

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MMO No. 92 of 2022****Reserved on: 05.05.2025****Date of Decision: 15.05.2025****M/s VADSP Pharmaceuticals & others****....Petitioners****Versus****Union of India****....Respondent*****Coram******Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting? No.*****For the Petitioners** : Mr. Anand Sharma, Senior Advocate,
with Mr. Karan Sharma, Advocate.**For the Respondent** : Mr. Shashi Shirshoo, Senior Panel
Counsel.**Rakesh Kainthla, Judge**

The petitioners have filed the present petition for quashing of the complaint filed against them for the commission of offences punishable under Sections 16, 18 (a) (i), 18(a) (vi) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 titled Union of India through Drugs Inspector (C.D.S.C.O) Sub Zone Baddi vs. M/s VADSP Pharmaceuticals and others pending before learned

Whether reports of Local Papers may be allowed to see the judgement? Yes

Additional Chief Judicial Magistrate, Nalagarh, Baddi, H.P. (learned Trial Court). *(The parties shall hereinafter be referred to in the same manner in which they are arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of offences punishable under Sections 16, 18(a)(i), 18(a)(vi) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 and Rules 1945. It was asserted that the complainant drew a sample of Lycoyat manufactured by M/s Unison Pharmaceuticals, Plot No. 124, E.P.I.P, Industrial Area Phase-1, Jharmajri, Baddi, H.P. for test and analysis on 24.11.2017 in the presence of Mr. Premnath, Analytical Chemist of the Firm. The drug was divided into three portions and was sealed as per the procedure. A copy of Form No.17, along with a portion of a sealed sample, was handed over to Mr. Premnath, an Analytical Chemist. One sample of the drug was sent to the Government Analyst, i.e. Regional Drugs Testing Laboratory, Sector 39-C, Chandigarh-160036, after completing the codal formalities. As per the report, the drug was not found to be of

standard quality, as it did not conform to claim as per Patent & Proprietary with respect to the uniformity of filled weight and the Assay of Vitamin D3, Calcium Pantothenate. The Drugs Inspector served a notice upon M/s Unison Pharmaceuticals. The necessary investigation was conducted, and it was found that the name of M/s Unison Pharmaceuticals was changed to M/s VADSP Pharmaceuticals. The Firm replied to the notice and requested retesting. The second sample was sent to the Central Drugs Testing Laboratory, Kolkata, which issued a report declaring that the sample was not of standard quality. Accused Nos. 1 to 3, being a manufacturing firm, had manufactured the drug, which was not of standard quality; hence, the complaint was filed against them for taking action as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused.

4. Being aggrieved by the filing of the complaint and summoning order, the petitioners/accused have approached this Court for the quashing of the complaint. It was asserted that the petitioner had appointed Mr Premnath, an Analytical Chemist, as the In-charge and responsible for the business transactions of the

Firm under Section 34 of the Drugs and Cosmetics Act. The sample handed over to Premnath was analysed by Shree Sai Test House Pvt. Ltd., who stated that 'it complied with all the quality standards and parameters'. The report from the Central Drugs Laboratory was received after a gap of one year and two months. Petitioners Nos. 2 and 3 are neither in charge nor responsible for the Company. Mr Premnath, an Analytical Chemist, represented the Firm before various authorities. There are no specific averments regarding the essential requirements of the Act. The Government Analyst submitted a report after three months. He did not disclose the test protocol adopted by him. No case is made out against the petitioners. Therefore, it was prayed that the present petition be dismissed.

5. The petition is opposed by filing a reply admitting that samples were drawn by the Drugs Inspector. It was asserted that petitioners Nos. 2 and 3 are in charge of the Firm. The Firm was directed to furnish the details of the responsible person, but no response was received. Therefore, the plea that Mr Premnath, an Analytical Chemist, is the responsible person is not acceptable. The samples were taken on 24.11.2017, and 25.11.2017 and

26.11.2017 were weekly off; hence, the sample was sent on 28.11.2017. The report was generated on 28.02.2018. There is no timeline for sending the sample to the Drug Testing Laboratory or for testing the sample by the laboratory. The references to the specific test or analysis have already been made in the report. The sample was not found to be of the prescribed standard, and the complaint was rightly filed before the Court. Therefore, it was prayed that the present petition be dismissed.

6. A rejoinder denying the contents of the reply and affirming those of the petition was filed.

7. I have heard Mr Anand Sharma, learned Senior Counsel, assisted by Mr Karan Sharma, learned counsel for the petitioners and Mr Shashi Shirshoo, and learned Senior Panel Counsel, for the respondent.

8. Mr Anand Sharma, learned Senior Counsel, submitted that the complaint does not mention that petitioners Nos. 2 and 3 are in charge and responsible for Firm/petitioner No. 1 for the conduct of its business, which is essential to establish the liability of petitioners no. 2 & 3. The Drugs were analysed belatedly by the Government Analyst and Central Drugs Testing Laboratory,

Kolkata. Therefore, he prayed that the present petition be allowed and the complaint pending before the learned Trial Court be set aside. He relied following judgments in support of his submissions:

- *State of Karnataka vs. Miniswamy and others* 1977 (2) SCC 699;
- *State of Haryana vs Bhajan Lal and others* 1992 Supp (1) SCC 335;
- *Prashant Bharti vs. State of Delhi* 2013(9) SCC 293 and dealt in *Rajiv Thapar vs Madan Lal Kapoor* 2013(3) SCC 330;
- *R.P. Kapur vs State of Punjab* AIR 1960 SC 866;
- *Ashok Kumar Tyagi vs State of H.P. & others* 2015 (1) Drugs Cases (DC) Page No.185, Cr.MMO No. 29 of 2014 decided on 22nd April 2015;
- *Abdul Moid and others Vs. The State* 1977 Cri. L.J. 1325;
- *State of Karnataka Vs. Pratap Chand and others, Drugs Cases* 1981-1;
- *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and others* AIR 1983 Supreme Court 67(1);
- *D. K. Javer and others Vs. The State* 1985 Cri. L. J. 1572;
- *Adarsh Marwah and another Vs. Nehar Ranjan Bhattacharya and another*, 1990 EFR 387;
- *State of Haryana Vs. Brij Lal Mittal and others* AIR 1998 Supreme Court 2327;
- *State of Maharashtra Vs. R.A. Chandawarkar and others* 1999 Drugs Cases 9;
- *Pannalal Sunderlal Choksi and others Vs. State of Maharashtra and another* 2001 Drugs Cases 7;
- *Aravind Babu Vs. State of Kerala* 2002 (1) Criminal Court Cases 375 (Kerala);

- *Umesh Sharma and another Vs. S.G. Bhakta and others* 2002 Cri L.J. 4843;
- *Deepak Kumar Vs. State of Haryana* EFR 2003(1) 523;
- *N. Dandapani and another Vs. State of A.P.* 2005 Drugs Cases (DC) 339;
- *Rachna Kapoor, Etc. Vs. State (NCT of Delhi) & Ors.* 2006 Cri. L.J. (NOC) 70 (DEL);
- *Desh Raj and others Vs. Meena* 2007(3) Shim LC 1.
- *Murari Lal Arora Vs. State of H.P.* 2010(2) Him. L.R. 742;
- *Aneeta Hada Vs. Godfather Travels and Tours Private Limited* (2012) 5 Supreme Court Cases 661;
- *Gunmala Sales Private Limited Vs. Anu Mehta and others* (2015) 1 Supreme Court Cases 103;
- *Ashish Mittal Vs. Shri Anil Chand and others*, Cr.MMO No. 111 of 2013, decided on 16th September 2013, by the High Court of Himachal Pradesh;
- *Randolph Alves and others Versus State of Jharkhand* decided on 23/6/2022;
- *Ashish Damija and others Versus UT of J&K*, decided on 4/8/2022, by the Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar.
- *Arun Kumar Gupta and others Versus UT of J&K*, decided on 4/8/2022, by Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar;
- *Rishi Sharma Versus Bilal Ahmad, Drugs Inspector UT of J&K*, decided on 24/8/2022, by the Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar;
- *Lalankumar Singh Versus State of Maharashtra*, decided on 11/10/2022, by the Hon'ble Apex Court;
- *Virender Kansal and others vs State of Himachal Pradesh through Drugs Inspector District Sirmour, H.P.* 2021(4) Shimla Law Cases 2203, by Hon'ble High Court of H.P..

- Ashish Dhamija and another State of H.P. Cr. MMO No. 1025 of 2022- Decided on 26-02-2024;
- *Anil Mediratta and others versus State of Himachal Pradesh and others CRMMO No. 738 of 2021- Decided on 04-07-2024;*
- *M/s Symbiosis Pharmaceuticals Pvt. Ltd. &Ors. versus Union of India through Drug Inspector, Cr. MMO No.458 of 2024- Decided on 17-07-2024;*

9. Mr. Shashi Shirshoo, learned Senior Panel Counsel, for the respondent, submitted that the sample was not found to be of standard quality and the complaint was rightly filed against the petitioners. Petitioners Nos. 2 and 3 are the partners of the Firm; therefore, they are responsible to the Firm for its business. There is no timeline provided in the analysis of the sample. Therefore, he prayed that the present petition be dismissed. He relied upon judgments of the Hon'ble Supreme Court of India in *State of Karnataka vs. Pratap Chand & Ors. AIR 1981 SC 872* and *M/S DM Pharma &Anr vs. The State of Karnataka in CRL.P No. 101877/2021 decided on 30th November 2021* in support of his submission.

10. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

11. The law relating to quashing of criminal cases was explained by the Hon'ble Supreme Court in *B.N. John v. State of U.P.*, 2025 SCC OnLine SC 7 as under: -

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.*

(2) *Where the allegations in the first information report and other materials, if any, accompanying*

the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.” *(emphasis added)*

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

12. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court.

The grounds for quashing, *inter alia*, contemplate the following situations : (i) the criminal complaint has been filed with *mala fides*; (ii) the FIR represents an abuse of the legal process; (iii) no *prima facie* offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335)

13. Similar are the judgments in *Prashant Bharti*(supra), *L. Muniswamy*(supra)and*R.P. Kapur*(supra)

14. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. Section 34 of the Drugs and Cosmetics Act reads as under:-

34. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

16. It is apparent from the bare perusal of the Section that a Company is primarily liable for the commission of an offence

punishable under the Drugs and Cosmetics Act. Vicarious liability has been fastened upon a person who, at the time the offence was committed, was in charge of and responsible to the Company for the conduct of its business. It was held by the Hon'ble Supreme Court in *Susela Padmavathy Amma v. Bharti Airtel Ltd.*, 2024 SCC OnLine SC 311 that a person can be vicariously liable if he is in charge and responsible to the Company for the conduct of its business. It was observed:

“18. In the case of *State of Haryana v. Brij Lal Mittal* (1998) 5 SCC 343, this Court observed thus:

“8. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act, which reads as under:

“34. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if, at the material time, he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company, it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director, a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question, we, however, find that except for a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.”

19. It could thus be seen that this Court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in charge of and was also responsible to the company for the conduct of its business.

20. In the case of *S.M.S. Pharmaceuticals Ltd.* (supra), this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word “director” as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

“8. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company, but he may not know anything about the day-to-day functioning of the company. As a director, he may be

attending meetings of the Board of Directors of the company, where they usually decide policy matters and guide the course of business of the company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of the resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company.”

21. It was held that merely because a person is a director of a company, it is not necessary that he is aware of the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary to aver as to how the director of the company was in charge of the day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

22. In the case of *Pooja Ravinder Devidasani v. State of Maharashtra* (2014) 16 SCC 1, this Court observed thus:

“17. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of the commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In *National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113]* this Court observed : (SCC p. 336, paras 13-14)

“13. Section 141 is a penal provision creating vicarious liability, which, as per settled law, must be strictly construed. It is therefore not sufficient to make a bald, cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with a strict interpretation of penal statutes, especially where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.” (emphasis in original)

18. In *Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189: 1971 SCC (Cri)*

279: AIR 1971 SC 2162], this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see *State of Karnataka v. Pratap Chand* [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335: 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

21. In *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 (2007) 1 SCC (Cri) 621], it was held by this Court that: (SCC pp. 584-85, para 7)

“7. ... It is not necessary for the complainant to specifically reproduce the wordings of the section, but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for the commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred

in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company.”(emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.”

23. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not *ipso facto* make the director vicariously liable.

24. A similar view has previously been taken by this Court in the case of *K.K. Ahuja v. V.K. Vora* (2009) 10 SCC 48.

25. In the case of *State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana* (2010) 11 SCC 469, this Court reiterated the position thus:

“17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused was in charge of the business of the company or responsible for the conduct of the company's business. Every Director does not need to be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of the business of the company and how and in what manner he is responsible or liable.”

26. In the case of *Ashoka Mal Bafna* (supra), this Court observed thus:

“9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a

catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of the commission of an offence will be liable for criminal action. (See *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378: AIR 2015 SC 675].)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.”

27. A similar view has been taken by this Court in the case of *Lalankumar Singh v. State of Maharashtra* 2022 SCC OnLine SC 1383, to which one of us (B.R. Gavai, J.) was a party.

17. The Hon’ble Supreme Court considered the liability of the Company and its Directors in *Pawan Kumar Goel v. State of U.P.*, 2022 SCC OnLine SC 1598 while dealing with Section 141 of Negotiable Instruments Act which is similar to Section 34 of the Drugs and Cosmetics Act and held that only a person, who is in charge of and responsible to the Company for its affairs can be

summoned and punished for the acts of the Company. It was observed:

“22. A two-judge Bench of this Court in the case of *K.K. Ahuja v. V.K. Vora* (2005) 8 SCC 89, after analysing the provisions contained in Section 141 of the Act, observed as under:—

“16. Having regard to section 141, when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonoured, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished:

- (i) every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company;
- (ii) any Director, Manager, Secretary or other officer of the company with whose consent and connivance, the offence under section 138 has been committed; and
- (iii) any Director, Manager, Secretary or other officer of the company whose negligence resulted in the offence under section 138 of the Act being committed by the company.

While the liability of persons in the first category arises under sub-section (1) of Section 141, the liability of persons mentioned in categories (ii) and (iii) arises under sub-section (2). The scheme of the Act, therefore, is that a person who is responsible to the company for the conduct of the business of the company and who is in charge of the business of the company is vicariously liable by reason only of his fulfilling the requirements of subsection (1). But if the person responsible to the company for the conduct of business of the company, was not in charge of the conduct of the business of the

company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.

17. The criminal liability for the offence by a company under section 138 is fastened vicariously on the persons referred to in sub-section (1) of section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly. When conditions are prescribed for extending such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of section 141 is imperative. As pointed out in *K. Srikanth Singh v. North East Securities Ltd. - (2007) 12 SCC 788*, the mere fact that at some point of time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability under section 141 of the Act.

18. Sub-section (2) of section 141 provides that a Director, Manager, Secretary or other officer, though not in charge of the conduct of the business of the company will be liable if the offence had been committed with his consent or connivance or if the offence was a result of any negligence on his part. The liability of persons mentioned in subsection (2) is not on account of any legal fiction but on account of the specific part played—consent and connivance, or negligence. If a person is to be made liable under sub-section (2) of section 141, then it is necessary to aver consent and connivance, or negligence on his part.”

23. The scope of Section 141 of the NI Act was again exhaustively considered by this Court in *S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89.*:

“10.What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. *Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of the business of the company at the time of the commission of an offence who will be liable for criminal action.* It follows from this that if a director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. *The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company.* Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of the business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager, or Secretary was enough to cast criminal liability, the Section would have said so. Instead of “every person”, the section would have said “every Director, Manager or Secretary in a Company is liable”,...etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. *Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action...*

18. To sum up, there is an almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. *A liability under Section 141 of the Act is*

sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelt out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelt out. A complaint has to be examined by the Magistrate in the first instance on the basis of the averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what the case is which is alleged against him. This will enable him to meet the case at the trial.”(emphasis supplied)

18. This position was reiterated in *Rajesh Viren Shah v. Redington India Ltd.*, (2024) 4 SCC 305: 2024 SCC OnLine SC 143, wherein it was observed:

“3. The position of law as to the liability that can be fastened upon a Director for non-realisation of a cheque is no longer *res integra*. Before advertng to the judicial position, we must also take note of the statutory provision — Section 141 of the NI Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under Section 138 of the NI Act, with exception thereto being that such an act if done without his knowledge or after him having taken all necessary precautions, would not be held liable. However, if it is proved that any act of a

company is proved to have been done with the connivance or consent or may be attributable to (i) a Director; (ii) a Manager; (iii) a Secretary; or (iv) any other officer — they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

4. Coming to the judicial position, we notice a judgment of this Court in *Monaben Ketanbhai Shah v. State of Gujarat* [*Monaben Ketanbhai Shah v. State of Gujarat*, (2004) 7 SCC 15: 2004 SCC (Cri) 1857] wherein it was observed that: (SCC pp. 18–19, para 6)

6. ... The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed, they were not in charge of and were not responsible to the firm for the conduct of the business of the firm would arise only when first the complainant makes necessary averments in the complaint and establishes that fact.”

5. A Bench of three learned Judges in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89: 2005 SCC (Cri) 1975] observed: (SCC p. 102, para 18)

“18. To sum up, there is an almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ... A clear case should be spelt out in the complaint made against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelt out.”

6. We also notice this Court to have observed, in regard to the exercise of the inherent powers under Section 482CrPC,

in cases involving negotiable instruments that interference would not be called for, in the absence of “some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. (*Ashutosh Ashok Parasrampuriya case [Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., (2023) 14 SCC 770: 2021 SCC OnLine SC 915], SCC para 24*)” This principle, as held in *S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975]*, was followed in *Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd. [Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., (2023) 14 SCC 770: 2021 SCC OnLine SC 915]*.

19. The Hon’ble Supreme Court held in *Siby Thomas v. Somany Ceramics Ltd., (2024) 1 SCC 348* that the primary responsibility to make the averment, that the accused is in charge and responsible for the Firm for its affairs lies upon the complainant in the absence of which the accused cannot be held liable. It was observed :

9. Bearing in mind the averments made in the complaint in relation to the role of the appellant and sub-section (1) of Section 141, we will have to appreciate the rival contentions. Going by the decision relied on by the respondent in the *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]* it is the primary responsibility of the complainant to make specific averments in the complaint, so as to make the accused vicariously liable. Relying on para 58.2 of the said decision the learned counsel appearing for the respondent would also submit that the complainant is supposed to

know only generally as to who were in charge of the affairs of the company or firm, as the case may be and he relied on mainly the following recitals thereunder : (SCC p. 716, para 58)

“58. ... 58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm, and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm.”

10. We are of the considered view that the respondent has misread the said decision. Under the sub-caption “*Specific averments in the complaint*”, in para 51 of *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]* and paras 34.1 and 34.4 of *Gunmala Sales case [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]* as also in para 52 of *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]*, it was held in the decision in *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]* thus : (SCC pp. 714-715, paras 51-52)

“51. In *Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103; (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]*, this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarised its conclusion as under : (SCC pp. 126-27, para 34)

‘34. ... 34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act, the basic averment is made that the Director was in charge of and responsible for the conduct of

the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

34.2.-34.3. * * *

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard, and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini-trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.'

52. The principles of law and the dictum as laid in *Gunmala Sales (P) Ltd. v. Anu Mehta*, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580], in our opinion, still holds the field and reflects the correct position of law.

11. In the light of the afore-extracted recitals from the decision in *Gunmala Sales (P) Ltd. v. Anu Mehta* [*Gunmala Sales (P) Ltd. v. Anu Mehta*, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580], quoted with an agreement in *S.P. Mani case* [*S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203] and in view of sub-section (1) of Section 141 of the NI Act, it cannot be said that in a complaint filed under Section 138 read with Section 141 of the NI Act to constitute basic averment it is not required to aver that the accused concerned is a person who was in charge of and responsible for the conduct of the

business of the company at the relevant time when the offence was committed. In para 53 of *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]* it was held thus : (SCC p. 715)

“53. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent.”

It is thereafter that in the decision in *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]* in para 58.1 it was held that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable.

12. Bearing in mind the afore-extracted recitals from the decisions in *Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]* and *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]*, we have carefully gone through the complaint filed by the respondent. It is not averred anywhere in the complaint that the appellant was in charge of the conduct of the business of the company at the relevant time when the offence was committed. What is stated in the complaint is only that Accused 2 to 6 being the partners, are responsible for the day-to-day conduct and business of the company. It is also relevant to note that an overall reading of the complaint would not disclose any clear and specific role of the appellant.

20. This position was reiterated in *K.S. Mehta v. Morgan Securities & Credits (P) Ltd., 2025 SCC OnLine SC 492*, wherein it was observed:

“16. This Court has consistently held that non-executive and independent director(s) cannot be held liable under

Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.

16.1. This Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 observed:

“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore not sufficient to make a bald, cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with a strict interpretation of penal statutes, especially where such statutes create vicarious liability.

22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear, and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.

39. From the above discussion, the following principles emerge: (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability,

there is no presumption that every Director knows about the transaction. (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company. (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with. (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred. (v) If the accused is a Managing Director or a Joint Managing Director, then it is not necessary to make a specific averment in the complaint and by virtue of their position, they are liable to be proceeded with. (vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company, then also it is not necessary to make a specific averment in the complaint. (vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

16.2. In *N.K. Wahi v. Shekhar Singh*, (2007) 9 SCC 481, this Court in *Para 8* observed:

“To launch a prosecution against the alleged Directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be a clear and unambiguous allegation as to how the Directors are in charge and responsible for the conduct of the business of the company. The description should be

clear. It is true that precise words from the provisions of the Act need not be reproduced, and the court can always come to a conclusion in the facts of each case. But still, in the absence of any averment or specific evidence, the net result would be that the complaint would not be entertainable.”

16.3. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89, this Court laid down that mere designation as a director is not sufficient; a specific role and responsibility must be established in the complaint.

16.4. In *Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1, this Court while taking into consideration that a non-executive director plays a governance role, they are not involved in the daily operations or financial management of the company, held that to attract liability under Section 141 of the NI Act, the accused must have been actively in charge of the company's business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.

16.5. In *Ashok Shewakramani v. State of Andhra Pradesh*, (2023) 8 SCC 473, this Court held:

“8. After having considered the submissions, we are of the view that there is non-compliance on the part of the second Respondent with the requirements of Sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the Appellants who have been alleged to be the Directors of the Accused No. 1 company. We are not dealing with the cases of a Managing Director or a whole-time Director. The Appellants have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the Appellants.”

16.6. In *Hitesh Verma v. Health Care at Home India Pvt. Ltd.*, Crl. Appeal No. 462 of 2025, this Court held:

“4. As the appellant is not a signatory to the cheque, he is not liable under Section 138 of the 1881 Act. “As it is only the signatory to the cheque who is liable under Section 138 unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable....”

5. There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible for the company for the conduct of the business are two different aspects. The requirement of law is that both the ingredients of Sub-Section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of the commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-Section (1) of Section 141 of the 1881 Act.”

21. Similar are the judgments in *Ashok Kumar Tyagi*(supra), *Pratap Chand*(supra), *D.K. Javer*(supra), *Adarsh Marwah*(supra), *R.A. Chandawarkar*(supra), *Pannalal Sunderlal Choksi*(supra), *Aravind Babu*(supra), *Umesh Sharma*(supra), *Deepak Kumar*(supra), *N. Dandapani*(supra), *Rachna Kapoor*(supra), *Murari Lal Arora*(supra), *Anil Mediratta*(supra), and *M/S Symbiosis Pharmaceuticals Pvt. Ltd*(supra).

22. Thus, the complainant needs to aver in the complaint that the person sought to be vicariously liable is not only in charge but also responsible to the Company for its affairs. In the present case, the complainant asserted in para 12 of the complaint:

“That, after completing all the investigation and correspondence under the Act, the complainant has found that accused Nos. 1 to 3, being the manufacturing firm which have manufactured the drug in question which have been declared as not of standard quality, hence are liable for punishment for the offences committed under the Act.”

23. Thus, the averments are silent regarding the accused Nos. 2 and 3 being in charge of accused No.1 and also responsible for its affairs. These averments do not satisfy the requirement laid down by the Hon’ble Supreme Court in the above-cited judgment.

24. The judgment of the High Court of Karnataka in *M/S DM Pharma* (supra) shows that a specific averment was made that accused No.2 was the In-charge of the Firm. Accused no. 3 and 4 were the employees of the Firm. Hence, the cited judgment does not apply to the present case.

25. Therefore, the proceedings against petitioners No. 2 and 3 are not maintainable and are liable to be quashed.

26. Petitioner No. 1 is the Firm which had manufactured the drugs and it is primarily liable for the manufacturing of the substandard drugs. Therefore, the proceedings cannot be quashed against it.

28. It was submitted that the sample was not stored as per the instructions mentioned on the label of the drug. This is a question of fact and cannot be decided in the proceedings under Section 482 of Cr. P.C. It will be open for petitioner No. 1 to raise this question before the learned Trial Court during the Trial.

29. It was further submitted that the report of the analyst is not as per the requirement of Rules 57 and 46 of the Drugs and Cosmetics Rules. This submission is also not acceptable. Rule 46 deals with the procedure to be adopted after the receipt of the sample. Rule 57 provides for the procedure for the dispatch of samples to the Government analyst. These rules do not contain any requirement that the full protocols of the test are to be mentioned in the report of analysis. Whether the analysis was carried out as per the protocol or not is a question of fact, which can be determined after examining the evidence. Therefore, this submission will also not help the petitioners.

30. It was submitted that there was a delay in sending the sample to the laboratory and its analysis. However, nothing was brought to the notice of this Court to show that a mandatory time frame has been prescribed for the sending and analysis of the sample and this submission will not help the petitioners.

31. Reliance was also placed upon the judgments of *Aneeta Hada* (supra), and *Ashish Mittal* (supra); however, these judgments deal with a situation where the Company is not arrayed as an accused and do not apply to the present case.

32. Reference was also made to *Randolph Alves*(supra), *Ashish Damija*(supra), *Arun Kumar Gupta*(supra), *Rishi Sharma*(supra)and *Lalankumar Singh*(supra). However, complete details of these cases were not given and their printouts were not supplied. They could not be found despite best efforts and nothing can be said about them.

33. It was held in *Desh Raj* (supra) that the recording of the statement of the complainant and the witnesses on oath is necessary before taking cognisance. However, in the present case, the complaint was made by the public servant in the discharge of his official duties and is saved by the proviso to Section 200 of

CrPC. *Virender Kansal*(supra) dealt with the wrong labelling which is not relevant.

34. No other point was urged.

35. In view of the above, the present petition is partly allowed and the complaint pending before the learned Trial Court against petitioners Nos. 2 and 3 is ordered to be quashed, whereas complaint will continue qua petitioner No.1.

36. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing, whatsoever, on the merits of the case.

37. The present petition stands disposed of, and so are the miscellaneous applications, if any.

(Rakesh Kainthla)
Judge

15th May, 2025.
(ravinder)