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

**CRM-M-23890-2024
Date of Decision: 15.01.2025**

SANDEEP PUGGAL**PETITIONER**

VS.

**STATE THROUGH DRUGS INSPECTOR
BARNALA****RESPONDENT****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present:- Dr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of Criminal Complaint No. CIS COMA/34/2020 dated 19/21.10.2020 titled as State Through Drugs Inspector, Barnala versus Amrinder Gupta and others U/s 18(a) (i) read with Section 17B, punishable U/s 27 (c) (ii) of the Drugs and Cosmetics Act, 1940/Rules 1945 (Annexure P-1) filed by the State through Drugs Inspector, Barnala before the Ld. CJM, Barnala who further wrongly summoned the present accused/petitioner vide order

dated 02.07.2022 (Annexure P-5) along with all other consequential proceedings arising out of the aforesaid complaint qua the present petitioner.

2. Succinctly, the facts of the complaint are that on 22.12.2015 the Drug Inspector, Barnala has inspected the sale premises M/s S.P. Medicos situated near Civil Hospital, Bhadour, District Barnala in the presence of Sanjeev Kumar, who is proprietor cum well educated person of the said firm. It is alleged that the samples of two types of Allopathic Drugs were taken for test and analysis as per Form 17 and the Samples were marked as No. BNL/PS/18/2015 to BNL/PS/19/2015 and four portions of each of these samples were sealed by the Drug Inspector, Barnala on the spot. Thereafter, the same was sent for test and analysis. Vide test report No.3201 dated 31.12.2015 Sample No. BNL/PS/19/2015 of Tab Wefix-CV, B.No. UTB-301, Mfg. May-2015 and Exp. August-2016, Mfd. by M/s Universal Healthcare, 124 HPSIDC, Industrial Area, Baddi (HP) declared as “Not of Standard Quality” and the reason was that the contents of “Clavulanic acid” has been found to be 2.79 mg/fctab against labeled claim of 125 mg/fctab.

3. Learned counsel for the petitioner submits that the quashing of the impugned complaint is sought on the ground that the petitioner is not a manufacturer, rather he is involved in trading of the drug, which is confiscated and subsequently found to be of non-standard quality. He further submits that the petitioner runs his business from Delhi and the transaction has been done from his office at Delhi, therefore, before summoning, it was

imperative upon the learned trial Court concerned to comply with the provisions of Section 202 Cr.P.C.

4. He further submits that the learned trial Court did not seek the report under Section 202 of the Cr.P.C. before issuance of process against the petitioner by passing summoning order dated 02.07.2022 (Annexure P-5).

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the summoning order dated 02.07.2022 (Annexure P-5) was passed without following the drill of Section 202 of the Cr.P.C.

6. The Hon'ble Supreme Court in ***Abhijit Pawar vs. Hemant Madhukar, 2017(3) SCC 528, 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*** has held that the drill of Section 202 of the Cr.P.C. is mandatory in nature.

7. A two Judge bench of Hon'ble Supreme Court in ***Abhijeet Pawar (supra)***, speaking through Justice A.K. Sikri has held:-

“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. A two Judge bench of the Hon'ble Supreme Court in **National Bank of Oman(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.”

Further, a Co-ordinate bench of this Court in ***Dr. Jasminder Kaur (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.”

9. Having heard the learned counsel for the parties and keeping in view the facts of the case, the present petition is allowed and order dated 02.07.2022 (Annexure P-5) is set aside and the matter is remanded back to learned Chief Judicial Magistrate, Barnala to consider the matter afresh in accordance with law, by taking recourse to Section 202 of the Cr.P.C.

10. The petition is disposed of accordingly.

15.01.2025
Poonam Sharma

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No