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

% ***Reserved on: 15th May, 2025***
Pronounced on: 28thAugust, 2025

\+ **CRL.M.C.4207/2018 & CRL.M.A. 30317/2018**

1. **M/S NICHOLAS PIRAMAL INDIA LTD.**
Now known as
Piramal Enterprises Ltd.
Piramal Ananta,
Agastya Corporate Park,
Opposite Fire Brigade,
Kamani Junction, LBS Marg,
Kurla (West)
Mumbai-400070.

2. **MR. A.K. BHAT**
M/s Nicholas Piramal India Ltd.
Now known as
Piramal Enterprises Ltd.
Piramal Ananta,
Agastya Corporate Park,
Opposite Fire Brigade,
Kamani Junction, LBS Marg,
Kurla (West)
Mumbai-400070

3. **MR VIJAY SHAH**
Director
M/s Nicholas Piramal India Ltd.
Now known as
Piramal Enterprises Ltd.
Piramal Ananta,
Agastya Corporate Park,
Opposite Fire Brigade,
Kamani Junction, LBS Marg,
Kurla (West)
Mumbai-400070

.....Petitioners

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Through: Mr. Puneet Mittal, Sr. Advocate with Mr. Arjun Mahajan, Mr. Raghvendera N. Budholia, Mr. Sagar Agarwal, Mr. Harshit Kapoor and Mr. AryanVerma, Advocates for P-1.
Mr. Tanveer Ahmed, Sr. Advocate with Mr. Arjun Mahajan, Mr. Raghvendera N. Budholia, Mr. Sagar Agarwal, Mr. Harshit Kapoor and Mr. Aryan Verma, Advocates for P-2 and P-3.

versus

STATE
Through Drug Inspector
Drug Control Department
Govt. of NCT, Delhi.

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. Rohit Bajpai Assistant Drugs Controller, Drugs Control Deptt.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C.")* read with Article 227 of the Constitution of India has been filed on behalf of the Petitioners to set aside the Impugned Order dated 17.04.2018 of Ld. ASJ, ***upholding*** the Order dated 30.11.2015 of ***Ld. M.M. dismissing the Discharge Application filed by the Petitioners*** in a Complaint under Section 18(a)(i)/27(d) of Drugs and Cosmetics Act, 1940 (*hereinafter referred to as the "D&C Act"*).

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2. ***Briefly stated***, a Criminal Complaint 12/2004 dated 09.02.2004 was filed under Section 18(a) (i)/27(d) of D&C Act. The ***averments*** made therein were that on 11.04.2002, the Complainant/Respondent Drug Inspector collected the sample of the drug "***Tixylix***" (Children Cough Linctus) *Batch No.B-2024, D/M March, 2002, D/E February, 2005;Manufactured by M/s Nicolas Piramal India Ltd.* (Accused No. 5) as per the procedure laid down under Section 23 of the D&C Act for the purpose of *Test or Analysis* from *Accused No. 1 Kewal Bajaj, Proprietor* and In-charge of M/s Kay Sons, Nangal Raya, New Delhi. Intimation of the collection of samples in Form-17, was given along with one sealed sample portion of the aforesaid drugs to Kewal Bajaj on the spot, who acknowledged the same *vide* his signatures on the Receipt.

3. On 12.04.2002, the Complainant sent one sealed sample of the drug to Central Indian Pharmacopeia Laboratory, Ghaziabad (CIPL) along with the Memorandum/Form-18 with sealed impression of the seal used to seal the Sample, by registered post parcel in accordance with Rule 57 of Drugs and Cosmetics Rules, 1945 (*hereinafter referred to as "D&C Rules"*).

4. The Government Analyst, Ghaziabad gave its Report on 28.05.2003, which was forwarded to M/s Kay Sons, Nangal Raya on 19.06.2003.On25.06.2003,M/s Kay Sons, Nangal Raya which gave a Reply informing that he had purchased the subject drugs from *S.K. Gupta proprietor M/s Om Medical Agencies (Accused No.2),* who in turn confirmed in writing that he had purchased the subject Drug v*ide* Invoice No. 136 dated 01.04.2002, from *M/s Mahavir Pharma Agency (Accused No.3) of which Rajiv Nanda (Accused No.4)was the partner*. Rajeev Nanda further informed in writing on 04.07.2003that its Firm i.e. M/s Pharma Mahavir Pharma Agency, had purchased the subject Drug *vide* Invoice No. 620376 dated 27.03.2002from

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*C&F Agent M/s G. K. Enterprises, Tughlakabad Extension, New Delh*i (Accused No.5). Sh. Avinash Khanna (Accused No. 7), the Competent person approved the wholesale Drug license of C&F agent of Accused No. 7,holding his Power of Attorney and duly nominated by ***Accused No. 6 Vijay Shah, CEO of M/s Nicolas Piramal India*** Ltd. (Accused No. 5/Petitioner No. 1) informed in writing on 28.07.2003 that the subject Drug had been received *vide Stock Transfer Note* number 713139 dated 23.03.2002 at Indore, M.P. from their Depot at Wadhawan City, Gujarat. The Accused No. 5 to 7 were claimed to be manufacturing and selling spurious Drug which was not of standard quality, in contravention of the provisions of the D&C Act.

5. The *Complaint for the offence under Section 18(a)(i) read with Section 17B of the Act, punishable under section 27(c) of the Act was thus, filed on 09.02.2004.*

6. The Petitioners as well as other Accused No1 to 7, were summoned *vide* Order dated 01.03.2003.

7. Aggrieved by the summoning Order, *Criminal M.C. No. 5149-51/2006 under Section 482 Cr.P.C.* was filed in this Court for the quashing of Criminal Complaint. The Petitioners raised the contentions of the violation of Section 25(3) of the Act. It also challenged the *Method of Test* used for inspection of the Drug by the Government Analyst in its Report dated 28.05.2003. It was claimed that Report was in procedural violation described under Section Rule 25 of D&C Rules.

8. The Petition was dismissed *vide* detailed Order dated 19.09.2013*with liberty to the Petitioners to raise these pleas in the Petition at the appropriate stage.*

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9. Thereafter, in the Order dated 30.11.2015 on Charge, the Ld. MM made a reference to Section 19(3) D&C Act and concluded that no *prima facie* case was made out against the Accused No. 1 to 4, who were the Proprietorship Firm from whom the samples had been taken and the Supplier Firms who had sold the said Drug to the Retailer. Accused No.1 to 4, (Kewal Bajaj, M/s Kay Sons, S.K. Gupta, M/s Om Medical Agencies, M/s Mahavir Pharma and its Partner, Rajeev Nanda), were accordingly, discharged.

10. An Application under Section 245(2) Cr.P.C. for Discharge, had been filed on behalf of the Petitioners, on the ground that another Test Report of *Government Analyst, Gujarat* pertaining to the same Drug which was lifted from the manufacturing unit of the Petitioners, shows that the Drug was of ***standard quality.*** The Application was disposed of *vide* Order dated 30.11.2015 wherein it was observed that *prima facie* case was made out against the Petitioners and that triable issues had been raised for which evidence was required to be led.

11. Aggrieved, by the said Order, the Petitioners herein filed a ***Revision Petition No. 7/2016 before the Court of Sessions***, who also did not find merit in the contentions of the Petitioners and dismissed the Revision Petition vide Order dated 17.04.2018.

12. ***Aggrieved by the dismissal of the Discharge Application, the present Petition has been filed to challenge the Order dated 17.04.2018 of Ld. ASJ.***

13. The ***main grounds of challenge*** are that the Courts below have erred in observing that the Report of *Government Analyst, Gujarat* was a document in defence and cannot be considered at the stage of framing of Charge. However, the settled principles of law have been ignored that if a document which is of *impeccable and sterling quality* and would convincingly demonstrate that the

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whole case of the Prosecution is totally absurd, then the Court would be justified to look into such document/material.

14. Reliance has been placed on *M.L. Meena v. State*, 2015 SCC OnLine Del 8567, *Lt. Gen. Nirmal Puri v. CBI*, 1990 SCC OnLine Del 53, and *Swadesh Kumar Sharma vs. CBI*, 2012 SCC OnLine Del 2066,whereinit was observed that the document which is free from any dubious character and which is glaring and stark on its face, can be taken into consideration by the Trial Court at the stage of framing of Charge.

15. The Courts of Ld. MM as well as of Ld. ASJ, did not appreciate the rationale of these judgments and chose to observe that the documents produced by the Petitioners cannot be considered at the stage of Charge despite the fact that judicial cognizance of these documents could have been taken under Section 57 Indian Evidence Act, inasmuch as these documents were of Government Authority and not of private person.

16. The Ld. Courts, therefore, committed gross error, which led to miscarriage of justice in sending the Petitioners to place the rigmarole of the trial unnecessarily.

17. It is no longer *res integra* and has also been settled in the case of *Union of India vs. Prafulla Kumar Samal* AIR 1979 SC 366 that at the stage of framing of Charge, the Court has the power to shift and weigh the evidence for the limited purpose of finding out whether a *prima facie* case is made out or not. The test to determine *prima facie* case, would depend upon the facts of each case and it is difficult to lay down the rules of universal application. However, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion, but no great suspicion against the Accused, he would be fully within his right to discharge

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the Accused. While exercising its jurisdiction under Section 227 of the Code, the Judge who is a senior and experienced Judge cannot act merely as a post office or a mouthpiece of the Prosecution, but has to consider the broad probability of the case and total effect of evidence and the documents produced before the Court and the basic infirmities in the case and so on. This does not however, mean that the Judge should make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

18. The Petitioners have submitted that applying the aforesaid parameters, it was imperative for the Courts of Ld. MM and Ld. ASJ to consider whether any suspicion of commission of criminal offense against the Petitioners was primarily and properly explained by them at the stage of Charge. In the case of Complaint, if the material appended with it, give rise to some suspicion but not great suspicion, the Ld. MM was under an obligation to discharge the Accused.

19. There were two Reports on which two views were possible and the one favorable to the Petitioners ought to have been accepted. The Test Report of Government Analyst, Gujarat in regard to the Drug bearing same date of *manufacture and expiry* and of same Batch Number, gave the Test Report that the Drug was according to the ***standard quality***.

20. It is contended that Government Analyst, Ghaziabad *ex facie* was not properly equipped to perform the requisite Test, as per the standards of D&C Act and Rules thereunder (Schedule V Rule 124B) on account of non-availability of the methods at its end, which is evident on the comparison on the of the report of Ghaziabad Laboratory with that of Gujarat Government Analyst, which clearly stated the Tests which were adopted by it to come to the conclusion of the sample being *of the standard quality.*

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21. In fact, when the Petitioners got in touch with the Drug Inspector and the Government Analyst, Ghaziabad, the latter himself admitted in his Communication dated 09.10.2003 that it had consumed all the sample and no residuary Sample was available for further testing or evaluating by any mechanism.

22. The Ld. Revisional Court erred in observing that it cannot be seen as a case of Report of Government Analyst, Ghaziabad versus Report of Government Analyst, Gujarat. The Revisional Court failed to appreciate that no document Report can supersede the other document, as both were of the Government Analyst. The suspicion having been properly explained and dispelled, case on hand before the Trial Courts, was one where two views were possible and there was no strong suspicion against the Petitioners. Therefore, the Court should have adopted the view given in the Report which was favorable to the Petitioners, who were entitled to be discharged.

23. The reliance is placed on the case on *State of Orissa vs. Debendra Nath Padhi* (2005) 1 SCC 568 wherein it was observed that it cannot be said that it is an absolute proposition that the Court cannot under any circumstances, look at the material produced by the defense at the time of framing of Charge and that in rare cases where defense produces some material which convincingly demonstrates the whole Prosecution case to be totally absurd or concocted, then the same may be considered and the Accused may be discharged.

24. Reliance has been placed on *Rukmini Narvekar vs. Vijaya Satardekar & Ors*. (2008) 14 SCC 1 wherein it had been held that in exceptional cases where defense material if shown to the Trial Court would convincingly demonstrate that the Prosecution version is totally preposterous, then such defense material can be looked into by the Court at the stage of framing of Charge.

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25. In the case of *Nitya Dharmananda v. Gopal Sheelum Reddy*, (2018) 2 SCC 93, the Apex Court had observed that the Court ordinarily has to proceed on the basis of material produced with the Chargesheet while dealing with the issue of Charge, but if the Court is satisfied that there is material of sterling quality which *has been withheld by the Prosecution,* the Court is not debarred from summoning or relying upon the same, even if it does not form the part of Chargesheet. The defense has a right to invoke Section 91 Cr.P.C. for the satisfaction of Court at the stage of Charge.

26. Supreme Court in the case of *Rajiv Thappar & Ors. vs. Madan Lal Kapur* 2013 (3) SCC 330 had observed that the powers vested in the High Court under Section 482 Cr.P.C. may be invoked by considering whether the material relied upon by the Accused is sound, reasonable and indubitable i.e. it is of *sterling and impeccable quality* and would rule out the assertions contained in the Charges leveled against the Accused and that the said material has not been refuted by the Prosecution and whether the continuation of the trial would be an abuse of the process of the Court. In case all these questions are answered and affirmed, then the power under Section 482 Cr.P.C. may be exercised to quash the proceedings.

27. The Petitioners have placed reliance on Section 294 Cr.P.C., to assert that the Report of Government Analyst, Gujarat could not have been rejected from consideration, at the stage of Charge. The Ld. Revisional Court fell in error in not taking into consideration the Report of Government Analyst, Gujarat. Prosecution of the Petitioners only on the basis of Report of Government Analyst, Ghaziabad is bad in law.

28. It is further contended that *Section 23 of the D&C Act* gives power to the Drug Inspector to lift a sample from the premises where the drug is

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manufactured, which clearly shows that lifting of sample from the Manufacturing Unit is prescribed in the Act itself. This aspect has been ignored by the Ld. Trial Court.

29. Furthermore, it has not been considered that even though within the specified period of 28 days, Petitioners have sought to controvert the Report of Government Analyst, Ghaziabad under Section 25(3) D&C Act, the Drug Inspector failed to get the sample analyzed by Central Drugs Laboratory, Kolkata, which has resulted in violation of his statutory rights.

30. Reliance has been placed on *M/s Medicamen Biotech Ltd. vs. Rubina Bose, Drug Inspector* 2008 (4) SCC 196 and *State of Haryana vs. Unique Farmaid P. Ltd*. 1998 (8) SCC 190.Moreover, the Report of the Government Laboratory, Vadodara has been withheld by the Prosecution.

31. *It is thus, submitted that the Impugned Order dated 17.04.2018 has resulted in great miscarriage of justice and be set aside.*

32. ***Counter Affidavit/Reply has been filed on behalf of the Respondent/State*** wherein it is submitted that on 11.04.2002, the sample of the drug "*Tixylix Children's Cough Linctus*" bearing Batch No. B2024 (date of manufacturing March 2002 and date of expiry February 2005), was lifted from one *Sh. Kewal Bajaj, Proprietor, M/s Kay Sons,* WZ-218, Nangal Raya, New Delhi.

33. One sealed sample was forwarded to the Government Analyst, Delhi at CIPL, Ghaziabad as per the prescribed procedure under the D&C Act. The Government Analyst, Ghaziabad prepared the Report dated 28.05.2003which found the seized Drug to be "***NOT OF STANDARD QUALITY***" as the sample did not conform to the contents as per the label and gave a *Negative Test* for Pholcodine.

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34. On 19.06.2003, the Respondent supplied one copy of the Test Report dated 28.05.2003 to M/s Kay Sons and requested him to disclose the particulars, as required under Section 18A of the Act, of the person(s)/Firm(s) from whom they had acquired the said Drug. A Reply was received on 25.06.2003, wherein it was informed that the said Drug was purchased from *M/s Om Medical Agencies, New Delhi*.

35. Thereafter***, M/s Om Medical Agencies*** informed the Respondent that the said drug was purchased from *M/s Mahavir Pharma Agencies* vide Invoice No. 136 dated 03.07.2003. Further, M/s Mahavir Pharma revealed that the said Drug was purchased vide Invoice No. 620376 dated 27.03.2002 from *M/s G.K. Enterprises*, TA 238-239, Tughlakabad Extension, New Delhi, who are the C&F Agent of the Petitioner No.1 Company, Nicolas Piramal.

36. On 28.07.2003, Shri Avinash Khanna, the Authorized Representative of the C&F Agent, M/s G.K. Enterprises, informed the Respondent that the Delhi Depot of the Petitioner No.1 Company, had received the said Drug vide Stock Transfer Note No. 717139 dated 23.03.2002 from Indore, Madhya Pradesh, which had received the consignment from the Petitioner No.1 Company's Depot at Gujarat. It is submitted that the entire chain of supply of the said drug was established and the *Petitioner No.1 Company has not disputed manufacturing the said Drug.*

37. On alleged receipt of the sample of the Drug along with the copies of the Test Report dated 28.05.2003 and letter from M/s Mahavir Pharma dated 11.07.2003, the Petitioner No.1 Company, vide Letters dated 15.07.2003 and 25.07.2003, informed the Respondent that the said sample ***was not tested as per their method of analysis for identification of Pholcodine and expressed its disagreement with the Report of the Government Analyst, Ghaziabad, and***

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requested the Respondent to send the drug sample to the Central Drugs Laboratory, Kolkata for re-testing. The Petitioner No.1 Company, again vide Letter dated 12.09.2003, set out the reasons for challenging the Report of the Government Analyst and suggested that the samples be tested at the Central Drugs Laboratory, Kolkata.

38. It is submitted that the sample was not sent to the Central Drugs Laboratory, Kolkata for re-testing because as per the provisions under Section 25(3) of the Drugs and Cosmetics Act, 1940, ***only the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18A, can seek re-testing within twenty-eight days of the receipt of a copy of the Report.***

39. In the present case, such right was vested with Sh. Kewal Bajaj, Proprietor, M/s Kay Sons, from whom the sample was taken or with M/s Om Medical Agencies, whose name was disclosed under Section 18A of the Act, by Kewal Bajaj, Proprietor, M/s Kay Sons.

40. It is submitted that the Petitioner No.1 Company was not entitled to exercise its right under Section 25 D&C Act to challenge the Test Report of the Government Analyst, Ghaziabad. However, the Petitioner No.1 Company could have approached the Court directly to exercise its right under Section 25 of the D&C Act to challenge the Test Report of the Government Analyst. Reliance has been placed on *Amery Pharmaceuticals v. State of Rajasthan*, (2001) 4 SCC 382.

41. A Complaint dated 09.02.2004 was filed against the Petitioners along with other accused persons under Section 18(a)(i) read with Section 17B of the Act, punishable under Sections 27(c) and 27(d) of the Act, for manufacturing and selling a spurious drug which is *not of standard quality*.

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42. Summons were issued against the Petitioners and other accused persons on 01.03.2004. The Petitioners approached this Court in Criminal Misc. Case No. 5149-51/2006 under Section 482 Cr.P.C., challenging the summoning Order dated 01.03.2004 and seeking quashing of the present Criminal Complaint bearing No. 12/2004wherein different grounds for discharge, were taken, including that their right to challenge under Section 25 of the D&C Act, was not exercised. These grounds were not appreciated by this Court, and the said Petition was dismissed vide Order dated 19.09.2013.

43. The *Test Report of the Government Analyst, Ghaziabad* had not been challenged by the Manufacturer in the prescribed manner. Therefore, the same was held to be conclusive evidence of the facts stated therein, as per the provisions of Section 25(3) of the D&C Act. Petitioners never raised the ground of the Test Report of the Government Analyst, Gujarat, which they are now claiming to be evidence of sterling quality.

44. These Test Reports are dated 2003 and were in the knowledge of the Petitioners at the time of filing of the previous Petition in the year 2006.Therefore, the Petitioners have not approached this Court with clean hands.

45. The Test Report of the Government Analyst, Gujarat, claiming it to be evidence of sterling quality, for the first time, found mention in the Discharge Application under Section 245(2) Cr.P.C. filed on 14.07.2014 by the Petitioners before the Ld. MM, despite the fact that the Report is of 2003.

46. It is submitted that the ***primarily*** the Petitioners are relying upon one conflicting Test Report of the Government Analyst, Gujarat, which is contrary to the Report of the Government Analyst, Ghaziabad, and claiming it to be evidence of sterling quality.

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47. It is stated that the grounds taken by the Petitioners find no place in the statutory provisions laid down under the D&C Act and the Rules made thereunder. The credibility of the conflicting Test Report cannot be considered as a piece of evidence of sterling quality at this stage, in the light of the Full Bench judgment of the Apex Court in *Debendra Nath Padhi* (supra). It is submitted that, at the time of framing of Charge, the accused has no right to produce any material.

48. It is submitted that the Report of the Government Analyst, Gujarat, is not binding over and above the Report of the Government Analyst, Ghaziabad. The D&C Act, being a special Act, provides a detailed procedure under Section 25 of the D&C Act for challenging the Report of the Government Analyst. In the present case, the said Report was not challenged by the Petitioners in the prescribed manner; therefore, *the Report of the Government Analyst, Ghaziabad, becomes conclusive evidence of the facts stated therein as per the provisions of Section 25(3) D&C Act.*

49. It is submitted that the Petitioners have taken a ground that the proper Testing Method was not followed, as the TLC (Thin Layer Chromatography) method was used instead of HPLC (High-Performance Liquid Chromatography). However, if both the Test Reports are perused, both the Analysts adopted the *TLC method* for testing the sample of the drug. If, according to the Petitioners, TLC is not the correct method, then how could the Report of the Government Analyst, Gujarat, be considered as evidence of sterling quality. In view of the above, it is submitted that the Report of the Government Analyst, Gujarat, cannot be considered a piece of evidence of sterling quality.

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50. It is asserted that the Petitioners are trying to delay the process of trial and abusing the process of law since the prosecution was initiated against them in the year 2003. *It is accordingly, prayed that the present Petition is devoid of any merit and is liable to be dismissed.*

Submissions heard and record perused.

51. Before considering the Prosecution Case along with its documents, pertinently the Petitioners had placed on record ***certain documents*** along with the Discharge Application**,** namely the Letter dated 01.07.2003, the collection of the sample from the manufacturing unit Gujarat of the Petitioner No. 1, M/s Nicholas Piramal India Ltd., the Report thereof and the Letters exchanged between the Drug Inspector, Gandhi Nagar and the Drug Inspector, Delhi. For consideration. Pertinently, these documents have not been placed on record along with the Complaint.

Admissibility of Documents Filed by the Petitioner along with Discharge Application:

52. The ***first question*** which arises is whether these documents filed along with the Discharge Application on which reliance has been placed by the Petitioners, can be considered at the stage of discharge. The law in this regard is well-settled that no private documents of the Accused, can be considered at the stage of framing of Charge, *except when it is of impeccable and sterling quality.*

53. In *Debendra Nath Padhi (supra)*, the Apex Court has held that at the time of framing of charge or taking cognizance, the accused has no right to produce any material, implying thereby, thattill the stage of framing of charge,

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the documents produced by the accused cannot be looked into. The relevant para is as under:

> ***"18.*** *We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood.* ***It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more.*** *The expression "hearing the submissions of the accused"* ***cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law****. At the stage of framing of charge hearing the submissions of the*

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accused has to be confined to the material produced by the police."

54. However, the Apex Court in *Nitya Dharmananda (supra)*, ***added a caveat that*** if the document relied upon by the defence, is of *sterling quality and its genuineness is beyond any doubt*, it can be relied upon. The relevant part is as under:

> ***"8.*** *Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC dehors the satisfaction of the court, at the stage of charge."*

55. Similarly, in *Rukmini Narvekar (supra)*, the Apex Court observed as under:

> ***22.*** *Thus in our opinion, while it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of D.N. Padhi case,* ***there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. I****n our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which*

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convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.

56. From the aforesaid Judgments and the discussion held therein, it iswell-settled that only such documents of the Petitioners which are of ***impeccable and sterling quality***, can be considered.

The Letters and Test Reports Filed by the Petitioners:

57. The documents placed on record by the Petitioners, may now be considered to ascertain if they are of "*Sterling Quality"* and can be considered at this stage of Charge.

58. The first document is the *Memorandum dated 01.07.2003*,addressed by the Drug Inspector, Gandhi Nagar, to the Petitioner No. 1 to stop and withdraw the entire stock of this Batch. It read as under:

NICHOLAS PIRAMAL (I) LTD.
CO: BIODEAL LABORATORIES PVT. LTD.
508, GIDC ESTATE
WADHWANCITY-383035

"TIXYLIX' NEW CHILDREN COUGH LINETUS BATCH NO.B-2024 DOES NOT INDICATE THE PRESENCE OF PHALCODINE (.) STOP SALE & WITHDRAW THE STOCK OF THIS BATCH (.)

GUJDRUG
382010

NOT TO BE) FOR COMMISSIONER
TELEGRAPHED) FOOD & DRUGS CONTROL ADMINISTRATION
) GUJARAT STATE DR. JIVRAJ MEHTA BHAVAN
) BLOCK NO. 6M, 1ST FLOOR, GANDHINAGAR
)
NO.TR/TEL/NICHLOS/03/ //GANDHINAGAR DT 1.3.2003

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1. *Copy in confirmation to:-*
   M/s Nichlos Piramal (I) Ltd. C/o M/s Biodeal Laboratories Pvt. Ltd. GIDC Estate, Wadhwancity-383035 for action as above.
   A copy of Test Report No. CIPL/6014/44 Dated 28/05/2003 will be sent in due course of time.
2. *Copy to the Assistant Commissioner, (Surendranagar Circle, Surendranagar for information.* ***He is asked to investigate and report in the matter to this office immediately phone Date: 26/06/2003.***
3. *Copy for Computer Records.*

For Commissioner
Food & Drugs Control Administration

59. The bare perusal of this Letter reflects that it is a correspondence made by Drug Inspector, Gandhi Nagar to the Petitioner No.1 as a follow-up of the Letter written to the Department by Drug Analyst Delhi as it makes a reference to the Test Report No. CIPL/6014/44 dated 28.05.2003 of Drug Analyst, Ghaziabad, in the Foot Note at Serial no.(1). It is clearly evident that this Letter was the outcome of the Inspection conducted by the Drug Inspector, Delhi on 11.04.2002 and the Drug was sought to be withdrawn from the Market on the basis of the Report of CIPL, Ghaziabad.

60. This Letter is an official communication made by Drug Inspector, Delhi to Drug Inspector, Gujarat, as part of the investigations in this Complaint and is not a Private Document. Significantly, this Letter dated 01.07.2003 does not get filed along with the Complaint.

61. The ***second document*** filed by the Petitioner is the copy of ***Form-17A dated 27.06.2003, prepared by Drug Inspector, Surender Nagar*** and sent to Mr. T.K Patel, Authorized signatory of *M/s Nicholas Piramal India Ltd./Petitioner No. 1.* It indicated that on 27.06.2003, the Drug Inspector, Surendranagar, Gujarat had taken the samples of three bottles from the from

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Vadodara City, Gujarat, premises of the Petitioner No. 1, of the *Batch No. 2024*, which is the Batch in question and also three bottles of *Batch No. 2019*, which also had the date of manufacturing as 2002 and expiry as February, 2005.

62. The sample so lifted, was Tested ***by Food and Drugs Laboratory, Vadodara***, which gave the ***Test Report dated 26.09.2003*** certifying that the Product was of ***Standard Quality. This Report*** was forwarded to Senior Drug Inspector, F&DCA, Surender Nagar, who *vide* Letter dated 25.10.2023, sent it to the Petitioner No. 1.

63. Therefore, it emerges that while the Complainant had decided to proceed on the basis of the Report received from the Drug Analyst, Ghaziabad dated 28.05.2003, but on the Letter of Drug Inspector, Delhi further investigations were undertaken by the Drug Inspector, Surender Nagar, who had lifted the samples of the same batch from the manufacturing premises of the Petitioner No.1 in Vadodara, Gujarat and had got it tested from Govt. Laboratory, Vadodra and found the sample to be of ***standard quality***.

64. *There are, therefore, two Reports both of State Government Analyst; one of Ghaziabad and one of Gandhi Nagar*. ***These two Reports are not the private documents of the Complainant but were part of the investigations undertaken by and at the instanceof the Drugs Inspector, Delhi.***

65. In the present case, the documents relied upon by the Petitioners, are not his private documents as discussed above, but in fact, are the correspondence held between the Drug Inspector, Delhi and the Drug Inspector, Gandhi Nagar and the Report of Government Laboratory, Vadodara, *which cannot be termed as the private documents.*

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66. In fact, these were the relevant and pertinent documents, which came into existence while the Drug Inspector, Delhi, was making investigations and corresponded with Drug Inspector, Gujarat to ascertain if the Drug was spurious. Test was indeed conducted on the Request of Drug Inspector, Gujarat which gave a Report of Drug being of ***Standard Quality.*** The Drug Inspector, Delhi has conveniently chosen not to place these documents on record.

67. The Ld.MM, therefore, fell in error in holding that only the documents relied upon by the Prosecution and no other documents produced by the Accused in his defence, can be looked into at this stage. Likewise, Ld. ASJ fell in error in observing that the Test Report of Government Analyst Food and Drugs Laboratory, Vadodara, Gujarat is a matter of trial or that it cannot be considered as a document contrary to that of the Laboratory Report of Government Analyst, Ghaziabad and that this Report of FDL, Gujarat may be put in the cross-examination to the Complainant at the appropriate stage, but cannot be considered at the stage of Charge.

68. These observations are totally contrary to the aforesaid Judgments, which provide that if the documents are of *unimpeachable quality,* may be considered. These documents sought to be placed on record, pertained to the Government Departments created during the investigations and significantly not placed on record by the Complainant though they were part of the investigations and are relevant.

69. *It is, therefore, held that the documents relied upon by the Petitioners should have been considered at the time of framing of Charge.*

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Compliance with S. 23 & S.25 D&C Act:

70. Having observed this, it now becomes pertinent to ascertain the procedure to be followed by the Drug Inspector, on collecting a sample of drug. ***Section 23*** of Drugs and Cosmetics Act, 1940, reads as under:-

> ***"23. Procedure of Inspectors.—***
> *(1) Where an Inspector takes any sample of a drug or cosmetic under this Chapter, he shall tender the fair price thereof and may require a written acknowledgement therefor.*
> *(2) Where the price tendered under sub-section (1) is refused or where the Inspector seizes the stock of any drug or cosmetic under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.*
> *(3) Where an Inspector takes a sample of a drug or cosmetic for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself,* ***shall divide the sample into four portions*** *and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:*
> *Provided that where the sample is taken from premises whereon the drug or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only:*
> *Provided further that where the drug or cosmetic is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them*
> *(4) The Inspector* ***shall restore one portion of a sample so divided or one container, as the case may be, to the***

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person from whom he takes it, *and shall retain the remainder and dispose of the same as follows:—*

(i) ***one portion or container he shall forthwith send to the Government Analyst*** *for test or analysis;*

(ii) the ***second he shall produce to the Court before which proceedings****, if any, are instituted in respect of the drug or cosmetic; and*

(iii) the ***third, where taken, he shall send to the person, if any, whose name, address and other particulars have been disclosed under section 18A****.*

(5) Where an Inspector takes any action under clause (c) of Section 22—

(a) he shall use all dispatch in ascertaining whether or not the drug or cosmetic contravenes any of the provisions of section 18 and, ***if it is ascertained that the drug or cosmetic does not so contravene forthwith revoke the order passed under the said clause or, as the case may*** *be, take such action as may be necessary for the return of the stock seized;*

(b) if he seizes the stock of the drug or cosmetic, he shall as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug or cosmetic, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

(6) Where an Inspector seizes any record, register, document or any other material object under clause (cc) of sub-section (1) of section 22, he shall, as soon as may be, inform a Judicial Magistrate and take his orders as to the custody thereof."

71. Clause (1) of Section 23 provides that the Drug Inspector shall tender the fair price and may require the acknowledgment thereof. Clause (2) of Section 23 provides that if the price tendered is refused, then a Receipt thereof shall be tendered in prescribed Form. ***Clause (4)*** states the manner how the four samples

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have to be dealt; **one portion** of container shall be sent to Government Analyst for test, the **second** to the Court before whom the proceedings are to be instituted and the **third** is to be sent to the person whose name, address and particulars are disclosed under Section 18A. The **fourth portion** has to be provided to the person from where the drug is seized. It is also provided that if the drug is seized from the Manufacturer, then only 03 samples are required to be taken.

72. In the present case, at the time of taking sample from M/s Kay Sons, the Form-17A dated 11.04.2002was filled wherein it was stated that four sealed bottles of the sample of the drug, were. At the same time, *one copy of Form-17 along with* ***one sealed portion of the above noted drug****, was handed over to M/s Kay Sons from where the drug was seized.*

73. The ***second sealed bottle*** *was sent to Government Analyst at CIPL Ghaziabad along with* Form-18 on the next day i.e. 12.04.2002, from where **Report dated 28.05.2003** was received. ***The sample does not conform to the claim in that it gives negative test for Pholcodine by TLC. Assay of Promethazine HCl could not be performed because of the non-availability of method.***

74. The Report of the Government Analyst, Ghaziabad was made available to ***Retailer M/s Kay Sons*** on 19.06.2003 who disclosed that the goods had been acquired from *M/s Om Medical Agencies*.

75. Apparently, from the averments made in the Complaint, the **third sample** along with the Report dated 28.05.2003 was sent to S.K. Gupta, Proprietor M/s ***Om Medical Agencies***, by the Drug Inspector on 03.07.2003 alongwith the collected sample and the Test Report.

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76. The Letter dated 11.07.2003 was sent by *S.K. Gupta, Proprietor M/s Om Medical Agencies to the Drug Inspector*, informing that they were not the manufacturer of the Drug and had purchased it from ***M/s Mahavir Pharma Agencies*** and had in turn, supplied it to M/s Kay Sons in sealed and intact condition. It further stated that on the persuasion of the Drug Inspector in the Meeting held on 03.07.2003, *S.K. Gupta* collected a sample of the drug, but was unable to identify the bottle. He also informed that it is only the *Manufacturer who could identify the product.* Therefore, as per the telephonic directions, a sample portion along with original copy of Test Report was forwarded to ***M/s Mahavir Pharma Agencies from where the product was purchased.*** The copy of this Letter was also copied to *Petitioner No. 1 M/s Nicolas Piramal India Ltd.*(Manufacturer) by *S.K. Gupta* of M/s Om Medical Agencies.

77. Evidently, the Drug Inspector despite being aware of the name of the Manufacturer, did not send the Sealed Sample along with the Test report to the petitioner who was the manufacturer, who got it through *S.K. Gupta* of M/s Om Medical Agencies.

78. Section 25 of Drugs and Cosmetics Act, 1940, reads as under:-

> ***"25. Reports of Government Analysts. —***
> *(1) The Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.*
> *(2)* ***The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed under section 18A,*** *and shall retain the third copy for use in any prosecution in respect of the sample.*

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(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under section 18A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused: cause the sample of the drug or cosmetic produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct."

79. Section 25(2) therefore, mandates that on receiving the Report from Drug Government Analyst, one copy is to be sent to the person from whom the sample was taken, which has been duly complied with as the Report was duly sent to M/s Kay Sons on 19.06.2003. *However, Clause 2 of Section 25 of the Act, further mandates that another copy be sent to the person, if any, whose name, address and other particulars, have been disclosed under Section 18A.*

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80. ***Section 18A*** provides for discloser of the name of the manufacturer, etc. It reads as under:

> ***"18A. Disclosure of the name of the manufacturer, etc.-*** *Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required,* ***disclose to the Inspector the name, address and other particulars of the person from whom he required the drug or cosmetic****."*

81. From the reading of Section 18A and sub-Section (3) and (4) of 23 of the D&C Act, it is clear that out of four portions, the one sample should be sent to the manufacturer.

82. The Division Bench of the High Court of Himachal Pradesh in *Kiran Dev Singh v. State*, 1990 SCC OnLine HP 56, has observed that *under section 18A, disclosure of identity is to be by a person from whom the sample is drawn by the Inspector. If it is the manufacturer of the drug or his-agent for distribution, there is no necessity or requirement of such a disclosure. The disclosure is contemplated in other cases alone.* ***Such a provision, as contained in Section 18A, also suggests that the identity of the manufacturer of the drug is being aimed at by the legislature for the purpose of ensuring compliance with the provisions of the Act in regard to the standard of quality.*** In such a scenario, the Drug Inspector was also required to send the seized sample along with the report to the Petitioners, as the legislative intent under Section 18A is to reach the manufacturer.

83. In the present case, the name of the manufacturer was known from the day when the sample was taken as in *Form-17A dated 11.04.2002* itself, the name of the manufacturer as mentioned on the bottle, has been mentioned. It is

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clear that the Manufacturer of the Drug was known since the day of Inspection on 11.04.2002.

84. Further, the Drug Inspector, Delhi had also sought withdrawal of the Sample from the Market, pursuant to which Commissioner, Food and Drugs Control Administration, Gandhinagar, Gujarat, issued Memorandum dated 01.07.2004 to Petitioner No.1 directing withdrawal of the Drug from the Market, again establishing that the name of Manufacturer was in the knowledge of Drug Inspector, Delhi. The Drug Inspector did not make any endeavor to comply with Section 23 of the Act the Manufacturer so as to enable him to exercise his right under Section 25(3) of the Act, to enable the Manufacturer to inform the Drug Inspector, within 28 days of receiving the Report of the Government Analyst, that it reserves his right to adduce its evidence in contra version of the Report.

85. Moreover, this fact was brought to the Notice of the Drug Inspector by S.K. Gupta, Proprietor M/s Om Medical Agencies, that they had merely supplied and had no concern and were unable to even identify the sample bottle, this again did not mobilize the Drug Inspector, who continued to press the former to collect the Sample, indicating his resistance to follow the D&S Act, in its letter and spirit.

86. However, M/s Nicholas Piramal India Ltd./Petitioner, became aware of the proceedings undertaken by the Drug Inspector, Delhi and the Report, from the Letter dated 11.07.2003 of Mr. S.K. Gupta, which was forwarded to it. The Petitioner, immediately wrote a Letter dated 25.07.2003, ***indicating its inclination to controvert the Report of the Government Analyst, Ghaziabad, in terms of S. 25(3) of the Act, which is within 28 days.*** However, it failed to make a request in writing to the Drug Inspector to send the Sample for re-

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Testing to a Central Laboratory in terms of S.25(4) of D&C Act. Therefore, the Petitioners have lost the valuable right of re-testing as mandated under the Section 25D&C Act, and the Report shall become binding.

Two Test Reports of CIPL, Ghaziabad and F&D Laboratory, Vadodra:

87. The petitioner, immediately on receiving this Letter No. F19/59/2002-03/GADC dated 03.07.2003, from S.K. Gupta, Proprietor M/s Om Medical Agencies addressed to Mahavir Pharma Agencies, New Delhi got geared up to establish that the Drug was of ***Standard Quality***.

88. Petitioner responded *vide* Letter dated 15.07.2003 to Drug Inspector, Delhi stating that the *said product is not official in I.P and is proprietary product. The procedure for testing the presence of Pholcodine was HPCL,* but the Government Analyst, Ghaziabad has tested the drug by using TLC test. Further, it stated that …*had analysed the control sample of the said drug lying with us and we confirm that it contains Pholcodine as per the label claim. It also indicated that the sample be re-checked by the HPCL methodology, for which it had offered to send its analyst.*

89. Petitioner again wrote a Letter dated 12.09.2003 to Drug Inspector, Delhi, questioning ***the methodology of TLC methodology*** used for testing the sample for Pholcodine and requested the re-evaluation of the Report and highlighted the urgency as the sample was to expire in the next month.

90. Simultaneously, a Letter dated 24.07.2003 was written by the Petitioner to the CIPL, Ghaziabad, stating therein that the "***Tixylix***" Cough Syrup for presence of Pholcodine was tested by TLC, which is far less sensitive as compared to HPLC, a method being used routinely in the Laboratory. A copy of the methodology of conducting the test for determining the presence of Pholcodine, was also annexed with the Letter dated 24.07.2003.

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91. The CIPL, Ghaziabad responded ***to the Drug Inspector,* Delhi** *vide* Letter dated 09.10.2003, with a copy to the Petitioner Company,*stating that there was no residual quantity of sample available in the laboratory for rechecked as per HPLC method.*

92. While no re-testing was done at the level of Drug Inspector, Delhi despite indicating the inadequacy of the TLC test to ascertain the presence of Pholcodine in the Drug, interestingly, in view of the initial correspondence made to the Drug Inspector, Surender Nagar, the sample had been picked up by ***Drug Inspector, Gujarat on 27.06.2003***from the factory of the Petitioner, the Manufacturer. It was also got tested from Govt. Laboratory, Vadodara and Test Report dated 26.09.2003 also obtained, which gave a clean chit to the Drugs seized by the Drug Inspector, certifying the Drug to be of ***Standard Quality by using TLC (***Thin Layer Chromatography) ***methodology.***

93. What thus, emerges is that there are two Reports of both Government Analyst, Ghaziabad, as well as Government Analyst, Vadodara who have used the same *photochromatic technology*. It is not a case of the Report CIPL, Ghaziabad taking precedence over the Report of Government Analyst, Vadodara. The ***question*** which arises is whether the Petitioners are entitled to the benefit of the Report which is in its favour.

94. The Test Report dated 28.05.2003 of CIPL, Ghaziabad reported that the identification shows the sample is "*Positive for Promethazine HCI but negative for Phalcodine*". It further records that the "*Assay of Promethazine HCl could not be performed* ***because of the non-availability of method***". This clearly shows that while CIPL, Ghaziabad had conducted the test for Promethazine in the Drug and found it to be positive, but they failed to determine the

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quantitative analysis of the other substance i.e. *Assay of Promethazine HCl due to non-availability of method.*

95. *However, the Report dated 26.09.2003 of* Government Analyst, Vadodara used the same TLC Method and reported that "*Thin layer Chromatographic procedure reveals the presence of Pholcodine and Premothanine hydrochloride*."

96. *The two different Reports of two Govt Laboratory giving different Results only points that* **the procedure followed by CIPL, Ghaziabad** was not applied correctly**.** It is evident that a doubt is created regarding the validity of the methodology used by CIPL, Ghaziabad as some of the essential parameters required for determining the quantitative analysis were left unexamined on account of *non-availability of method*. Therefore, prosecution initiated against the Petitioner on the basis of such Report, is also doubtful.

97. Now, the question which arises, ***is whether this Report from Drug Analyst Vadodara, can be considered at the stage of Charge***. As has already been discussed in detail, this Report is not a private document nor is a Report prepared at the behest of the Petitioner; rather it has been conducted on the samples of the same batch from the manufacturing unit of the Petitioner as per the procedure, by Drug Analyst, Vadodra at the instance of Drug Inspector, Delhi. Therefore, this second Report cannot be discarded at the stage of framing of Charge by observing that the same may be proved during the trial.

98. It is a settled law that if there are two views possible from the Documents gathered/ created during investigations, then the one benefitting the accused must prevail. The Apex Court in *Kali Ram v. State of H.P.*, (1973) 2 SCC 808 has observed that *Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on*

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*the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted…*Similar observations are made by the Apex Court in *Digamber Vaishnav v. State of Chhattisgarh*, (2019) 4 SCC 522 and *Yogesh Singh v. Mahabeer Singh*, (2017) 11 SCC 195.

99. The Complaint in the Court was filed on 09.02.2004. The cognizance was taken on 01.03.2004. It is no doubt true that Section 25(4) of the D&C Act, the Petitioner after being summoned, had another opportunity to seek the fourth sample sent to the Court, for analysis by a Central Laboratory as the date of expiry of the sample was February, 2025. There was enough opportunity and time to get the sample tested from the Central Laboratory, which evidently has not been exercised by the Petitioner.

100. However, the Government Analyst Report, Vadodara, prepared at the instance of Drug Inspector, Delhi, establishes that the drug Tixylixbeing manufactured by the Petitioners, was not spurious but was of **Standard Quality**. ***From the documents of the Respondent itself, no offence is made out against the Petitioners.***

101. In the end, another incidental aspect is that earlier as well, Petitioners had filed *Crl. M.C. No. 5149-51 of 2006* seeking quashing of this Complaint which was dismissed by this Court vide Order dated 19.09.2013, with liberty to raise the contentions at the stage of trial.

102. However, the earlier Petition was filed for quashing of the Complaint without placing on record on the documents including the Report of the Government Analyst, Gujarat, which were filed for the first time, in the Discharge Application, that this ground has been taken. Therefore, it cannot be said that the Petitioners are estopped from raising such a contention at this

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stage, especially when liberty was granted by this Court to the Petitioner to raise the contentions at the stage of trial.

Conclusion:

103. Therefore, in the light of aforesaid discussion, it is held that no prima facie case is made out against in the Complaint. The Petition is allowed and the Complaint No. 12/2004 is hereby, quashed and the Petitioners are discharged.

104. Pending Applications are disposed of accordingly.

(NEENA BANSALKRISHNA)
JUDGE

AUGUST 28, 2025/*N*

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