & Ors. State of Maharashtra,*** Criminal Application No. 3684 of 2009, decided on 01.09.2017 (High Court of Bombay Bench at Nagpur).
iv. ***Rashmi Kamal Shah v. The State of Maharashtra & Anr.***, 2017 SCC OnLine Bom 10353.
v. ***State of Haryana v. Brij Lal Mittal & Ors.,*** (1998) 5 SCC 343.
vi. ***N Dandapani & Anr. v. State of A.P.,*** 2004 SCC OnLine AP 1012
vii. ***Ashok Kumar Tyagi v. State of Himachal Pradesh & Ors.,*** 2015 SCC OnLine HP 1713
viii. ***Sulochana Devi v. State of Bihar***, Criminal Miscellaneous No. 34874 of 2003, decided on 26.08.2008 (Patna High Court)
ix. ***Anandkumar & Anr. v. The State of Maharashtra & Anr.,*** 2016 SCC OnLine Bom 16321.

x. ***State of Maharashtra v. R A Chandawarkar & Ors.***, Criminal Revision Application No. 228 of 1991, decided on 18/19.02.1999, (Bombay High Court)

6. Supporting the order of issuance of process, Ms. Susan Linhares, learned Standing Counsel for Central Government, submitted that paragraph 4 of the Complaint contains a specific averment that the Accused Nos. 2 to 5 were directors of the Company and were responsible for the day-to-day activities and the conduct of the business of the Company that manufactured the subject drug. Reliance was placed by the Learned Advocate on the following judgments:

i. ***S. M. S. Pharmaceuticals Ltd. v. Neeta Bhalla***, 2005 4 MhLJ 731

ii. ***Dinesh B. Patel & Ors. v. State of Gujarat & Anr.,*** (2010) 11 SCC 125

iii. ***Iridium India Telecom Ltd. v. Motorola Incorporated & Ors.,*** (2011) 1 SCC 74

iv. ***Ravi Rascendra Mazumdar & Anr. v. Union of India***, Criminal Writ Petition No. 175 of 2017, decided on 13.02.2018 (High Court of Bombay at Goa).

v. ***Vikas Rambal & Ors. v. The State***, Crl.O.P. No. 11184 of 2019 & Crl.M.P. No. 5726 of 2019, decided on 12.10.2022 (Madras High Court)

7. The main point for my consideration is whether the order dated 22.04.2024 for the issuance of process can be sustained based upon the averments made in the complaint and the considerations for passing that order.

The offence that the Petitioners are alleged to have committed is manufacturing for sale or distribution, a drug which is not of standard quality. The offence alleged is covered under Section 18(a)(i) of the Drugs Act. This offence is punishable under Section 27(d) of the Drugs Act with imprisonment for a term which shall not be less than one year but which may extend to two years, and with a fine which shall not be less than Rupees Twenty Thousand.

8. Section 34 of the Act creates a vicarious liability in every person, who at the time the offence was committed, was in charge of and responsible to the company charged of the offence, for the conduct of the business of the company; it specifies that such person shall be guilty of the offence and shall be proceeded against and punished accordingly. Section 34 has been quoted below for ready reference:

"*34. Offences by companies.— (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the* *offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means a body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm."

9. The question before me is as to what are the necessary averments that the complaint filed under Section 200 of the CrPC has to contain to foist the vicarious liability under Section 34 of the Drugs Act, on its Directors. This question has been considered in various judgments, reference to which is presently made below.

In ***S M S Pharmaceuticals Ltd.***(supra), the Supreme Court considered what specific averments are to be made in a complaint under Section 138 of the Negotiable Instruments Act against a Director of a Company, to bring home the vicarious liability under Section 141 of that Act. It has been held therein that there is a necessity to make specific averments in the complaint, that at the time the offence was committed, the accused Director was in charge of and responsible for the conduct of a company, and that it is not sufficient to just state that the person was a Director. It further holds that the complaint must aver, as a fact, the manner in which the Director was in charge of and responsible for such conduct of business. The relevant paragraph is quoted below:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:
(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint. the requirements of Section 141 cannot be said to be satisfied.
(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.
(c) The answer to question (c) has to be in the affirmative. The question notes that the managing director or joint

managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

10. ***S M S Pharmaceuticals Ltd*****.** (supra) finds reference in a later judgment of the Supreme Court in ***Lalankumar Singh*** (supra), where not only the question of the averments required to be made to bring home the vicarious liability contained in Section 34 of the Drugs Act was considered, but a further question as to what should be the considerations whilst a Magistrate issues process on such a complaint was also decided. The following paragraphs are relevant in this context:

"17. … A director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the director concerned (see State of Karnataka v. Pratap Chand (1981) 2 SCC 335 ; [1981] SCC (Cri) 453). In other words, the law laid down by this court is that for making a director of a

company liable for the offences committed by the company under section 141 of the N.I. Act, there must be specific averments against the director showing as to how and in what manner the director was responsible for the conduct of the business of the company.

……

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 (2015) 4 SCC 609, 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 (i.e. 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."*

11. Thereafter, in ***J M Laboratories*** (supra), the Supreme Court has also considered what are the requirements of a valid order of issuance of process, and to what extent reasons are to be supplied by the

Magistrate issuing such process, to sustain such an order under Section 202 of the CrPC. The following paragraphs are relevant to the decision of this matter:

> "*8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited v.The State of Andhra Pradesh", we have observed thus:*
>
> *"33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.*
>
> *34. In this respect, it will be relevant to refer to the following observations of this Court in the case of Pepsi Foods Ltd. v.Special Judicial Magistrate (1998) 5 SCC 749 (supra):*
>
> *"28.Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

36. The said law would be consistently following by this Court in a catena of judgments including in the cases of Sunil Bharti Mittal v Central Bureau of Investigation(2015) 4 SCC 609,Mehmood Ul Rehman v. Khazir Mohammad Tunda(2015) 12 SCC 420 and Krishna Lal Chawla v. State of Uttar Pradesh(2021) 5 SCC 435.

37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of Lalankumar Singh v. State of Maharashtra 2022 SCC OnLine SC 1383 (supra), has observed thus:

"38. 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 v. Central Bureau of Investigation[9], 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 (i.e. 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."*
>
> *39. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra).*
>
> *40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed."*
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> *9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh", and the legal position as has been laid down by this Court in a catena of judgments including in the cases of Pepsi Foods Ltd. v. Special Judicial Magistrate,Sunil Bharti Mittal v. Central Bureau of Investigation,Mehmood Ul Rehman v.Khazir Mohammad Tunda and Krishna Lal Chawla v. State of Uttar Pradesh, the present appeal deserves to be allowed."*

12. In ***Ramprakash Gulati*** (supra), this Court was considering the provisions of Section 34 of the Drugs Act in a somewhat similar case, where the only averment made in the complaint was that the Directors named in the complaint were responsible for the manufacture and day-

to-day running of the affairs of the company. The relevant paragraphs of the judgment are quoted below:

> "*15. It is not in dispute that the applicants are the directors of accused no.4, however as per the scheme of the Act merely because a person is a director that by itself is not sufficient to bring him within the clutches of the Act, if the said director is not responsible for the day to day affairs of the company. In the complaint specific averments are made in respect of Shri Ramesh Chandra Malik, accused no.5 who is the manufacturing chemist and accused no.6 Smt. Sarita Bhatnagar, who is Analytical Chemist and their roles. However, at the same time the complaint is totally silent in respect of the role of the present applicants.*
>
> *16. The reading of sub-Section 2 of Section 34 of the Act shows that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
>
> *17. Thus, sub-Section 2 of Section 34 of the Act clearly mandates that if the director, manager, secretary or any other officer of the company is shown to be an accused in the complaint, then it is obligatory on the part of the complainant to show that the offence is committed with the consent or connivance. Merely because that a person is director is not self sufficient to establish that the offence is committed with his consent or connivance in the absence of basic pleading in that*

> *behalf. In absence of such, merely because the complaint is filed against the directors in my view the directors are not required to face gamut of the prosecution at the behest of the complainant."*

13. The upshot of the relevant portion of the aforementioned judgments would bear out that the complaint must contains specific averments to the effect that the offence committed by the company was with the consent or connivance of or is attributable to any act of the Director, Manager, Secretary or other Officer of the company, deeming him to be guilty of the offence.

The judgments also hold that merely because a person is a Director of a Company, would not suffice to fulfil the twin requirements of sub Section 1 of Section 34 of the Drugs Act which are that the complaint must contain a specific averment against a Director showing how, and in what manner the Director was responsible for a conduct of a business of a company and how he was in charge of the day to day affairs of the company which has resulted in the commission of the offence.

14. In the present case, the offence alleged is of producing a sub-standard drug, which was manufactured at its factory in Kolkata and distributed to a hospital at Mapusa, Goa. The only averment made, purporting to be in compliance with the requirements of Section 34, is contained in paragraph 4 of the complaint, which is quoted below:

> *"4. The Complainant states that the Accused no. 2, 3, 4*

and 5 are the Director(s) of Firm i.e. Accused no. 1 and are responsible for the day-to-day activities, conduct, and business of the Accused no. 1 Firm manufactured the subject drug product Diaset1 (Glimepiride Tablets I.P. 1 mg), Batch. No: C22F81, Mfg. date: 09/2021, Exp. date: 08/2024, which was tested and was found to be NSQ "Not of Standard Quality" drug. The subject drug was manufactured in violation of the provisions as laid down under Section 16 (1)(a) of the Drugs & Cosmetics Act, 1940."

15. Apart from this averment, there is an averment stating that Accused No.1 (the Company) disclosed the names of the competent persons for the manufacture, test and release of a concerned drug, wherein four persons, who are the manufacturing chemist, analytical chemist and in charge of NSQ drug products. However, these persons were not arrayed as Accused by the Complainant.

16. Applying the ratio of the afore-quoted judgments to the facts of present case, the complaint is devoid of any averment to demonstrate the role played of the Directors, roped in as Accused in the complaint nor is there any averment to state in what manner the offence was committed with their consent or their connivance or was attributable to their neglect or whether they were at all part of the manufacturing process of the drug. The necessary averments which are necessary for the provisions of Section 34 to apply are completely missing in the complaint for the Magistrate to have even considered issuing process. On this count alone, the impugned order dated 22.04.2024 issuing process would be required to be set aside.

17. *J M Laboratories* (supra) considers to what extent the Magistrate is required to supply reasons for the issuance of process in a prosecution relating to the Drugs Act, and the considerations for passing the order under Section 202 CrPC. Obviously, the reasons to be recorded for passing an order issuing process, even though they may be brief, must refer to and consider the specific averments in the complaint that constitute vicarious liability under Section 34 of the Drugs Act, to foist the commission of the offence on the Directors of an Accused company. In the present case, the only averment referring to such liability is contained in paragraph 4 of the complaint, which had been referred to by me in the preceding paragraphs, as to be devoid of the substance required to make out the vicarious liability.

18. The order issuing process is a one-line order stating "cognizance taken, issue summons to the Accused". The order is absolutely devoid of any reason and does not even make a brief reference to the averments in the complaint. As is a mandate of law, the Magistrate is required to make brief reference to the facts that were considered from the complaint, that prima facie constitute the offence; an order of issuance of process must reflect the application of mind to the facts of the complaint and the provisions of law that spell out the offence which the Accused persons are alleged to have committed. There is absolutely no reason contained in the impugned order or even a reference made to the ingredients of the offence and whether they have

been prima facie made out in the complaint to justify the issuance of process.

19. For all the above reasons, the impugned order issuing process passed by the Magistrate on 22.04.2024 cannot be sustained and is accordingly quashed and set aside. Since the complaint is devoid of the required averments/statements to foist vicarious liability on the Directors of the company who are arrayed as Accused, the complaint is hereby quashed.

20. Rule is made absolute in terms of prayer clause (a) of the petition.

VALMIKI MENEZES, J.

Signed by: MEENA VISHAL BHOIR
Designation: Private Secretary
Date: 25/07/2025 15:24:02