

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 10.11.2025

Pronounced on: 14.11.2025

Uploaded on: 14.11.2025

*Whether the operative part
or full judgment is
pronounced: **Full***

CRM(M) No.509/2024

M/S ARISTO LABORATORIES PVT. LTD.

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Aatir J. Kawoosa, Advocate.

Vs.

UT of J&K.

...RESPONDENT(S)

Through: - Mr. Hakim Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged the complaint filed by the respondent against it alleging commission of offences under Section 18(a)(i) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short "the Act") which is stated to be pending before the Court of Chief Judicial Magistrate, Srinagar. Challenge has also been thrown to order dated 24.12.2012, passed by the learned CJM, whereby cognizance of offence has been taken and process has been issued against the petitioner.

2) It appears that the respondent Drugs Officer, Anantnag, filed a complaint against the petitioner and co-accused before the Court of learned Chief Judicial Magistrate, Anantnag. In the complaint, it was alleged that the complainant lifted a sample of injection 'Monocef' Batch No.D16B271 with date of manufacturing 02/2011 and date of expiry as 07/2013, manufactured by the petitioner/accused. The sample was lifted from the premises of co-accused M/S M.T. Traders, Cheeni Chowk, Anantnag. After lifting the sample, its one portion was sent to the Government Analyst, Jammu, for analysis, who, vide its report dated 09.04.2012, declared the sample not to be of standard quality. It was further alleged that a copy of test report was provided to co-accused M/S M. T. Traders, Cheeni Chowk, Anantnag, vide communication dated 17.04.2012 and vide communication dated 28.04.2012, the said accused disclosed that the drug in question had been purchased by it from M/S S. S. Traders, Cheeni Chowk, Anantnag, the co-accused.

3) The matter was taken up with the said co-accused, who, vide reply dated 21.05.2012, disclosed that the drug in question was supplied to it by M/S New Ahmad Medical Agencies, Doodh Ganga Road, Balgarden, Srinagar, the co-accused. Thereafter the matter was taken up with M/S New

Ahmad Medical Agencies, Srinagar, and in response, the said accused vide its communication dated 24.05.2012, disclosed that the drug in question had been supplied by M/S Aristo Pharmaceuticals Pvt. Ltd. Opp. Nevdec Prosthetic Centre, Chandigarh, Ambala Road, Zirakpur District S. A. S. Nagar, Mohali Punjab, the co-accused. Again the matter was taken up with the said co-accused and in response, the said co-accused vide its communication dated 13.06.2012, disclosed that the drug in question was supplied to it by M/S Aristo Laboratories Pvt. Ltd. Kunbar Fulia, Village Dabhel, Nani Daman, the petitioner herein.

4) It was further averred in the impugned complaint that in terms of Section 25(2) of the Act, a copy of the test report along with the portion of drug sample was sent to the petitioner vide communication dated 25.06.2012, which was responded to by the petitioner vide communication dated 20.07.2012. After receiving the response of the petitioner, the matter was taken up by the complainant with the Controller, Drug & Food Control Organization, whereafter sanction for prosecution was granted. On the basis of the these allegations, it was contended by the complainant that the petitioner has committed an offence under Section 18(a) read with Section 27(d) of the Act.

5) The Chief Judicial Magistrate, Anantnag, assigned the complaint to the Court of District Mobile Magistrate(T), Anantnag, who vide order dated 24.12.2012, took cognizance of the offences and issued process against the accused including the petitioner herein.

6) It seems that vide order dated 01.06.2013, the learned District Mobile Magistrate (T), Anantnag, committed the case to Principal Sessions Judge, Anantnag. Before the learned Sessions Judge, it seems that the petitioner filed an application seeking re-testing of the seized drug. In terms of order dated 04.06.2013, passed by the learned Principal Sessions Judge, Anantnag, the sample of the drug in question was sent to the Central Drugs Laboratory, Calcutta, for its re-testing. However, it appears that as per the report of the Central Drugs Laboratory, Calcutta, the sample was again found to be not of standard quality.

7) The record of the trial court further shows that on 30.05.2015, the learned Principal Sessions Judge, Anantnag, passed another order, whereby the Court came to the conclusion that the complaint is triable by a Magistrate specially empowered in this behalf by the Government. After taking note of SRO 44 dated 06.02.2006 issued by the Government of J&K, the learned Sessions

Judge concluded that the offences for which the accused have been booked are triable not by the Sessions Court but by the Court of Chief Judicial Magistrate. Accordingly, the complaint was transferred to the Court of Chief Judicial Magistrate, Anantnag.

8) On 17.10.2015, the learned Chief Judicial Magistrate, Anantnag, passed a fresh order taking cognizance of offence under Section 18(a)(i) of the Act and issued process against the accused who were present in the Court on the said date. It seems that thereafter trial of the complaint was conducted by the Chief Judicial Magistrate, Anantnag.

9) Vide order dated 22.07.2022, passed by this Court in TrP(Crl) No.21/2022, the complaint came to be transferred to the Court of Chief Judicial Magistrate, Srinagar. It seems that when the trial of the case was almost complete and evidence of the accused was going on, the petitioner/accused filed the present petition challenging the proceedings pending before the Court of Chief Judicial Magistrate, Srinagar.

10) The petitioner has challenged the impugned complaint and the proceedings emanating therefrom on the grounds that the Court of Chief Judicial Magistrate, Srinagar, is not empowered to try the complaint filed by the respondent. In

this regard, reference has been made to the provisions contained in Section 32 of the Act. It has been contended that the respondent/complainant has not adhered to the procedure prescribed under Section 23(4) of the Act, inasmuch as a portion of the sample has not been provided to the petitioner who happens to be the manufacturer of the drug, which is subject matter of the complaint. It has been further submitted that the order whereby cognizance of offences has been taken by the learned Mobile Magistrate(T), Anantnag, is cryptic in nature and it does not exhibit application of mind.

11) I have heard learned counsel for the parties and perused record of the case.

12) So far as the first contention of the petitioner is concerned, it has to be noted that the petitioner is facing prosecution for offences under Section 18(a)(i) of the Act punishable under Section 27(d) of the Act. The said offence is punishable with imprisonment for a term which is less than one year but which may extend to two years with fine not less than twenty thousand rupees. As per Section 36-A of the Act, all offences triable by the Special Court under Section 36-AB or Court of Sessions under the said Act except the offences punishable with imprisonment for a

term not exceeding three years, other than an offence under clause (b) of sub-section (1) of Section 33-I, are to be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government. So far as the offences triable by Special Courts are concerned, the same have been mentioned in Section 36-AB of the Act. These include the offences relating to adulterated or spurious drugs which are punishable under clauses (a) and (b) of Section 13, sub-section (3) of Section 22, clauses (a) and (c) of Section 27, Section 28, Section 28-A, Section 28-B and clause (b) of sub-section (I) of Section 30 of the Act. The provisions contained in Section 32 of the Act are also required to be taken note of. It provides that no court inferior to that of a Court of Sessions shall try an offence punishable under Chapter-IV of the Act except otherwise provided under the Act, meaning thereby that Section 32 of the Act will govern a situation which is not otherwise provided for in the Act.

13) In the present case, the petitioner is facing prosecution for offence under Section 27(d) which falls under Chapter-IV of the Act but, as already noted, Section 36-A of the Act provides for summary trial of certain types of offences, which are punishable with imprisonment for a term not exceeding three years, by a Judicial Magistrate of

first class specially empowered in this behalf. Thus, if an offence, which is punishable with imprisonment for a term not exceeding three years, the same would be triable by a Judicial Magistrate of first class specially empowered by the Government in this behalf in spite of the fact that the said offence may fall within Chapter-IV of the Act. The saving clause in sub-section (2) of Section 32 of the Act clearly provides that the said sub-section would not apply to a case where the Act provides otherwise. Therefore, contention of the petitioner that the impugned complaint could not have been tried by the learned Chief Judicial Magistrate, Srinagar, is without any merit.

14) In fact, the aforesaid aspect of the matter has been dealt with by the learned Principal Sessions Judge, Anantnag, while passing order dated 30.05.2015, by making reference to SRO 44 of 2006, which empowers all the Judicial Magistrates of the State to try the offences in exercise of powers under Section 36-A of the Act. The contention of learned counsel for the petitioner in this regard is, therefore, without any merit.

15) The second contention that has been raised by learned counsel for the petitioner is that a portion of the sample was not furnished to the petitioner, who happens to be the

manufacturer of the drug, which is subject matter of the impugned complaint. It has been submitted that by not furnishing a portion of the sample to the petitioner, the respondent Drugs Inspector has violated the mandate of Section 23(4) of the Act.

16) In the above context, it is to be noted that a portion of the sample was furnished to the petitioner and only thereafter, the petitioner, vide its letters dated 20.07.2012 and 23.07.2012, responded by stating that the drug in question is of standard quality. In fact, the petitioner approached the learned trial court for re-testing of the sample from Central Drugs Laboratory, Calcutta. Even after retesting by the Central Drugs Laboratory, Calcutta, the sample was not found to be of standard quality. The complainant has specifically pleaded in the complaint that a portion of the sample was furnished to the petitioner in terms of communication dated 25.06.2012.. The contention of the petitioner that portion of the sample was not furnished to it is factually incorrect in view of clear stand of the petitioner in response to communication dated 25.06.2012 issued by the Drugs Inspector.

17) The last contention that has been urged by learned counsel for the petitioner is that the impugned order,

whereby cognizance of offences has been taken and process has been issued against the petitioner and co-accused, is cryptic in nature and it does not reflect the application of mind on the part of the learned trial Magistrate.

18) In the above context, it may be noted that though the learned trial Magistrate, before whom the complaint was initially filed at Anantnag, had passed a cryptic order taking cognizance of the offence and issuing process against the accused without satisfying itself as to whether any offence is made out against them, yet when the matter came to be transferred to the learned Chief Judicial Magistrate, Anantnag, pursuant to the order dated 30.05.2015 passed by the learned Sessions Judge, Anantnag, a fresh order taking cognizance of the offences came to be passed by the learned Chief Judicial Magistrate, Anantnag on 17.10.2015. In the said order, the learned Magistrate has, after noticing the allegations made in the complaint and applying his mind to the same, recorded that prima facie offences under Section 18(a)(i) of the Act are made out against the accused, whereafter the process has been issued against them. Therefore, the contention of the petitioner that the order taking cognizance of offences is

mechanical in nature, is without any substance and is liable to be rejected.

19) For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly. Interim direction, if any, shall stand vacated with immediate effect.

(SANJAY DHAR)
JUDGE

Srinagar
14.11.2025
“Bhat Altaf”

*Whether the **Judgment** is speaking: **Yes***
*Whether the **judgment** is reportable: **Yes/No***