



2026:AHC-LKO:21582

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 820 of 2026

Mr. Anil Kumar And Another

.....Applicant(s)

Versus

Inspector Of Drugs U.P. Bahraich Region
Authority Food Safety Drug Admin. Bahraich U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)

: Skand Bajpai

Counsel for Opposite Party(s)

: G.A.

**Reserved on 13.03.2026
Pronounced on 26.03.2026
Uploaded on 26.03.2026**

Court No. - 15

HON'BLE BRIJ RAJ SINGH, J.

1. The present application under Section 482 of Code of Criminal Procedure, 1973 (in short "CrPC") has been filed seeking quashing of summoning order dated 19.12.2019 passed in Special Session Trial No. 09 of 2019 (State Vs. Anil Kumar & Anr.) pending in the Court of Additional Session Judge, Bahriach (in short "Trial Court"), under Sections 18(a)(i) and 27(a) of the Drugs and Cosmetics Act, 1940 (in short "Act, 1940").

2. It is the case of the applicant that the applicant no.1/Anil Kumar is the proprietor of the applicant no.2/ M/S Skohind Labs, Plot No.20, Extn. HPSIDC, Ind. Area, Baddi, District Solan-173205, Himachal Pradesh proprietorship engaged in manufacturing of drugs authorised by the State Drug Controller, Controlling-cum-Licensing Authority, Baddi, District Solan, Himachal Pradesh vide Loan Licenses to manufacture for sale or for distribution of drugs bearing Licence Nos. L/16/1719/MNB & L/16/1720/MB, both dated 27.04.2016 valid through 26.04.2021. The firm is registered for the purpose of the Goods and Service Tax, vide registration number 02AMYPK9712B220. On 19.12.2019, the opposite party/Inspector of Drugs preferred complaint dated 18.12.2019 before Additional Session Judge-1, Gonda alleging offences punishable under S

ections 18(a)(i) and 27(a) of the Act, 1940. In his complaint, the opposite party alleged that on 27.05.2019 allopathic drug Sample No. RP/BRH/may/19/08 was collected during inspection from M/s Shabnam Medical Store, Kaiserganj Bazar, Bahraich (in short "Medical Store") of Gauseclav-625 LB tablet (Amoxycillin, Potassium clavulanate and Lactic Acid Bacillus) B/N-SLB-1832. M/D- Jan/2019m E/D- Jun/2020, Manufactured by M/S Skohind Labs, Plot No.20, Extn. HPSIDC, Ind. Area, Baddi, District Solan-173205, Himachal Pradesh (applicant no.2 herein) for test and analysis as per provisions and procedure of the Act, 1940. It was further alleged in the complaint that the collected sample was sent to Government Analysis Laboratory, Lucknow for test and analysis, vide registered post dated 30.05.2019, and the laboratory vide report dated 28.06.2019 opined that "*The Sample does not conform to declared formula, in respect of Content of Clavulanic Acid.*", after which the opposite party sent notice dated 09.07.2019 to Medical Store, in response to which, Medical Store produced the purchase records of M/S MK Healthcare, Shop No. 47. 2nd Floor Pipliwala. Town Manimajra, Chandigarh-160101. It was further alleged in the complaint that notice dated 06.09.2019 was sent to M/S MK Healthcare, Chandigarh, however they remained unresponsive. It is further alleged that notice dated 06.09.2019 was sent to the applicants with sealed portion and original test report, and vide letter dated 19.10.2019, the applicants replied and accepted the manufacturing of Gauseclav-625 LB tablet and produced attested copies of Batch Manufacturing records, test report, license and other related documents. Lastly in the complaint it is stated that the Commissioner, Food Safety and Drug Administration, Lucknow vide letter dated 08.07.2019 instructed to file complaint against the accused firm or persons, consequentially the applicants were arrayed as accused by the opposite party in his complaint praying for summoning. trying and punishing them. In support of his complaint, the opposite party enclosed a list of witnesses having three witnesses including the opposite party, and in his list of documents filed in support of his complaint he annexed fourteen annexures.

3. It is submitted that the opposite party has not appended the statements of his witnesses thereby causing irreparable prejudice applicant-accused in preparing their defence as such proceedings

impugned are in teeth of the right of fair trial of the applicants guaranteed under Article 21 of the Constitution of India.

4. It is further submitted that it is the admitted case of the prosecution that the alleged substandard drugs were confiscated/seized from Medical Store where the drug was allegedly exhibited, offered for sale and stocked. A further perusal of the record makes it evident that the said drug was procured by Medical Store from M/s MK Healthcare, however, neither the firms or their proprietors have been arrayed as an accused by the opposite party for ulterior reasons and oblique motives.

5. Mr. Skand Bajpai, learned counsel for the applicants has submitted that the opposite party in his complaint has nowhere alleged that the applicants have manufactured for sale or distribution deficient/faulty/substandard medications, in absence of such an allegation the complaint lacks the ingredients of offence under Sections 18(a)(1), 27(a) of the Act, 1940, as such the Court below could not have taken cognizance and summoned the applicants to stand trial vexatiously.

6. He has further submitted that the opposite party has appended the requisition form dated 10.01.2019, Batch Manufacturing/Packing Records dated 10.01.2019-11.01.2019, and Certificates of Analysis dated 27.11.2018, 03.01.2019, and 15.01.2019 in support of his complaint, a perusal of the same reflects that the batch samples comply with the standards of amoxicillin and Clavulanic acid, as such the applicants cannot be held liable for any spoiling of the drug which may have occurred due to lack of proper storage and transit of the drug. The complaint fails to point any flaw, shortcoming, or negligence on part of the applicants during manufacturing or packaging of the drug. the complaint further fails to satisfy any intentional substandard, spurious or adulterated manufacturing of the drug, as such the impugned proceedings are liable to be quashed on this ground alone.

7. He has further submitted that the opposite party alleges having collected samples from Medical Store on 27.05.2019 and having sent the samples for test which allegedly were found substandard, however, a perusal of the Form-17 issued by the opposite party witnessing the collection of samples reflects that he did not collect the samples in

presence of two or more independent witnesses inhabiting the locality in which Medical Store is situated, as such the proceedings are vitiated at their very root as the inspection/search is patently illegal and consequent collection of samples too is untenable for causing irreparable prejudice to the accused.

8. He has further submitted that the matter remained pending before Additional Session Judge-I, Gonda till 04.04.2021, and was transferred to Additional District & Session Judge-I, Bahraich in pursuance to Government Order dated 25.11.2019 and Notification dated 30.11.2019 issued by this Court on administrative side.

9. He has further submitted that Additional Session Judge-I. Gonda did not have jurisdiction to take cognizance on the opposite party's complaint dated 18.12.2019 as His Excellency the Governor of Uttar Pradesh, in exercise of powers under Section 36AB of the Act, 1940 issued Government Order dated 25.11.2019, designating the 7th Additional Session Judge in each district as special Court for the purpose of trial of offence referred to under subsection (1) of Section 36AB of the Act, 1940, and the senior most Additional Session Judge as per the said notification can try offence under subsection (1) of section 36AB only when there is no Court of 7th Additional Session Judge in the district and as per the information available on the official website of this Court regarding District Judgeship Gonda, thirty one Judicial Officers are posted there out of which eight are of the Additional District Judge rank, therefore, the impugned proceedings are inherently without jurisdiction and the impugned cognizance and summoning order dated 19.12.2019 is liable to be set aside for want of jurisdiction. To buttress his arguments, he has placed on the judgments passed in **Union of India v. Ashok Kumar Sharma**, reported in (2021) 12 SCC 674; **JM Laboratories v. State of Andhra Pradesh**, reported in 2025 SCC OnLine SC 208; **Hasmukhlal D. Vora v. State of Tamil Nadu**, reported in (2022) 15 SCC 164; **Rajesh v. State of Madhya Pradesh**, reported in (2023) 15 SCC 521; **Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited**, reported in (2008) 14 SCC 171; **Purushottam Chaudhary v. Central Bureau of Investigation through the Superintendent of Police**, reported in 2023 SCC OnLine All 4103;

Vijay v. State of Maharashtra, reported in (2017) 13 SCC 317; and **Anand Kumar Mohatta v. State (NCT of Delhi)**, reported in (2019) 11 SCC 706.

10. On the other hand, Mr. Rao Narendra Singh, learned AGA-I has filed counter affidavit sworn by Sri Vinay Krishna, Drug Inspector in District Bahraich and has placed reliance on the complaint by the sole-opposite party and has submitted that on 27.05.2019, allopathic drug Sample No. RP/BRH/may/19/08 was collected during routine inspection from the Medical Store of Gauseclav-625 LB tablet (Amoxycillin, Potassium Clavulanate and Lactic Acid Bacillus) B/N-SLB-1832, M/D-Jan/2019, E/D-Jun/2020, Manufactured by the applicant no.2, for test and analysis as per provisions and procedure of Act, 1940. As per rule Form 18 and Form 17 were prepared on the spot and purchase bill no.T24 dated 27.05.2019 was collected. The complainant sent the above sample of drug to Government Analysis Laboratory, Lucknow for test and analysis purpose through registered post dated 30.05.2019. The drug sample Gauseclav-625 LB tablet (Amoxycillin, Potassium clavulanate and Lactic Acid Bacillus) B/N- SLB-1832, M/D- Jan/2019, E/D- Jun/2020, Manufactured by the applicant no.2 was declared not of standard quality with remarks "*The Sample does not conform to declared formula, in respect of Content of Clavulanic Acid*" by Government Analyst, Uttar Pradesh, Lucknow vide Test Report No. V/1626-19 dated 28.06.2019. Vide letter No. 147-46/औषधि/2019-20 dated 09.07.2019, the Complainant has sent notice to the Medical Store. Vide letter No. NIL dated 23.07.2019, Sri Shabbir Ali (Proprietor of firm) of the Medical Store has replied and produced the purchase records i.e. Invoice No. 0000319 dated 24.01.2019 of M/s MK Healthcare, Shop no.47, 2nd Floor Pipliwala, Town Manimajra, Chandigarh-160101. Vide letter No. 195-96/औषधि/2019-20 dated 07-08-2019, the Complainant sent notice to M/s MK Healthcare, Chandigarh but no reply was received. Again, vide letter No. 240-41/औषधि/2019-20 dated 06.09.2019, the Complainant sent reminder notice to M/s MK Healthcare, Chandigarh-160101.(Annexure-11) but did not reply. Vide letter No. 242-44/औषधि/2019-20 dated 06.09.2019, the Complainant sent notice along with Sealed Sample Portion and Original test report to the applicant no.2. Vide letter No. SLB/272 dated 19.10.2019, the applicant no.2 has replied and has accepted the

manufacturing of Gauseclav-625 LB tablet (Amoxycillin, Potassium clavulanate and Lactic Acid Bacillus B/N- SLB-1832, M/D- Jan/2019. E/D- Jun/2020 and produced the attested copies of Batch Manufacturing records, test report, license and other related documents.

11. He has further submitted that the complainant, after receiving instructions from Commission, Food Safety and Drug Administration, Lucknow filed the complaint before the competent Court in which the applicants have been summoned.

12. Heard Mr. Skand Bajpai, learned counsel for the applicants and Mr. Rao Narendra Singh, learned AGA-I assisted by Mr. Shivendra Shivam Singh Rathore and Mr. Awadhesh Pandey, learned counsels appearing for the sole-opposite party/Inspector of Drugs.

13. The record reveals that Pathological Drug Sample No. RP/BRH/may/19/08 was collected on 27.05.2019 from the Medical Store, which was manufactured by the applicant no.2. The test was conducted, as per procedure of Act, 1940 and as per Rules 14 & 17. The sample was prepared on the spot on 27.05.2019 on Form 17 which indicates that collected sample on Form 17 was received by the Medical Store. The Test Report dated 28.06.2019 indicates that *“The Sample does not conform to declared formula, in respect of Content of Clavulanic Acid.”*.

14. It is also relevant to be mentioned here that the Medical Store was issued show-cause notice on 09.07.2019, which was replied on 23.07.2019 by Sri Shabbir Ali (Proprietor of firm) of the Medical Store. Record further reveals that vide letter No. 242-44/औषधि/2019-20 dated 06.09.2019, the Complainant sent notice along with Sealed Sample Portion and Original test report to the applicant no.2 and the applicant no.2, on 19.10.2019, replied and accepted the manufacturing of Gauseclav-625 LB tablet (Amoxycillin, Potassium clavulanate and Lactic Acid Bacillus B/N- SLB-1832, M/D- Jan/2019. E/D- Jun/2020 and produced the attested copies of Batch Manufacturing records, test report, license and other related documents.

15. It is relevant to be noted that the applicant has questioned the procedure of collecting the sample on the ground that the two witnesses

were not produced by the complainant for verification of the said sample. It is a disputed question of fact, which cannot be scanned by this Court in exercise of power conferred under Section 482 CrPC. This is a matter of trial.

16. The admission of the applicant is also made in para 16 of the application that on 07.04.2021 Additional Sessions Judge-I, Gonda passed an order directing that “This case is received by transfer from Court 1st ASJ Gonda on which order was passed to be put up on next date fixed.

17. The record reveals that on 19.12.2019, the summons has been issued by ASJ, 1st, Gonda. The matter is pending before the competent Court of jurisdiction for the adjudication.

18. The sample was taken at the Medical Store and the sample was furnished to the Proprietor of the Medical Store and thereafter, the show cause notice has been sent to the Proprietor of the Medical Store and later on to the applicant no.2, who is the manufacturer.

19. In para 9.1 of the judgment passed in **Kaptan Singh v. State of U.P., (2021) 9 SCC 35**, Hon’ble Supreme Court has held that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial.

20. Para 9.1 of the judgment passed in **Kaptan Singh (Supra)** is extracted herein-under :-

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even

the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.”

21. Similarly, in the case of **Faizan Ahmad v. State of U.P., 2024 SCC OnLine All 687**, this Court has considered the judgment of Hon’ble Supreme Court passed in in the case of **CBI v. Aryan Singh, (2023) 18 SCC 399** wherein Hon’ble Supreme Court has observed that while exercising a power under Section 482 Cr. P.C. this court cannot go into the disputed question of fact and hold a mini trial to adjudicate the correctness of the allegations and that is to be done by the trial court after the the parties are given opportunity to lead evidence in support of their respective case. Thereafter, this Court has held in para 12 that while deciding an application under Section 482 Cr. P.C., for quashing of criminal case, this court has to examine the prosecution case only to ascertain as to whether the case for trial of the accused person is made out or not and the defense of the accused cannot be taken into consideration at this stage.

22. In the case of **Rajeev Kourav v. Baisahab, (2020) 3 SCC 317**, Hon’ble Supreme Court has held as under :-

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

23. The applicant has questioned the manner of taking samples, jurisdiction of the Court and procedure as envisaged under Section 36AB of Act, 1940. These are the disputed question of fact, and can be decided by the trial Court.

24. In the present case, there is allegation of adulteration of drugs and the analytical report reveals that *“The sample does not conform to the declared formula in respect of the content of Clavulanic Acid.”* In such circumstances, it is the trial court which is competent to adjudicate the case upon appreciation of the evidence to be adduced.

25. This Court, while exercising its inherent jurisdiction under Section 482 CrPC, cannot undertake a mini-trial or embark upon an evaluation of the evidentiary material. The scope of interference at this stage is limited, as consistently held by the Hon’ble Supreme Court in **Kaptan Singh (Supra)**, **Aryan Singh (Supra)** and **Rajeev Kourav (Supra)**.

26. This Court is also of the view that this Court cannot weight evidences at this stage, for which trial is required.

27. The application is devoid of merits and is, accordingly, rejected.

(Brij Raj Singh,J.)

March 26, 2026

Mohit Singh/-