



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 29th August, 2025
Pronounced on: 21st November, 2025

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CRL.M.C. 2230/2021

1. M/S. GAUTAM GAMBHIR FOUNDATION

Through its Hony. Administrator
 Mr. Pawan Gulati
 Registered Office: 51/4, Old Rajinder Nagar
 New Delhi-110060

...Petitioner No. 1

2. MRS. SEEMA GAMBHIR

w/o Sh. Deepak Gambhir
 R/o 6B/8, Old Rajinder Nagar
 New Delhi-110060

...Petitioner No. 2

3. MR. GAUTAM GAMBHIR

s/o Sh. Deepak Gambhir
 R/o 6B/8, Old Rajinder Nagar
 New Delhi-110060

...Petitioner No. 3

4. MRS. NATASHA GAMBHIR

w/o SH. GAUTAM GAMBHIR
 R/o 6B/8, Old Rajinder Nagar
 New Delhi-110060

...Petitioner No. 4

Through:

Mr. Jai Anant Dehadrai, Ms. Srutee
 Priyadarshini, Adv.

versus

STATE OF NCT OF DELHI

Through Drugs Control Department
 F-17, Karkardooma, Delhi-110032

... Respondent

Through:

Mr. Utkarsh, APP for the State.



Mr Amarkumar Mokashi Drugs
Inspector Govt of NCT of Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (“CrPC”), on behalf of *M/s. Gautam Gambhir Foundation* and its Trustees (“the Petitioners”) for quashing of the Criminal Complaint for offences under Section 18(c) read with Section 27(b)(ii) Drugs and Cosmetics Act, 1940 (the D&C Act) and also to challenge the Summoning Order dated 26.07.2021 and the subsequent Order dated 26.08.2021 of the Learned Metropolitan Magistrate.

2. ***Briefly stated***, Petitioner No. 1, Gautam Gambhir Foundation (“*the Foundation*”), is a registered Trust established in 2014, engaged in various charitable activities, including running of Community Kitchens, supporting the education of martyrs’ children and providing scholarships to the girl children of Sex Workers. During the unprecedented second wave of COVID-19 Pandemic, in around April-May 2021, the Healthcare system in Delhi was overwhelmed, leading to a catastrophic failure in providing essential life-saving drugs and oxygen to citizens, particularly to the poorest sections of Society. Witnessing this public health emergency and receiving numerous pleas for help, the Petitioners decided to render assistance for purely *charitable purposes*.



3. In collaboration with *M/s. Garg Hospital*, the Foundation organized a free Medical Camp from 22.04.2021 to 07.05.2021. On the advice of doctors of Garg Hospital, the Foundation provided financial support to procure Favipiravir Tablets, a protocol medicine for COVID-19 treatment. The medicine was purchased in a phased manner over eight days, from licensed Dealers against valid Invoices, to avoid creating any shortages. The medicines and oxygen were then dispensed for free, to the needy patients under the direct supervision of doctors from Garg Hospital, and only after strict verification of Medical Prescriptions and Identity Cards.
4. Writ Petition (Crl.) No. 953 of 2021 was filed before this Court by one Dr. Deepak Singh, alleging black-marketing of COVID-19 Medicines. Delhi Police filed two *Status Reports* dated 15.05.2021 and 22.05.2021, concluding therein that the Petitioners were engaged in helping people voluntarily and that “*no cognizable offence*” was found to be committed.
5. The Drugs Control Department/ Respondent also filed its first *Status Report* dated 30.05.2021 in the said Writ Petition, which also concluded that “*no evidence of contravention under the Drugs and Cosmetics Act, 1940 and Rules made thereunder has been found during the enquiry so far*”. The Report confirmed that the medicines were procured from Dealers with sufficient stock, were dispensed under medical supervision and were provided free of cost.
6. However, the Respondent later changed its stance, alleging contravention of the Act. *This change was purportedly based on a subsequent clarification from Garg Hospital that its role was limited to medical supervision and verification of prescriptions, but not in the procurement, stocking, or distribution of the drugs.*



7. Based on this stand, the Respondent filed the impugned Criminal Complaint No. 6953 of 2021 on 08.07.2021 for the offences under Section 18(c) read with Section 27(b)(ii) of the DCA for unlicensed stocking and distribution of *Favipiravir* tablets and oxygen during a free medical camp in April - May 2021.

8. The Learned Magistrate took cognizance and summoned the Petitioners vide Order dated 26.07.2021.

9. The Petitioners have *challenged the impugned Complaint and the Summoning Order* inter alia, **on the grounds** that the prohibition under Section 18(c) of the D&C Act applies to commercial activities of manufacture, sale, and distribution and not to the charitable distribution of medicines free of cost during a public health emergency. There was a complete absence of *mens rea* or any commercial intent. The actions were purely *humanitarian*, undertaken in *good faith* to save lives during a catastrophic failure of the State Health Machinery.

10. The Respondent's own First Status Report along with Reports from the Delhi Police had exonerated the Petitioners, making the subsequent prosecution a *malicious abuse of the process of law*.

11. The Apex Court in Mohd. Shabir v. State of Maharashtra, (1979) 1 SCC 568, has settled the law that stocking or exhibiting drugs is only an offence if it is done "*for the purpose of sale*". Mere possession or distribution without a commercial element does not attract the penal provisions of the Act.

12. The act of the Trust is protected under Section 19(3) D&C Act, as the drugs were acquired from licensed dealers and the Petitioners, relying on



Medical Experts, had no reason to believe their charitable act was in contravention of the law.

13. The activity falls under the exemption provided in *Entry 5 of Schedule K of the Drugs and Cosmetics Rules, 1945*, as the drugs were supplied by a registered medical practitioner to their patients and not from an open Shop or across the counter.

14. The Learned Magistrate passed the Summoning Order without appreciating that the Complaint, on its face, did not disclose the essential ingredients of the alleged offence.

15. The *Respondent, in its Reply*, has defended the initiation of the prosecution and opposed the Petition. The primary submissions of the Respondent are that the Foundation and its Trustees *procured, stocked, and distributed drugs*, namely *Favipiravir* tablets and Medical Oxygen, without holding the requisite License under the Act, which is a clear contravention of Section 18(c).

16. The initial prima facie view that no contravention was made out, was based on the understanding that the Foundation and Garg Hospital were working as a single associated Unit. However, Garg Hospital later clarified vide Letter dated 01.06.2021 that their role was limited to the verification of prescriptions and they had no role in the procurement, stocking, or distribution of the drugs. Since the procurement was solely done by the Foundation, it could not claim exemption under Schedule 'K'.

17. The language of Section 18(c) uses the words "sale" and "distribute" separately, which implies that even distribution free of cost, if done without a license, constitutes an offence.



18. The offence under Section 18(c) read with Section 27(b)(ii) of the D&C Act is a *strict liability offence*. The motive of the Petitioners, whether charitable or for political gain, is irrelevant.

19. The criminal Complaint was filed based on the enquiry, and the designated court has rightly taken cognizance and summoned the accused after finding a prima facie case.

Submissions heard and record perused.

20. The history of humanity is marked by devastating outbreaks and **pestilences**. Among the most historically significant are the plagues that ravaged **Poland in the 1500s** and, perhaps more famously, the **Great Plague of London in 1665**. The latter, a terrifying outbreak of **bubonic and pneumonic plague**, is a chilling reminder of how quickly an unseen enemy can destroy a population and bring society to a standstill.

21. The shadow of these historical events is often evoked by folklore, notably the nursery rhyme '**Ring-a-Ring o' Roses**'. The popular belief connects the rhyme to the Great Plague: the '**ring**' referred to the characteristic round, red lesions on the skin; '**pocketful of posies**' represented the desperate attempts to ward off the disease by carrying fragrant herbs; the '**a-tishoo**' reflected the severe respiratory symptoms of pneumonic plague; and '**all fall down**' was the stark reality of mass death. These stories underscore the deep psychological impact of such widespread illness.

22. Centuries later, the world faced a **similar pestilence**, though fundamentally different in scale and nature - the **COVID-19 Pandemic**. Unlike previous regional epidemics, this was a global crisis, impacting nearly every person in every corner of the Earth.



23. The severity and complexity of COVID-19 were amplified by the fact that it was a **novel Coronavirus**, an **unknown disease**, for which no established, proven treatment existed. This created an extraordinary medical emergency, forcing global health systems into a rapid **trial and error to find the cure**.

24. In the absence of a cure, **isolation** became the primary defense to contain the transmission. As researchers across the globe raced to understand the nature of the virus and to develop the prophylactic and curative medicines, various existing and new medicines were tried to manage symptoms and improve survival rate.

25. The gravity of the COVID-19 pandemic was highlighted in the Supreme Court's *suo moto* cognizance in "*In Re: Distribution of Essential Supplies and Services During Pandemic*". The Order dated 22.04.2021 noted the "*unprecedented crisis*" and observed as under:

"The situation in various parts of the country is grim. There seems to be a sudden surge in the number of covid patients and mortality. Other than vaccination which is prophylactic in nature, covid can be treated only by some drugs such as Remdesivir. Oxygen to the patients is also said to be an essential part of the treatment."

26. The emergency highlighted the critical need for basic supportive care, where the **supply of oxygen** became the lifeline. Medications like **Favipiravir** emerged as frontline options for emergency treatment. **Government of India** responded with tremendous fervor, not only by implementing crucial preventive measures, but also by mobilizing resources to ensure the immediate availability of these life-saving drugs and oxygen. The intense public demand for Favipiravir and oxygen during peak waves,



underscored the desperate effort by individuals to save their loved ones, while simultaneously the government committed significant resources toward the long-term goal of **vaccine development** to provide a lasting solution.

27. The second wave of the COVID-19 pandemic in April-May 2021 led to catastrophic situation of widespread distress and loss of life. Many Samaritans and public spirited persons came forth to augment the inadequate and ever depleting resources of the Govt Agencies, to provide the adequate support by procurement and distribution of life-saving medical support. The Supreme Court in its Order dated 31.05.2021, referenced to the prior Orders from 30.04.2021, and recognized the collapse of public health systems during the second wave, with shortages of oxygen and medicines like Favipiravir.

28. The Apex Court directed that no coercive actions against entities distributing essential supplies bona fide, the relevant para of the Order dated 27.04.2021 is extracted as under:

“The Central Government and State Governments shall notify all Chief Secretaries/Directors General of Police/Commissioners of Police that any clampdown on information on social media or harassment caused to individuals seeking/delivering help on any platform will attract a coercive exercise of jurisdiction by this Court.”

29. It is during this time that the Petitioners through their Foundation provided financial support for the procurement of *Favipiravir* Tablets and medical oxygen and their free of cost distribution, to needy COVID-19 patients at a *Medical Camp organized in collaboration with Garg Hospital*. The Foundation’s efforts were directed to prevent hoarding and black-



marketing, aligning with the Court's call for sympathetic consideration towards such individual/Organizations.

30. However, the Medical Camp set up by the Petitioners resulted in the Complaint under S. 18(c) read with 27(b)(ii), against the Petitioners, the quashing of which is sought by the Petitioner.

I. Commercial Intent vs. Strict Liability:

31. The Respondent contends that Section 18(c) of the Drugs and Cosmetics Act (DCA) is a "*strict liability*" offence where the motive is irrelevant, and that the distinct use of the words "*sale*" and "*distribute*" implies that even free distribution requires a license and that such distribution could only be effected by way of procurement, stocking, and distribution, regardless of the charitable motive, and that the same is prohibited without a License and is an offence under Section 18(c) of D&C Act.

32. It is imperative to underscore that the *Drugs and Cosmetics Act, 1940*, being public welfare legislation aims to regulate the import, manufacture, distribution, and sale of drugs and cosmetics. ***Its objective is to ensure that the public receives drugs of standard quality and to prevent the circulation of substandard or spurious drugs.***

33. To understand the true import, it would be pertinent to reproduce relevant part of Section 18(c) which prohibits the *manufacture, sale, stocking, exhibition, or distribution of drugs without a license*, under Chapter IV of the Act. Section 18(c) reads thus:

"Section 18: Prohibition of manufacture and sale of certain drugs and cosmetics - From such date as may be fixed by the State Government by notification in the Official



Gazette in this behalf, no person shall himself or by any other person on his behalf—

...

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter.”

34. The penalty for contravention of S.18(c) is provided Section 27(b)(ii) of the Act which prescribes punishment of imprisonment of not less than three years, extendable to five and fine.

35. The true import of this offence can be best understood by referring to established judicial precedent which explain that *the mere act of stocking or distributing without a commercial element, does not attract penal provisions.*

36. The Supreme Court in Mohd. Shabir v. State of Maharashtra held that *stocking* is an offence, only if done for the *purpose of sale*. The Court observed:

“4. ... The words used in Section 27, namely, ‘manufacture for sale’, ‘sells’, have a comma after each clause but there is no comma after the clause ‘stocks or exhibits for sale’. Thus, the section postulates three separate categories of cases and no other: (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word ‘stocks’ clearly indicates that the clause ‘stocks or exhibits for sale’ is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted.”



37. The Apex Court unequivocally concluded that “*possession simpliciter of the articles, does not appear to be punishable under any of the provisions of the Act*” and that the prosecution must affirmatively prove that the accused had ***stocked the drugs “for sale”***.

38. Since the Foundation’s actions were purely charitable, free of cost, and undertaken to save lives during a public health emergency, the essential ingredient of “***commercial intent***” is absent, making the S.18(c) punishable under Section 27(b)(ii) D&C Act, inapplicable. This was a case of ***free distribution***.

39. The Respondent’s claim that ***free distribution*** still violates Section 18(c) of the Act.

40. The aspect of *distribution* was considered in S. Athilakshmi (supra), wherein the Apex Court held that Rule 123 read with Entry 5, exempts registered medical practitioners stocking drugs for patient treatment, provided they do not operate *a retail pharmacy or sell across the counter*. The Court quashed the prosecution of a Dermatologist for stocking small quantities of lotions, *emphasizing that the exemption applies to non-commercial, patient-specific supply*. The Court clarified that the prosecution must prove *commercial intent* or *non-compliance with Schedule K conditions*, to negate the exemption.

41. This contention is therefore, contrary to S. Athilakshmi v. State Rep. by the Drugs Inspector 2023 SCC OnLine SC 269, which emphasizes that Entry 5 protects non-commercial supply under medical supervision. The Foundation’s distribution of Favipiravir tablets falls under Entry 5, as it was conducted under the supervision of *M/s Garg Hospital’s* registered medical practitioners, who verified prescriptions. As is evident from the



correspondence exchanged between the Petitioner Foundation and *M/s Garg Hospital*. This aspect is discussed below.

II. Procurement and Exemption under Schedule K:

42. The contention that the Foundation has the protection and exemption under *Entry 5 of Schedule K* of *THE DRUGS RULES, 1945* because the procurement was done by the Foundation itself and not by *Garg Hospital*, thereby failing the requirement of “*supply by a registered medical practitioner*”.

43. The ***procurement and free distribution*** of *Favipiravir* Tablets and Medical Oxygen during the COVID-19 Pandemic, was under medical supervision of *M/s Garg Hospital*.

44. Admittedly, to address the acute shortage of critical drugs like *Favipiravir* and medical oxygen and to provide free medical assistance to the poorest sections of Society, a Medical Camp was organized by the Foundation at Jagriti Enclave, New Delhi from 22.04.2021 to 07.05.2021 which continued from 05.05.2021 to 18.05.2021. It aimed to support individuals unable to access these resources due to supply chain disruptions.

45. Over eight days, the **Foundation procured 2628 strips of Favipiravir tablets from licensed dealers** through valid Invoices, ensuring compliance with sourcing requirements and no disruption to the broader supply chain, as confirmed by the Drugs Control Department Report dated 30.05.2021. *The remaining stock of Favipiravir was handed over to the Directorate General of Health Services (DGHS), after the Camp concluded.*

46. The Camp was prompted by a Letter dated 19.04.2021 from *Dr. Manish of M/s Garg Hospital*, advising the procurement of protocol medicines, including *Favipiravir (Fabiflu)* tablets, to address the crisis.



advising the procurement of protocol medicines, including Favipiravir (Fabiflu) tablets, to address the crisis. The Foundation thus, collaborated with *M/s Garg Hospital*, a licensed Medical facility, to ensure professional medical over-viewing and distribution. Doctors from *M/s Garg Hospital* supervised the distribution and verification of prescriptions, after which alone medicines were dispensed to eligible patients.

47. The Camp was a temporary setup designed specifically for charitable relief during the emergency and not a permanent pharmacy or retail outlet.

48. The Exemption is afforded under Rule 123 of the Drug Rules, 1945 read with Entry 5 to Schedule K, which exempts the drugs supplied by registered Medical Practitioners without an open shop or counter sales from a requirement of license.

49. Rule 123 of the Drugs and Cosmetics Rules, 1945, states:

*“The drugs specified in **Schedule K** shall be **exempted** from the **provisions of Chapter IV** of the Act and the rules made thereunder to the extent and **subject to the conditions specified in that Schedule.**”*

50. Rule 123 is the enabling provision **for Schedule K**, which lists drugs and scenarios exempted from the stringent licensing and regulatory requirements of Chapter IV of DCA. Rule 123 ensures that these exemptions are legally enforceable, provided the conditions in Schedule K are strictly followed.

51. The entities which comply with Entry 5 conditions read with Rule 123, are exempted from the licensing requirements under Section 18(c) or penalties under Section 27(b)(ii). To ascertain the necessary conditions, it is imperative that we refer to Entry 5 of Schedule K and the same is as under:



SCHEDULE K (See rule 123)

Entry	Class of Drugs	Extent and Conditions of Exemptions
1.		
...	...	...
5.	<i>Drugs supplied by a registered medical practitioner to his own patient or any drug specified in Schedule C supplied by a registered medical practitioner at the request of another such practitioner if it is specially prepared with reference to the condition and for the use of an individual patient provided the registered medical practitioner is not (a) keeping an open shop or (b) selling across the counter or (c) engaged in the importation, manufacture, distribution or sale of drugs in India to a degree which render him liable to the provisions of Chapter IV of the Act and the rules thereunder.</i>	<i>All the provisions of Chapter IV of the Act and the rules made thereunder, subject to the following conditions:—</i> <i>(1) The drugs shall be purchased only from a dealer or a manufacturer licensed under these rules, and records of such purchases showing the names and quantities of such drugs, together with their batch numbers and names and addresses of the manufacturers shall be maintained. Such records shall be open to inspection by an Inspector appointed under the Act, who may, if necessary, make enquiries about purchases of the drugs and may also take samples for test.]</i> <i>(2) In the case of medicine containing a substance specified in 306[Schedule G, H or X] the following additional conditions shall be complied with:—</i> <i>(a) the medicine shall be labelled with the name and address of the registered medical practitioner by whom it is supplied;</i> <i>(b) If the medicine is for external application, it shall be labelled with the words 307[***] "For external use only" or, if it is for internal use with the dose;</i> <i>(c) the name of the medicine or ingredients of the preparation and the quantities thereof, the dose prescribed, the name of the patient and the date of supply and the name of the person who gave the prescription shall be entered at the time of supply in register to be maintained for the purpose;</i> <i>(d) the entry in the register shall be given a number and that number shall be entered</i>



		on the label of the container; (e) the register and the prescription, if any, on which the medicines are issued shall be preserved for not less than two years from the date of the last entry in the register or the date of the prescription, as the case may be. (3) The drug will be stored under proper storage conditions as directed on the label.] (4) No drug shall be supplied or dispensed after the date of expiration of potency recorded on its container, label or wrapper or in violation of any statement or direction recorded on such container, label or wrapper.
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52. A bare perusal of this Entry 5 of Schedule K reveals that it specifies various classes of drugs and conditions under which exemptions apply, to medical practitioners, government hospitals, household remedies, and public health programs. It also addresses drugs supplied by a registered medical practitioner to his own patients or any drug specified in Schedule C supplied by a registered medical practitioner to their own patients and *Schedule C drugs* (biological and special products, e.g., antibiotics like Favipiravir) supplied at the request of another practitioner.

53. The **necessary conditions** under which the exemption is permitted are:

- a) *The drugs should be purchased only from a licensed dealer or manufacturer, and proper records must be maintained of such purchases.*
- b) *The drugs are supplied directly by the registered medical practitioner to his own patients.*



- c) *The drugs must not contain any substance specified in Schedule G, H or X, which relate to controlled drugs.*
- d) *The drug will be stored under proper storage conditions.*
- e) *No drug shall be supplied or dispensed after the date of expiration.*

54. To ascertain whether the said conditions are fulfilled in the instant case, we may refer to the documents placed on record by the Petitioners to prove the same.

55. *In regards to the first condition* of purchasing only from a licensed dealer or manufacturer, reference has to be made to the Invoices which confirm procurement from licensed dealers. The Invoice dated 22.04.2021 for procuring FABIFLU tablets worth Rs. 9,20,147/-, Invoices dated 24.04.2021 for purchase of FABIFLU worth Rs. 11,07,140/-, and Invoices dated 25.04.2021 for purchase of FABIFLU worth Rs. 49,500 are placed on record to corroborate the due procurement of the Medicines.

56. The procurement of empty Oxygen cylinders is also confirmed by Letter dated 21.05.2021 written by authorized representative of Singhal Gases, addressed to ACP, Crime branch.

57. A bare perusal of the Invoices/Letter clearly establishes the valid channels of procurement of the medicines and oxygen cylinders.

58. *The second condition* of drugs being supplied directly by a registered medical practitioner is sought to be proved by way of the letters exchanged between the Petitioners and *M/s Garg Hospital*.

59. The first Letter dated 18.04.2021 was written by the Petitioner for seeking support in organizing Medical Camp. The Letter reads thus:



LETTER OF REQUEST

To,

Dr. Sanjay Garg,
Garg Hospital,
A.G.C.R. Enclave,
Delhi-110092

Dear Sir,

In terms of our on-going discussions, we hereby confirm and thank you for extended your kind support for organising the medical camp to assist people affected by Covid-19 virus during the present second wave.

As discussed, the camp will be organised from the 22nd of April, 2021 to 7th May 2021 at 2, Vikas Marg, Jagriti Enclave, Anand Vihar, Delhi, under your complete supervision and guidance. As suggested, the timing for the camp shall be 10am to 5pm.

We from GGF will be there to assist you in whatever manner that you may want us to help as well as in implementing all Covid protocols.

Having confirmed the above, we would also request you to kindly confirm and communicate the medicinal requirements that you may have for running the free OPD, so that the same can be procured and made available to you in good time.

Kind Regards

Aparajita Singh
CEO
Gautam Gambhir Foundation

Signature and Organisational seal

Place: NEW DELHI

Date: 18TH April 2021.

60. The two Letters dated 19.04.2021 were written by Dr. Sanjay Garg and Dr. Manish of *M/s Garg Hospital* extending their support for organizing the Medical Camp, wherein they had also noted the prescribed medication for treatment.

61. The Letter reads thus:



1. LETTER OF ACCEPTANCE FROM THE DOCTOR



GARG HOSPITAL
(A UNIT OF GARG HEART CENTRE & NURSING HOME (P) LTD.)
Service Tax Registration Number : AAACG0063C6D001
DHS - Reg. No. 181 CIN : U74899DL1090PTC039551



Gautam Gambhir Foundation
22, Pusa Road,
New Delhi - 110005.

Ma'am,

Reference your letter dated April 18, 2021, I hereby confirm my availability to volunteer and hold the free medical camp (OPD) at the designated venue from April 22, 2021 to May 07, 2021, taking the due precautions for social distancing and other Covid protocols.

The prescribed medication for treatment of mild and moderate cases of Covid patients are listed below, which may be obtained under this prescription, for me to dispense at the camp.

The general protocol medication are:

- Tab. Ivermectin 12mg
- Tab. Doxycycline 100mg
- Tab. Amoxicillin 500mg
- Tab. Fabiflu (200mg / 400mg / 800mg)
- Tab. Zincovit
- Tab. Celin 500mg
- Tab. Dolo 650
- Thermometers
- Oxymeters

I am happy to be associated in this noble cause and appreciate your coming forward to help the citizens in these extremely difficult times.

Thanking you,



Place: New Delhi
Date: 19TH April 2021.



DHS Reg. No. 181 CIN : U74899DL1990PTC039551



Dear Ma'am

Reference to your letter dated April 18, 2021, I hereby Confirm that Our Hospital has agreed to volunteer its free services and hold free Medical Camp (OPD) at the designated site from April 22, 2021 to May 07, 2021.

I have been deputed by the Hospital as the Visiting Doctor at the Medical Camp Site for the entire Period. Considering the social distancing norms and other covid protocols, we would be able to render our services to 100 patients in a day (approx. 1400-1600 patients during the entire period).

The below given are some of the prescribed covid protocol medications duly approved by the competent authorities for treatment of mild and moderate cases of Covid Patients.

Tab. Ivermectin 12 mg
Tab Doxycycline 100 mg
Tab Amoxicyclin 500 mg
Tab Favipiravir 200mg/400mg
Tab Zincovite
Tab. Celin 500 mg
Tab. Dolo 650

I suggest you to procure/arrange the requisite medicines for the Medical Camp from authorized sources on the basis of present advice, so that we are able to serve the covid patients in timely manner. The procurement/arrangement of the above said medicines will be done solely by Gautam Gambhir Foundation with their own resources and also it inventory would be managed by Gautam Gambhir Foundation.

It is my privilege to be associated to this noble cause and I really appreciate the laudable initiative of Gautam Gambhir Foundation to provide the life-saving medicines to the distressed covid patients in these troubled times.

Thanking you

Dr. Manish
C/o Garg Hospitals

62. These Letters clearly establish that the Camp was held only in collaboration with *M/s Garg Hospital* and their Doctors remained present throughout and the distribution of medicines was strictly according to Medical Protocols.



63. Further, these facts were duly confirmed from the subsequent communication of *M/s Garg Hospital with the Drugs Inspector*. The letter dated 26.05.2021 is most relevant for the same.

64. The Letter reads as under:

Dated: 26th May, 2021

SAFETY NO. 607
DATED 27-05-21

To

THE ASSISTANT DRUGS CONTROLLER
F-17, Karkardooma
Delhi - 110032

RE: REPLY TO THE LETTER DATED 26.05.2021 WHEREBY SOME CLARIFICATIONS AND INQUIRIES HAVE BEEN MADE FROM THE UNDERSIGNED DOCTOR (MANISH)

Respected Sir / Madam,

Today, I am in receipt of letter dated 26.05.2021 issued by the team headed by the Assistant Drug Controller, Drug Inspector, personnel of GNCTD. At the first instance, I could not join the investigation because I was attending the patients in ICU and Dr. Sanjay Garg contacted me and informed that I need to join the investigation and at around 1:00 p.m., I joined the same.

With reference to the subject matter, it is stated that the Gautam Gambhir Foundation (GGF) wanted to organize a free medical camp to support the Covid-19 patients for the noble cause / to help the needy and poor people who cannot afford the treatment as well as medications. The representatives of GGF, officially contacted Garg Hospital for the same and issued a letter dated 18th of April, 2021. GGF sought help of Garg Hospital for organizing the medical camp from 22nd of April, 2021 to 7th of May, 2021 to assist people affected by Covid-19 virus during the second wave of pandemic. Gautam Gambhir Foundation assured that they will procure the required medicines for the Covid-19 patients and will distribute the



same to the needy and poor patients, who cannot afford the medications, at the cost and expenses of the Foundation.

I would like to inform you that after receiving their request vide letter dated 18.04.2021, Garg Hospital agreed to assist Gautam Gambhir Foundation in the camp organized by them to a limited liability in pursuance of which Garg Hospital wrote two letters dated 19.04.2021 whereby Garg Hospital / Doctors of Garg Hospital will volunteer its free services at the medical camp organized by the Foundation at the 2, Jagriti Enclave, New Delhi - 110092. It is pertinent to mention that although initially the proposal was for conducting OPD at the medical camp, however, OPD was not conducted and only medicine distribution was done wherein the deputed staff of Garg Hospital have performed the limited role of providing free services to verify the prescriptions issued by different doctors to various patients, basically to check for correctness of prescribed medicines which were distributed by the staff / representatives of Gautam Gambhir Foundation to the needy and poor patients, who could not afford the medicines at their own.

It is stated that conducting of the Outpatient Patient Department (OPD) in the medical camp is not practically possible in case of Covid-19, as covid patients are not allowed to visit in the public places and it is against the covid-19 norms as issued by Health Department, so medicine and oxygen cylinder distribution was done by the Foundation and hence, Gautam Gambhir Foundation asked the attendants / relatives of the Covid-19 patients to furnish their prescription along with identity cards of the patients, so that the deputed staff of Garg Hospital can verify the prescriptions to check for correctness of prescribed medicines.

It is stated that Gautam Gambhir Foundation organized the camp and procurement of the medicines and oxygen cylinder, distribution of medicines and oxygen cylinder, arrangement of space, manpower, etc. were solely done by the foundation and Garg Hospital staff only provided the service to verify prescriptions and to check for correctness of prescribed medicines. It is pertinent to mention that neither Garg Hospital nor any of its staff / doctors was ever in possession of the medicines procured by the Foundation. It is stated that vide letter dated 19.04.2021,

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written by myself under the care of Garg Hospital clearly mentioned that procurement / arrangement of the medicines will be done solely by Gautam Gambhir Foundation with their own resources and also inventories related to medicines would be managed by Gautam Gambhir Foundation. Garg Hospital and their staff have been associated with Gautam Gambhir Foundation for the noble cause to provide the life-saving medicines to the distressed covid-19 patients during the pandemic situation. At the outset it is categorically denied that the medical camp was organized in collaboration with Gautam Gambhir Foundation. It is stated that Garg Hospital had the limited role of only providing voluntary services for verifying the prescriptions.

PARA WISE REPLY TO THE QUERIES:

1. I confirm / verify the letter dated 19.04.2021 written by myself confirming that Garg Hospital / its staff will be available to volunteer / assist the Gautam Gambhir Foundation in the camp organized by them. It is strongly and vehemently denied that Dr. Sanjay Garg / Garg Hospital / any of its doctors / staff issued any prescription against which Gautam Gambhir Foundation purchased 2628 strips / medicines. It is pertinent to mention that in letters dated 19.04.2021 written by Dr. Sanjay Garg and Dr. Manish to the Foundation had only suggested a list of medications which may be required to treat the Covid-19 patients, who are suffering with mild and moderate symptoms. The aforesaid suggestion was made only at the request made by the Foundation vide their letter dated 18.04.2021 wherein they requested to communicate the list of medicines for the camp. It is clarified that the letters dated 19.04.2021 can by no stretch of imagination be construed as a prescription on behalf of Garg hospital / its doctors and it was only a suggestion.

2. It is absolutely denied that the procurement of any medicines or medical oxygen cylinder was made under my supervision or the supervision of doctors of Garg Hospital and no distribution was done by Garg Hospital and their staff. I categorically deny any knowledge of or any involvement in procurement and distribution of oxygen cylinders. It is reiterated that Garg Hospital and its deputed staff's role was only limited to verify the prescriptions written on letterhead of registered medical

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practitioner and to check for correctness of prescribed medicines used in Covid-19 disease. It is reiterated that I or Garg Hospital, its doctors, and staff had no role whatsoever in procurement of medicines and it was done by GGF independently. It is pertinent to mention that at no point of time I had advised or suggested for anything regarding the quantity of medicines to be procured by GGF.

3. It is stated the all the medicines were distributed by Gautam Gambhir Foundation and the staff of Garg Hospital only verified the prescriptions issued by different doctors to various patients, basically to check for correctness of prescribed medicines which were distributed by the staff / representatives of Gautam Gambhir Foundation at the counter at the camp site. It is pertinent to mention that I played no role in distribution of the medicines at the camp organized by Gautam Gambhir Foundation.


Dr. Manish
Care of Garg Hospital

End:

1. Letter dated 18.04.2021 by Gautam Gambhir foundation
2. Letter dated 19.04.2021 by Dr Sanjay Garg
3. Letter dated 19.04.2021 by Dr Manish.

65. The third condition is that the drugs must not contain controlled substance as provided under Schedule G, H, & X.

66. The Drugs Rules, 1945, classify certain drugs under various Schedules to regulate their manufacture, sale, and distribution to ensure public safety and proper medical use. Among these, Schedule G, Schedule H, and Schedule X impose specific restrictions and conditions for drugs that require medical supervision or have abuse potential.

67. Schedule G drugs include substances that should be used only under medical supervision due to possible adverse effects. These drugs carry the



labeling caution: “*Caution: it is dangerous to take this preparation except under medical supervision.*”

68. Schedule H encompasses a vast list of prescription-only drugs that cannot be sold over the counter without a valid prescription from a registered medical practitioner. The intent is to ensure these drugs are used appropriately for medical conditions requiring expert diagnosis and monitoring. These drugs include antibiotics, narcotics, and other potent medications. Retailers must demand prescriptions and maintain records to comply with the law.

69. Schedule X includes drugs with a high potential for abuse, such as certain barbiturates, amphetamines, and psychotropic substances. These require even stricter controls than Schedule H drugs, with mandatory prescription retention for two years, special licensing for pharmacies, and tighter regulation to prevent misuse, abuse, and illegal diversion. These drugs are dispensed only under strict medical supervision.

70. Favipiravir¹ is an antiviral drug used primarily for the treatment of influenza and more recently for mild to moderate COVID-19 under emergency use authorization. Despite its potent antiviral properties, Favipiravir is not classified under Schedule G, H, or X in India. This exemption allowed for broader availability under emergency use conditions, facilitating rapid access during the COVID-19 pandemic.

71. Its exemption from stringent Schedules G, H, & X reflects an assessment of its safety profile, the urgent public health need, and controlled use under government authorization rather than traditional prescription-only classifications.

¹ <https://go.drugbank.com/drugs/DB12466> & <https://pmc.ncbi.nlm.nih.gov/articles/PMC7467067/>



72. The fourth condition is that drug shall be stored under proper storage conditions.

73. There is no contravention of this condition as well, as the drugs were properly stored and remained in the same state as acquired, with no allegation of tampering. The initial Drugs Control Department Report dated 30.05.2021 confirms no supply chain disruption or quality issues, and there are no claims of improper storage, meeting clause (c).

74. The fifth condition no drug shall be supplied or dispensed after the date of expiration. There is no contravention of the mandate of supplying only the drugs which are within the date of expiration.

75. Thus, it is evident that there is compliance of all the necessary conditions, both in letter and spirit, for exemption from the requirement of a license under the D&C Act. The Procurement of medicines was against proper Invoices from licensed sources in accordance with the Protocol. There was no violation in the distribution of medicines which was medically supervised in the Medical Camp.

76. There is no criminal intent of non-compliance of statutory procedures have been established.

77. In addition to this exemption, a statutory defence is also available under Section 19(3) of the D&C Act. This provision applies to individuals or entities (other than manufacturers or their agents) who are accused of offences under Chapter IV of the Act (Sections 16 to 33A). These offences include violations of Section 18, which prohibits the manufacture, sale, stocking, exhibition, or distribution of drugs without a licence, or the handling of drugs that are misbranded, adulterated, or spurious.

78. Section 19(3) provides *Section 19(3) specifically states:*



“S.19 -

...

(3) *A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves –*

(a) *that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;*

(b) *that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and*

(c) *that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.”*

79. This provision is a safeguard against strict liability under the Act, protecting innocent intermediaries or end-users who act in good faith and comply with sourcing and storage requirements. It is particularly relevant for entities like charitable organizations, hospitals, or individuals distributing drugs during emergencies, as it shifts the burden to the prosecution to disprove the defence once raised.

80. In Medipol Pharmaceutical India Pvt. Ltd. v. Post Graduate Institute of Medical Education & Research (2016 SCC OnLine P&H 10435), the Punjab and Haryana High Court recognized Section 19(3) as a defence for hospitals supplying drugs to patients, provided that they were sourced from licensed dealers and maintained proper storage protocols. The Court emphasized that the absence of knowledge about any contravention is critical, and the burden lies on the accused to establish due diligence.

81. In State of Karnataka v. Pratap Chand (1981) 2 SCC 335, the Apex Court noted that Section 19(3) protects practitioners or entities who procure



drugs from licensed sources and use them for legitimate purposes, such as patient treatment, without knowledge of any illegality.

82. Similarly, in Alladi Krishna Murthy v. State of A.P. (2006) 48 AIC 459 (AP HC), relying on Mohd. Shabir (supra), it was ruled that ***non-commercial stocking for personal or charitable use, is exempt***. Section 19(3) protects bona fide purchasers of drugs from licensed dealers, if drugs are properly stored.

83. This section protects a person (who is not a manufacturer) from liability in the context of S. 18(a)(i), subject to the conditions as explained in the case of P. Sukumar vs. State rep. by the Junior Drug Inspector, Salem 2009 SCC Online 1644. It was observed as under:

“14. A reading of the said provision makes it crystal clear that a person shall not be liable for any contravention of section 18 of the Act if he is not the manufacturer of a Drug and Cosmetic or shall be for the distribution thereof, if he proves –

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he is not having knowledge about the contravention of any provisions of the Act in respect of a particular drug or cosmetic; and

(c) that the said drug or cosmetic was properly stored and remained in the same state while such drug was in his possession.”

84. These three conditions as explained in P. Sukumar (supra) to attract the defence of Section 19(3), were fully satisfied by the Petitioners as has been discussed above.

85. *Firstly, the Foundation proved the acquisition from Licensed Source. Secondly, the Petitioners, acting on medical advice during a crisis, had no knowledge or reason to believe they were contravening the law. Thirdly, the*



drugs were properly stored and remained in the same state as acquired, with no allegation of tampering.

86. From the aforesaid discussion, the Foundation's charitable distribution under medical supervision further supports their *good faith*, bringing them under the protection of defence under Section 19(3) for their *bona fide charitable distribution of medicines and oxygen cylinders*. Thus, there is no violation of S.18(c) of the D&C Act.

87. Next we may consider, the Status Reports dated 15.05.2021 and 22.05.2021 filed by the Delhi Police, in Writ Petition No.953/2021 filed by Dr. Deepak Singh wherein he alleged black-marketing of Covid-19 medicines.

88. The first **Status Report dated 15.05.2021** filed in the said Writ Petition, after detailing the facts has concluded that:

*“That the enquiry conducted so far has revealed that all the persons alleged to have been hoarding medicine etc, have been actually helping people in getting medical aid in time of medicine, oxygen, plasma or hospital bed, the person enquired into have not charged any money for the help provided, and thus no one has been defrauded. **The distribution/help has been voluntary and without discrimination.**”*

89. Likewise, the second Status Report dated 22.05.2021 concluded as under:

*“That, in view of the above stated facts and Judgment of Hon'ble Apex Court in Criminal Appeal No-200/2020 SLP (Crl.) No- 4178 of 2019}, it is submitted that in the present matter, **no cognizable offence has been found to have been committed.**”*



90. From the aforesaid two Status Reports, it emerges that after due investigations, Police came to the conclusion that the medicines had been distributed for actually helping people in getting medical aid in time and that distribution had been voluntary and without discrimination and that no cognizable offence was found to have been committed.

91. Significantly, during time because there were various allegations that had started cropping up about the black-marketing, hoarding and sale of the emergency medicines & Oxygen at exorbitant rates to the distressed people, and the concerns started being raised about equitable and fair distribution of medicines and Oxygen, the Department took a complete somersault and filed Complaint No.6753/2021 on 08.07.2021 against the petitioners, before the learned MM.

92. Pertinently, **third Status Report** was filed immediately thereafter on 14.07.2021, in the pending **Writ Petition No.953/2021 filed by Dr. Deepak Singh** wherein it was mentioned that present Complaint has been filed against *M/s Gautam Gambhir Foundation*, its trustees and CEOs (Petitioners herein) on 08.07.2021 for contravening the provision of Section 18(c) read with Section 27(b)(ii) of Drugs and Cosmetics Act, 1940.

93. From these Status Reports, it is evident that on the same facts there was a complete exoneration of the Trust and it was found that they were genuinely doing equitable distribution of the medicines to the public at large. However, since the questions about hoarding and black-marketing started emerging, on the same facts where the earlier Status Reports stated that there was no cognizable offence, the Complaint came to be filed against the Petitioner on 08.07.2021.



94. Pertinently, once the facts were the same and no cognizable offence was initially disclosed, it is indeed intriguing as to how merely because of change in prevailing scenario in the society and the questions which started emerging; Complainant changed its stand and filed the Complaint. This also corroborates that in fact, no offence was committed by the Petitioners.

III. Abuse of Process Of Law:

95. In the end, it may be observed that continuing the prosecution would amounts to an abuse of the process of law. The Respondent's own initial Status Reports and those of the Delhi Police had concluded that no cognizable offence was committed and that the supply chain was not disrupted.

96. The Apex Court in its seminal judgement in the case of State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, enumerated various grounds where extra ordinary jurisdiction under S.482 Cr.P.C. must be exercised to prevent abuse of process of law. One such circumstance is where uncontroverted allegations fail to disclose an offence, which is blatantly visible in this case, as discussed above.

97. Another even more significant ground enumerated in the case of Bhajan Lal (supra) is to *prevent abuse of law and promote interest of justice*.

98. The facts as disclosed above clearly reflect that the Petitioners as conscious citizens of this country, who out of their concerns, chose to use their means to extend helping hand to the people in distress. They also made an endeavour to support the Government in providing the essential medicines for survival in the time when there was a challenge of availability of the essential medicines for saving life. Petitioners, as has been noted above, took all precautions to ensure that the procurement of medicines was



done legitimately and that no hoarding of medicines was done by them. Not only this, they also ensured that the distribution of medicines was done under the supervision of *M/s Garg Hospital*, whose representative remained present to verify the prescriptions brought by the patients and only thereafter, the medicines were supplied to them. Their good faith acts, at the time of need, do not in any way bring home any commission of offence. To take a view otherwise, would have the chilling effect of dissuading citizens and organizations from rendering aid during public emergencies.

99. To allow a prosecution to continue in such circumstances, where the act itself, is fundamentally contrary to the mischief the statute seeks to remedy, would be a gross abuse of the process of law.

Relief:

100. In view of the aforesaid discussion the Petition is **allowed**.

101. The Criminal Complaint bearing CT. Case No. 6953 of 2021 and all proceedings emanating therefrom including the Summoning Orders dated 26.07.2021 and 26.08.2021, are hereby **quashed**.

102. The Petition is accordingly, disposed of along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 21, 2025/R