



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

142

CRM-M No.15364 of 2025 (O&M)
Date of decision: 20.03.2025

Rajesh Bansal

....Petitioner

Versus

State of Punjab through Drugs Inspector, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

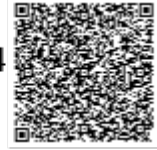
Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been preferred under Section 528 of BNSS, 2023, seeking quashing of criminal complaint No.CIA COMA/41336/2022 dated 09.06.2022, titled as “*State through Drugs Control Officer, Ludhiana vs Rajesh Bansal and others*”, filed under Section 18(c), punishable under Section 18(a)(i), punishable under Section 27(c) of the Drugs and Cosmetics Act, 1940 and Rules, 1945, before the learned Chief Judicial Magistrate, Ludhiana as well as the summoning order dated 10.06.2022 passed by learned Chief Judicial Magistrate, Ludhiana, and all other consequential proceedings arising therefrom.

2. The brief facts of the case are that on 27.06.2018, the Drugs Inspector conducted an inspection at M/s. TSM Medicare, during which the drug Apclon-LB was seized and sent for testing. The test



results showed that the drug did not meet the required standard, containing only 80.37% of the claimed Cloxacillin Sodium. M/s. TSM Medicare explained that the drug had been supplied by M/s. Aviv Pharma Distributors, who, in turn, blamed M/s. The Distributors House for the issue, which ultimately traced the drug's purchase to M/s. Ridley Life Sciences Pvt. Ltd. As a result of further investigation, M/s. Ridley Life Sciences had their license suspended from 11.01.2020 to 31.01.2020. On 18.06.2020, prosecution sanction was granted, and thereafter, the complaint (supra) was filed before the learned Chief Judicial Magistrate, Ludhiana.

3. Learned counsel for the petitioner submits that the Director of M/s Ridley Life Sciences Pvt. Ltd. should not be held responsible for the substandard quality of the drug Apclon-LB, as the drug was purchased from M/s. The Distributors House, and there is no evidence showing any negligence on the part of the petitioner. The petitioner was simply a distributor and had no role in manufacturing or quality control. Moreover, the 21-day suspension of their license, imposed by the Drug Licensing Authority, was a sufficient corrective measure. The petitioner has fully cooperated with the investigation and taken the necessary steps to address the issue. Further there is no direct evidence of criminal intent against the petitioner and thus, the prosecution sanction is premature, and criminal proceedings are unnecessary. Learned counsel for the petitioner further submits that the learned trial Court has wrongly



summoned the petitioner without properly considering the discrepancies, leading to wrongful initiation of legal proceedings.

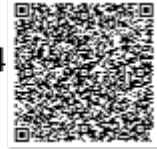
4. *Per contra*, learned State counsel submits that the present petition is without any merit and is liable to be dismissed. He further submits that the petitioner being the Director of M/s Ridley Life Sciences Pvt. Ltd., should be held responsible for the substandard quality of the drug, as his firm is part of the supply chain and it is the duty of the firm to ensure the drugs, it distribute are of good quality. Lastly, he submits that after a thorough investigation, the prosecution sanction was granted, and the legal proceedings are necessary to hold the petitioner accountable and protect public safety and thus, the learned trial Court, after examining the facts, has rightly issued summons against the petitioner.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the summoning order dated 10.06.2022 was passed without following the drill of Section 225 BNSS (erstwhile Section 202 Cr.P.C.).

6. A study of Section 225 of BNSS is called for, which is reproduced below:

Section 225. Postponement of issue of process.—

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such



other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on an officer in charge of a police station except the power to arrest without warrant.

7. Time and again, the Constitutional Courts have reiterated that the drill of Section 202 Cr.P.C. (now Section 225 of BNSS) is mandatory in nature. A two Judge bench of Hon'ble Supreme Court in ***Abhijit Pawar vs. Hemant Madhukar 2017(3) SCC 528***, speaking through Justice A.K. Sikri has held as follows:

“28. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter



(See : *National Textile Corpn. Ltd. Vs. Nareshkumar Badrikumar Jagad*; [(2011) 12 SCC 695].

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the *National Bank of Oman*.

30. For the aforesaid reasons, Criminal Appeal arising out of SLP (Crl) No. 9318 of 2012 is allowed thereby quashing the notice dated 24 th November, 2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.”

8. Reliance in this regard can also be placed on the judgment rendered by the Hon’ble Supreme Court in ***National Bank of Oman vs. Barakara Abdul Aziz and another*** 2013(2) SCC 488 and this Court in ***Dr. Jasminder Kaur vs. Raj Karan Singh Boparai*** CRM-M-20260-2008.

9. A two Judge bench of the Hon'ble Supreme Court in ***National Bank of Oman’c case (supra)*** has held as follows:

“10. We are of the view that the High Court has correctly held that the above-mentioned amendment was not noticed by the C.J.M. Ahmednagar. The C.J.M. had failed to carry out any enquiry or ordered investigation as contemplated under the amended Section 202 of the Code of Criminal



Procedure. Since it is an admitted fact that the accused is residing outside the jurisdiction of the C.J.M. Ahmednagar, we find no error in the view taken by the High Court. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 of the Code of Criminal Procedure. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 of the Indian Penal Code. The C.J.M. will pass fresh orders after complying with the procedure laid down in Section 202 Code of Criminal Procedure, within two months from the date of receipt of this order.”

10. Further, a Co-ordinate bench of this Court in **Dr. Jasmininder Kaur’s case (supra)** has made the following observations:

“Therefore, in view of the law laid down, on which reliance has been placed by learned counsel for the petitioners, I find that the examination of the complainant and eye witness alone under Section 200 Cr.P.C. cannot be held as the enquiry as prescribed under Section 202 (1) Cr.P.C. Admittedly, in the present case, no enquiry as prescribed under Section 202 (1) Cr.P.C. has been made by the Court and non-compliance of the provisions of Section 202 (1) Cr.P.C., which are mandatory in nature, the summoning order cannot be passed where the respondents are residing outside the jurisdiction of the Court where the complaint was filed.”

11. In view of the discussion above, the present petition is allowed and summoning order dated 10.06.2022 passed by learned



Chief Judicial Magistrate, Ludhiana is set-aside. The matter is remanded back to concerned Court to consider the matter afresh in accordance with law, by taking recourse to Section 225 of BNSS.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.03.2025
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No