(1997) 09 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 20022-M of 1997

Joginder Pal Vohra and Others — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Drugs and Cosmetics Act, 1940 — Section 13, 16, 17, 17A, 17B

Citation : (1998) CriLJ 2592 : (1997) 4 RCR(Criminal) 584

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Shri Joginder Pal and five others, fully described in the head note of this petition, have filed the present petition u/s 482, Cr.P.C. against the repsondent, i.e., the State of Haryana through District Drugs Inspector, Kurukshetra, for the quashment of the complaint (Annexure P 1) filed by the respondent against the petitioners under the Drugs and Cosmetics Act, 1940, for the violation of Sections 16 17C 17-A(f) 17-B(d) and 18(a)(i) of the said Act and consequential proceedings.

2. The State of Haryana through the District Drugs Inspector, Kurukshetra, filed a complaint under the Drugs and Cosmetics Act, 1940 (for short ''the Act'') read with the rules made thereunder against Shri Joginder Pal Vohra, Smt. Indu Prabha, Shri Avinash Chander, Shri Ravinder Vij, being partners of M/s. Navax Pharmaceuticals, 30 Industrial Area Phase-I, Panchkula ; Shri O. P. Verma, manufacturing Chemist of M/s. Navax Pharmaceuticals and the firm M/s. Navax Pharmaceuticals, in the Court of Chief Judicial Magistrate, Kurukshetra, on the allegations that petitioner No. 6 is a firm dealing in manufacturing for sale of drugs at 30 Industrial Area, Phase-I, Panchkula, having Drug Manufacturing

Licence on form 28 bearing No. 285-B(H). Petitioners Nos. 1 to 4 are all its partners and petitioner No. 5 is its manufacturing chemist. The record of constitution of the firm and original licences is with the office of State Drugs Controller, Haryana, Chandigarh. On 30-3-1993 Shri Ashok Bhambha, District Drugs Inspector, Kurukshetra, inspected the shop of M/s. Janta Medical Hall, Railway Road, Kurukshetra, where Shri Ashwinder Singh, Partner of the firm, was present. During the inspection following drugs were purchased for analysis and testing by Mr. Ashok Bhambha, District Drugs Inspector, Kurukshetra :-

(a) 12 x 5 ml. Gentamicine Eye/Ear Drops B.P. BATCH No. G. 20, expiry date June 1994. Manufactured by M/s. Navax Pharmaceuticals, 30 Industrial Area, Phase No. 1, Panchkula.

(b) 5 x 30 ml. Analgin Injection NFIB. No. P 978, expiry date August 1994; manufactured by M/s. Quality Pharmaceuticals Pvt. Ltd., Tung Bula Majitha Road, Amritsar.

The above samples of drugs were purchased for analysis and test vide credit memo No. 1214 dated 30-3-1993 for Rs. 58/- only and the payment of the same was made vide Bank Draft No. B.N./B-80/4-7800 dated 18-10-1993. Four portions of each of the samples were prepared as per details on Form 17, in the presence of Shri Ashvinder Singh, partner of M/s Janta Medical Hall, Kurukshetra. After completing the formalities on 31 st March, 1993 one sealed portion of each of the samples mentioned in the complaint, was sent to the Government Analyst, Haryana, Chandigarh, for test and analysis with separate form No. 18 for each of the samples by registered parcel. On 15th June, 1993 the test report was received by the Drugs Inspector, declaring that sample No. AKB 7/93 was not of standard quality because Assay of Gentamicine was found to be less than the prescribed I.P. limits i.e., 51%. On 17th June, 1993 an original copy of the test report No. 2706 dated 14th June, 1993 was sent to M/s. Janta Medical Hall, Railway Road, Kurukshetra, by Shri Ashok Bhambha along with notice No. D.I. 93/373 dated 17th June, 1993, On 2nd July, 1993 the reply of the said firm was received along with photostat copy of Bill No. 6187 dated 30-3-1993 of M/s. Shiva Medical Hall, Ambala Cantt. On 7th September, 1993 a notice u/s 81A of the Act was sent to M/s. Shiva Medical Hall, Ambala Cantt. along with original test report No. 2706 dated 14th June, 1993 and copy of Bill No. 6187 dated 30-3-1993. A reminder was also issued to the firm on 1st October. 1993. On 8th October, 1993 the firm M/s. Shiva Medical Hall, Ambala Cantt. was visited for inspection by the complainant along with Shri Satpal Verma and the statement of Shri Parshottam Lal Goyal, partner of the firm, was recorded. On 7th October, 1993 reply was received from M/s. Shiva Medical Hall along with the attested copy of bill No. 2175 dated 15-3-1993 of M/s. Navax Pharmaceuticals, 30 Industrial Area, Phase I, Panchkula (petitioner No. 6), which was the manufacturer of the drug. After taking some record from the possession of the dealer and the distributor, notice under Sections 18 and 18-B of the Act was sent the petitioner No. 6 along with copy of bill No. 6187 dated 30-3-1993 and reply

was received from petitioner No. 6 through partner Shri Ravinder Vij (petitioner No. 4) vide letter dated 1 -4-1993 u/s 25 of the Act and showed its intention to get the sample analysed from Central Drugs Laboratory, Calcutta. The date of expiry of the sample was June, 1994. The State Drugs Controller, Haryana, vide letter dated 4th March, 1994 directed the complainant to launch the complaint in the Court of Law against the petitioners after obtaining the necessary documents pertaining to the sample. It is the case of the complainant that Gentamicine Eye/ Ear-drop B. P. is a drug within the meaning of Section 3(b) of the Act. The sample of the drug was not of standard quality u/s 16 of the Act and it was misbranded and adulterated under Sections 17 17A and 17-B of the said Act. It is also alleged by the complainant that the petitioners had manufactured for sale and sold a drug which was not of standard quality and their act is punishable u/s 27 of the Act. In para No.21 of the complaint it has been alleged that petitioner No. 4 Shri Ravinder Vij on behalf of the firm and on behalf of other partners and manufacturing chemist has challenged the test report of Govt. Analyst, Haryana, Chandigarh and wanted to adduce evidence in contravention of the said report. Finally it was prayed that necessary action be taken against the petitioners. This became the basis for the petitioners to challenge the complaint on the following grounds :-

(i) That the proper parties have not been arrayed as accused. According to the petitioners the sample was not taken from the possession of the petitioners. It was taken from the possession of M/s. Janta Medical Hall (Dealer) and it is not mentioned in the entire complaint that the sample was contained in a sealed packing. It also does not mention that the sample was stored in a cool place though the petitioner-manufacturing company specifically directed on the outer carton that the drug has to be stored in a cool place precisely for the reason that the drug has its own temperature which gets chemical reaction which changes its chemical properties due to the variation of the temperature. Nowhere it has been mentioned in the complaint that the drug was found untampered by the distributor or by the dealer. In the absence of a categoric averment in the complaint about the above facts, presumption is that the sample was opened and tampered with. The complainant had not arrayed the dealer and the distributor as an accused. In these circumstances the petitioners could not be prosecuted.

(ii) the second ground for attack of the complaint is that the drug in question was manufactured as per British Pharmacopiea whereas in para No. 6 of the complaint the allegation is that the drug was sub-standard because assay (strength) of the drug was found less than the prescribed India Pharmacopiea limits. Since the pharmacopiea limits of I.P. and B. P. are different and the petitioners are manufacturing on B. P. method, therefore, the prosecution cannot be launched.

(iii) It has also been pleaded by way of third ground that as per the report of the Central Drugs Laboratory the assay was required to be 3000 units (0.3% W/V), i.e., weight/volume, is found to be 100% in the drug, namely, gentamicine which

belies the report of the State Laboratory, which had opined that the assay was 0.15% W/V.

(iv) Fourthly it has been pleaded by the petitioners that the report of the State Laboratory reveals very interesting results. According to this report, the drug is free from any living germs or microorganisms. If that being so, the second allegation that the sample contained suspended matter comprising of white-particles and that too seen on a microscopical test by the Central Laboratory is no reason for launching the prosecution.

(v) The next ground of attack is that the complaint has been filed in a mechanical manner by invoking the provisions of Sections 16 17 and 18 of the Act. Moreover the complaint deserves to be quashed on the ground that petitioners Nos. 1 to 3 are not responsible for the business of the firm though they have been arrayed as accused. In para No. 21 of the complaint it has been pointed out by the complainant that the business was being looked after the petitioner No. 4 only. It has also been pleaded that the maximum punishment for the violation of the various provisions of the Act is three years. 3 years have already elapsed since April, 1994 when the complaint was filed and the trial has not started. Reliance has been placed on a famous judgment reported as Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, .

3. With the above main averments, the petitioners have prayed for the quashment of the complaint and the subsequent proceedings.

4. This petition I would like to dispose at the motion stage itself after hearing the learned Counsel for the petitioner Shri R. K. Jain, Advocate, who made an effort in order to convince me that it was a fit case for the issuance of notice to the respondents.

5. This Court after hearing the learned Counsel for the petitioner is of the confirmed view that through this petition the attempt on the part of the petitioners was only to drag the proceedings for their own vested interests and in order to scuttle the process of law. This petition, in my opinion, was nothing but an abuse of the process of law itself and such an effort on the part of the petitioners should not be allowed to be encouraged. 1 will deal with the points which have been raised by the learned Counsel for the petitioners, but at this stage I would like to quote with approval the provisions of Section 482, Cr.P.C, the assistance of which has been sought by the petitioners in the present petition. Section 482, Cr.P.C, lays down that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The powers under this section would be exercised by the High Court only when the complaint prima facie does not disclose any offence or when this Court is of the opinion that perverse, vexatious and oppressive attempt has been made by the

State in order to prosecute the petitioners. It is also a settled law that this Court cannot embark upon any inquiry whether the allegations in the complaint are likely to be established by evidence or not. We all know that the powers u/s 482, Cr.P.C, are supposed to be used sparingly and in exceptional cases and some guidelines have been given by the Hon''ble Supreme Court in the famous case reported as State of Haryana and others Vs. Ch. Bhajan Lal and others, and the same are reproduced as under:-

In following categories of case, the High Court may in exercise of powers under Article 226 or u/s 482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases :-

(1) Where the allegations made in the First Information Report of 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 F.I.R. do not disclose a cognizable office justifying an investigation by police officers u/s 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 F.I.R. do not constitute a cognizable! offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without art order of a Magistrate as contemplated u/s 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/of 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 private and personal grudge.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the

categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

Further it has been repeatedly held by the Hon''ble Supreme Court that if without making any additions or omissions in the complaint lodged by the complainant, if the High Court finds that the attempt on the part of the State or the complainant is to harass Or to humiliate a citizen, the High Court would come forward to rescue the rights of such a person. If on the contrary the High Court feels that an attempt on the part of the litigant is to drag and delay the proceedings and that he has alternative remedy to show Ids innocence or he wants to throttle the litigation at the very beginning, such an act cannot be encouiaged.

6. I have already reproduced the contents of the. complaint as well as the major pleas which have been put forth by the petitioners in the petition itself. The gist of the complaint is that 12.5 ml. gentamicine eye/ear drops were purchased by the District Drugs Inspector, Kurukshetra from the premises of M/s Janta Medical Hall and this drug was manufactured by petitioner No. 6. Petitioners Nos. I to 4 are its partners while petitioner No. 5 is the drugs chemist of the firm. This sample was sent to the State Laboratory, which gave the report Annexure P2. The formalities under the Act were completed and ultimately it was found that the drugs were manufactured by petitioner No. 6 and then distributed to its distributor at Ambala Cantt., who further sold the same to the dealer M/s. Janta Medical Hall. The report of the Government Analyst, Haryana, is Annexure P2, who gave the following report :-

Certificate of test or analysis by Government Analyst u/s 25(1) of Drugs and Cosmetics Act, 1940.

1. Name of Inspector : Sh. Ashok Bhamba/ from whom received Kurukshetra.

2. Serial No. and date DI-93/86 dt. 31-3-93 of Inspector''s Memo.

3. Number of sample AKB-7/3.

4. Date of Receipt : 2-4-93.

5. Name of drugs Gentamycin eye/ear purporting to be drops B. P. contained in the sample.

(a) Batch No. GN 20

(b) Manufactured by Navax Pharmaceuticals

30 Ind. Area, Phase-I, Panchkula.

Intact identical with the specimen seal.

6. Condition of seals on the package impression sent by D.I. separately.

7. Result of test of analysis with protocols of test or analysis applied : BP 88.

Description : A colourless solution in

colourless glass bottle provided with plastic dropper. The sample contains suspended matter comprising of white particles and fibres.

Net sample/bottle 5.0 ml. Dec/limit

Identification Positive 5.0 ml.

Gentamicine base O. 154% W/V 0.3% WV/Min Sterility : Passes the test. 27% W/v

In the opinion of the undersigned the sample referred to above is not of standard quality as defined in the Drugs and Cosmetics Act, 1940 and Rules thereunder for the reasons given below :-

(1) Assay of Gentamicine are found to be less than the prescribed IP Limits.

(2) The sample contained suspended matter comprising of white particles and fibres.

160 15-6-1993

Sd/- (Kamlesh Jain) Government Analyst, Haryana. Chandigarh.

Despatch No. 2706 dated 14-6-93 c/o Govt. Analyst, Haryana, Sector 11 -D, Chandigarh.

Intimation was duly sent to the dealer as well as to the manufacturer. The partner, Le.,petitioner No. 4 challenged the report Annexure P2 and the sample was again sent to the Central Drugs Laboratory, which gave the following report :-

Gentamicin eye/ear drugs B. P. Batch No. GN-20 (manufactured by M/s. Navax Pharmaceuticals, 30-Industrial Area Phase-I, Panchkula.

Method B. P.

Description Colourless liquid with suspended matter in 5 ml. sealed glass vial.

Particle size : Does not comply with B. P.

Microscopical: Under microscope the sample shows presence of matter and fibre.

Identification: Yields positive tests for Gentamicin sulphate.

Assay: Found/ml. Claim/ml.

Gentamicine : 3000 units 3000 units (100% of claim)

Reason for declaring the sample as not of standard quality :

Remarks : The sample declared sub-standard for the reason stated under ''Description'' and ''Microscopical tests'' and particles size.

N.B. The sample was tested before date of expiry.

No. 241 /94-P&P/CC-8/1931

Dated : the 30th June, 1994

Sd/- (Dr. M.K. Majumdar) Director, Central Drugs Laboratory.

Thereafter the complaint was filed against the firm, its four partners and the chemist. Before I further deal with the matter, I would like to quote the relevant provisions of law. Section 2(b) of the Drugs and Cosmetics Act, 1940 defines ''drug'' as follows :-

drug" includes-

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals; and

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the official gazette.

The standard of quality of the drugs has been mentioned in Section 16 of the Act, which means in relation to a drug, that the drug complies with the standard set out in the second schedule. When the drug will be treated as misbranded has been defined in Section 17 and adulterated drug has been defined in Section 17-B of the Act. For the sake of convenience I would again like to quote the provisions of Sections 17 and 17-B of the Act, which are as follows :-

17. Misbranded drugs.- For the purposes of this Chapter a drug shall be deemed to be misbranded-

(a) if it is an imitation of, or substitute for, or. resembles in a manner likely to deceive, another drug, or bears, upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity, with such other drug, or

(b) if it purports to be the product of a place or country of which it is not truly a product; or

(c) if it is sold, or offered or exposed for sale, under a name which belongs to another drug; or

(d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or

(e) if it is not labelled in the prescribed manner; or

(f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is

false or misleading in any particular; or

(g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug which individual or company is fictitious or does not exist.

17B. Adulterated drugs.- For the purposes of this Chapter a drug shall be deemed to be adulterated-

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if any substance has been-

(i) mixed or packed therewith so as to reduce its quality or strength; or

(ii) substituted wholly or in part therefore.

Explanation.- For the purpose of Clause (a) a drug shall not be deemed to consist, in whole or in part, of any decomposed substance only by reason of the fact that such decomposed substance is the result of any natural decomposition of the drug within the period, if any, specified on the label of the drug within which the drug is to be used :

Provided that such decomposition is not due to any negligence on the part of the manufacturer of the drug or the dealer thereof and that it does not render the drug injurious to health.

The contravention of the provisions of Sections 16 17 17-A and 17-B of the Act has been made punishable u/s 27 thereof. Then the relevant provision is Section 25, which deals with the reports of the Government Analyst. Again for the sake of convenience, I would like to requote this provision for ready reference :-

25. Reports of Government Analysts :-

(1) The Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis under Sub-section (4) of Section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed u/s 18A and

shall retain the third copy for use in any prosecution in respect of the sample.

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

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

Yet there is another provision which cannot be lost sight of in order to deal with the submission made by the learned Counsel appearing on behalf of the petitioner-Company and i.e., Section 34 of the Act, which deals with the offences committed by the Company. By virtue of the explanation given u/s 34 of the Act, "company" means a body corporate and includes a firm or other association of individuals.

7. If the provisions of Section 25 of the Act are read in depth, it will become apparent that the report of the Central Drugs Laboratory would prevail upon the report of the State Government Laboratory. I have already quoted both he reports above and the finality of the matter has been obtained with the report filed by the Central Drugs Laboratory when it had declared that the sample was substandard for the reason as stated under "description" and ''microscopical tests'' and particles size. It has also been certified by the Director, Central Drugs Laboratory that the sample was tested before the expiry date. As per ''description'', it was a colourless liquid with suspended matter. The particle size did not comply with B. P. The microscopical examination showed that there was presence of matter and fibre. If these findings are read in the light of the provisions of Sections 16 17 and 17B of the Act, there is no manner of doubt prima facie that the complaint discloses a cause of action, which must be tried by the Magistrate himself. At this stage it cannot be said whether the allegations would end in conviction or acquittal. But at this stage I am very sure that the filing of the complaint against the petitioners was not an abuse of the process of law. Under these circumstances, the provisions of Section 482, Cr.P.C, cannot be invoked.

8. The first ground of attack in the petition was that the sample was not seized from the petitioners. There is no doubt about this proposition. The sample was taken into possession from a dealer. The dealer furnished proper evidence that he purchased the drugs from a distributor, who also furnished proper documents to the department and ultimately it came to the light that the drugs were manufacured by petitioner No. 6. Notice was sent to the manufacturer, which decided to challenge the report of the State Laboratory. The report of the Central Drugs Laboratory was taken and still the sample was declared misbranded for the reasons stated therein. If the contents of the sample have been found to be misbranded, such as not conforming to the standard quality, the manufacturing company can be prosecuted under the various heads, which has been rightly done in the present case. When the complainant is satisfied that the offence has been committed by the manufacturing company, in these circumstances, the dealer and the distributor are not supposed to be arrayed as an accused. Moreover if the petitioners have any grouse against the complainant that the latter had not impleaded the dealer or the distributor, they can make a submission before the Magistrate, who has the authority to implead any one, who in the opinion of the Court had, committed some offence. But at this stage it cannot be said that the complaint is not legally maintainable visa-vis the petitioners because according to Section 34 of the Act, every person, who, at the time the offence was committed, was in charge of and was responsible to the firm for the conduct of the business of the firm, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If any person wants to prove that he is not covered under the provisions of Section 34 of the Act, he (they) can show to the learned Magistrate by proving that the offence has been committed without their knowledge or such person(s) had exercised all due diligence to prevent the commission of such offence. At this juncture it is difficult for this Court to give a finding in favour of the petitioners. It is well settled that the questions of fact are not supposed to be adjudicated in the proceedings u/s 482, Cr.P.C.

9. It was then submitted by Shri R. K. Jain, learned Counsel for the petitioners, that the prosecution has been done in a mechanical manner. It has not been able to swallow the argument of the learned Counsel for the petitioners. If an act falls within the mischief of different provisions of the Act, the offender can be prosecuted for the various offences for one act. Moreover it has to be seen by the trial Court itself at the time of the framing of the charge as to what charge is to be framed against the petitioners. At this juncture it cannot be said that there was a non-application of mind on the part of the Government when it granted the sanction against the petitioners.

10. It was then submitted by Shri R. K. Jain that in view of the conflicting reports of the State Laboratory and the Central Laboratory, a doubt has arisen with regard to the contents of the sample and the alleged violation, if any, had been noticed in a mostly sceptic examination. The conflicting reports make the case of the prosecution doubtful, for which the benefit should go to the petitioners at this

stage without further inquiry. I do not submit to the argument raised by the learned counsel for the petitioners in view of the specific provisions of Section 25 of the Act because the report of the Central Drugs Laboratory bears the ring of conclusive evidence of the facts stated therein. At the time of the framing of the charge, the Magistrate will now only see the report of the Central Drugs Laboratory and then would decide what violation, if any, had been committed by the petitioners. The Legislature has introduced a double test with a purpose and has attached importance to the results of the Central Drugs Laboratory. Once the report of the Central Drugs Laboratory is on the record, it will supersede the report of the State Drugs Laboratory, irrespective of the findings contained therein.

11. It was finally submitted by the learned Counsel for the petitioners that the sample was taken in the year 1993, the complaint was filed in the year 1994 and three years have elapsed since the filing of the complaint. Therefore, in view of the judgment of the Hon''ble Supreme Court reported as Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, the complaint was nothing but an abuse of the process of law. The submission made by the learned Counsel for the petitioners is misleading. If the guidelines of the Hon''ble Supreme Court are read in depth, it would show that these guidelines would apply where the right of speedy justice had been violated after the start of the trial. In the present case, the trial had not even commenced. It would commence with the framing of the charge against the petitioners.

12. It was also the major submission of the learned Counsel for the petitioners that all other partners, i.e. petitioners Nos. 1 to 3 cannot be prosecuted as there was no averment that they were in charge of the partnership firm. Learned Counsel for the petitioners is presuming too much. The question which has to be put by way of leading evidence, cannot be answered at this stage. Learned Counsel for the petitioners relied upon Sham Sunder and Others Vs. State of Haryana, a judgments the Hon''ble Supreme Court. The ratio of this judgment is distinguishable on facts. As stated in para No. 11 of the judgment, the Hon''ble Judges of the Supreme Court had scanned through the evidence led by the prosecution. The said para is quoted as follows (at p. 2203, para)10 of Cri LJ) for ready reference :-

11. We have perused the evidence of the prosecution. Santlal Inspector, Pood and Civil Supplies (P.W. 1) has deposed that the accused were partners of the firm. He has staled that the statement Ex.P8 regarding purchase of paddy and supply of levy rice was signed by Lajpat Rai as partner on behalf of the firm. The rest of his statement related to (the short supply of levy rice and it does not indicate that other partners were also conducting the business during the relevant time. The statement of P.W. 3, who investigated the case,, does not indicate anything further. He has seized the relevant documents like stock register and recovery memo and arrested all the four accused. These documents do not indicate even remotely that all the partners were doing the business of

the firm. There is no other evidence on record on this aspect. With these lit bits, it is impossible to hold that when the offence was committed all the partners were conducting the business of the firm. However, Lajpat Rai accused No. 3 cannot escape the liability. The material on record indicates that he was conducting the business of the firm and in fact, he has signed the statement Ex.P8 on behalf of the firm. His conviction cannot therefore be disturbed. But the conviction of other partners is absolutely uncalled for. Here in the present case nothing has been proved by the petitioners as to who were the actual partners incharge of the affairs of the partnership firm. Reliance was also placed on Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, In my opinion this judgment rather goes against the petitioners, Hon''ble the Supreme Court has been pleased to hold that the proceedings against the accused at the initial stage can be quashed only if on the face of the complaint or the papers accompanying the same, the High Court comes to the conclusion that no offence is constituted in other words, the test is that taking the allegations in the complaint as they are, without adding or substracting anything, if no offence is made, out, then the High Court would be justified in exercising its jurisdiction u/s 482, Cr.P.C. It can be said that if on the face of it the complaint discloses a cause of action against the firm, its partners or the chemist, without adding or subtracting anything from the complaint, such a complaint cannot be scuttled at the initial stage. 1 myself rely on the observations of the Hon''ble Supreme Court as contained in the aforesaid judgment in its earlier portion. Learned counsel for the petitioners also relied upon an authority of the Hon''ble Supreme Court reported as Adarsh Marwah v. Nehar Ranjan Bhattacharya 1990 (2) RCR 112. This judgment again it distinguishable on the fact of it. The trial had already been concluded in the cited case. Evidence was recorded by the Magistrate. This fact is quite discernible in para No. 4 of the judgment. Here in the present case the petitioners are not allowing the prosecution to proceed. They want to gag the mouth at the very threshold by moving the petition before this Court u/s 482, Cr.P.C. Such attempt cannot be encouraged.

13. After summing up the submission made by the learned Counsel for the petitioners, this Court is of the opinion that the complaint discloses a triable offence against the petitioners; the questions of fact cannot be agitated in the proceedings u/s 482, Cr.P.C. and in the case in hand it is yet to be decided as to who are the actual persons responsible for the commission of the offence.

14. In the light of the above, I do not find any merit of this petition, which even does not call for issuance of notice to the respondent-State.

15. The petition is hereby dismissed in limine.

