Sr. No. 162

# HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

**CRMC No. 364/2016 c/w**
**CRMC No. 15/2017**
**CRM(M) No. 223/2022**

Reserved on: 31.07.2026
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**CRMC No. 364/2016**

1. M/S Simran Pharmaceuticals,
   Ward No. 3, Indira Colony,
   Near Dreamland School, Janipur,
   Jammu,
   Through its Competent Person, namely,
   Rajinder Singh age 42 years,
   S/o Sh. Parmod Singh

2. M/S Sunil Medicates,
   Ramsharnam Colony,
   Dalhousie Road, Pathankot, Punjab,
   Through its competent person namely
   Sunil Thakur, Age 40 years,
   S/o Sh. Kartar Singh

…..Petitioner(s)

Through: Mr. Sachin Gupta, Advocate
Mr. Varut Kumar Gupta, Advocate

**Vs.**

1. State of Jammu and Kashmir
   Through Drugs Inspector, Doda, H.Q. C/o Office of the Deputy Controller, Drugs and Food Control Organisation, Jammu Division.

….. Respondent(s)

Through: Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

**CRMC No. 15/2017**

1. Affine Formulations Pvt. Ltd.
   1947/3, Village Bhatia, Tehsil Nalagarh
   District Solan, Himachal Pradesh.
   Through its Director Namely,
   Pradhyuman Nyati, Age 34 years .....Petitioner(s)
   S/o Sh. Mohan Lal Nyati.

Through: Mr. Sachin Gupta, Advocate
Mr. Varut Kumar Gupta, Advocate

Vs.

1. Stage of Jammu and Kashmir
   Through Drugs Inspector, Doda. H.Q.
   C/o Office of Deputy Controller,
   Drugs and Food Control Organization,
   Muthi, Jammu, J&K

2. Government Analyst Doda,
   C/o Office of Controller,
   Drugs and Food Control Organization, ..... Respondent(s)
   Patoli Mangotria, Jammu, J&K

Through: Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

**CRM(M) No. 223/2022**

**1.** Veena Rani, Age-75 Years,
W/o Late Wazir Chand,
House No. 1047, Sector 6
Karnal Rural Part 1, Haryana, India,
Proprietor Luv Kush Drug House,
Shop No. 10, Phoosgarh Road, .....Petitioner(s)
Karnal

Through: Mr. Sachin Gupta, Advocate
Mr. Varut Kumar Gupta, Advocate

**Vs.**

1. Union Territory of Jammu and Kashmir,
   Through Drugs Inspector Doda, H.Q.
   C/o Office of Deputy Controller,
   Drugs and Food Control Organization, ..... Respondent(s)
   Jammu Division.
2. Government Analyst Doda,
   Combined Food and Drugs Laboratory,
   Controller Drugs J&K,
   Drugs and Food Control Organization,
   Patoli Mangotria, Jammu.

Through: Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGEMENT**

1. Petitioners herein are aggrieved of the proceedings pending against them for the alleged commission of offences punishable under Section 18 (a) (i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (*hereinafter referred to as "the Act"*), arising out of an incident dated 04.01.2014, when the complainant-Drug Inspector lifted samples of various drugs from the premises of M/s Lucky Medical Hall, Doda (A-1) including "Macnim Plus Tablets", bearing Batch No. 13329, manufactured in 05/2013 and having expiry date of 04/2015. The said sample was subsequently reported to be not of standard quality on the ground that it had failed the *disintegration test*.

2. That CRMC No. 364/2016 has been preferred by the petitioners, namely, M/s Simran Pharmaceuticals, Janipur, Jammu, and M/s Sunil Medicates Dalhousie Road, Pathankot, Punjab, who are alleged to be the stockiest/distributors of the aforesaid drug. CRMC No. 15/2017 has been preferred by M/s Affine

Formulations Pvt. Ltd., the manufacturer of the drug, whereas the third petition-CRM(M) No. **223/2022,** has been preferred by M/s Luv Kush Drug House, Karnal also a dealer, through its proprietor.

3. A common and substantial question of law arising for consideration in all the aforesaid petitions is whether the complainant-Drug Inspector was duly empowered under the provisions of the Act to draw and have the subject sample analysed for the purpose of launching prosecution under Section 27(d) of the Act. It is the specific case of the petitioners that the Drug Inspector was not competent/empowered to deal with the said sample in the manner in which it was done. It is further contended that the Public Analyst, who furnished the report declaring the drug to be not of standard quality, was likewise not competent/empowered under the statutory scheme to undertake the analysis of the drug in question, which falls within Schedule C of the Act.

4. It is further the specific case of the petitioners that they have been deprived of their valuable statutory right and opportunity to have the subject sample retested/reanalysed in accordance with law. No portion of the sample was ever forwarded or made available to the manufacturer for the purpose of seeking a retest/reanalysis. Consequently, by the time the petitioners came to know of the alleged contravention and the prosecution was initiated, the petitioners were effectively denied the opportunity contemplated under Section 25(3) of the Drugs and Cosmetics Act, 1940. Such deprivation has caused serious prejudice to the petitioners and vitiates the continuation of the prosecution against them.

5. *Per contra,* it is the case of the respondents that, at the time of drawing the sample from the spot, four portions of the sample were prepared. One portion was handed over to the retailer from whose premises the sample was drawn, while another portion was transmitted to the Public Analyst for analysis. The third portion was personally handed over to accused No. 2, namely, M/s Simran Pharmaceuticals Pvt. Ltd., Janipur, Jammu, on 28.02.2014, with a request to furnish the particulars/name of the manufacturer from whom the drug in question had been procured. It is, thus, contended that the statutory requirement contemplated under Section 18-A of the Act stood duly complied with.

6. That the respondents further contend that none of the petitioners, at the relevant stage, availed of or sought to invoke the statutory remedy for retesting/reanalysis of the subject sample. It is submitted that the manufacturer, vide communication dated 28.04.2014, acknowledged having received the report of the Public Analyst from the complainant-Drug Inspector; however, the said communication does not contain even a reference to any intention on the part of the manufacturer to challenge or controvert the report by seeking retesting/reanalysis of the sample. According to the respondents, the petitioners, having failed to exercise the remedy available to them within the prescribed period, cannot now contend that they were deprived of an opportunity to have the sample retested. Placing reliance upon Section 25(3) of the Act, the counsel appearing for the respondents submits that the report of the Public Analyst attains finality and becomes conclusive unless the person from whom the sample was taken, or the person to whom the information under

Section 18-A is furnished, communicates, within a period of twenty-eight days from the date of receipt of the copy of the report, his intention to adduce evidence contrary of the report or to have the sample reanalysed/retested. It is, therefore, contended that, in the absence of any such request or expression of intention on the part of the petitioners within the prescribed period, the report of the Public Analyst became conclusive in terms of the statutory scheme. With reference to Section 25(4) of the Act, the counsel for the respondents further submits that the onus was upon the petitioners to take appropriate steps for re-examination/reanalysis of the sample and that, having consciously failed to avail the remedy available under the Act, they cannot subsequently seek to assail the prosecution on the ground that such opportunity was not afforded to them.

7. That learned counsel for the respondents has further relied upon SRO 137 dated 28.03.2013 to contend that the Drug Inspector, Doda, was duly authorised and competent to draw samples from the premises in question. It is further submitted that the report furnished by the Public Analyst was prepared in accordance with the applicable Standard Operating Procedure (SOP) prescribed by the Drugs and Cosmetics Department and, therefore, the same cannot be discarded at this stage merely on the basis of the allegations raised by the petitioners.

8. That, as regards the objections raised by the petitioners concerning the manner and procedure adopted in conducting the analysis, learned counsel for the respondents submits that such issues involve disputed questions of fact which

cannot appropriately be adjudicated in proceedings seeking quashing of the complaint/prosecution. According to the respondents, any challenge to the correctness of the analytical process or the findings recorded by the Public Analyst would be a matter for evidence and could appropriately be tested by subjecting the Public Analyst to cross-examination during trial, rather than being determined in the present proceedings.

9. In rebuttal to the submissions advanced on behalf of the respondents, the counsel for the petitioners, placing reliance upon the judgment rendered by a Coordinate Bench of this Court in *August Remedies, Village Ogli, Nahan Road v. State of J&K and others*, in CRMC No. 402/2013, has contended that non-supply/non-forwarding of the requisite portion of the sample to the manufacturer has resulted in denial of a valuable statutory right available to the petitioners under the Act. It is argued that the manufacturer was thereby deprived of an effective opportunity to have the sample reanalyzed/retested and to controvert the report of the Public Analyst. According to learned counsel, such denial has caused manifest prejudice to the petitioners and, therefore, the continuation of the criminal proceedings against them is legally unsustainable and liable to be quashed. Besides, the petitioners have further placed reliance upon the judgment rendered by a Coordinate Bench of this Court in *Neena Gupta v. UT of Ladakh*, and submitted that other petitioners had dealt with the drug in question in the ordinary course of their respective businesses as retailer, stockiest, wholesaler and distributor, through duly licensed premises. It is contended that there is neither any allegation nor any material on record to

suggest that the prescribed storage conditions in respect of the drug were violated or compromised at any stage while the drug remained in the custody of the petitioners. It is further submitted that no contrary evidence has been brought on record by the prosecution to establish any deviation from the prescribed conditions of storage. In such circumstances, according to learned counsel, fastening criminal liability upon the retailer, stockiest, wholesaler and distributor, in the absence of any specific allegation or material indicating their culpable conduct, is without legal foundation and the prosecution against them deserves to be quashed.

10. Heard learned counsel for the parties at length and perused the record. From a perusal of the complaint, it emerges that on 04.01.2014, the complainant-Drug Inspector purchased the drug in question from the premises of accused No. 1, namely, M/s Lucky Medical Hall, Doda, and drew the requisite sample. The sample was divided into four portions, each of which was duly packed and sealed in accordance with the prescribed procedure. One portion was handed over to accused No. 1, whereas another portion was forwarded to the Government Analyst under Form No. 18 dated 04.01.2014 for analysis. The report of the Government Analyst was received by the complainant on 29.01.2014, whereby the subject drug was declared to be "Not of Standard Quality" on the ground that the sample had failed the disintegration test.

11. Upon receipt of the aforesaid report, the complainant conveyed the result to accused No. 1 and called upon him to furnish the particulars of the dealer/manufacturer from whom the drug in question had been procured.

Pursuant thereto, accused No. 1 disclosed the particulars of accused No. 2, namely, M/s Simran Pharmaceuticals, Ward No. 3, Janipur, Jammu, from whom the stock had allegedly been purchased. According to the complainant, a copy of the test report was supplied to accused No. 2 and the third portion of the sample was also personally handed over to accused No. 2 on 28.02.2014.

12. During the course of further proceedings, accused No. 2 informed the complainant that the drug in question had been supplied to it by M/s Sunil Medicates, stated to be the wholesaler, who was, in turn, called upon to furnish the particulars of the manufacturer/supplier from whom the drug had been procured. M/s Sunil Medicates disclosed that the drug had been supplied by M/s Luv Kush Drug House, Karnal, arrayed as accused No. 4. On the basis of the information so furnished, the particulars of accused No. 5, namely, M/s Sian Biotech, the authorised distributor, came to be disclosed. The said concern was also apprised of the analytical report and the proceedings initiated in respect of the drug in question.

13. Thereafter, the manufacturer, arrayed as accused No. 6, was informed by the complainant regarding the failure of the subject drug in the prescribed test. The record further discloses that, vide communication dated 28.04.2014, the manufacturer responded to the Drug Inspector and furnished the particulars of the distribution channel, stating that the drug had been supplied through accused No. 5, M/s Sian Biotech, Chandigarh, which was its authorised distributor. The manufacturer asserted that the drug conformed to the prescribed standards under the Indian Pharmacopoeia (IP). At the same time,

the manufacturer sought consideration of the disintegration test result and offered an explanation with regard to the possible behavior of the tablet in the presence of the excipients, suggesting that the tablet might swell after a longer period during the disintegration process. The manufacturer, accordingly, appears to have instructed its distributor to recall the product in question.

14. It is further borne out from the record that, according to the complainant, none of the accused approached the Drug Inspector for reanalysis or retesting of the subject sample. The complainant thereafter took up the matter with the Drugs Controller, who, in turn, directed the complainant to initiate prosecution against the manufacturer and the other persons allegedly connected with the distribution and sale of the drug in question. It is in the aforesaid backdrop that the complaint came to be instituted and the proceedings against the petitioners were set in motion.

15. Before proceeding further, it would be apposite to notice the judgment rendered by a coordinate bench of this Court in CRMC No. 402/2013, wherein, relying upon the judgment of the Hon'ble Supreme Court reported as (2018) 15 SCC, it was held that where the manufacturer was not supplied with the requisite portion of the sample of the seized drug and, in addition thereto, there was an unexplained delay on the part of the Court in taking cognizance of the complaint, such circumstances, which were not attributable to the manufacturer, could not operate to his prejudice. The Court observed that the manufacturer and the stockiest possessed a valuable statutory right to seek reanalysis of the sample and that denial of such right, on account of

circumstances beyond their control, would materially prejudice their defence. In the aforesaid circumstances, the proceedings were held liable to be quashed.

16. In the said case, this court had noticed that the report of the Government Analyst had been submitted**,** whereas the same was communicated to the manufacturer after a lapse of approximately five months. By that time, the shelf life of the drug had already expired, thereby rendering the statutory remedy of reanalysis/retesting practically unavailable. The manufacturer had also specifically pleaded that the report of the Government Analyst had never been served upon it and that it had acquired knowledge of the same only upon receipt of the summons issued by the Court. Taking into consideration the aforesaid circumstances, particularly the expiry of the shelf life of the drug and the consequent frustration of the manufacturer's statutory right to seek reanalysis, the coordinate bench proceeded to quash the criminal proceedings.

17. However, the legal position governing the right contemplated under Section 25 of the Act also came to be considered by the Hon'ble Supreme Court in *State of Haryana v. Brij Lal Mittal and others*, (1998) 5 SCC 343. In that case, the sample was reported to be not of standard quality and the drug was also alleged to be misbranded/adulterated. The complainant-Drug Inspector had supplied the report of the Government Analyst to the retailer, who disclosed the particulars of the distributor, namely, M/s Ajay Medical Agencies, and the manufacturer, M/s Mitson Pharmaceutical Pvt. Ltd. The High Court quashed the proceedings, *inter alia*, on the ground that the complaint had been instituted after expiry of the shelf life of the drug, thereby depriving the manufacturer of

the opportunity contemplated under Section 25(4) of the Act to have the sample reanalysed by the Central Drugs Laboratory.

18. The Hon'ble Supreme Court, while examining the statutory scheme, noticed that Section 25(3) of the Act requires the person from whom the sample was taken, or the person to whom the report was furnished under Section 18A, to notify the Inspector or the Court, in writing, within twenty-eight days of receipt of the copy of the Government Analyst's report, of his intention to adduce evidence in controversial of the report. The Court found that the manufacturer in that case had admittedly received the report of the Government Analyst on 19.02.1991, but had failed to communicate, within the prescribed period of twenty-eight days, its intention to controvert the report or to have the sample reanalyzed. Instead, the manufacturer had chosen to subject the drug to its own internal testing. In those circumstances, the report of the Government Analyst had attained the status of conclusive evidence in terms of Section 25(3) of the Act.

19. The Hon'ble Supreme Court, therefore, held that merely because the shelf life of the drug had expired or there had been some delay in instituting the complaint, the prosecution could not, by itself, be quashed when the accused had failed to exercise the statutory right available to them within the period prescribed under Section 25(3) of the Act. The judgment thus makes it clear that the question whether the accused was effectively deprived of the statutory right of reanalysis has to be examined in the context of the facts of each case, including the date of receipt of the Government Analyst's report, the

opportunity available to the accused to exercise the right under Section 25(3), and the circumstances resulting in the sample becoming unavailable for reanalysis.

20. In *Amery Pharmaceuticals v. State of Rajasthan*, 2001 (4) SCC 382, the retailer had disclosed the particulars of the distributor, through whom the identity of the manufacturer became known to the complainant. The manufacturer claimed before the learned Magistrate that it was entitled to be discharged on the ground that it had not been supplied with the sample and, consequently, had been deprived of its right to contest the complainant's case. The Hon'ble Supreme Court held that even where the manufacturer is not initially supplied with a copy of the report or a portion of the sample, it is not left remediless and retains the liberty to challenge the correctness of the report by taking recourse to Section 25(4) of the Drugs and Cosmetics Act. The Apex Court further observed that acquitting a manufacturer of adulterated drugs merely on a technical ground would be contrary to the legislative intent. In that case, the appellant had alleged non-compliance with Section 23(4) on the ground that the Drug Inspector had failed to send a portion of the sample to the manufacturer.

21. In the said case, although the Sessions Judge deleted the charge relating to the manufacture of spurious drugs, the remaining charges, including those relating to misbranding and adulteration, were upheld. The High Court dismissed the petition preferred by the manufacturer, which led the manufacturer to approach the Hon'ble Supreme Court. It was in that factual background that the Apex Court laid down the aforesaid principle.

22. In *Medicamen Biotech Ltd. v. Rubina Bose*, 2008 (7) SCC 196, the laboratory reported that the drug sample seized did not conform to the prescribed standards. Upon receiving the information, the manufacturer conducted in-house tests and also obtained an analysis report from another approved laboratory, both of which confirmed that the drug conformed to the prescribed standards. The appellant-manufacturer communicated to the Drug Inspector its intention to contest the findings of the Government Analyst. However, the Drug Inspector failed to facilitate retesting of the sample and proceeded to file the complaint.

23. The Hon'ble Supreme Court held, in the facts and circumstances of that case, that the manufacturer had correctly and timely exercised its statutory right under Section 25 of the Drugs and Cosmetics Act by indicating its intention to dispute the Government Analyst's report. The Drug Inspector, therefore, was under a mandatory legal obligation to forward the sample for retesting to the Central Drugs Laboratory. Since the manufacturer had demonstrated its intention to contest the Government Analyst's report, the failure of the Drug Inspector to facilitate such retesting deprived the manufacturer of its valuable statutory right to a fair defence. The continuation of the criminal proceedings in those circumstances was consequently held to constitute an abuse of the process of law.

24. In *GlaxoSmithKline Pharmaceutical Ltd. v. State of Madhya Pradesh*, Criminal Appeal No. 1489 of 2011, decided on 28.07.2011, the Government Analyst reported that the sample was not of standard quality on account of "analytical

difficulties". A show-cause notice was thereafter issued to the manufacturer, which replied that the sample ought to have been tested and analysed with reference to the Indian Pharmacopoeia (I.P.), 1996, instead of the I.P., 1985. Criminal proceedings were subsequently initiated and cognizance was taken. The manufacturer thereafter moved an application before the Chief Judicial Magistrate under Section 25(3) of the Drugs and Cosmetics Act, seeking that the sample be sent to the Central Drugs Laboratory for analysis. The application was rejected, and the High Court also dismissed the challenge thereto. When the matter reached the Hon'ble Supreme Court, it was held that Section 25(3) confers upon the manufacturer a statutory right to challenge or controvert the report of the Government Analyst. However, the Court found that the manufacturer had failed to notify the concerned authorities within 28 days of its intention to adduce evidence in contravention of the report. Mere technical objections regarding the methodology adopted for testing, or a request that the proceedings be closed, were held not to satisfy the mandatory statutory requirement. Relying upon *State of Haryana v. Brijlal Mittal and Others*, the Hon'ble Supreme Court reaffirmed that the right to have the sample tested by the Central Drugs Laboratory accrues only when the accused complies with the requirement of Section 25(3) within the prescribed period of 28 days. Since the manufacturer had itself failed to exercise the statutory right within the prescribed period, there was no justification for interfering with the orders of the courts below rejecting its application for retesting. The Court further held that, once the accused fails to exercise the statutory right under Section 25(3)

within the prescribed period, any delay on the part of the State in filing the criminal complaint or instituting the prosecution becomes irrelevant and immaterial.

25. Having regard to the aforesaid legal precedents, this Court now proceeds to examine the case of the petitioners. A reading of the complaint reveals that, since the samples were not lifted from the distributor but from the premises of accused No. 1, namely, the retailer, the Drug Inspector was required to draw four portions of the sample, which he admittedly did. Out of the four samples, one was handed over to accused No. 1; the second, as admitted by the parties, was forwarded to the Government Analyst, who submitted his report; and the third sample, as specifically stated in the complaint, was handed over to M/s Simran Pharmaceuticals, the petitioner in CRMC No. 364/2016.

26. The fourth sample, in terms of the statutory scheme, was required to be produced before the Court in which the complaint was filed. The sole grievance projected by the petitioners is that the manufacturer was not supplied with a portion of the sample. The drug in question was admittedly manufactured by M/s Affine Formulations and supplied to accused No. 5, M/s Sian Biotech, its distributor, from whom the drug travelled through the subsequent stages of the distribution chain, namely, the stockist, wholesaler and, ultimately, the retailer.

27. Section 23(4) of the Act categorically provides that, after the samples are taken, one portion thereof shall be delivered to the person, if any, whose name, address and other particulars have been disclosed under Section 18-A. In the present case, the sample was lifted from accused No. 1, M/s Lucky Medical

Hall, Doda, which was the retailer to whom the drug had been supplied by accused No. 2, M/s Simran Pharmaceuticals, the petitioner herein. Significantly, paragraph 8 of the complaint specifically records that the third portion of the sample was personally handed over by the complainant to accused No. 2, thereby complying with the requirement of Section 18(a).

28. Merely because the manufacturer was not directly supplied with a portion of the sample would not, in the facts of the present case, render the procedure adopted by the Drug Inspector illegal or contrary to the statutory scheme. This is also borne out from the communication addressed by the manufacturer to the complainant on 28.04.2014. There is not even a whisper in the said communication that the manufacturer intended to have the sample retested or proposed to exercise its statutory right under Section 25(3) of the Act. Rather, the manufacturer sought to contend that the disintegration test may not be applicable to it, suggesting that there could have been some lapse on the part of the retailer or any other licensee in whose possession the drug had remained. The manufacturer further requested the Drug Inspector to treat the disintegration test of *Macnim Plus Tablets* as having complied with the prescribed standards, contending that there had been instances where tablets had exhibited swelling only after a longer period following the testing process. Thus, the substance of the manufacturer's response was essentially to attribute the failure in the disintegration test to the manner in which the drug may have been stored or handled by the distributor, stockist, wholesaler, retailer or any other person in the distribution chain.

29. The manufacturer, therefore, nowhere expressed any intention to have the sample retested or to adduce evidence in contrary of the Government Analyst's report. Learned counsel for the petitioners has laid considerable emphasis on the contention that, out of the four portions of the sample, one portion was mandatorily required to be supplied to the manufacturer. Such an argument could have some force where the sample itself had been drawn from the premises or possession of the manufacturer. In such a case, the statutory procedure would require one portion of the sample to be delivered to the person from whose possession the sample was taken.

30. However, where the sample is drawn from a retailer or any other person in the distribution chain, the Drug Inspector is required to comply with the mandate of Section 18A by obtaining and recording the particulars of the person from whom the drug was received and by supplying the requisite portion of the sample to such person whose particulars have been disclosed in accordance with the statutory requirement. Once the complainant had admittedly delivered the third portion of the sample to accused No. 2, M/s Simran Pharmaceuticals, a fact which has not been disputed in the present petitions, the other petitioners cannot derive any benefit under Section 25(3) merely by contending that the manufacturer was not directly supplied with a portion of the sample. The statutory right under Section 25(3) becomes available to the manufacturer upon it expressing an intention, within the prescribed period of 28 days, to adduce evidence in contravention of the report of the Government Analyst. In the present case, no such intention was expressed by the manufacturer within the

statutory period. Consequently, the petitioners cannot seek to invalidate the proceedings merely on the ground that a portion of the sample was not directly supplied to the manufacturer.

31. I now proceed to examine the contention that the complainant did not possess the requisite authority to inspect the premises and draw the sample. The said contention is wholly contrary to the statutory position and the mandate of SRO 137. It has also been argued that the Public Analyst was not competent or authorised to analyse the drug in question as the same falls within Schedule C. This contention, however, requires consideration in the light of the relevant statutory provisions and the evidence to be led by the complainant.

32. The report submitted by the Public Analyst on 29.01.2014 records that the sample had failed the disintegration test as per I.P. 2010. Whether the Public Analyst possessed the requisite authority to conduct such analysis and whether the test was carried out in accordance with the applicable standards are matters which would require factual determination. Such questions can appropriately be examined after the Public Analyst is produced and examined by the complainant during trial. Section 25(3) provides that the report of the Government Analyst shall be conclusive evidence of the facts stated therein unless the person concerned, within the prescribed period of 28 days, notifies the concerned authority of his intention to adduce evidence in contravention of the report. Thus, where no such intention is expressed within the statutory period by the manufacturer, distributor or any other person concerned, the report acquires the character of conclusive evidence, subject to the statutory

remedy available under Section 25(4). Such remedy can be invoked by approaching the Court for an order directing that the sample be sent to the Central Drugs Laboratory for analysis, and the report of the Central Drugs Laboratory would thereafter prevail in accordance with law.

33. In the present case, the petitioners have failed to demonstrate that, at any stage, they expressed an intention to avail themselves of the statutory remedy contemplated under Section 25(3) or Section 25(4), as the case may be, for having the sample retested. Reliance placed upon the judgment of a learned Single Judge of this Court in *August Remedies v. State of J&K and Others*, passed by a Coordinate Bench, is wholly misplaced. The said judgment was rendered in the peculiar facts and circumstances of that case. There, the manufacturer had not received the report of the Government Analyst and, specifically, claimed that it had received the report for the first time along with the summons issued by the Court. It was in that factual background that the Court concluded that the manufacturer had been deprived of its valuable right to adduce evidence contrary of report. The Court also found that the complainant had failed to supply a portion of the sample to the manufacturer so as to enable it to seek retesting.

34. The factual position in the present case is entirely different. Neither the manufacturer nor the distributor, nor any of the other petitioners, ever expressed an intention to have the sample retested. Even accused No. 2, who, in terms of Section 18-A, had admittedly been supplied with the third portion of the sample by the complainant, chose not to seek retesting. Thus, none of the

petitioners raised any timely objection to the report of the Public Analyst by invoking the statutory mechanism provided under the Act.

35. So far as the manufacturer is concerned, its reply, already referred to hereinabove, was essentially an attempt to explain away or dispute the findings recorded by the Public Analyst without demonstrating any tangible or unequivocal intention to controvert the report by adducing evidence to the contrary. On the contrary, the manufacturer proceeded to recall the existing stock of Macnim Plus Tablets. Such conduct, at least prima facie, indicates that even the manufacturer was conscious of the adverse report and had proceeded on the basis that the sample had failed to satisfy the prescribed standards. As held by the Hon'ble Supreme Court in Criminal Appeal No. 1489 of 2011 (supra), failure to notify the intention to controvert the report of the Government Analyst, coupled with merely raising technical objections regarding the methodology adopted for testing, does not fulfil the mandatory statutory requirement of expressing an intention to adduce evidence in contravention of the report.

36. Having regard to the peculiar facts of the present case, the complainant was not under a legal obligation to directly supply one of the portions of the sample to the manufacturer. The statutory requirement under Section 18-A, stood duly complied with when the requisite portion of the sample was supplied to the person whose particulars had been disclosed in the distribution chain. In the present case, the complainant had supplied the sample not only to the retailer

but also to the distributor/wholesaler in accordance with the statutory procedure.

37. There is yet another aspect of the matter which assumes significance. According to the averments made in the complaint, on 07.04.2014, M/s Sian Biotech, the distributor, informed the complainant of the particulars of the manufacturer. This prompted the complainant to issue a communication dated 05.05.2014 to the manufacturer, requiring it to furnish the details concerning the drug in question as well as the constitution of the firm. However, the manufacturer, in its communication dated 28.04.2014 addressed to the Drug Inspector, referred to a letter dated 19.05.2014 allegedly received from the complainant. The chronology of these communications, as emerging from the material placed on record, indicates that the manufacturer had already acquired knowledge regarding the failure of the sample before the complainant formally approached it for the particulars of the manufacturer. Significantly, even before such communication from the complainant, the manufacturer had directed its distributor, M/s Sian Biotech, to recall the remaining stock of approximately 2,000 boxes of Macnim Plus Tablets. This conduct demonstrates that the manufacturer was aware of the adverse test result and had taken steps in relation to the remaining stock.

38. By the time the manufacturer acquired knowledge of the adverse test result, the shelf life of the drug had not yet expired, the expiry date being April 2015. The manufacturer, therefore, had sufficient opportunity to exercise its statutory right to seek retesting of the sample. It could have either expressed its intention to

adduce evidence contrary of the Government Analyst's report within the prescribed period or sought appropriate orders for retesting of the sample in accordance with law. No such course was adopted. The manufacturer neither expressed a timely intention to contest the report by adducing contrary evidence nor sought from the Court or the Drug Inspector the requisite portion of the sample for retesting. In view of the aforesaid discussion, the petitioners have failed to point out any material infirmity or lacuna in the case of the complainant warranting interference at this stage. Whether the report of the Public Analyst conforms to the prescribed testing standards, whether the test was properly conducted, and whether the Public Analyst was competent to undertake such analysis are matters of evidence which can appropriately be determined during trial.

39. At the stage of considering a petition for quashing of criminal proceedings, the relevant material is primarily the complaint and the documents/material annexed thereto. The material presently available, prima facie, demonstrates that the complainant followed the statutory safeguards while drawing the samples and invoked Section 18-A to ascertain the particulars and whereabouts of the wholesaler, stockist, distributor and manufacturer. The disputed factual aspects cannot, therefore, be adjudicated upon in proceedings seeking quashing of the complaint. Reliance placed upon the judgment of a coordinate bench in *Neena Gupta v. Union Territory of Ladakh*, is also of little assistance to the petitioners. In that case, the petitioners before the Court were dealers in the drug in question and were not the manufacturers. The manufacturer had

specifically taken the defence that the drug had failed to meet the prescribed standards on account of the petitioners' failure to store the drug in an appropriate manner. During the course of investigation, the authorities under the Drugs and Cosmetics Act had found that the manufacturer was attributing the failure of the drug to the dealer/retailer. However, from the complaint and the material placed before the Court, there was no evidence to establish that the drug in question had in fact been stored improperly by the petitioners, who were the dealers. In that factual background, the Court held that, once the material on record satisfied the requirements of Section 19(3), the petitioners could not have been prosecuted.

40. The factual position in the present case is materially different. Neither the complaint nor the material annexed thereto contains any averment or material suggesting that accused Nos. 1 to 5, who dealt with the drug in question in their respective capacities as retailer, stockiest, dealer or distributor, had stored the drug in an improper manner. The petitioners, therefore, cannot derive any substantial benefit from the judgment rendered by a coordinate bench in *Neena Gupta supra*. For the foregoing reasons, this court finds no merit in these petitions. The same are, accordingly, ***dismissed***, interim direction, if any, shall vacated.

**(Sanjay Parihar)**
**Judge**

**Jammu**
11.08.2026
Rahul Sharma

Whether the order is speaking? Yes
Whether the order is reportable? Yes