



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 28 OF 2025

1. M/s Psychotropics India Ltd, a
Plot No.46, 49, Sector 6A, IIIE,
SIDCUL Industrial Area, Ranipur,
Dist-Haridwar, Uttarachal State.
2. Shri Navdeep Chawla,
Aged- 67 years, Occ- Managing
Director of M/s Psychotropics India
Ltd, R/o 216, Sec.15 Faridabad
(Harayana).
3. Shashi B. Nautiyal,
Aged - 67 years, Technical Director
of M/s Psychotropics India Ltd, a
Plot No.46, 49, Sector 6A, IIIE,
SIDCUL Industrial Area, Ranipur,
Dist-Haridwar, Uttarachal State.
4. Shri Sunil Kumar,
Aged - 55 years, Senior
Manufacturing Chemist of M/s
Psychotropics India Ltd, a Plot
No.46, 49, Sector 6A, IIIE, SIDCUL
Industrial Area, Ranipur, Dist-
Haridwar, Uttarachal State.

APPLICANTS

Versus

State of Maharashtra,
Thr. Mr. Kishore Muniraj Rajane,
Drug Inspector, Food & Drugs
Administration (M.S), Civil Lines,
Nagpur.

NON-APPLICANT

Mr. Sunil V. Manohar, Senior Advocate a/b Mr. Vipul Bhise,
Advocate for the Applicants.

Ms. H.N. Prabhu, APP for the Non-applicant/State.

CORAM : URMILA JOSHI PHALKE, J.

RESERVED ON : 09th MARCH, 2026.

PRONOUNCED ON : 17th MARCH, 2026.

ORAL JUDGMENT :-

1. Heard.

2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.

3. This Application challenges the order passed by the Additional Chief Judicial Magistrate, Nagpur in Criminal Complaint No.1477/2015, by which the learned Additional Chief Judicial Magistrate, Nagpur took cognizance and issue process against the Applicants for contravening Sections 18(a) (i), 18, (a)(vi), read with Sections 16 & 34 punishable under Section 27 of the Drugs & Cosmetics Act, 1940 (hereinafter to be referred as the “said Act”) and Rules framed thereunder.

4. Brief facts which are necessary for the disposal of the present Application are as under:

4(i). The Applicant No.1 is a Company registered under the provisions of the Companies Act, involved in the manufacturing and sale of drugs including Pilzime Syrup. The Applicant Nos. 2 and 3 are the Directors of the Applicant No.1/Company and the Applicant No.4 is the official of the Applicant No.1/Company and Non-applicant is the Officer of the Food and Drugs Administration Department.

4(ii). The Non-applicant filed a complaint against the present Applicants on an allegation that the original accused No.5 is the Technical Director, the accused No.6 is the Senior Manufacturing Chemist and accused No.7 is the Senior Manager, Quality Control.

4(iii). On 12.06.2014, the complainant received the documents from Shri S.K. Nandekar, the then Drugs Inspector, Nagpur as he was transferred from Nagpur to Chandrapur and from the said documents, it revealed to him that on 15.02.2014 the then Drug Inspector S.K. Nandekar visited the premises of

M/s. Ambika Pharma, situated at Block No. 244, 245 Sandesh Dawa Bazar, Nagpur for routine visit and sampling. At the relevant time the Proprietor of said firm Shri Naresh R. Chaudhari, was present.

4(iv). The Drug Inspector S.K. Nandekar drawn the sample of drugs Pilzime Syrup, Quantity 4 x 200 ml, Batch No.II-332, Mfg. date 12/2013, Exp. date 11/2014 and Mfg. Lic. No 41/UA/SL/P-2006 of M/s. Ambika Pharma, Block No. 244, 245 Sandesh Dawa Bazar, Nagpur, which was manufactured by Applicant No.1 Company. The details of sample were mentioned in Form No.17 bearing No. 118951. The complainant handed over copy of Form 17 dated 15.02.2014 and one sealed part of said drug sample to Shri Naresh R. Chaudhari, Proprietor of said firm and taken acknowledgment thereof. The said firm issued Bill No.SD-01001 dated 15.02.2014.

4(v). The complainant prepared Form 18 in triplicate and original copy of Form 18 bearing No. NAG /REG/FRM/35049/MH-MUM alongwith one counter part of the sample was sent to Government Analyst, Drugs Control Laboratory, Mumbai, by Registered post and one copy of said Form 18 alongwith

specimen impression of seal used to seal said sample was sent separately to the Government Analyst.

4(vi). The office of the complainant on 27.06.2014 received Analytical Report in Form 13 vide Report No. NSQ/MUM/35049/2014 dated 16.06.2014 from the Government Analyst, Drugs Control Laboratory, Mumbai and the Government Analyst reported that the said sample is 'NOT OF STANDARD QUALITY' as defined in the said Act and Rules thereunder for the reason that, 1) "CONTENT OF PEPSIN IN THE SAMPLE IS LESS (34.72 PERCENT OF THE LABELED AMOUNT) THAN LABELED AMOUNT" AND 2) "CONTENTS OF FUNGAL DIASTASE IN THE SAMPLE IS LESS (16.73 PERCENT OF THE LABELED AMOUNT) THAN LABELED AMOUNT". The said Analytical Report was filed on record.

4(vii). The complainant vide letter dated 24.06.2014 handed over original copy of Analytical report with protocol to M/s. Ambika Pharma, Nagpur from where the samples are drawn by then Food Inspector S.K. Nandekar and asked the firm to disclose name and address of the firm/company from whom the drug in question was acquired alongwith documentary

proof. The complainant also directed to said M/s. Ambika Pharma, Nagpur to stop sale of said product and recall all the stock of the same sold/distributed.

4(viii). On 04.07.2014, the complainant received reply dated 02.07.2014 from M/s. Ambika Pharma, Nagpur, by which it was disclosed that they received total 50 bottles of 200 ml Pilzyme Syrup vide Bill No.119 dated 30.12.2014 from Vandit Tradelink, Pharmaceutical Distributors, Shop No. 1 & 2, Opp: Hotel Radhika, Tah. Haveli, Pune 412308 and the firm also submitted the sale details.

4(ix). Thus, the name of the supplier of said drugs disclosed under Section 18(A), the complainant sent letter dated 15.07.2014 alongwith copy of Analytical Report by Registered Post to M/s. Vandit Tradelink, Pharmaceutical Distributors, Shop No. 1 & 2, Opp: Hotel Radhika, Tah. Haveli, Pune 412308 and asked the said firm to disclose the name and address of the Company / firm from whom he acquired the drug in question alongwith documentary proof. The complainant also informed for stopping of the sale of the said drug.

4(x). The Vandit Tradelink, Pune vide its letter dated 25.07.2014 accepted having sold the drug 50 bottles x 200 ml Pilzime Syrup through Bill No.119 dated 30.12.2014 to M/s. Ambika Pharma, Nagpur and disclosed that they had purchased the said drug Pilzime Syrup from M/s. Psychotropics India Ltd., i.e. the Applicant No.1/Company through Invoice No. 2013/3579 dated 09.12.2013 quantity 100 x 200ml bottles.

4(xi). On 02.08.2014, the complainant received prosecution order from Joint Commissioner (H.Q.) & Controlling Authority, Food & Drugs Administration, M.S. Mumbai.

4(xii). The name of manufacturer and supplier disclosed under Section 18(A), the complainant sent a letter dated 13.08.2014 by Registered Post A.D. to the Applicant No.1/Company alongwith one sealed part of sample of said drug Pilzime syrup and original copy of Analytical report to the accused under compliance of Sections 23(4) & 25(2) of Drugs & Cosmetics Act, and asked the firm to furnish the information regarding drugs manufacturing license, constitution of firm,

name and address of manufacturing chemist, analytical chemist, raw material purchase record, manufacturing records, sale details of the drug in question. The complainant further directed to stop, distribution sale of said drug.

4(xiii). The complainant received letter dated 04.09.2014 from the Applicant No.1/Company thereby challenging the said Analytical Report and informed that they want to adduce evidence in contravention of the report of the Government Analyst and want to send the samples to Central Drugs Laboratory for re-test. On 22.09.2014, the complainant filed application bearing Misc. Cri. Appll. No. 3196/2014 before the Additional Chief Judicial Magistrate, Nagpur as per the provision of Section 25(4) of the said Act and prayed for directions to the accused to collect necessary fees from the accused.

4(xiv). On 01.10.2014, the complainant along with Mr. M.S. Rana the Drug Inspector, Uttarakhand visited the factory premises of the Applicant No.1/Company and at that time of visit the Applicant No.3 was present alongwith the

co-accused. The complainant made enquiry with the Applicant No.3 and other co-accused regarding manufacture and supply of Not of Standard Quality drugs and Pilzime Syrup.

4(xv). The co-accused Shri S.B. Nautiyal vide letter dated 01.10.2014 submitted partial information regarding Batch Manufacturing, Copy of Licences, List of Approved Technical Person, Sale details, Testing record etc., but the company did not submit documents in respect of the Constitution and details of responsible persons who are responsible for the day to day activities of the Applicant No.1/Company.

4(xvi). The complainant informed the accused as per Court's order dated 14.10.2014 to remain present in the Court on 31.10.2014 with necessary fees for retesting of the said drug sample, but none appeared before the Court on behalf the Applicant No.1/Company, and therefore, the complainant deposited fee of Rs. 1000/- by Demand Draft before the Hon'ble Additional Chief Judicial Magistrate, Nagpur for re-testing of said sample of drug Pilzime syrup for retesting at Central Drug Laboratory, Kolkata.

4(xvii). Thus, after receipt of Analytical/Test Report from Mumbai, the complainant sent sample part and asked for documents regarding constitution but the same was not provided by Applicant No.1/Company and was also absent for depositing the fee for reanalysis the sample, therefore the complainant constrained to file the complaint against the present Applicants for contravention of provisions under Sections 18(a)(i), 18, (a)(vi) read with Sections 16 & 34 punishable under Section 27 of the Drugs & Cosmetics Act, 1940 and Rules thereunder.

4(xviii). The Additional Chief Judicial Magistrate has taken the cognizance of the said complaint and passed the order “Accused absent. Issue summons to accused.”

4(xix). Being aggrieved with the said order the present Application is filed by the Applicants.

5. Heard Mr. Manohar, learned Senior Counsel for the Applicants. He invited my attention towards the order passed by the Additional Chief Judicial Magistrate and submitted that the Additional Chief Judicial Magistrate has recorded the absence of

the accused. At the pre-cognizance stage, there is no reason for remaining present by the accused and the order passed by the Additional Chief Judicial Magistrate, is without any reason. A single line order without recording the satisfaction regarding the constitution of the offence.

5(i). He further submitted that, the Application is filed on two grounds; that the provision of Section 32 of the said Act says that no Court inferior to the Court of Sessions was entitled to take cognizance of the offence alleged to have been committed by the Applicants, and therefore, the Trial Court i.e. the Court of Additional Chief Judicial Magistrate did not have the competence to entertain and tried the said compliant. More so, as the Court of Sessions is available at Nagpur.

5(ii). The another ground raised by him is that, the Applicant No.1/Company is situated beyond the territorial jurisdiction of the learned Trial Court and the present Applicants are also residing beyond the territorial jurisdiction of the learned Trial Court. It was therefore obligatory for the learned Trial Court who has conducted an enquiry under Section 202 of the Code of Criminal Procedure (for short "Cr.PC.") before

passing the impugned order of issuance of summons. The learned Trial Court has passed the impugned order thereby issuing summons to the Applicants without complying with the mandatory provisions of Section 202 of Cr.P.C., and therefore, the impugned order is liable to be quashed and set aside.

5(iii). In support of his contention he placed reliance on *JM Laboratories & Ors., Vs. State of Andhra Pradesh & Anr., 2025 SCC OnLine SC 208*. As to the maintainability of the Application, he placed reliance on *Vijay & Anr. Vs. State of Maharashtra & Anr., (2017) 13 SCC 317*.

6. *Per contra*, learned APP strongly opposed the said contention and submitted that, the recitals of the complaint itself shows that, there was a contravention of the provisions of the said Act. The efficacious remedy is available to the present Applicants by preferring the Revision before the Sessions Court against the order of issuance of process and on that ground the Application is not maintainable.

6(i). It is further submitted that, the Drug Inspector during inquiry found that the sample is not of a standard quality

as defined under the said Act. During investigation it was found that the Drugs were supplied by M/s Vandit Tradelink, Pharmaceutical Distributors, and said M/s Vandit Pharmaceutical disclosed that these Drugs are purchased by them from the Applicant No.1/Company. The present Applicant Nos. 2 to 4 are the Directors and officials of the said Company who are responsible for the day to day activities of the said Company, and therefore, the learned Additional Chief Judicial Magistrate has rightly passed the order of issuance of summons, and therefore, no interference is called for, and therefore, the Application deserves to be rejected.

7. Having heard the learned Senior Counsel for the Applicants and learned APP for the Non-applicant/State and having gone through the material placed on record as well as the provisions of law and the decisions relied upon by the learned Advocates, it transpires that the complaint has been filed against the present Applicants alleging that they have committed the contravention of the provisions of Sections 18(a)(i), 18, (a)(vi), read with Sections 16 & 34 and punishable under Section 27 of the said Act. From the record, it further

transpires that, the allegations against the present Applicants are that they have manufactured the Drugs which has not maintained the standard of quality and as per the Analysis Report it is of a sub-standard quality.

8. At this stage, it would be relevant to refer the relevant provisions of the said Act as well as the Rules.

“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-

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute.....

.....

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder.

Section 22. Powers of Inspectors.-(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed

(a) inspect, - (i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic; (ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

.....

(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed.

Section 27-Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter - Whoever, himself or by any other person on his behalf, manufactures for sale or for

distribution, or sells, or stocks or exhibits or offers for sale or distributes.

(a).....

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.”

9. Schedule M of the Act provides for good manufacturing practices for premises and materials whereas Schedule U provides for particulars to be shown in manufacturing records.

10. From the aforesaid provisions contained in the Act of 1940 and the Rules framed thereunder it reveals that no person can manufacture for sale or for distribution, or sell or stock or exhibit or offer for sale or distribute any drug or cosmetic in contravention of any provisions of Chapter IV or any Rule made thereunder. Further, every person holding a license is required to keep and maintain such records register and other documents as may be prescribed and shall furnish to the officer or authority exercising power under the Act. It further transpires

that Section 27(d) specifically provides that if a person manufactures for sale or for distribution or sells or stocks or exhibits etc., any drug or other than drug in contravention of any provisions of Chapter IV or any Rule made thereunder shall be punishable with imprisonment for a term which shall not be less than one year but which may extended to two years.

11. Keeping in view the aforesaid provisions, the issue raised in the present Application is that, the Additional Chief Judicial Magistrate is not empowered to take the cognizance of the complaint and in view of Section 32 only the Sessions Court can take the cognizance of the said complaint.

12. Now, at this stage, I would like to refer provisions contained in Sections 32(2), 36-A & 36-AB of the Act, which provides as under:

*“Section 32 : Cognizance of offences- (1) No prosecution under this Chapter shall be instituted except by—
.....*

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter

Section 36A- Certain offences to be tried summarily.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences (except the offences triable by the Special Court under Section

36AB or Court of Session under this Act punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section (1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial : Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year: Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.

Section 36AB - Special Courts. — (1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. *Explanation.* —In this sub-section, “High Court” means the High Court of the State in which a Court of Session designated as Special Court was functioning immediately before such designation. (2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.”

13. From the provisions contained in Section 32(2) of the Act, it is revealed that save as otherwise provided in the Act of 1940, no Court inferior to that Court of Sessions shall try an offence punishable under this Chapter (Chapter IV). This aspect is recently considered by the Hon'ble Apex Court in ***Special Leave Petition (Criminal) No.9281/2025 decided on 20.02.2026***, wherein the Hon'ble Apex Court held that Section 32(2) specifically provides that no Court inferior to that of a Court of Session shall try an offence punishable under this Chapter (Chapter IV). Thus, it can be said that for the offences punishable under Chapter IV, the Court inferior to the Court of Session shall not try such offences. Therefore, it is rightly submitted by the learned Senior Counsel for the Applicant that, the learned Additional Chief Judicial Magistrate is not competent to take the cognizance of the complaint and issue process against the present Applicants.

14. The another ground raised by the learned Senior Counsel, is that the Applicant No.1/Company as well as the Applicants are residents beyond the jurisdiction of the Additional Chief Judicial Magistrate, and therefore, it is under

obligation to conduct an enquiry before issuance of process. Thus, the thread of the argument of the learned Senior Counsel was that though the inquiry contemplated under Section 202 of Cr.P.C., is mandatory in case the accused resides outside the jurisdiction of the learned Magistrate, before whom, the complaint is made, but when the case entirely depends on documents particularly in complaint filed for offences punishable under Section 138 of N.I. Act, there is a need to adduce the evidence and even an affidavit filed by the complainant would suffice the purpose of inquiry. The learned Chief Judicial Magistrate has not conducted the inquiry under Section 202 of Cr.P.C., and therefore, the entire proceeding requires to be quashed and set aside.

15. Considering the submissions made by the learned Counsel for the respective parties, it would be appropriate to refer Section 202 of Cr.P.C., which reads as under:

“202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such

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

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

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

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

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

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

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

16. Section 202 of the Cr.P.C. speaks about postponing the issuance of process against the accused in case he resides beyond the area in which the Magistrate before whom the complaint is made exercises his jurisdiction. In that case, the Magistrate either inquire into the case himself or direct an investigation to be made by the police officer for the purpose of deciding whether there are sufficient grounds for proceedings or not. Whether the inquiry as contemplated under Section 202 of Cr.P.C. is mandatory is the question arise for consideration.

17. In the case of ***Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another, (2017) 3 SCC 528***, wherein the Hon'ble Apex Court dealt with this issue and observed that Section 202 Cr.PC. was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22.06.2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process, so that false complaints are filtered and rejected. It is further held that the requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in ***Vijay Dhanuka and others Vs. Najim Mamtaj, (2014) 14 SCC 638***, wherein it is held that, "No specific mode or manner of inquiry is provided under

Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.” The amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. He also placed reliance on ***Vijay Dhanuka*** (supra), wherein also the Hon’ble Apex Court by referring Section 200 and 202 of the Cr.P.C. observes that “Section 202 of the Code, *inter alia*, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our

determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.”

18. Thus, by referring the decisions in the case of *Abhijit Pawar* (supra) and *Vijay Dhanuka* (supra), wherein the Hon’ble Apex Court considers the provision under Section 202(2) of Cr.P.C. In view of that observations, the amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the Court.

19. In the case of *Vijay Dhanuka* (supra), wherein the Hon’ble Apex Court held that, “No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is

nothing but an inquiry envisaged under Section 202 of the Code.” The amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed.

20. Thus, under Section 202 of Cr.P.C., which contemplates postponement of the issue of the process in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

21. In the *Suo Motu Writ Petition (Crl.) No.2 of 2020 decided on 16.04.2021 [(2021) 16 SCC 116]*, wherein the Hon’ble Apex Court held requirement to conduct inquiry of

direct investigation before issuing process where accused residing beyond territorial jurisdiction of Magistrate concerned held mandatory purpose is to protect innocent persons residing at far of places from being harass. In the said judgment after discussing all facts of the various aspects relevant and connected to the issues before it, the five-Judge Bench of the Apex Court held:

“(i) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

(ii) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

(iii) For the conduct of inquiry under Section 202 CrPC, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

(iv) It is recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 CrPC.

(v) The High Courts are requested to issue practice directions to the trial courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

*(vi) The judgments of this Court in **Adalat Prasad, (2004) 7 SCC 338** and **Subramaniam Sethuraman, (2004) 13 SCC***

324 have interpreted the law correctly and it is reiterated that there is no inherent power of trial courts to review or recall the issue of summons. This does not affect the power of the trial court under Section 322 CrPC to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

*(vii) Section 258 CrPC is not applicable to complaints under Section 138 of the Act and findings to the contrary in **Meters and Instruments, (2018) 1 SCC 560** do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of the Supreme Court dated 10.03.2021.*

(viii) All other points, which have been raised by the Amicus Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.”

22. Learned APP placed reliance on ***Special Leave Petition (Criminal) No. 4524/2023 decided on 26.02.2026***, wherein it is held by the Hon'ble Apex Court that on a plain but relevant reading of Section 202(1) of the Code indicates that a Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer

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

23. It is further held by referring the judgment of ***Cheminova India Limited Vs. State of Punjab, 2021 SCC OnLine SC 5736***, wherein it is held in para 18, which reads as under:

“18. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where the accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of the Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant.”

24. It is further held by the Apex Court that in ***Cheminova India Limited*** (supra), a coordinate Bench of this Court recognised that the Legislature had accorded, to public servants discharging their duties in their official capacity(ies), a different footing *qua* when they were complainant(s), vis-a-vis

complaints made in private capacity. As previously noted, Mr. Luthra, learned Senior Counsel, stressed upon the factual differences between the position in *Cheminova India Limited* (supra), as compared to the instant matter. Having bestowed thoughtful consideration thereon, we are not inclined to accept his contentions, in view of the clear enunciation in *Cheminova India Limited* (supra). The second question also stands answered in the Appellants' favour.

25. Thus, learned APP submits that the present case emanates from a complaint by an officer, made in writing. In terms of Section 200 of the Code, the Magistrate is not required to examine the complainant and the witnesses, if a public servant is acting or purporting to act in discharge of his official duty or a Court has made the complaint. Here, an official complaint was made on authorisation by the State Government. In this factual setting, Section 202 of the Code would necessarily have to be construed harmoniously with Section 200 of the Code when considering postponement of the issue of process, and therefore, no illegality is committed by the Trial Court.

26. In view of the observations of the Hon'ble Apex Court, the contentions raised by the learned Senior Counsel for the Applicants, as to the enquiry is not conducted by the Magistrate, and therefore, issuance of process in absence of an enquiry is not sustainable and acceptable.

27. As already observed that, the first issue raised by the learned Senior Counsel is that in view of the provisions contained in Section 32(2) of the said Act, no Court inferior to that Court of Sessions shall try an offence punishable under this Chapter. In view of that, as the Section 32(2) specifically provides for offence to be tried by the Courts not inferior to the Court of Sessions, and therefore, the cognizance taken by the Additional Chief Judicial Magistrate is beyond its jurisdiction and it is incompetent to take the cognizance. On that ground, the Application of the present Applicants deserves to be allowed.

28. Learned APP also raised the ground that, an efficacious remedy is available to the present Applicants, and therefore, the Application is not maintainable. She also placed reliance on *V.K. Jain & Ors., Vs. Pratap Vs. Padode & Anr.*,

[2005(3) Mh.L.J. 778], wherein this Court has held that, the power of High Court under Section 482 of the Criminal Procedure Code should not be resorted to if there is specific provision in the Code for the redress of the grievance of the aggrieved party. The applicants have an efficacious remedy of preferring revision in respect of the order of the Magistrate issuing process. Thus, as there is a specific provision in the Code for redressal of the grievance of the applicants, it would be appropriate that the applicants prefer a revision against the order of the Magistrate issuing process, before the concerned Sessions Court.

29. However, the Hon'ble Apex Court in the judgment of *Vijay & Anr. Vs. State of Maharashtra & Anr.*, (supra) and relied by learned Senior Counsel by referring the judgment of *Dhariwal Tobacco Products Ltd., Vs. State of Maharashtra, (2009) 2 SCC 370*, wherein it is specifically held that, only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code. Even where a revision application is barred, as for example the

remedy by way of Section 115 of the Code of Civil Procedure, 1908 this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. Thus, it is held that, mere availability of alternative remedy cannot be a ground to disentitle the relief under Section 482 of CrPC and, apart from this, we feel that the learned Judge without appreciating any of the factual and legal position, in the mechanical way, passed the impugned order.

30. In view of the decision of the Hon'ble Apex Court, the Application under Section 482 of Cr.P.C., is maintainable.

31. In the facts and circumstances of the present case and in view of specific provision under Section 32(2) which specifically states that, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter. Section 36A of the said Act specifically excludes the offences triable by the Sessions Court under Section 36-AB or Court of Sessions from the purview of Section 36A of the said Act. Now, Section 32(2) specifically provides that, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter (Chapter IV). Thus, it can be said that, for the offences

punishable under Chapter IV, the Court inferior to the Court of Sessions shall not try such offences. Therefore, the cognizance taken by the Additional Chief Judicial Magistrate, Nagpur is without its jurisdiction and on that ground, the Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is Allowed.**
- ii. The order of issuance of process by the Additional Chief Judicial Magistrate, Nagpur by order dated 10.07.2015 in Criminal Complaint No.1477/2015, is hereby quashed and set aside.**

32. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)