HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 6524/2025

1. M/s Cadila Pharmaceuticals Ltd., Industrial Growth Centre, Sidco, Samba- 184121, J And K, India through its Authorised Representative Mr. Sanjeev Kumar Singh S/o Shri Atiraj Singh, G.m. Legal.
2. Mr. Manmohan Sharma, Manufacturing Chemist M/s Cadila Pharmaceuticals Ltd., Industiral Growth Centre, SIDCO, Samba- 184121 J And K, India.

----Petitioners

Versus

1. The State of Rajasthan, Through P.P.
2. Sh. Narottam Dev Barothia, Drugs Control Officer, Jhunjhunu (Raj).

----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No. 2667/2022

Mahesh Gupta S/o Shri Rudmal Gupta, aged about 57 Years, Resides At 187,-Patmavati Colony-A. Kings Road, Ajmer Road, Jaipur (Raj.).

----Petitioner

Versus

1. State of Rajasthan, through Public Prosecutor.
2. Drug Control Officer, Bhilwara, Rajasthan

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 2668/2022

M/s Kaushal Pharma, Shop No. 2, Mahendvas House, Near Mahalaxmi Market, Nehru Bazar, Jaipur (Raj.) Through Firm Owner And Competent Person Shri Mahesh Gupta S/o Late Shri Rudmal Ji Gupta, 187, Padmavati Colony-A, Kings Road, Ajmer Road, Jaipur (Raj.) New Address J-163-166, Aakera Doonger, V.K.I. Road No. 17, Jaipur (Raj.)

----Petitioner

Versus

1. State of Rajasthan, Through Public Prosecutor.

2. Drug Control Officer, Bhilwara, Rajasthan

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 5132/2022

M/s Gadia Distributors, Tibarewal Market, Jhunjhunu (Raj). Through Firs Owner And Competent Person Shri Mahendra Kumar S/o Shri Khobchand.

----Petitioner

Versus

1. State of Rajasthan, Through Public Prosecutor.
2. Drug Control Officer, Jhunjhunu, Rajasthan.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 5136/2022

Bhanwar Lal Bhati S/o Shri Nanagaram Gupta, Resides At Sawarda, Tehsil-Dudu, Dist. Jhunjhunu (Raj). Additional Competent Person of M/s Kaushal Pahram, Shop No. 2, Mahendvas House, Near Mahalaxmi Market, Nehru Bazar, Jaipur (Raj).

----Petitioner

Versus

1. State of Rajasthan, Through Public Prosecutor.
2. Drug Control Officer, Jhunjhunu, Rajasthan.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 5137/2022

Mahendra Kumar S/o Shri Khobchand, Resides at Post- Bajaba, Distt. - Jhunjhunu, (Raj). Owner and Competent Person M/s Gadia Distributors, Tibarewal Market, Jhujhunu (Raj).

----Petitioner

Versus

1. State of Rajasthan, Through Public Prosecutor.
2. Drug Control Officer, Jhunjhunu, Rajasthan.

----Respondents

S.B. Criminal Miscellaneous (Petition) No. 7747/2024

Mr. Rajiv Modi S/o Indravadan Modi, aged about 64 Years, R/o 13, Sanjeev Baug, New Sharda Mandir Road, Ahmedabad-380007 Having His Place Of Business As Cadila Pharmaceuticals Limited, Cadila Corporate Campus, Bhat Village, Ahmedabad,

Gujarat- 382210.

----Petitioner

Versus

State of Rajasthan, through Drug Control Officer, Office Of The Drug Control Office, Jhunjhunu, Rajasthan- 333001.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 7748/2024

Mr. Pankaj Patel S/o Ramanbhai Patel, aged about 71 Years, R/o 16, Aazaad Society, Ahmedabad- 380015. Having His Place of Business As Zydus Corporate Park, Scheme No. 63, Khoraj (Gandhinagar), 536,sg Highway, Vaishnodevi Circle, Ahmedabad, Gujarat-382481.

----Petitioner

Versus

State Of Rajasthan, Through Drug Control Officer, Office of The Drug Control Office, Jhunjhunu, Rajasthan- 333001.

----Respondent

For Petitioner(s)	:	Mr. V.R. Bajawa-Sr. Advocate with Ms. Savita Nathawat, Mr. Vickey Bajwa, Mr. Sarthak Karol, Mr. Neelakshi Bhadawria and Mr. Tarun Kumar Mishra Mr. Dharmendra Gupta for Mr. G.D.Bansal
For Respondent(s)	:	Mr. Amit Punia-PP

JUSTICE ANOOP KUMAR DHAND

Order

Reportable

1.	**Date of conclusion of arguments**	**25/11/2025**
2.	**Date on which the judgment was reserved**	**25/11/2025**
3.	**Whether the full judgment or only the operative part is pronounced:**	**Full judgment**
4.	**Date of pronouncement**	**28/11/2025**

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1. Since common questions of fact and law arise in all these misc. petitions, hence, with the consent of counsel for the parties, all the matters are taken up for final disposal and are accordingly being decided by this common order.

2. For the sake of convenience, the facts mentioned in S.B. Criminal Miscellaneous (Petition) No. 7747/2024 are taken into consideration.

3. By way of filing this criminal misc. petition, a prayer has been made for quashing the order dated 22.05.2015 passed by the Chief Judicial Magistrate, Jhunjhunu in criminal complaint No. 285/2015 taking cognizance against all the petitioners under Section 18(a)(i), 18(a)(iv) and 27(d) read with Section 16(1)(a) of the Drugs and Cosmetics Act, 1940 (for short, 'the Act of 1940') and all the petitioners have been summoned.

4. Counsel appearing on behalf of the Director i.e. Mr. Rajiv Modi submits that bare perusal of the entire complaint does not reveal any allegations against the petitioners. Counsel submits that as per Section 34 of the Act of 1940, the Drug Inspector is duty bond to incorporate the allegation levelled against the Director in the complaint that every person who is In-charge of the company was liable and responsible for the business/conduct of the company but in the instant case, no specific allegation has been alleged against the petitioners. He further submits that in the absence of such allegation, the petitioners cannot be arrayed as accused in the complaint. He further submits that while taking cognizance against the petitioners no satisfaction has been recorded by the Trial Court and straightaway, the order of

cognizance has been passed in a cursory manner without due application of mind. In support of his contentions, counsel has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Inox Air Products Limited Vs. The State of Andhra Pradesh**, reported in **2025 INSC 128**, **M/s. JM Laboratories and Ors. Vs. State of Andhra Pradesh and Anr.,** (Criminal Appeal No. 487/2025) decided on 30.01.2025, **Anita Malhotra Vs. Apparel Export Promotion Council and Anr.** reported in **2012(1) SCC 520**, **Siby Thomas Vs. M/S/. Somany Ceramics Ltd.** reported in **2023 Live Law (SC) 869** and **Susela Padmavethy Amma Vs. M/s. Bharti Airtel Limited**, (SLP (Criminal) No. 12390/2022) decided on 15.03.2024.

Lastly, he argued that under Section 202 Cr.P.C. it is mandatory that before issuing summons to the accused, an enquiry should be held against the accused particularly in those cases where the accused is residing outside the territorial jurisdiction of the Court. Counsel submits that under these circumstances, the impugned order passed by the Court below taking cognizance against the petitioners is not sustainable in the eyes of law and the same is liable to be quashed and set aside.

5. Counsel appearing on behalf of the other Director i.e. Pankaj Patel, submits that the sample of the disputed drugs was taken by the Drug Inspector on 21.05.2012 and it was sent to the State Laboratory for analysis and the report of the same was received on 04.12.2012 which indicates that the drugs were found to be of substandard quality. Counsel submits that Mr. Pankaj Patel, was

not the Director of Company because he had already resigned from his post way back in the year 1995 and was no longer involved in the day to day affairs of the said company. Hence, under these circumstances, the petitioner cannot be arrayed as an accused in the complaint and no cognizance ought to have been taken against him.

6. Counsel submits that so far as the petitioner company M/s Cadila Pharmaceuticals Ltd. is concerned, no specific allegation has been attributed to the said company, and the same is against the mandate contained under Section 34 of the Act of 1940. Hence, under these circumstances, the impugned proceedings arising out of the impugned complaint and cognizance order are liable to be quashed and set aside.

7. Mr. Dharmendra Gupta for Mr. G.D.Bansal appearing on behalf of the Distributors and Stockists i.e. Mahesh Gupta, M/s. Kaushal Pharma, M/s. Gadia Distributors, Bhanwar Lal Bhati and Mahendra Kumar submits that they are either Distributors or Stockists of the drugs and not manufacturers. Hence, under these circumstances, they cannot be impleaded as accused in terms of Section 19(3) of the Act of 1940. Counsel submits that all these relevant facts have been overlooked and brushed aside by the learned Magistrate, while passing the impugned cognizance order. Hence, the same is not sustainable in the eyes of law and is liable to be quashed and set aside.

8. Per contra, learned Public Prosecutor opposes the arguments raised by counsel for the petitioners and submits that so far as the contentions raised by Distributors and Stockists are concerned, it

is a matter of trial and at the stage of taking cognizance, only prima facie case is required to be seen by the Trial Court. He further submits that pursuant to the notice given by the Drug Inspector to the Company, details/information was furnished to the Controller/Drug Inspector which clearly indicate that Rajiv Modi and Pankaj Patel were the Directors of the Company at the relevant time and they were responsible for the day to day affairs of the Company. Counsel submits that on the basis of the aforesaid information, received from the Company, these two persons have been impleaded as accused in the complaint in the capacity of Directors of the Company. Hence, there is no fault in the complaint submitted by Controller/Drug Inspector and the Trial Court has not committed any error in taking cognizance against the petitioners. Therefore, interference of this Court is not warranted and these misc. petitions are liable to be rejected.

9. Heard and considered the submissions made at Bar and perused the material available on record.

10. Perusal of the impugned cognizance order and material available on the record indicates that samples of the drugs were taken by the Drug Inspector and after analysis of the same, the drugs were found to be of sub-standard quality. Hence, the complaint has been submitted against the Stockists, Distributors and Directors of the Company and the learned Magistrate has taken cognizance against all the petitioners, under the above noted provisions of the Act of 1940.

11. Basically, the petitioners are feeling aggrieved by the impugned order by which cognizance has been taken against them

for the above stated offences and they have approached this Court for quashing of the cognizance order on several grounds and one of the grounds is that it is a non-speaking order and it does not reflect the reasons for proceeding against the petitioners. Several other arguments have also been raised that the petitioners are not having any liability for the sub-standard drugs. Hence, it is prayed that the order of taking cognizance be quashed against them.

12. The term "cognizance" has nowhere been defined under the Code, but the word itself is of indefinite import. The word itself is derived from the Latin word 'cognoscere', and the French Word "conoisance" which means "to know", "to become acquainted with", or "to recognize". The Black's Law Dictionary defines the term "cognizance" as "Judicial notice, knowledge or acknowledgement" or "the judicial hearing of a cause".

13. In criminal law, the term "cognizance" has no esoteric or mystic significance, and the same is reflected by the omission of any formulaic definition of the term under the Code. However, over time, the term "cognizance" has come to acquire a special and distinct connotation, through a catena of decisions and authoritative exegesis rendered by this Court. The expression "cognizance" means to 'become aware of' or 'to take notice of judicially'. The special connotation that has been ascribed to the term denotes or indicates the stage at which a judicial authority such as a Court of Sessions or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence.

14. Cognizance is, at its heart, always an act of the court. It entails not merely the receipt of information or the mechanical act of acknowledgement of a particular offence by a judicial authority, but a conscious application of mind by it, to the information disclosed or received, as the case may be, and the subjective element of its satisfaction that i) an offence has indeed occurred and ii) the circumstances necessitate setting into motion criminal proceedings in respect of the said offence, or at the very least take steps for ascertaining if there is any basis for initiating such proceedings. Cognizance is attended by the assumption of jurisdiction for proceeding further.

15. Having understood the legal import of the term "cognizance", we may now profitably turn towards understanding how cognizance may be taken. Chapter XIV of the Code deals with "Conditions requisite for initiation of proceedings", and Section(s) 190 to 199 contained thereunder, delineates the methods and the limitations subject to which cognizance of offence may be taken by the various criminal court empowered thereunder.

16. Remarkably, none of the provisions in the aforesaid Chapter prescribe how 'cognizance' is to be taken, and rather only describe the conditions and limitations for the initiation of proceedings under the Code. This is because, taking cognizance, as already stated, is an act of court, and the prosecuting agency or complainant have no control over the same. It is predicated upon application of judicial mind and is not dictated by the complaint or police report, which cannot be construed by any formulaic approach. 'Taking cognizance' does not involve any formal action

of any kind. It occurs as soon as a judicial authority applies its mind to the suspected commission of an offence.

17. The process of "taking cognizance" is one of variable and inderminate import; it neither carries a uniform or fixed procedural contour nor has it been used in the same sense throughout the scheme of the Code. This is because "taking of cognizance" signifies the setting into motion, the criminal justice machinery, which may be done, under the Code, in different ways, which is why it derives its understanding from the various procedures by which proceedings are initiated under the Code, and as such its import differs, depending upon the context of the procedure in which it has been used. Hence, there exists no rigid taxonomy or formulaic framework for "taking cognizance", and the act of "taking cognizance" has to be understood from the procedure itself, more particularly, at which stage, it could be said that there has been an application of judicial mind for the purpose of initiating proceedings under the Code or in simple words, cognizance has been taken.

18. It is equally true that at the stage of taking cognizance, the Magistrate is mainly concerned with the allegations made in the complaint on the evidence led in support of the same and is not required to enter into a detailed discussion on the merits or demerits of the case and he is to find out only a prima facie case and at this stage, he is not supposed to see the defence of the accused.

It is well settled that at the stage of taking cognizance, the accused has got absolutely no locus standi and is not entitled to

be heard in the question whether the process should be issued against him or not.

19. But, at the same time, this fact cannot be lost sight of that a reasoned and speaking order must be passed by the Magistrate, after formal and due application of judicial mind, to proceed further in the matter ensuring that the ingredients of the offence for which cognizance is being taken are present. Though, meticulous appreciation of evidence is not required to be done but atleast a formal application of mind must be there.

20. It is settled proposition of law that the order of summoning the accused must reflect that the Magistrate has applied his mind to the facts of the case. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient grounds exist for proceeding against the accused.

21. Hon'ble Apex Court in the case of **Lalankumar Singh Vs. State of Maharashtra**, reported in **2022 SCC Online 1383** has held in para 38, 51, 52 and 53 as under:-

> "38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation9, which reads thus:
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> > "51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of

an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

22. The above view taken by the Apex Court in the case of **Lalankumar Singh** (supra) has been followed in the cases of **M/s JM Laboratories** (supra) and **Inox Air Products Private Ltd.**(supra) where it has held that there is no application of mind even for the namesake by the learned Magistrate while issuing the process. Hence, the same was held to be a non-speaking order.

23. In the instant case also while passing the impugned cognizance order, the learned Magistrate has not assigned any reason as to how a prima facie case is made out against the petitioners for proceeding against them for the above stated offences. A totally non-speaking order has been passed in a very cursory manner by the Trial Court. Hence, the same is not tenable in the eyes of law and is liable to be and is hereby quashed and set aside.

24. The matter is remitted to the learned Magistrate to pass a reasoned and speaking order afresh, after due application of judicial mind and proceed further in the matter ensuring that the ingredients of the offences for which cognizance is required to be taken are present. It is made clear that meticulous appreciation of evidence is not required to be done at the cognizance stage. If the Magistrate comes to the conclusion that a prima facie case is made out against the accused persons, including the petitioners, he would be at liberty to proceed against them in accordance with law, without considering the defence of the accused and without granting them any opportunity of hearing, as the accused has no locus standi and are not entitled to be heard on the question whether the process should be issued against them or not.

25. With the aforesaid observations and directions, all these misc. petitions stand disposed of.

26. It goes without saying that fresh reasoned and speaking order would be passed by the learned Magistrate expeditiously as early as possible within a period of four weeks from the date of receipt of this order, as the matter pertains to the year 2012.

27. Let a copy of this order be sent to the Learned Magistrate for needful compliance of the order.

28. Before parting with this order, this Court takes a serious note of the prevailing situation and circumstances, while noticing that in several cases cognizance orders are being passed by the learned Magistrates, in a very causal and cursory manner, without due application of judicial mind, without perusing the material available on the record and without ensuring that there exists any "prima facie" case to issue summon and proceed against the accused. It is further noticed that in some of the cases, cognizance orders are being passed in proformas and in cyclo-style manner. Although, meticulous appreciation of evidence is not required at this stage but at least a formal application of mind must be there.

The order of taking cognizance and issuance of process against the accused is not an empty formality. The Magistrate is required to apply his judicial mind as to whether there is a prima facie case to take cognizance and there exists sufficient grounds to proceed against the accused.

29. However, in the fitness of the things, the matter be placed before Hon'ble the Chief Justice from administrative side for consideration as to whether a copy of this order be sent to all the Judicial Officers of the State on their e-mail address manning them to remain careful in future, while taking cognizance and issuing process against the accused person and further to consider and/or sending a copy of this order to the Director, Rajasthan State Judicial Academy to formulate a course in the training of the

Judicial Officers to apply their judicious mind before taking cognizance and do not pass the cognizance orders in most cursory manner or in proformas, in a cyclo-style manner, while conducting trial, in future (if deems appropriate).

(ANOOP KUMAR DHAND),J

Ashu/-