IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

2026:PHHC:080876

CRM-M-59208-2023 (O&M)

M/s San Houstan and another **...Petitioners**

Versus

State of Punjab through its Drugs Inspector **...Respondent**

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	14.05.2026
2	The date when the judgment is pronounced	26.05.2026
3	The date when the judgment is uploaded on the website	26.05.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Nitin Bahsin, Advocate and
Mr. Bharti Bhatia, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

MANISHA BATRA, J.

1. Prayer in the present petition, filed under Section 482 Cr.P.C. (now corresponding to Section 528 BNSS), is for quashing Complaint No. COMA/74/2023 dated 15.06.2023 titled as ***State through Drugs Inspector, Sahibzada Ajit Singh Nagar v. M/s San Houston and others***, instituted for offences under Section 18(c)(i) punishable under Sections 27(b)(ii) and Section 18(a)(i) punishable under Section 27(d) of the Drugs and Cosmetics Act, 1940 *(for short 'the Act, 1940)* and Rules framed thereunder,

along with summoning order dated 26.07.2023 passed by the Court of learned Chief Judicial Magistrate, Sahibzada Ajit Singh Nagar and all consequential proceedings arising therefrom.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that petitioner No.1 is a proprietorship concern namely M/s San Houston situated at Industrial Area, Phase-9, Sector-82, Mohali and petitioner No.2 is its proprietor. According to the petitioners, the firm was operating under licence issued under the Food Safety and Standards regime and was engaged in manufacture of health supplement/food products. The case originates from an inspection conducted on 09.08.2018 by officials of the Drugs Department along with other officers at the premises of petitioner No.1. During inspection, sample of product "IRONOX" bearing Batch No. SHT-3615, manufacturing date July, 2018 and expiry date December, 2019, was drawn in Form-17 and sealed in presence of representatives of the firm for test and analysis. One sealed portion of the sample was thereafter sent to the Government Analyst, Punjab.

3. As per the Government Analyst report dated 12.10.2018, the sampled product was declared "Not of Standard Quality" on the grounds recorded in the report including alleged discrepancies regarding composition and labelling particulars. On receipt of the report, show cause notice dated 21.11.2018 was issued to the petitioners, to which reply dated 03.12.2018 was submitted asserting that the product in question was a food/health supplement and not a drug and that no therapeutic or curative claim had been made on the label. Thereafter, correspondence was exchanged by the Drugs Inspector seeking technical opinion from authorities in the Food and Drugs Department. Eventually, sanction was obtained and complaint No. COMA/74/2023 came

to be filed on 15.06.2023 before the Court of learned Chief Judicial Magistrate, Sahibzada Ajit Singh Nagar. After presentation of the complaint and leading of preliminary evidence by the respondent/complainant, the petitioners were summoned to face trial under the aforesaid provisions, Vide order dated 26.07.2023. Aggrieved from the same, the present petition has been filed.

4. It is argued by learned counsel for the petitioners that the impugned complaint and summoning order are not sustainable in the eyes of law and amount to abuse of process of law. It is argued that the product "IRONOX" is a health supplement/food product governed by the provisions of the Food Safety and Standards Act, 2006 and Regulations of 2016 and does not fall within the definition of "drug" under Section 3(b) of the Act, 1940. The petitioners were holding a valid FSSAI licence and the product never carried any claim relating to treatment, cure or prevention of disease. It is further argued that although sampling was done in August, 2018 and the product had expired in December, 2019, the complaint was instituted only in June, 2023, i.e. after expiry of shelf life of the sampled batch. Such delay, according to learned counsel, deprived the petitioners of their valuable statutory right to seek re-analysis/re-testing of the sample and has caused serious prejudice to the defence.

5. It is further argued by learned counsel for the petitioners that even the departmental record would show uncertainty regarding applicability of the Act, 1940 inasmuch as technical opinion had been sought from Food authorities before initiation of prosecution. It is submitted that the sample, if at all, ought to have been dealt with under the mechanism prescribed under the Food Safety and Standards Act and not under the Drugs and Cosmetics

Act. It is also argued that the learned Magistrate mechanically passed the summoning order without proper application of mind. Hence, it is urged that the petition deserves to be allowed and the impugned complaint along with all the subsequent proceedings having emanated therefrom including the impugned summoning order is liable to be quashed.

6. Reply has been filed by the respondent-State. Learned State counsel has argued that during inspection conducted on 09.08.2018 by the Drugs Control Officer along with officials of the Food Department at the premises of petitioner-firm, sample of Tablet “IRONOX” was drawn for test and analysis and the same was sent to Government Analyst, Punjab. As per Government Analyst report dated 12.10.2018, the sampled product was declared “Not of Standard Quality” and it was found that the label reflected FSSAI license despite the product being a fixed dose combination containing Ferrous Ascorbate, Folic Acid and Zinc, which falls within the category of “drug” as per approved Fixed Dose Combination list maintained by CDSCO. It is further argued that after receipt of adverse report, due procedure was followed by supplying copy of the report to the manufacturer and seeking its response, whereupon the petitioners admitted manufacture of the sampled product and furnished FSSAI license details. It is further argued that technical opinion was also sought from competent authority and, thereafter, prosecution sanction was duly obtained from the Joint Commissioner (Drug), Food and Drugs Administration, Punjab before institution of complaint. It is, thus, contended that sufficient material existed to proceed against the petitioners for contravention of the aforementioned provisions of the Act, 1940. Hence, it is urged that the petition is liable to be dismissed.

7. This Court has heard the rival submissions.

8. The principal issue which arises for consideration is whether continuation of the impugned complaint and summoning order dated 26.07.2023 would amount to abuse of process of law or whether the controversy raised by the petitioners requires adjudication during trial. The foundation of the prosecution is that sample of Tablet “IRONOX” was lifted on 09.08.2018 and was declared “Not of Standard Quality” vide report dated 12.10.2018. However, despite availability of the report in October, 2018 and despite issuance of show cause notice in November, 2018, the complaint came to be filed/presented only on 15.06.2023 i.e. almost five years after drawing of sample and more than three years after expiry of the sampled batch in December, 2019. No satisfactory explanation worth acceptance has come forth in the reply for such prolonged inaction. Though reference has been made to correspondence seeking technical opinion from Food authorities, the record itself shows that no final technical determination was received and prosecution nevertheless proceeded under the Act, 1940. Mere movement of file between departments cannot justify a delay of such magnitude when penal consequences are sought to be imposed.

9. At this stage, this Court is unable to agree with the submission of learned State counsel that delay by itself is inconsequential and the petitioners may raise all such pleas during trial. The delay in the present case is not procedural alone. Rather, it goes to the root of fairness of prosecution. The sampled batch admittedly expired in December, 2019, whereas complaint was filed in June, 2023. Once the shelf life had long expired, the petitioners stood deprived of any effective opportunity to challenge the analytical findings through re-testing or by producing scientific material relatable to the sampled batch. Such prejudice cannot later be cured during trial. In this regard, reliance

can be placed upon ***Hasmukhlal D. Vora and another v. State of Tamil Nadu, 2023(1) RCR (Cri) 624***, wherein the Hon'ble Supreme Court held that though delay by itself may not always be sufficient, an inordinate and unexplained delay between inspection, show cause proceedings and institution of complaint is a crucial factor and may render prosecution unsustainable, particularly where such delay raises serious doubt regarding fairness of proceedings and results in prejudice to the accused. The Hon'ble Supreme Court further observed that criminal law cannot be permitted to become an instrument of harassment. Another fact which cannot be ignored is that the departmental record itself reflects uncertainty regarding applicability of the Act, 1940. The Drugs Inspector, instead of proceeding directly on the assumption that the sampled article was unquestionably a drug, sought technical opinion from the competent Food authority on the issue whether the product in question fell under the Food Safety and Standards regime and whether any offence was made out thereunder. The fact that such opinion was considered necessary by the department itself shows that classification of the product was not free from doubt.

10. The petitioners have consistently maintained from the stage of reply to show cause notice that "IRONOX" was manufactured and marketed as a health supplement/food product under valid FSSAI licence and no therapeutic, preventive or curative claim had been made on the label. The respondent, on the other hand, seeks to classify the same as a drug primarily on the basis that ingredients of the formulation appear in the approved Fixed Dose Combination list. Mere existence of ingredients which may also be used in medicinal preparations cannot, by itself, conclude the issue.

11. The record further shows that petitioner No.1 was admittedly operating under licence issued under the Food Safety and Standards regime and not under the Act, 1940. Even the respondent-State, in its reply, has acknowledged that after receipt of the analyst report, the petitioners furnished their Food licence details and the department thereafter sought technical opinion from Food authorities before proceeding further. This conduct of the authorities assumes significance. If the product was unquestionably and ex facie a drug requiring licence under the Act, 1940, there was no occasion for the department itself to seek clarification regarding applicability of the Food Safety framework. Mere mention of ingredients which may also appear in a fixed dose combination list cannot automatically render the product a "drug" irrespective of the licence under which it was manufactured, labelled and intended to be marketed. The existence of a valid FSSAI licence may not by itself confer immunity from prosecution under the Act, 1940, but it certainly strengthens the petitioners' plea that the issue was one of classification requiring technical certainty before launching criminal prosecution. In absence of such determination and in view of the department's own hesitation reflected from the record, continuation of prosecution would not be justified. Reference in this regard can be made to ***Ranbaxy Laboratories Ltd. v. Union of India, 2009(22) RCR (Criminal) 584 (Patna)***, wherein while dealing with overlap between food and drug regulatory regimes, it was observed by the Patna High Court that questions relating to classification of products are essentially technical matters and once expert determination points towards a food category, authorities should not proceed merely on assumptions under the Drugs Act. It was emphasized that such matters require proper technical adjudication and not unilateral departmental conclusions.

12. Furter, the respondent has argued that since the formulation corresponds to a fixed dose combination approved by CDSCO, the product necessarily becomes a drug. This Court is unable to accept such proposition in absolute terms at least at the present stage because no material has been brought on record to show that any independent scientific exercise was undertaken to establish that the product, in the form in which it was manufactured and labelled by the petitioners, could not legally operate within the food/health supplement framework. Significantly, despite seeking technical opinion from Food authorities, the prosecution proceeded without obtaining any conclusive answer to that issue. The objection of the petitioners that the complaint ought to have proceeded under the Food Safety and Standards Act also deserves consideration, though not in the strict sense urged. Reference can be made to ***Siva Foods v. Food Safety Officer, 2022 Law Finder Doc ID 1963022*** and ***A. Sudalaimani and others v. Food Safety Officer, 2022 (2) MLJ (criminal) 39***, though these cases arose under the Food Safety and Standards Act and are not directly applicable to prosecution under the Drugs and Cosmetics Act, however, the principle emerging from those decisions remains relevant, vis-à-vis statutory delay resulting in destruction of the accused's right to meaningful re-analysis causes real prejudice and continuation of prosecution in such circumstances serves no useful purpose. The argument of learned State counsel that prosecution sanction was duly obtained and therefore complaint must proceed also does not persuade this Court. Sanction cannot cure foundational defects where initiation itself suffers from unexplained delay and unresolved jurisdictional uncertainty regarding the governing statute.

13. This Court is conscious that the power under Section 482 Cr.P.C. *(which corresponds to Section 528 of BNSS)* is undoubtedly to be exercised sparingly. At the same time, where continuation of proceedings would result in avoidable trial despite evident prejudice and where the factual foundation itself does not inspire confidence, the High Court would not be justified in relegating parties to undergo criminal trial merely as a matter of formality. The principle has been reiterated in ***Best Price Modern Wholesale and another v. State of Punjab, 2023(1) RCR (Criminal) 188***, wherein this Court held that inherent jurisdiction exists to prevent criminal proceedings from degenerating into a weapon of harassment and that proceedings can be quashed where continuation would amount to abuse of process.

14. In view of the discussion as made above, this Court is of the considered opinion that allowing the complaint to proceed any further would amount to abuse the process of law and in order to secure the ends of justice, the same needs to be quashed. Accordingly, the present petition is allowed and the impugned complaint and summoning order along with all the consequential proceedings arising therefrom are hereby quashed qua the petitioners.

26.05.2026 **(MANISHA BATRA)**
Parveen Sharma **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*