



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2026

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.4524 OF 2023]

THE STATE OF KERALA & ANR. ...APPELLANTS

A1: THE STATE OF KERALA REPRESENTED BY HOME
SECRETARY

A2: THE DRUGS INSPECTOR (INTELLIGENCE BRANCH) OFFICE OF
ASSISTANT DRUGS CONTROLLER, THRISSUR, KERALA

VERSUS

M/s. PANACEA BIOTEC LTD. & ANR. ...RESPONDENTS¹

R1: M/S PANACEA BIOTEC LTD.

R2: PANACEA BIOTEC LTD.

WITH

CRIMINAL APPEAL NO. _____ OF 2026

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2026]

[@ DIARY NO.18999 OF 2023]

M/s. PANACEA BIOTEC LTD. & ANR. ...APPELLANTS

A1: M/s. PANACEA BIOTEC LTD.

A2: PANACEA BIOTEC LTD.

VERSUS

STATE OF KERALA & ANR. ...RESPONDENTS

R1: STATE OF KERALA THROUGH HOME SECRETARY

R2: THE DRUGS INSPECTOR (INTELLIGENCE BRANCH)
OFFICE OF ASSISTANT DRUGS CONTROLLER, THRISSUR

WITH

CRIMINAL APPEAL NO. _____ OF 2026

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.8867 OF 2023]

¹ (Original) R2 deleted *vide* Order dated 16.10.2023.

THE DRUGS INSPECTOR & ANR. ...APPELLANTS
A1: THE DRUGS INSPECTOR, OFFICE OF ASSISTANT DRUGS
CONTROLLER, KOZHIKODE
A2: STATE OF KERALA

VERSUS

VIMAL KUMAR KHEMKHA & ANR. ...RESPONDENTS
R1: VIMAL KUMAR KHEMKHA
R2: NARENDRA KUMAR KAPOOR

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

The matters are dealt with as follows:

CRIMINAL APPEAL NO. OF 2026
[@ SLP (CRL.) NO.4524/2023]

1.1 Leave granted.

2. The present appeal assails the Final Judgment and Order dated 14.07.2022 passed in CrI. M.C. No.2802 of 2012 (hereinafter referred to as the 'Impugned Order') passed by a learned Single Judge of the High Court of Kerala at Ernakulam (hereinafter referred to as the 'High Court').

FACTUAL MATRIX:

3. On 21.10.2005, one Mr. Joy Mandi was informed, about an alleged discrepancy in the labelling of the subject drug, alleged to be manufactured and sold by the Respondents, by the Medical Officer, Primary Health Centre, Thrissur, Kerala.

4. On 05.01.2006, Mr. Joy Mandi filed a Complaint with Appellant No.2-Drug Inspector regarding the discrepancy in the labelling of the drug alleged to be manufactured and sold by the Respondents. Admittedly, no bill of purchase of the drug was placed on record in the Complaint Case.

5. On 16.01.2006, Appellant No.2 received the Complaint dated 05.01.2006 filed by Mr. Joy Mandi, whereafter Appellant No.2 commenced an enquiry into the subject-matter of the said Complaint.

6. On 20.01.2009, Appellant No.2 filed a Complaint Case before the learned Chief Judicial Magistrate, Court, Thrissur, Kerala (hereinafter referred to as the 'CJM'), against, *inter alia*, the Respondents for the alleged commission of offences under Sections 18(a)(i) read with 17(b) and 17(c) of the Drugs & Cosmetics Act, 1940 (hereinafter referred to as

the 'Act') read with Rule 96 [of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 'Rules')] punishable under Section 27(d) of the Act.

7. The core allegation as per the Complaint Case was that there was an alleged discrepancy in the label on the carton concerned *vis-à-vis* the label on the top of the vial of the drug manufactured and sold by the Respondents. To be specific, the carton was labelled as '*Easy five, Pentavalent vaccine B. No.:PO124 SBPC, Mfg. date: 14/August/2004, Exp.: 13/August/2006, manufactured by: Panacea Biotech Ltd., A 241 Okhla, Industrial Area-1, New Delhi - 110020, India. Retail price not to exceed Rs.550/- LT extra, Manufacturing Licence No:1259*' (sic)². But, allegedly, on the seal cap of the vial, it was labelled as '*pentavalent vaccine Easy Five, B.No: P0124 SBPC, Mfg. Date: 14/Aug,2004, Exp. date: 13-Aug 2006*' (sic)³. Whereas, on the vial it was labelled as '*Tetravalent Vaccine Easy Four. B.No: TO124SBC, Mfg. date: 29/August/2004, Exp. date: 28/August/2006. Manufactured by Panacea Biotec Ltd., A-241, Okhla, Industrial Area-1, New Delhi-110020, India. Retail price not to exceed Rs.500/- LT extra*' (sic)⁴.

² As per the True Typed Copy of the Complaint annexed with the Paperbook.

³ *Ibid.*

⁴ *Ibid.*

8. The Complaint alleged ‘... As per the label claim of outer carton, the drug is Easy Five pentavalent vaccine which is a combination of 5 different vaccines including HbSAg 10 mcg. (vaccine for Hepatitis). But as per label claim of inner vial Easy Four tetravalent vaccine which is a combination of four different vaccines, an does not contain HbSAg 10 mcg. (vaccine for Hepatitis) as claimed on the outer carton label ...’ (sic)⁵. It was averred that as the contents differed on the outer and inner labels, the drug was not labelled in the prescribed manner as specified in Rule 96 of the Rules; that the outer carton label makes a false claim for the drug and is misleading, and; that the drug is misbranded.

9. Pursuant to the Complaint, *vide* Order dated 29.01.2009 in the Complaint Case, the CJM summoned, *inter alia*, the Respondents.

10. On 04.08.2009, the Respondents filed a Petition being CrI. M.C. No.2551/2009 before the High Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’), seeking to set aside the Summoning Order dated 29.01.2009. Subsequently, *vide* Order dated 17.06.2011, the High Court directed the CJM to consider whether the delay in filing the Complaint Case could be condoned in terms of Section 473 of the Code.

⁵ *Ibid.*

11. *Vide* Order dated 10.07.2012, the CJM condoned the delay on the part of Appellant No.2 in filing the Complaint Case under Section 473 of the Code and summoned, *inter alia*, the Respondents to face the trial.

12. Aggrieved by the Summoning Order dated 10.07.2012, on 21.08.2012, the Respondents filed Crl. M.C. No.2802/2012 before the High Court under Section 482 of the Code to quash the afore-mentioned Order on the grounds that the CJM did not conduct the mandatory statutory enquiry under Section 202 of the Code to ascertain the sufficiency of grounds to proceed against the Respondents.

13. The High Court *vide* the Impugned Order dated 14.07.2022 quashed the Complaint Case *qua* the Respondents on the ground that they resided beyond the territorial jurisdiction of the CJM and yet the CJM failed to conduct the mandatory statutory enquiry under Section 202 of the Code. However, be it noted, the High Court did not interfere with the Order dated 10.07.2012 on the ground of limitation/under Section 473 of the Code.

THE APPELLANTS' SUBMISSIONS:

14. The learned counsel, Mr. H. V. Hameed, for the State argued that the procedure under Section 202 of the Code cannot be treated as a mandatory requirement for a complaint filed by a public servant, as they would stand on a different pedestal. Parallely, the learned counsel urged that the Complainant cannot be faulted for an omission, if any, on the part of the CJM and the Respondents-accused persons cannot take undue advantage therefrom.

15. Learned counsel proceeded to invite the Court's attention to the gravity of the alleged offences and the material/evidence collected by the Drugs Control Inspector. It was submitted that keeping in view the facts and circumstances of the case, since the offences affect the public at large and violate the rights of various citizens, especially innocent consumers, who would be totally ignorant of the misbranding, the Complaint Case was erroneously quashed by the High Court.

16. Learned counsel placed reliance on ***Cheminova India Limited v State of Punjab, 2021 SCC OnLine SC 573***⁶, wherein it was held:

'18. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where the accused resides outside the territorial jurisdiction of such Magistrate, is to

⁶ Alternatively, (2021) 8 SCC 818.

ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of the Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant.'

17. Learned counsel for the Appellants submitted that the present case is squarely covered by the afore-noted *dictum*.

18. Touching upon the concept of vicarious liability apropos ascertainment of the culpability of the then Managing Director of the Respondents-companies (original Respondent No.2), the learned counsel further submitted that the primary allegation is with respect to misbranding and a bare reading of Section 34 of the Act makes it clear that whenever an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of or 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.

19. Learned counsel pointed out that even though the High Court in the Impugned Order noted that the Order dated 10.07.2012, passed by the CJM condoning the delay, cannot be said to be perverse, proceeded to quash the Complaint. It was prayed that the appeal be allowed.

THE RESPONDENTS' SUBMISSIONS:

20. *Per contra*, learned senior counsel Mr. Siddharth Luthra, argued the point of non-compliance of the mandatory provisions of Section 202(1) of the Code and stressed that *vide* the 2005 Amendment [as made *vide* Act 25 of 2005 with effect from 23.06.2006] to the Code, the words '*and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction*' were inserted before the words '*postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding*'. Learned senior counsel submitted that the said Amendment did not carve out any exception in Section 202 of the Code for a case where the Complainant is a public servant.

21. Learned senior counsel vehemently submitted that the CJM ought not to have summoned the Respondents without conducting an enquiry as prescribed under Section 202 of the Code. *Ergo*, it was advanced that the Impugned Order suffers from no infirmity and the Appellants' challenge thereto is liable to be rejected.

22. In other words, the straight submission canvassed was that compliance of Section 202 of the Code is a *sine qua non* and merely because the Complainant happens to be a public servant, cannot be used to circumvent the clear statutory mandate.

23. To substantiate the argument, learned senior counsel submitted that the Legislature has expressly provided Exceptions to the provisions of Section 202 of the Code in the Proviso to the said Section 202 itself. In the event, it was urged, the intent of the Legislature was to carve out an exception for public servants, the Legislature would have done so in the said Proviso.

24. Learned senior counsel opposed the applicability of ***Cheminova India Limited*** (*supra*), relied upon by the Appellants, stating that the allegations in the underlying Complaint Case were not corroborated by the Report of a Government Analyst. Pertinently, Appellant No.2 was,

inter alia, relying on the allegations made by Mr. Joy Mandi in his 'complaint' dated 05.01.2006 and the alleged label of the carton of the subject drug to corroborate the allegation of misbranding.

25. Learned senior counsel also contended that Appellant No.2 had failed to adduce the label of the vial of the drug in question or any independent third-party evidence or even a Government Analyst's Report to *prima facie* prove the allegation of misbranding, which was contrary to the judgment cited, wherein the specific facts and circumstances of that case, were considered by the Court. It was submitted that in ***Cheminova India Limited*** (*supra*), *firstly*, the allegations in the Complaint filed by a public servant were corroborated by Report(s) of Government Analyst(s) (which are *per se* admissible in law), therefore there was no need to examine the Complainant-public servant and/ or the Government Analyst(s) on oath, and; *secondly*, no prejudice was caused to the Appellants therein at the concerned stage. It was urged that the appeal merited outright dismissal.

ANALYSIS, REASONING AND CONCLUSION:

26. Having considered the rival contentions at the Bar, we find that a case for interference has been made out by the Appellants. For the

purposes of adjudication in the case at hand, the Court is confronted with twin questions that arise:

(a) *re* limitation in taking cognizance as stipulated under Sections 468 and 469 read with Section 473 of the Code, and;

(b) *re* territorial jurisdiction in terms of Section 202 of the Code.

27. On the initial question, let us take note of the relevant extract from the Complaint dated 20.01.2009 by the State of Kerala, represented by the Drugs Inspector (Intelligence Branch), Office of the Assistant Drugs Controller, Thrissur, Kerala (hereinafter referred to as the 'Drugs Inspector'). The same is culled out and reproduced hereunder:

'The facts of the case are as follows:-

A petition dated, 5/1/2006 was received in the office of the Asst. Drugs Controller, Thrissur from Mr. Joy Mandi Kanakamala, Thrissur Dt regarding improper labeling of a drug namely Easy five vaccine, B.No: PO 124/SBPC Mfg. date: 14/August 2004, Exp. Date: 13 August 2006, manufactured by: Panacea Biotec Ltd., A 241 Okhla Industrial Area-1, New Delhi-110020, India. T.V. Rajathan, the then Drugs Inspector conducted enquiries at the residence of petitioner on 18/1/2006. Petitioner vide letter dated 18/1/2006 informed that 44 the subject drug was purchased from Meenakshi Medical Stores, Thrissur. One vial along with the packing of subject drug maintained in the custody of the petitioner was also handed over to the Drugs Inspector voluntarily and free of cost. After making necessary enquiries the then Drugs Inspector T.V. Rajathan informed the petitioner that Meenakshi Medical Stores, Thrissur has not purchased or sold the subject drug. In response the petitioner vide

letter dated 21/1/2006 clarified that the subject drug was purchased from Meenakshi Medical Agencies, Thrissur. On verifying the vial produced by the petitioner it was found that the subject drug was packed in carton labelled as Easy Five. Pentavalent vaccine, B. No: P0124 SBPC, Mfg. Date: 14/August/2004, Exp.: 13/August/2006, manufactured by: Panacea Biotech Ltd., A 241 Okhla, Industrial Area-1, New Delhi – 110020, India. Retail price not to exceed Rs.550/- LT extra,

Manufacturing Licence No:1259.

Each dose 0.5 ml. contains:

Diphtheria Toxoid 20 LF,

Tetanux Toxoid 7.5 LF,

Inactivated W-8, pertussis 12.0U

(12000 X 10 Organisms)

HS.Sag 10 mcg.

H influenzae type b

Oligosaccharides 10 mcg.

Conjugated to CRM 197 Protien

Aluminium content (A1 *3+) 0.25 mg

As Aluminium Phosphate gel

Thiomersal I.P. 0.025 mg,

Water for injection I. P. Q.S.

On the seal cap of the vial it was labelled as pentavalent vaccine Easy Five, B.No: P0124 SBPC, Mfg. Date: 14/Aug,2004, Exp. Date: 13-Aug 2006. But on the vial it was labelled as Tetravalent Vaccine Easy Four. B.No: TO 124SBC, Mfg. date: 29/August/2004, Exp. date: 28/August/2006. Manufactured by Panacea Biotec Ltd., A-241, Okhla, Industrial Area-1, New Delhi-110020, India. Retail Price not to exceed Rs.500/- LT extra.

Manufacturing Licence No: 1259.

Each dose 0.5 ml.contains:

Diphtheria Toxoid 20 LF,
Tetanux Toxoid 7.5 LF,
Inactivated W-B, pertussis 12.0U
(12000 X 10 Organisms)
H influenzae type b
Oligosaccharides 10mcg.
Conjugated to CRM 197 Protien
*Aluminium content (A1 *3+) 0.25mg*
As Aluminium Phosphate gel
Thiomersal. I. P. 0.025 mg,
Water for injection I.P. Q.S.

As per the label claim of the outer carton, the drug is Easy Five pentavalent vaccine, which is a combination of 5 different vaccines, including HbSAg 10 mcg. (vaccine for Hepatitis). But as per label claim of inner vial Easy Four tetravalent vaccine which is a combination of four different vaccines, an does not contain HbSAg 10 mcg. (vaccine for Hepatitis) as claimed on the outer carton label. The drug is not labelled in the prescribed manner as specified in Rule 96, and the carton accompanying the drug makes a false claim for the drug and is misleading.

The drug is misbranded as per Section 17 (b) and 17 (c) of the Act read with Rule 96 of the Drugs and Cosmetics Rules 1945.

On 21/1/2006 Drugs Inspector T.V. Rajathansupreme court of india inspected the premises of A7 M/s. Meenakshi Medical Agencies Thrissur in presence of witnesses. The Subject drug was not available in the premises. Original invoices towards purchase of subject drugs by A7 from A5, Carbon copies of invoices towards sale of subject drugs by A7 and credit notes towards return of subject drug to A5 by A7 were seized under a

mahazar and form 16 dated, 21/1/2006. The seized documents were produced before this Honourable court on 23/1/2006 and were taken into safe custody. AB vide his statement dated, 21/1/2006 has stated that some of the vials of the subject drug were wrongly labelled and that the balance stock of subject drug was returned to supplier due to improper labeling (misbranded). Sales representative of A7 firm C.Rajendran vide his statement dated, 21/1/06 has stated that 2 vials of subject drug were sold to the petitioner (CW2) from A7 firm and balance stock of subject drug was returned to supplier A5 due to improper labelling. He has also stated that 4 vials of subject drug were traced from balance stock with labelling defects. (Misbranded) AB vide his statement dated, 6/4/2006 has submitted his explanation for the discrepancies in the sales records of subject drug. In the letter he has confirmed that some of the vials of subject drug were found wrongly labelled and returned to supplier A5 and credit note obtained from them. As per the request of Drugs Inspector (Intelligence Branch), Thrissur, the Drugs Inspector (Intelligence Branch) Ernakulam inspected the premises of A5 firm. On 18/4/2006, Certified copies of original invoices pertaining to purchase of subject drugs by A7 from A5, Certified copies of invoices pertaining to sale of subject drug from A5 to A7, and certified copies of credit notes issued by A5 to A3 were taken along with other connected documents.

From the above documents it is proved that A5 has purchased, stocked for sale and sold the subject drug.48

The Drugs Inspector (Intelligence Branch), Ernakulam also inspected the premises of A3 firm on 18/4/06. Certified copies of purchase invoices pertaining to the purchase of the subject drug by A3 from A 1, Certified copies of invoices pertaining to the sale of drugs by A3 to A5, and certified copies of credit notes pertaining to return of subject drug from A3 to A1 were taken. From above documents it is proved that A3 has purchased stocked for sale and sold the subject drug. The Drugs Inspector (Intelligence Branch), Office of the Asst. Drugs Controller, Ernakulam forwarded the certified copies of relevant details taken from A3 and A5.'

(sic)

28. From the aforesaid, it transpires that the initial 'complaint' dated 05.01.2006 was made by one Mr. Joy Mandi and was received by the Drugs Inspector on 16.01.2006, alleging that although he had purchased two ampoules of '*Easy Five Pentavalent Vaccine*' for immunization of his child at the Primary Health Centre, as was represented on the outer packaging, but the vial inside had the label '*Tetravalent vaccine Easy Four*'.

29. On 21.01.2006, the Drugs Inspector inspected the premises of M/s Meenakshi Medical Agencies, Thrissur, Kerala from where the said drug had been purchased by Mr. Joy Mandi and found that the subject drug was not available and thus, original invoices towards purchase of the subject drugs by A-7 from A-5, carbon copies of invoices towards sale of subject drugs by A7 and credit note towards return of subject drug to A-5 by A-7 were seized. A-8 in his Statement on 21.01.2006 stated that some vials of the subject drugs were wrongly labelled and that the balance stock of the subject drug was returned to the supplier due to improper labelling (Misbranded). The Sales Representatives of A-7 (firm), Mr. Rajendran, on the same day, made a Statement that two vials of the subject drug were sold to Mr. Joy Mandi/CW-2 from A7 firm, and the

balance stock of the subject drug was returned to the Supplier-A5 due to improper labelling. He further stated that four vials of the subject drug were traced from the balance stock with labelling defects (misbranded). A-8 *vide* Statement recorded on 06.04.2006, submitted his explanation for the discrepancies in the sales record of the subject drug. A-8 affirmed that some of the vials of the subject drugs were found wrongly labelled and returned to the Supplier-A5, and a credit note was obtained from them. Thereafter, as per request, the Drugs Inspector inspected the premises of A-5 (firm).

30. On 18.04.2006, certified copies of original invoices pertaining to the purchase of the subject drug from A-5 by A-7, certified copies of invoices pertaining to the sale of the subject drug from A-5 to A7 and certified copies of the credit note issued by A-5 to A-3 were taken along with other connected documents. On the same day i.e., 18.04.2006, the Drugs Inspector also inspected the premises of A-3 (firm) from where certified copies of purchase invoices pertaining to the subject drug by A-3 (firm) from A-1, certified copies of invoices pertaining to the sale of drugs by A-3 (firm) to A-5 and certified copies of credit notes pertaining to return of subject drugs from A-3 (firm) to A-1 were taken. The aforesaid certified copies of relevant details/documents obtained from A-3 (firm) to A-5 were then forwarded by the Drugs Inspector.

31. We may end the narration here. The question/objection put forth by the Respondents-accused has to be noticed in terms of Sections 468 and 469 read with Section 473 of the Code, quoted hereunder:

'468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Cr.P.C, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

- (a) six months, if the offence is punishable with fine only;*
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation.—

(1) The period of limitation, in relation to an offender, shall commence,—

- (a) on the date of the offence; or*
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or*
- (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.*

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

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473. Extension of period of limitation in certain cases.—
Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.'

32. Section 468 of the Code explains the period of limitation that bars taking cognisance. For now, this Court is restricting its discussions in the light of the relevance of the said provision to the facts of the present case. Thus, *stricto sensu*, on a plain reading, there is a bar to taking cognisance of the offence [i.e., Section 27(d) of the Act, which provides for '*imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than twenty thousand rupees*'] after 3 years, in view of Section 468(2)(c) of the Code. Section 469 of the Code relates to the commencement of the period of limitation and that it shall commence on the date of the offence or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police

officer, whichever is earlier; or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier. Section 473 of the Code, however, begins with a *non-obstante* provision and permits 'any Court' to take cognizance of any offence even after the expiry of the limitation period prescribed, upon satisfaction with regard to the facts and circumstances of the case that the delay has been '*properly explained*' or '*it is necessary so to do in the interests of justice.*'

33. Taking a cue from the aforesaid, the bar to taking cognizance in the present case would be covered by Section 469(1)(c) of the Code inasmuch as the period of limitation would commence from the '*first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.*' Thus, Section 469(1)(c) of the Code clearly contemplates that the identity of the offender may emerge during '*investigation into the offence*'. In the present case, though the initial 'complaint' was made by Mr. Joy Mandi on 05.01.2006, but for authentication and verification of the persons allegedly involved, an exercise was undertaken. We are of the considered opinion that the State adopted the correct approach, by virtue of Section 32 of the Act.

34. In the present case, the Complaint was made by a Gazetted Officer of the State of Kerala, who was authorised in this behalf viz. the Drugs Inspector (Intelligence Branch), Office of the Assistant Drugs Controller, Thrissur, Kerala.

35. It is deemed necessary to quote Section 32 of the Act, as it stood at the relevant time i.e., on 20.01.2009, when the Complaint was made to the Court (prior to the amendment thereto which came into effect on 10.08.2009 by Act 26 of 2008), which reads as under:

'32. Cognizance of offences—

(1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a recognised consumer association whether such person is a member of that association or not.

(2) No Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this Chapter.'

35.1 Only for completeness, we also note Section 32 of the Act as it now stands i.e., after amendment by Act 26 of 2008, effective from 10.08.2009:

'32. Cognizance of offences—

(1) No prosecution under this Chapter shall be instituted except by—

(a) an Inspector or

(b) the person aggrieved; or

- (c) a recognised consumer association, whether such person is a member of that association or not.*
- (2) Save as otherwise provided in this Act, no court inferior to that of a Metropolitan Magistrate or of a Chief Judicial Magistrate shall try an offence punishable under this Chapter.*
- (3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.'*

36. From the aforesaid, it is clear that the Drugs Inspector, who made the complaint in the present case, satisfied the legal requirements of being a complainant. In other words, the Drugs Inspector was an '*Inspector*' within the fold of Section 32 of the Act. On a conjoint reading of the provisions discussed hereinabove, the chain that emerges is that the Competent Authority having received a 'complaint' from a private party, namely Mr. Joy Mandi on 05.01.2006, put in motion a verification/investigation process, which was completed within three months, only whereafter the exact identity of the accused was established. In our considered view, hence, the time for making a complaint to the Court would start ticking only therefrom. In this context, we find that for the first time only on 18.04.2006, the identity of all the accused persons was before the Competent Authority. Undoubtedly, the Competent Authority was required to file a proper complaint before the Court, which was, however, ultimately done only on 20.01.2009. Though there is an inordinate delay, between the period from 18.04.2006 to

20.01.2009, in making the complaint, whereafter cognisance was taken and summons issued on 29.01.2009, the said exercise was completed within the 3-year period, as per Section 468(2)(c) read with Section 469(1)(c) of the Code. Therefore, in our view, the limitation bar does not come in the way. The limitation period would run out, in the present case, only on 17.04.2009, i.e., on completion of three years from the date the identity of the accused became known to the Competent Authority. On this question, we unhesitatingly hold in favour of the Appellants. As such, the Order passed by the High Court in Crl. M. C. No.2551/2009 dated 17.06.2011 was incorrect to the extent that it computed limitation as having started from '21.10.2005', as the provision attracted was not Section 469(1)(b), but Section 469(1)(c) of the Code. Be that as it may, the legality, or otherwise, of the said Order dated 17.06.2011 has become academic today, in view of subsequent developments.

37. Coming to the second question, on the aspect of jurisdiction, on which learned senior counsel for the Respondents laid great emphasis, the same is to be examined from the perspective of Section 202 of the Code:

'202. Postponement of issue of process.—

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and

shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Cr.P.C on an officer in charge of a police station except the power to arrest without warrant.'

38. A plain but relevant reading of Section 202(1) of the Code indicates that a Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for

the purpose of deciding whether or not there is sufficient ground for proceeding.

39. At this juncture, we turn to Section 200 of the Code, which provides as under:

'200. Examination of complainant.—

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.'

40. The present case emanates from a complaint by an officer, made in writing. In terms of Section 200 of the Code, the Magistrate is not required to examine the complainant and the witnesses, if a public servant is acting or purporting to act in discharge of his official duty or a Court has made the complaint. Here, an official complaint was made on authorisation by the State Government. In this factual setting, Section

202 of the Code would necessarily have to be construed harmoniously with Section 200 of the Code when considering postponement of the issue of process. Euclidean geometry tells us that the shortest distance between two points is a straight line. We, therefore, straightaway come to ***Cheminova India Limited*** (*supra*), relied upon by learned counsel for the Appellants, and valiantly attempted to be distinguished, factually, by learned senior counsel for the Respondents. At the cost of repetition, we re-extract Paragraph 18 thereof:

'18. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where the accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of the Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant.'

(emphasis supplied)

40.1 In ***Cheminova India Limited*** (*supra*), a coordinate Bench of this Court recognised that the Legislature had accorded, to public servants discharging their duties in their official capacity(ies), a different footing

qua when they were complainant(s), *vis-a-vis* complaints made in private capacity. As previously noted, Mr. Luthra, learned senior counsel, stressed upon the factual differences between the position in ***Cheminova India Limited*** (*supra*) as compared to the instant matter. Having bestowed thoughtful consideration thereon, we are not inclined to accept his contentions, in view of the clear enunciation in ***Cheminova India Limited*** (*supra*). The second question also stands answered in the Appellants' favour.

40.2 We may add that we have borne in mind the earlier pronouncement of another Coordinate Bench in ***Birla Corporation Limited v Adventz Investments and Holdings Limited, (2019) 16 SCC 610***⁷, referred to by the High Court, as also the case-law discussed therein. In ***Birla Corporation Limited*** (*supra*), the complainant was a private person. As such, no aid therefrom can flow to the Respondents' advantage.

41. Furthermore, admittedly the accused who actually sold the medicine to Mr. Joy Mandi was residing within the limits of the local jurisdiction of the Magistrate concerned. The allegation/prosecution story also commences with the purchase of the medicines by Mr. Mandi from such accused seller. We have noted this only to complete the loop.

⁷ The *coram* in ***Birla Corporation Limited*** (*supra*) included the learned Judge who authored ***Cheminova India Limited*** (*supra*).

42. We would, however, necessarily add a few words of caution. Inasmuch as we have held in favour of the Appellants on both points above, we would emphasise that the same have been examined bearing in mind the facts and circumstances herein, to the extent called for.

43. As a sequel to the aforesaid, the Impugned Order is set aside, and the Order taking cognisance and issuing summons dated 10.07.2012 is held to be good in law. However, due to the efflux of time and the fact that in this appeal [arising out SLP (Crl.) No.4524/2023], out of the three respondents, two are juristic entities and the third (i.e., Original Respondent No.2) having passed away, being the Managing Director, shall be substituted by the person(s) in charge of running the affairs of the Respondents-companies, at the relevant point of time. The Court concerned, upon appropriate application filed by the Appellants/Prosecution, shall array the said person(s) as accused and issue fresh summons.

44. In the above terms, this appeal stands allowed.

CRIMINAL APPEAL NO. _____ OF 2026
[ARISING FROM SLP (CRL.) NO. _____ OF 2026 @ DIARY
NO.18999/2023]

45. Delay condoned.

46. Leave granted.

47. This appeal is at the instance of the accused assailing the Final Judgment and Order dated 14.07.2022 in CrI. M.C. No.2802/2012 passed by the High Court, on the ground that the High Court ought to have quashed the Summoning Order on the aspect of limitation as well.

48. In view of and for the reasons already stated in the Criminal Appeal arising from SLP (CrI.) No.4524/2023, the instant appeal stands dismissed.

CRIMINAL APPEAL NO. _____ OF 2026 [@ SLP (CRL.) NO.8867/2023]

49. Leave granted.

50. This appeal assails the Final Judgment and Order dated 01.07.2021 in CrI. M.C. No.2188/2020 (hereinafter referred to as the 'Impugned Judgment') passed by the High Court of Kerala.

THE FACTUAL SETUP:

51. The Complainant is an Inspector appointed under Section 21 of the Act. On, 13.11.2014, the said Drugs Inspector visited the premises of Community Health Centre, Balussery, Kozhikode, Kerala and drew samples of 10ml Sterile Hypodermic Single-use Syringe Safe-plus manufactured by a company in the name of Veekay Surgicals Pvt. Ltd. One of the portions of the sealed sample and Form 18 were sent to the Government Analyst, Drugs Testing Laboratory, Thiruvananthapuram, Kerala as per Section 23(4)(i) of the Act.

52. On 27.01.2016, Government Analyst, Drugs Testing Laboratory, Thiruvananthapuram in Form 13 declared the above drug as being '*not of standard quality*' as it had failed the test of '*Freedom from Extraneous matter and Sterility*'. Pursuant to subsequent inquiry, on 03.06.2016, the Managing Director, Kerala Medical Service Corporation Limited, Thiruvananthapuram, *vide* Letter of even date, forwarded the constitutional details of the afore-mentioned accused company to the Appellants.

53. Consequently, Appellant No.1 initiated prosecution against M/s. Veekay Surgicals Pvt. Ltd., accused No.1 and respondents herein as Accused Nos.2 and 3, who are Directors in accused No.1, alleging offence under Section 18(a)(i) of the Act, punishable under Section 27(d) of the Act, by filing a formal complaint before the Court of the learned Judicial First Class Magistrate-II, Perambra, Kozhikode on 29.06.2016.

54. Aggrieved, the Respondents herein moved the High Court for quashing the proceedings and *vide* the Impugned Judgment, a learned Single Judge of the High Court quashed the proceedings in C.C. No.433/2016, on the ground of non-compliance with the provisions of Section 202(1) of the Code and insufficient compliance with Section 34 of the Act.

55. Considering the nature of arguments advanced by the learned counsel on behalf of the parties who assisted this Court, as they relate to Section 202(1) of the Code, they are not repeated as they have already been noted/discussed in the Criminal Appeal arising out of/from SLP (Crl.) No.4524/2023.

56. Our view on the finding recorded by the High Court on Section 34 of the Act is dealt with later.

ANALYSIS, REASONING AND CONCLUSION:

57. Admittedly, the Drugs Inspector visited the premises of the Community Health Centre, Balussery, Kozhikode, Kerala on 13.11.2014 and drew samples of 10ml Sterile Hypodermic Single-use Syringe Safe-plus which were subsequently sent to the Government Analyst, Drugs Testing Laboratory. On 27.01.2016, the subject drug was found '*not of standard quality*' as it had failed the test of '*Freedom from Extraneous matter and Sterility*'. Formal complaint was made against the accused for offences under Section 18(a)(i), being punishable under Section 27(d), of the Act. Upon being assailed, the High Court quashed the subject complaint, *inter alia*, on the grounds of non-compliance with the mandatory provisions of Section 202(1) of the Code. Be it noted, the High Court also opined that '*a mere bald statement in the petition that they are the persons who are manufacturing the hypodermic syringes found to be below standard, is not sufficient compliance of Section 34 of the Act.*'

58. As the primary challenge in the instant appeal was with regard to Section 202(1) of the Code, the said point has already been answered in

the above-mentioned Criminal Appeal arising out of SLP(Crl.) No.4524 of 2023 in favour of the concerned Appellants, to which we add no more.

59. On the aspect of Section 34 of the Act, we are of the opinion that the High Court's view *per se* was premature. The Respondents-Directors were in the accused-Company's management. Whether or not, they were '*in charge of*' and '*responsible to the company for the conduct of the business of the company*' are questions of fact. To our mind, bearing in mind a holistic conspectus of the case, these questions are best left to be determined by the Trial Court, at the appropriate stage. Accordingly, the instant appeal also stands allowed by setting aside the Impugned Judgment.

OBSERVATION QUA ALL THE AFORESAID APPEALS:

60. The discussions hereinabove are purely for the purposes of deciding the questions raised in this set of appeals. Nothing therein shall be construed as a final adjudication/findings on the merits of the underlying Complaint Case(s) and will not prejudice any party. Parties are at liberty to other issues of fact and law at trial at the appropriate stage. Since the date/s for entering appearance have already elapsed in all the matters, the Court(s) concerned shall issue fresh summons to all

accused. Thereafter, the matter shall be proceeded with, strictly in accordance with law. We propose no order as to costs.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

NEW DELHI
FEBRUARY 26, 2026