

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on:05.05.2025

+ **CRL.M.C. 6426/2019 & CRL.M.A. 42579/2019**

HARSH MARIWALAPetitioner

versus

PRAMOD KUMARRespondent

+ **CRL.M.C. 6428/2019 & CRL.M.A. 42583/2019,**
CRL.M.A. 38658/2024

M/S. MARICO LIMITED & ORS.Petitioners

versus

PRAMOD KUMARRespondent

Advocates who appeared in this case:

For the Petitioner(s) : Ms. Supriya Juneja, Mr. Aditya Singla & Ms. Medha Navmi, Advs. for the petitioner in CRL.M.C. 6426/2019.

Mr. Sidharth Luthra, Sr. Adv. along with Ms. Supriya Juneja, Mr. Aditya Singla, Mr. Anmol Kheta & Ms. Medha Navmi, Advs. for the petitioners in CRL.M.C. 6428/2019.

For the Respondent : Mr. Sanjay Kumar Dubey, Mr. Vivek Kumar Pandey & Mr. Ravinder Pal Singh, Advs.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed seeking quashing of the summoning order dated 11.10.2019 and the order taking cognizance



dated 05.10.2018 passed by the Learned ACMM (South), Saket Courts, New Delhi (**‘Trial Court’**) in Complaint Case No. 14909/2018. The petitioners, namely Mr. Harsh Mariwala, M/s Marico Limited, and its executives, have been summoned for alleged violations under Sections 17C(c)/18(a)(ii)/27A(ii)/ 32 of the Drugs and Cosmetics Act, 1940 (**‘D&C Act’**), as well as under Sections 417/420/120-B read with Section 34 of the Indian Penal Code, 1860 (**‘IPC’**).

2. Succinctly stated, the complainant, Mr. Pramod Kumar, who is an advocate by profession, filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (**‘CrPC’**) before the learned Trial Court asserting that he had been deceived into purchasing a misbranded cosmetic product by M/s Marico Limited, a leading manufacturer of personal care products in India, and its top functionaries. According to the complaint, on 03.05.2018, the complainant purchased a 200 ml bottle of ‘Parachute Advanced Jasmine Non-Sticky Coconut Hair Oil’ from New Modern Bazar, Select City Walk Mall, Saket, New Delhi. The purchase was backed by a bill, marked as Exhibit CW2/1, and payment was made *via* an HDFC debit card, the transaction record of which was also placed on the record.

3. As per the averments in the complaint, the complainant did not immediately inspect the product but sometime later, around 23.05.2018, he happened to carefully peruse the label printed on the bottle. To his surprise and dismay, he noticed that the product



contained 20% coconut oil and a predominant 79.7% mineral oil. This revelation, he alleged, contradicted his reasonable and legitimate expectation from the packaging and branding of the product, particularly the front panel, which prominently stated 'Parachute Advansed Jasmine Non-Sticky Coconut Hair Oil' and visually depicted a broken coconut. The complainant contended that the representation made on the front panel led him to believe that the product was either composed entirely or at least predominantly of coconut oil, and this belief was fortified by the longstanding reputation of the 'Parachute' brand as being associated with authentic coconut oil products in India.

4. The complainant asserted that the product's labelling was intentionally misleading and aimed at inducing consumers, like him, to purchase a product that did not conform to the reasonable expectations raised by its visual presentation. He contended that the real and chief ingredient in the oil was mineral oil, a fact that was concealed or disclosed only in fine print on the back label, thereby frustrating the statutory duty of transparency and violating the consumer's right to be informed. Based on these grounds, the complainant alleged that the product was 'misbranded' within the meaning of Section 17C(c) of the D&C Act and that the actions of the company and its members amounted to a violation of Section 18(a)(ii) of the said Act, punishable under Section 27A(ii) of the D&C Act. He further alleged that the conduct also gave rise to penal offences under Sections 417/420/120-B read with Section 34 of the IPC.



5. The complaint specifically named Mr. Harsh Mariwala, Chairman of Marico Ltd., Mr. Saugata Gupta, Managing Director and CEO, and Mr. Vivek Karve, CFO, as accused persons responsible for the alleged offence, claiming that they were directly involved in the business operations and day-to-day affairs of the company, including product development, marketing, and labelling.

6. In accordance with the provisions of Chapter XV of the CrPC, the complainant was examined on oath as CW-1, and his statement was recorded by the learned MM. Following this, in deference to the mandate of Section 202 of the CrPC and to further verify the transaction, the learned Trial Court directed that an inquiry be conducted and summoned the shopkeeper from whom the product had been purchased. On 15.05.2019, the store manager, Mr. Jitender (CW-2), from M/s New Modern Bazar, appeared before the learned Trial Court and produced the computer-generated invoice confirming the sale of the product to the complainant.

7. After recording the preliminary evidence and upon considering the material placed on record, including the sample labels and accompanying documents, the learned Trial Court observed that *prima facie* material existed to summon the accused persons named in the complaint. It was observed that the allegations raised substantial issues regarding the product's labelling and its potential to mislead consumers. Accordingly, the learned Trial Court passed the order dated 11.10.2019 issuing summons to the accused persons to appear



and face trial for the alleged offences under the D&C Act as well as under the IPC.

8. The learned senior counsel appearing on behalf of the petitioners, in both petitions, assailed the summoning order dated 11.10.2019 and the earlier cognizance order dated 05.10.2018 passed by the learned Trial Court, on multiple legal and procedural grounds. It was argued that the learned MM acted mechanically, without applying judicial mind, and failed to satisfy himself as to the essential ingredients of the alleged offences either under the D&C Act or under the IPC. He submitted that the impugned orders did not disclose any reason or discussion on how the statutory offences are made out against the petitioners. The order dated 05.10.2018 merely recorded the submissions of the complainant and proceeded to take cognizance, whereas the summoning order of 11.10.2019 failed even to mention the statutory provisions under which the petitioners were being summoned.

9. He submitted that the learned Magistrate failed to adhere to the mandate of Section 202(2) of the CrPC. Since the offences alleged under the D&C Act—particularly those under Sections 18(a)(ii) and 27A(ii) of the D&C Act—are triable exclusively by a Court of Session, the proviso to Section 202(2) of the CrPC imposed a clear and mandatory duty upon the learned MM to conduct an inquiry prior to the issuance of process. However, in the present case, the inquiry undertaken was perfunctory and limited only to the examination of the complainant himself and the shopkeeper from whom the product was



allegedly purchased. It did not extend to any meaningful evaluation of the allegations of misbranding, nor did it involve the examination of any technical expert or independent witness who could attest to the alleged misleading nature of the product label. Crucially, there was no attempt to obtain or consider any expert opinion with respect to whether the product contravened the labelling standards prescribed under the Drugs and Cosmetics Rules or amounted to ‘misbranding’ under Section 17C of the D&C Act. The entire inquiry remained confined to verifying the sale transaction and did not assess the substantive allegations made in the complaint. The failure to undertake a comprehensive inquiry, as mandated by law, rendered the order summoning the petitioners legally unsustainable.

10. In addition, it was contended that the learned MM completely overlooked the requirements of Section 26 of the D&C Act, which lays down that no prosecution for offences under Chapter IV of the Act can be instituted unless the drug or cosmetic in question has been subjected to testing or analysis by a Government Analyst, and a report to that effect has been filed. The learned senior counsel stated that in the present case, it was an admitted position that no such testing had been undertaken, and no report of a Government Analyst had been annexed to the complaint. The complaint rested solely on the complainant’s own inference drawn from the product’s labelling, without any scientific validation of the same.

11. He contended that in the absence of an expert report, the institution of criminal proceedings was not only premature but in



direct contravention of the statutory framework. It was thus submitted that the complaint suffered from a jurisdictional defect and was non-maintainable *ab initio*.

12. He also pointed out that the product in question, 'Parachute Advanced Jasmine Non-Sticky Coconut Hair Oil' is classified as a 'Type 3 Hair Oil' under BIS Standards (IS: 7123:1993), which permits a composition comprising both vegetable oil and mineral oil. The product packaging clearly disclosed the composition on the rear label, and there was full compliance with Rule 148 of the D&C Act read with Schedule S and Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, the use of the descriptor 'Coconut Hair Oil' on the front panel could not be deemed misleading when the ingredient breakdown was accurately and prominently displayed on the back panel in compliance with regulatory norms.

13. Insofar as the allegations of cheating and conspiracy under the IPC were concerned, it was argued that the complaint lacked the essential ingredients of *mens rea* and deception. No material was placed on record to indicate that the petitioners had acted fraudulently or dishonestly with an intent to cheat the complainant. The learned senior counsel emphasized that all statutory declarations required for the label had been made, and the complaint essentially reflected a subjective grievance rooted in a misunderstanding or an unsubstantiated expectation about the product. No overt act had been attributed to any of the individual petitioners, and their implication in the proceedings was solely on account of their official designations.



Such mechanical arraignment of senior functionaries without any specific allegation of personal involvement or decision-making is impermissible in law. The summoning of the Chairman and CEO of the company, without anything more, amounted to an abuse of process. Reliance was placed on *Sunil Bharti Mittal v. CBI : (2015) 4 SCC 609* and *State of Haryana v. Brij Lal Mittal : (1998) 5 SCC 343* to contend that vicarious liability cannot be fastened in the absence of specific and substantiated averments showing the requisite degree of control or involvement in the allegedly unlawful conduct.

14. The learned senior counsel further highlighted that the petitioner company has, for decades, sold various products under the 'Parachute' brand name with coconut oil as a base ingredient. The branding, packaging, and formulation of the product in question were duly approved by the licensing authority under the D&C Act. The complainant's grievance is not supported by any evidence that the label contained incorrect information or made false claims. The consumer, it was argued, is expected to read both front and back panels to understand the product composition. The use of stylized branding or marketing descriptors does not amount to deception, particularly when statutory labelling requirements have been complied with in full. Consequently, it was urged that the proceedings deserve to be quashed.

15. *Per Contra*, the learned counsel for the respondent submitted that the grievance raised in the complaint was not of a technical nature but rather of a fundamental consumer deception. He argued that the



display panel of the product, prominently displaying the phrase ‘Parachute Advansed Jasmine Non-Sticky Coconut Hair Oil’ and the visual of a broken coconut, was designed to lead an ordinary consumer into believing that the product was either wholly or predominantly composed of coconut oil. The actual ingredient list, which revealed the presence of 79.7% mineral oil and only 20% coconut oil, was allegedly printed in a smaller font on the rear panel, thus obscuring this information from a typical buyer.

16. The learned counsel relied on international consumer protection jurisprudence, including the decisions of *Williams v. Gerber Products Co.* : 552 F.3d 934 (9th Cir. 2008) and *Murphy v. Stonewall Kitchen, LLC* : 503 S.W.3d 308 (Mo. Ct. App. 2016), to argue that back-panel disclaimers or ingredient disclosures cannot cure a misleading impression created on the front panel of a product. He emphasized that it is the overall impression of the packaging that governs consumer perception and that manufacturers cannot mislead consumers through branding or visual marketing and then escape liability by pointing to disclosures hidden in fine print. It was contended that the presence of the ingredient list on the back does not exonerate the company when the primary visual cues are misleading.

17. Refuting the petitioners’ claim regarding compliance with the BIS Standard for Type-3 Hair Oil, the learned counsel submitted that the BIS specification was irrelevant to the issue of whether a consumer was misled. It was his case that Section 17C(c) of the D&C Act prohibits misleading labels, and Rule 148(1)(a) of the Drugs and



Cosmetics Rules mandates that the ‘correct name’ of the cosmetic must appear on the principal display panel. According to him, the term ‘Coconut Hair Oil’ was not only incorrect but a deliberate mischaracterization that violated this rule.

18. He also denied the necessity of a Government Analyst’s report in the present case. He contended that the complaint was based on a plain reading of the label, supported by documentary evidence, and not on any technical defect or adulteration that required lab testing. As such, the requirement of testing under Section 26 of the D&C Act, according to him, did not apply. The gravamen of the offence was misbranding, which, he submitted, was amply demonstrated by the misleading name and image on the front label.

19. The learned counsel also denied that the complaint was motivated or that the proceedings amounted to abuse of process. He submitted that the product had been in the market since 2000 and that its branding had continuously induced consumers to believe they were purchasing a coconut oil-based product when in fact the chief ingredient was mineral oil. This, he submitted, constituted a longstanding fraudulent commercial practice.

20. Lastly, he emphasized that the learned Trial Court had taken cognizance only after recording pre-summoning evidence and conducting an inquiry under Section 202 of the CrPC.

Analysis

21. The fulcrum of the issue that falls for consideration before this Court is whether the learned MM committed any error in passing the



impugned orders in Complaint Case No. 14909/2018, summoning the petitioners, and whether the ingredients of the alleged offences under the D&C Act and the IPC stand disclosed from the material placed on record. The question assumes significance in light of the admitted fact that the product in question was manufactured pursuant to a valid license issued by the competent authority, and its label and composition were duly approved under the governing statutory framework.

22. It is settled law that at the stage of issuance of process, the learned Trial Court is supposed to apply its mind to the facts at hand as well as the relevant law. After examination of the allegations and material on record, the learned Trial Court is required to record its satisfaction that sufficient grounds exist for proceeding against the accused. The Hon'ble Apex Court, in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate : (1998) 5 SCC 749*, had observed as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the



evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

23. The complainant’s allegation is that the front label of the product ‘Parachute Advansed Jasmine Non-Sticky Coconut Hair Oil’ is misleading, as it highlights the phrase ‘Coconut Hair Oil’ despite the product containing only 20% coconut oil and 79.7% mineral oil. This, according to the complainant, amounts to misbranding under Section 17C(c) of the D&C Act and also constitutes cheating under Sections 417 and 420 of the IPC. However, *prima faice*, upon a closer examination of the factual matrix and the applicable statutory framework, this Court is unable to find merit in the allegations as alleged.

24. It is an admitted position that M/s Marico Limited is a licensed manufacturer of the product in question. The license was issued by the Office of the Licensing Authority, Drugs Control Administration, Government of Assam, and categorically describes the product as a ‘Type-3 Hair Oil’ conforming to BIS Standard IS 7123:1993 —which governs the formulation, labelling, packing, and marketing of hair oil products. As per the said standard, hair oils are classified into three categories: Type I (vegetable oil based), Type II (mineral oil based), and Type III (comprising a mixture of vegetable and mineral oils). The product in question—Parachute Advansed Jasmine Non-Sticky Coconut Hair Oil—is a Type III hair oil, and its formulation with 20%



coconut oil and 79.7% mineral oil falls squarely within the permissible limits specified in Clauses 3.1 and 4.2.1.3 of IS 7123:1993.

25. Additionally, Clause 5 of the BIS sets forth requirements for packing and marking, which include the name of the product, type, net quantity, batch number, date of manufacture and expiry, manufacturer's details, and ingredient disclosure. The product label placed on record complies with these requirements and bears all such particulars in clear, legible font on the rear panel of the bottle. These disclosures are made in conformity with Rule 148 of the Drugs and Cosmetics Rules, 1945, and Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011, both of which require that labelling include a complete and accurate disclosure of the product's composition and weight measures.

26. The petitioner company's label, which forms part of the license application and was expressly approved by the licensing authority, conforms to all the above BIS and statutory standards. The front panel of the label identifies the product as 'Parachute Advanced Jasmine Non-Sticky Coconut Hair Oil'—which is precisely the name under which the product was licensed—while the rear panel discloses the exact percentage of coconut and mineral oil. This dual-panel format meets both regulatory expectations and industry best practices for transparency.

27. The complainant has not placed any material to rebut this classification. Nor has the complainant produced any expert evidence or analyst's report to demonstrate that the labelling falls foul of the



BIS standard. The allegation is based purely on personal perception, divorced from regulatory fact.

28. It is in this context that the allegation of misbranding must be evaluated. Section 17C(c) of the D&C Act deems a cosmetic to be misbranded if its label contains any statement which is false or misleading in any particular. The same reads as under :

*“17C. Misbranded cosmetics.--For the purposes of this Chapter, a cosmetic shall be deemed to be misbranded,--
xxxx xxxx xxxx
(c) if the label or container or anything accompanying the cosmetic bears any statement which is false or misleading in any particular.”*

29. In the present case, however, there is no dispute that the composition was truthfully disclosed and that the product was lawfully manufactured and marketed. The phrase ‘Coconut Hair Oil’ used on the front panel is part of the branding and does not, by itself, purport to represent the entirety of the ingredients. When read with the rear label, which discloses the composition in clear terms, the packaging cannot be said to mislead the consumer.

30. In the absence of any material to suggest that the product failed to comply with BIS specifications or that it was packed or labelled in a manner contrary to the Drugs and Cosmetics Rules or the Legal Metrology Rules, no presumption of misbranding arises. To the contrary, the fact that the regulatory authority found the product, packaging, and label compliant and accordingly granted license and approval, is indicative of the absence of any misleading or fraudulent conduct.



31. At best, the complainant’s grievance pertains to a personal impression derived from the product’s front panel—a matter of perception, not deception. A consumer who wishes to verify the product’s contents is obliged to read both sides of the label. Where a statutory regime mandates disclosure of ingredients, and those disclosures are made transparently and accurately, no criminality can arise merely because the consumer felt the product name was suggestive of a different composition.

32. This Court also notes that the complainant has not placed on record any contrary evidence, such as a Government Analyst’s report or third-party analysis, to establish that the product is chemically different from what is disclosed on the label. In fact, Section 26 of the D&C Act explicitly bars prosecution unless the cosmetic has been tested by a Government Analyst and a report has been filed to that effect.

33. In such a context, it would be wholly inappropriate to read criminal intent or deceit into what is, at best, a marketing expression. Criminal liability, particularly in statutory offences such as ‘misbranding’, must be anchored in a demonstrable departure from prescribed standards or an intention to deceive. Where the product’s content, label, and manufacturing process are in full conformity with the applicable regulatory regime, and where the product is manufactured under a valid license, the invocation of criminal provisions would not only be unjustified but would risk trivialising the criminal process.



34. This Court, therefore, finds that the ingredients of the offence of ‘misbranding’ as defined under Section 17C(c) of the D&C Act are *prima facie* not made out. The provision criminalizes a label which is ‘false or misleading in any particular’. In the present case, the complainant has not demonstrated which part of the label is ‘false’. Nor is it misleading when the rear panel discloses the precise composition in a format consistent with legal requirements.

35. In the absence of the offence of misbranding, the consequential invocation of Sections 18(a)(ii) and 27A(ii) of the D&C Act also collapses.

36. It is also pertinent to observe that the impugned orders do not reflect application of mind to the statutory requirements or the materials on record. The order dated 05.10.2018 does not disclose which provisions of law were allegedly violated or how the learned MM was satisfied that there is sufficient ground for proceeding. Similarly, the order dated 11.10.2019 summoning the petitioners appears mechanical and is not accompanied by any reasoned satisfaction, as required by law.

37. Moreover, the inquiry purportedly conducted under Section 202 of the CrPC was limited in scope and failed to consider whether the allegations of misbranding had any legal or factual foundation. The offences alleged under Sections 18 and 27A of the D&C Act are triable by a Court of Session. In such cases, the Magistrate is statutorily bound to conduct an inquiry and record statements on oath before issuing process. In the present case, the inquiry was limited to



recording the shopkeeper's statement regarding the purchase. The shopkeeper was examined merely to verify the sale transaction; no expert witness was examined, nor was any evidence led to support the allegation of deception. The object of an inquiry under Section 202 of the CrPC, particularly in cases triable by the Court of Sessions, is to act as a safeguard against frivolous or vexatious complaints.

38. The invocation of Sections 417 and 420 of the IPC in this context also appears wholly unfounded. For an offence of cheating to be made out, there must be a dishonest inducement, deception, and resulting wrongful loss or gain. The Hon'ble Apex Court in ***Mariam Fasihuddin v. State* : 2024 SCC OnLine SC 58** noted that mere breach of trust or unauthorized actions, absent deceitful intent or resultant damage, do not fulfill the criteria for cheating. The relevant paragraphs of the said judgment are reproduced hereunder :

“23. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that



it shall be acted upon by another person, resulting in damage or loss.² 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement."

39. Applying these principles to the present case, the complainant has alleged that the product's front label was misleading as it suggested that the oil was composed entirely of coconut oil, whereas in reality, it contained 20% coconut oil and 79.7% mineral oil. However, the product's composition was transparently disclosed on the rear label in accordance with statutory requirements, and it was manufactured and marketed under a valid license granted by the competent authority, after due scrutiny of its packaging, labelling, and ingredient disclosure. The complaint, however, does not contain even a *prima facie* assertion of any dishonest intent or overt act on their part that could attract criminal liability.

40. This Court is further guided by the law laid down by the Hon'ble Supreme Court in *Sunil Bharti Mittal v. CBI : (2015) 4 SCC 609*, wherein it was held that criminal liability cannot be fastened on company officials merely by virtue of their office unless the statute creating the offence provides for vicarious liability and specific allegations are made demonstrating active participation in the commission of the offence. The relevant paragraphs of the said judgment are reproduced hereunder :



“(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

42. *No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.*

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45.4. *Maksud Saiyed v. State of Gujarat [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] : (SCC p. 674, para 13)*

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

(emphasis supplied)

45.5. *R. Kalyani v. Janak C. Mehta [(2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567] : (SCC p. 527, para 32)*

“32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be



fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created.”

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48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

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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.”

41. In the present case, the petitioners Harsh Mariwala (Chairman), Saugata Gupta (Managing Director and CEO), and Vivek Karve (CFO) appears to have been summoned solely on account of their position in the company, without any averment as to their direct involvement in either the composition, branding, or labelling of the impugned product. There is no material on record to show that they acted with any fraudulent or dishonest intent. In the absence of any specific allegation indicating their *mens rea* in the alleged misbranding or consumer deception, the summoning of these petitioners amounts to a mechanical exercise of jurisdiction and is contrary to settled principles of criminal law.

42. It is reiterated that this Court is conscious of the limited scope of interference under Section 528 of the BNSS (akin to Section 482 of the CrPC) in summoning orders passed after consideration of complaint and pre-summoning evidence. At the summoning stage, the Magistrate is only required to assess whether there is *prima facie* sufficient ground to proceed, not to meticulously evaluate the admissibility of evidence or probable defences. The learned Apex Court, in *Delhi Race Club (1940) Limited and Others v. State of Uttar Pradesh and Another* : (2024) 10 SCC 690, held as under:

“12. It is by now well-settled that at the stage of issuing process it is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object



of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation.

13. If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only.

14. What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : D.N. Bhattacharjee v. State of W.B. [D.N. Bhattacharjee v. State of W.B., (1972) 3 SCC 414 : 1972 SCC (Cri) 564]]

15. Further it is also well-settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have.

16. In fact in proceedings under Section 202CrPC, the accused has got absolutely no locus standi and is not entitled to



be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused.

17. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202CrPC which culminates into an order under Section 204. [See : Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] .] It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of the Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under : (Nagawwa case [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , SCC p. 741, para 5)

“5. ... (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”



18. Each penal section of the Penal Code or of the other laws can be subjected to an analysis by posing and answering the following questions:

I. What is the overt act stipulated in the section, which overt act has resulted in an injury?

II. What is the state of mind stipulated in respect of the accused and which state of mind must precede or accompany the act of the accused?

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23. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. [See : Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] .]

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25. The Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that Appellants 2 and 3 herein were personally liable for any offence. Appellant 1 is a body corporate. Vicarious liability of the office-bearers would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part



of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

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31. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124], this Court held thus : (SCC p. 430, para 22)

“22. ... The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

32. The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

33. In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482CrPC. In the decisions in *Bhushan Kumar v. State* (NCT of Delhi) [*Bhushan Kumar v. State* (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] and *Pepsi Foods [Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998



SCC (Cri) 1400] , this Court held that a petition filed under Section 482CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that sine qua non for exercise of the power to issue summons is the subjective satisfaction “on the ground for proceeding further” while exercising the power to consider the legality of a summons issued by a Magistrate, certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned. In this context, we think it appropriate to state that one should understand that “taking cognizance”, empowered under Section 190CrPC, and “issuing process”, empowered under Section 204CrPC, are different and distinct.”

43. In the circumstances of the present case, this Court is satisfied that the complaint, even if taken at face value, does not disclose the commission of any cognizable offence. When dealing with a private complaint, the law enjoins upon a Magistrate a duty to undertake a careful and thorough examination of the contents of the complaint, along with the supporting material, to assess whether the essential ingredients of the alleged offence are *prima facie* made out. The allegations in the present case seem to be vague, unsupported by material evidence, procedurally flawed, and directed at parties against whom no specific case is made out. The complaint in the present case fails to disclose the essential ingredients of the offences alleged. It is not the function of the criminal court to enter into consumer preference or branding interpretation when there is compliance with all applicable legal and regulatory standards.



44. The use of the brand name ‘Coconut Hair Oil’ on the front panel, without any falsification of ingredients, cannot by any stretch be said to constitute misbranding. Consequently, in the absence of the foundational offence under the D&C Act, the invocation of IPC provisions also fails.

45. Criminal prosecution must rest on more than consumer dissatisfaction. It must be grounded in law, backed by evidence, and must disclose the core elements of the offence alleged. Where a complaint is speculative, lacks material foundation, and is contradicted by documents on record—including statutory licenses and regulatory approvals—allowing such proceedings to continue would constitute an abuse of the process of law.

46. In view of the aforesaid, the present petitions are allowed. Complaint Case No. 14909/2018 and all other consequential proceedings emanating therefrom, pending before the court of learned MM are quashed *qua* the petitioners.

47. Pending applications, if any, also stand disposed of.

48. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

MAY 5, 2025