IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 490 of 2026

Reserved on: 21.07.2026

Date of Decision: 03.08.2026.

Geeta Kandpal & others ...Petitioners

Versus

Union of India ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioners : Mr Divya Raj Singh, Advocate.

For Respondent : Mr Shashi Shirshoo, Central Government Counsel (CGC).

Rakesh Kainthla, Judge

The petitioners have filed the present petition for quashing of the order dated 15.09.2020 and the criminal complaint titled Union of India vs. M/s Fortschritt Healthcare Pvt. Ltd & others pending before learned Special Judge, Nalagarh, District Solan, H.P., for the commission of an offence punishable under Section 18 of the Drugs and Cosmetics Act (Drugs Act). (*The parties*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

shall hereinafter be referred to in the same manner as they were arrayed before the trial Court for convenience)

2. Briefly stated, the facts giving rise to the present petition are that the complainant- Union of India through Drugs Inspector- filed a complaint before the learned Additional Chief Judicial Magistrate-Nalagarh, District Solan, H.P. under Section 18(c) and Section 27(b) (ii) of the Drugs Act. It was asserted that Drugs Inspectors Abhinav Kapoor, Arun Prashar and Kamlesh Naik inspected M/s Fortschritt Healthcare Pvt. Ltd. on 18.04.2018 for the verification of the products Ulipristal Acetate 5 mg, Softgelatin capsules and Ulipristal Acetate 5 mg tablets, manufactured by M/s Fortschritt Healthcare Pvt. Ltd. They demanded the manufacturing license, the purchase quantity, bills of API Ulipristal Acetate and the number of batches manufactured. M/s Fortschritt Healthcare Pvt. Ltd. was the loanee licensee at M/s Avans Healthways, village Thana Baddi, Solan, H.P. The firm had purchased 9.0 kilograms of Ulipristal Acetate API from various vendors and had manufactured 7 batches of Ulipristal Acetate 5 mg Softgelatin capsules and 16 batches of Ulipristal Acetate 5 mg tablets. The firm could not produce any product without permission or Form 46 for manufacturing the drugs. The Drugs

Inspector directed the firm to produce the permission on or before 19.04.2018, up to 05.00 p.m. Subsequently, an intimation was received from the State Drugs Controller on 02.05.2018 that the product permission for several drugs, including Ulipristal Acetate 5mg tablet and Ulipristal Acetate Softgelatin Capsules 5 mg, issued to M/s Avans Healthways was cancelled. The notice was issued to M/s Fortschritt Healthcare Pvt. Ltd. for manufacturing the drugs without product permission in violation of Section 18 of the Drugs Act. The firm submitted a reply that product permissions were obtained by M/s Avans Healthways. They had acted in a bona fide manner and manufactured the drugs as per the orders placed by M/s Avans Healthways. The stock of the drugs was seized. A custody order was obtained. Permission was obtained for launching the prosecution and a complaint was filed before the Learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P. for taking action as per the law.

3. Being aggrieved by the filing of the complaint, the petitioners have approached this Court asserting that the summoning order was not passed against the petitioners. The petitioner no. 1 and petitioner no. 2 are not involved in the manufacturing of any drugs, and they are the shareholders.

Petitioner no. 3 is the Director of the firm, but is not involved in the manufacturing process. The petitioners' company is only to pay the license fee, and the formalities are to be completed by M/s Avans Healthways. The order of cognisance is bad; therefore, it was prayed that the present petition be allowed and the complaint and subsequent proceedings arising out of the complaint be quashed.

4. The petition is opposed by filing a reply making a preliminary submission regarding lack of maintainability. It was asserted that the people have a right to best healthcare facilities and the regulators have a duty to protect this right. The petitioners were manufacturing Ulipristal Acetate 5mg tablets without valid manufacturing permission. The non-involvement of the petitioners or bona fide reliance upon another unit are the disputed facts to be determined during the trial. The petitioners are the Directors and responsible persons, and the complaint cannot be quashed on the disputed facts. The Drug Act has been enacted to protect the rights of the people, and nobody can be allowed to violate its provisions. The extraordinary jurisdiction for quashing the complaint is to be exercised sparingly. The complaint disclosed the commission of a cognisable offence, and

this Court should not undertake an inquiry to determine the correctness or otherwise of the allegations. Ulipristal Acetate falls within the category of a new drug, and its manufacture requires prior approval from the Drug Controller General of India; however, no such approval was granted in the present case. The petitioners derived commercial benefit from the manufacture and sale of the drugs. M/s Fortschritt Healthcare Pvt. Ltd. had product permission only for Ulipristal Acetate 5mg, Softgelatin capsules and not for Ulipristal Acetate 5 mg tablets. The cognisance order mentions the name of Meva Lal instead of the present petitioners, which is a curable irregularity and does not affect the merits of the case. Therefore, it was prayed that the present petition be dismissed.

5. I have heard Mr Divya Raj Singh, learned counsel for the petitioners and Mr Shashi Shrishoo, learned standing Central Government Counsel, for the respondent.

6. Mr Divya Raj Singh, learned counsel for the petitioner, submitted that the cognisance order dated 15.09.2020 is bad and does not mention that cognisance was being taken against the petitioners. There is no specific averment in the complaint that

the petitioners are in charge and responsible to the company for its affairs. Therefore, the proceedings against the petitioners are bad. He prayed that the present petition be allowed and the complaint and consequential proceedings arising out of it be quashed. He relied upon the judgment of this Court in M***/s VADSP Pharmaceuticals & others vs. Union of India 2025:HHC14089*** in support of his submission.

7. Mr Shashi Shirshoo, learned Central Government Counsel (CGC) for the respondent submitted that the petitioners have approached the Court after the lapse of six years. The jurisdiction under Section 482 of the Code of Criminal Procedure (Cr.P.C) or 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS) is discretionary and extraordinary. This jurisdiction should not be exercised after an inordinate delay. The error in the summoning order is a curable irregularity and does not affect the merits of the case. The complainant had specifically mentioned in the complaint that the petitioners are in charge and responsible for the firm for its business. Truthfulness or otherwise of the allegations is not to be seen at this stage. Therefore, he prayed that the present petition be dismissed. He relied upon ***Pradeep S.***

Wodeyar vs The State of Karnataka, Criminal Appeal No. 1288 of 2021, dated 29.11.2021, in support of his submission.

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

9. 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 summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:
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>> "**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 nos. (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."

10. 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.
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> **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***)

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

12. In the present case, the summoning order was passed on 15.09.2020, and the petition was filed on 13.05.2026, after the lapse of five and a half years from the date of the summoning order. It was laid down by the Delhi High Court in ***Sanyam Bhushan v. State (NCT of Delhi), 2024 SCC OnLine Del 4545,*** that a person cannot approach the Court for quashing the criminal proceedings after an inordinate delay. It was observed:

> "**43.** At the outset, I find merit in the submission made by the learned counsel for the Complainant that the present set of petitions is liable to be dismissed on the ground of delay and laches, as also for the failure of the petitioners to

avail of their alternate efficacious remedy in the form of Revision Petitions under Section 397 of the Cr. P.C.

44. It need not be emphasised that powers under Section 482 of the Cr. PCs are discretionary in nature, and though there may not be a total ban on the exercise of such power where the situation so warrants, at the same time, there are limitations of self-restraint that are recognised and followed by the Courts in exercising this jurisdiction. One such limitation is where the petitioner had an alternate efficacious remedy; however, they did not avail of the same within the period of limitation and thereafter filed the petition under Section 482 of the Cr. P.C. to overcome the objection of limitation. Similarly, the Courts have refused to entertain a petition under Section 482 of the Cr. P.C., where it is filed with unexplained delay and laches, and in the meantime, the trial has proceeded.

45. In ***Prabhu Chawla*** (Supra), the Supreme Court quoted with approval its earlier judgment in ***Madhu Limaye*** (Supra), wherein it had been held that though the availability of an alternate efficacious remedy of a Revision under Section 397 of the Cr. P.C. does not affect the amplitude of the inherent power under Section 482 of the Cr. P.C. that the High Court possesses; at the same time, easy resort to inherent power is not to be allowed except under compelling circumstances; it should not invade areas set apart for specific power under the Cr. P.C. itself. It was held that while it is true that Section 482 of the Cr. P.C. is pervasive, it should not subvert legal interdicts written into the same Code, such as, for instance, in Section 397(2) of the Cr. P.C.

46. This Court in ***Vipin Kumar Gupta*** (Supra), placing reliance on its earlier judgment in ***Rajesh Chetwal v. State Neutral Citation no. 2011: DHC: 4313***, held that though there is no period of limitation prescribed for filing of a petition under Section 482 of the Cr. P.C., the principles of inordinate delay and laches shall be applicable, and where such petitions are filed with an inordinate delay and laches, this itself shall be a ground to dismiss the same."

13. Therefore, it is impermissible to exercise the inherent jurisdiction when the party has approached the Court after an inordinate delay.

14. 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:
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> 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.

15 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:
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> > "**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 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."
> >
> > 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 for 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 who 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.

16. 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 the 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)

17. 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 adverting 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]***.

18. 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 mainly on 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 [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.

19. 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 in charge 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 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."

20. 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 this in paras 17 and 18 of the complaint as under:

> 17. That after completing all the investigation and correspondence under the Act, complainant has found that accused no. 1 and 9 are the firms whose have manufactured the drug product in question, hence, being a juristic person under law is liable for Punishment for the offences committed under the Act.
>
> 18. That further, it has been found that accused no. 2 to 8 and 10 are Directors and responsible persons of the accused No. 1 and 9, respectively, firm who have manufactured the drug product in question which was manufactured without license liable to be punished under Section 18(c) read with Section 27 (d) of Drugs and Cosmetics Act, 1940 and Rules therein. Copy of Constitution details of accused no. 1 and 9 are annexed herewith as Annexure 'N' and Annexure 'O'.

21. It is apparent from these recitals that the complainant has specifically asserted that accused nos. 2 to 8 and 10 are the Directors and responsible persons of accused no. 1 and 9, who had manufactured the drug in question without license and are liable to be punished. Thus, the averments in the complaint substantially fulfil the requirement of Section 34 of the Drugs and

Cosmetics Act, and the complaint cannot be quashed in the present case.

22. It was submitted that the petitioners are not the Directors but the shareholders. This submission will not help the petitioners. It was laid down by the Hon'ble Supreme Court in ***Punit Beriwala v. State (NCT of Delhi), 2025 SCC OnLine SC 983,*** that the Court exercising the inherent jurisdiction has to treat the allegations in the FIR as correct. It was observed: -

> "29. It is settled law that the power of quashing a complaint/FIR should be exercised sparingly with circumspection, and while exercising this power, the Court must believe the averments and allegations in the complaint to be true and correct. It has been repeatedly held that, save in exceptional cases where non-interference would result in a miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences. Extraordinary and inherent powers of the Court should not be used routinely according to its whims or caprice."

23. It was laid down by the Hon'ble Supreme Court in ***Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643,*** that the Court cannot conduct a mini-trial to determine the genuineness of the allegations. It was observed: -

> "**13.** As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of

the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at their face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint, even if taken at their face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of ***Bhajan Lal (supra)***.

14. We may gainfully refer to the observations of this Court in the case of ***Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home (2019) 11 SCC 706: 2018 INSC 1060***:

> "**14.** First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of the FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in ***Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]***. In ***Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23],*** this Court while deciding the question of whether the High Court could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed: (SCC p. 63, para 16)
>
>> "*16.* Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [***Joseph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365***] could have still examined whether the offences alleged to have been committed by the appellant

were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."

24. It was laid down by the Hon'ble Supreme Court in ***Dharambeer Kumar Singh v. State of Jharkhand, (2025) 1 SCC 392: 2024 SCC OnLine SC 1894*** that the Court cannot conduct a mini-trial while exercising jurisdiction under Section 482 of CrPC. It was observed at page 397:

> "**17.** This Court, in a series of judgments, has held that while exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini-trial. A profitable reference can be made to the judgment in ***CBI v. Aryan Singh [CBI v. Aryan Singh, (2023) 18 SCC 399: 2023 SCC OnLine SC 379***]. The relevant paragraph from the judgment is extracted hereunder: (SCC paras 6-7)
>
> > 6. … As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini-trial. …
> >
> > 7. … At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not'."

25. Therefore, it is not permissible to carry out a mini trial at this stage to determine the truthfulness or otherwise of the complaint.

26. The judgment in ***M/s VADSP (supra)*** shows that the necessary averments were lacking and this Court held that in the absence of the necessary averments, the complaint could not continue against them. The facts of the cited judgment are clearly distinguishable, because in the present case such an averment has been made and no advantage can be derived from the cited judgment.

27. It was submitted that the order of cognisance is bad and the proceedings are not maintainable qua the petitioners. This submission will not help the petitioners. It was rightly submitted on behalf of the respondent that even if there is some infirmity in the cognisance order, that is merely a curable irregularity. It was laid down by the Hon'ble Supreme Court in ***Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62: 2021 SCC OnLine SC 1140*** that an order of taking cognisance or a summoning order would be protected under Section 465 of the CrPC and where a challenge was not made at the earliest stage, it is impermissible to challenge these orders subsequently. It was observed at page 95:

> "**41.** Section 465 stipulates that the order passed by a court of competent jurisdiction shall not be reversed or altered by a court of appeal on account of an irregularity of the proceedings *before trial or any inquiry*. It is settled law that

cognisance is at the pre-trial or inquiry stage. [***Gangula Ashok v. State of A.P., (2000) 2 SCC 504: 2000 SCC (Cri) 488; Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86***, where a Constitution Bench held that trial begins after framing of charge] *Therefore, irregularity of a cognisance order is covered by the provision*. In order to determine if the provision applies to pre-trial orders like an irregular cognisance order or only applies to orders of conviction or acquittal, it is necessary that we interpret the provision contextually.

42. Chapter XXXV CrPC is titled "Irregular Proceedings". Section 460 ["**460.** ***Irregularities which do not vitiate proceedings***.—If any Magistrate not empowered by law to do any of the following things, namely—(*a*) to issue a search-warrant under Section 94;(*b*) to order, under Section 155, the police to investigate an offence;(*c*) to hold an inquest under Section 176;(*d*) to issue process under Section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;(*e*) to take cognizance of an offence under clause (*a*) or clause (*b*) of sub-section (1) of Section 190;(*f*) to make over a case under sub-section (2) of Section 192;(*g*) to tender a pardon under Section 306;(*h*) to recall a case and try it himself under Section 410; or(*i*) to sell property under Section 458 or Section 459,erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered."] on the one hand provides for those irregularities if any, on the part of a Magistrate which do not vitiate proceedings. Section 461 ["**461.** ***Irregularities which vitiate proceedings***.—If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely—(*a*) attaches and sells property under Section 83;(*b*) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;(*c*) demands security to keep the peace;(*d*) demands security for good behaviour;(*e*) discharges a person lawfully bound to be of good behaviour;(*f*) cancels a bond to keep the peace;(*g*) makes an order for maintenance;(*h*) makes an order under Section 133 as to a local nuisance;(*i*) prohibits, under Section 143, the repetition or continuance of a public nuisance;(*j*) makes an order under Part C or Part D of Chapter X;(*k*) takes cognizance of an offence under clause (*c*) of sub-section (1) of Section 190(*l*) tries an offender;(*m*) tries an offender summarily;(*n*) passes a sentence, under Section 325, on proceedings recorded by another Magistrate;(*o*) decides an appeal;(*p*) calls, under Section 397, for proceedings; or(*q*) revises an order passed under Section 446,his proceedings shall be void."] , on the other hand, contains a list of proceedings by the Magistrate who is not empowered by law in this behalf, which would vitiate the proceedings. Clause (*e*) of Section 460 relates to the taking of cognisance of an offence under clause (*a*) or clause (*b*) of sub-section (1) of Section 190CrPC. Clause (*a*) of Section 190(1) refers to the receipt of a complaint of facts constituting an offence and clause (*b*) refers to a police report of the facts. Consequently, where a Magistrate who is not empowered by law takes cognisance of an offence either under clause (*a*) or clause (*b*) of Section 190(1) erroneously, though in good faith, the proceedings will not be set aside merely on the ground that the Magistrate was not so empowered. *In other words, for vitiating the proceedings, something more than a mere lack of authority has to be established*. Clause (*k*) of Section 461 adverted to a situation where a Magistrate who is not empowered takes cognisance of an offence under clause (*c*) of Section 190(1). Section 190(1)(*c*) empowers the Magistrate to take cognisance upon information received from a person other than a police officer or upon his own knowledge. The taking of cognisance under Section 190(1)(*c*) by a Magistrate who is not empowered renders the proceedings void.

43. Section 462 relates to proceedings being taken in a wrong place; Section 463 with the non-compliance of the provisions of Section 164 [Recording of confessions and statements.] or Section 281 [Record of examination of accused.] and Section

464 with the effect of an omission to frame, or absence of or error in a charge. Section 465 deals with irregularity of "the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial".

44. The overarching purpose of Chapter XXXV CrPC, as is evident from a reading of Sections 460 to 466, is to prevent irregularities that do not go to the root of the case from delaying the proceedings. Sections 462-464 lay down specific irregularities which would not vitiate the proceedings. Section 465, on the other hand, is a broad residuary provision that covers all irregularities that are not covered by the above provisions. This is evident from the initial words of Section 465, namely, "Subject to the provisions hereinabove contained". Therefore, irregular proceedings that are not covered under Sections 461-464 could be covered under Section 465. It is also evident that the theme of "failure of justice" uniformly guides all the provisions in the chapter. There is no indication in Section 465 and in Sections 462-464 that the provisions only apply to orders of conviction or acquittal. All the provisions use the words "finding, sentence or order". Though one of the major causes of judicial delay is the delay caused from the commencement of the trial to its conclusion, there is no denying that delay is also predominantly caused in the pre-trial stage. Every interlocutory order is challenged and is on appeal till the Supreme Court, on grounds of minor irregularities that do not go to the root of the case. The object of Chapter XXXV CrPC is not only to prevent the delay in the conclusion of proceedings after the trial has commenced or concluded, but also to curb the delay at the pre-trial stage. It has been recognised by a multitude of judgments of this Court that the accused often uses delaying tactics to prolong the proceedings and prevent the commencement or conclusion of the trial. [***A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531***]

45. The object of Chapter XXXV is to further the constitutionally recognised principle of speedy trial. This was highlighted by Jeevan Reddy, J. while writing for a two-Judge Bench in ***Santosh De v. Archna Guha [Santosh De v. Archna Guha, (1994) 2 SCC 420: 1994 SCC (Cri) 546***] where the learned Judge observed: (SCC pp. 427-28, para 15)

> "*15*. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory order is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. *Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it*. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465CrPC. That any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself, because such *frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means can keep the law at bay. That would mean the failure of the very system*."

(emphasis in original)

46. *Section 465 would also be applicable to challenges to interlocutory orders such as a cognisance order or summons order on the ground of irregularity of procedure*. This interpretation is supported by sub-section (2) of Section 465 which states that while determining if the irregularity has occasioned a failure of justice, the Court shall have regard to whether the objection could or should have been raised at an earlier stage in the proceeding. Therefore, the very fact that the statute provides that the Court is to consider if the objection could have been raised earlier, without any specific

> mention of the stage of the trial, indicates that the provision covers challenges raised at any stage. The Court, according to sub-section (2), is to determine if the objection was raised at the earliest." (emphasis supplied)

28. Therefore, it is impermissible to challenge the summoning order when such an order was not challenged for six years, and any defect in the cognisance order is a curable irregularity which does not affect the proceedings.

29. The copy of the order dated 21.09.2024 shows that the case has been committed to the Court of learned Additional Sessions Judge, Nalagarh, District Solan, H.P. Hence, the complaint has proceeded to the next stage and its continuation cannot be stopped because of some error in the cognisance order.

30. No other point was urged.

31. In view of the above, the present petition fails, and it is dismissed.

32. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

03rd August, 2026.
(ravinder)