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Failure to conduct enquiry under Section 202 of the Code of Criminal Procedure, 1973 does not vitiate complaint filed by public servant; limitation runs from discovery of offender

The Supreme Court of India (“**Supreme Court**”) in the case of *The State of Kerala vs. M/s Panacea Biotec Limited and Anr.*¹ considered whether criminal proceedings under the Drugs and Cosmetics Act, 1940 could be quashed on the ground that the Magistrate failed to conduct an enquiry under Section 202 of the Code of Criminal Procedure, 1973 (“**CrPC**”), and whether cognisance was barred by limitation under Sections 468 and 469 of the CrPC.

The Supreme Court held that the Hon’ble High Court of Kerala at Ernakulam (“**Kerala HC**”) erred in quashing the complaint under Section 482 of the CrPC solely on account of non-compliance of the mandatory statutory enquiry by the Ld. Chief Judicial Magistrate, Court, Thrissur, Kerala (“**Ld. CJM**”) under Section 202 of the CrPC.

The Supreme Court held that where a complaint is instituted by a public servant acting in discharge of official duties, procedural requirements must be viewed in the context of the statutory scheme and the material collected during investigation. In this context, it was held that mandatory enquiry under Section 202(1) of the Cr.P.C. is not an absolute requirement when a complaint is filed by a public servant. The Supreme Court further clarified that the limitation period for taking cognisance may commence from the date when the identity of the offender becomes known during investigation, and delay may be condoned under Section 473 of the CrPC if it is properly explained or is necessary in the interests of justice.

Brief facts

The case arose from a complaint regarding alleged discrepancies in the labelling of a vaccine manufactured by a pharmaceutical company, M/s Panacea Biotec Limited. On January 5, 2006, a consumer alleged that although the outer carton of the vaccine indicated that it was a pentavalent vaccine containing 5 (five) components, the vial inside the carton bore a label indicating that it was a tetravalent vaccine containing only 4 (four) components. The discrepancy suggested possible misbranding in violation of the provisions of the Drugs and Cosmetics Act, 1940 (“**D&C Act**”).

Following receipt of the complaint, the Drugs Inspector conducted enquiries and inspections at the premises of medical agencies involved in the distribution chain. During the course of these enquiries, invoices, sales records, and credit notes were examined and seized. Statements were recorded from representatives of the distributor and supplier firms. They acknowledged that certain vials had been wrongly labelled and that the remaining stock had been returned to the supplier due to the labelling defect.

¹ 2026 INSC 200 (decided on February 26, 2026)

After collecting documentary evidence regarding the movement of the drug through the supply chain and identifying the entities involved in the manufacture and distribution of the product on April 18, 2006, the Drugs Inspector filed a criminal complaint on January 20, 2009 before the Ld. CJM. The complaint alleged offences under Sections 18(a)(i), 17(b) and 17(c) of the D&C Act read with Rule 96 of the Drugs and Cosmetics Rules, 1945 (“**D&C Rules**”) punishable under Section 27(d) of the D&C Act. The Ld. CJM took cognisance of the complaint and issued summons to the accused persons.

The accused approached the Kerala HC under Section 482 of the CrPC seeking quashing of the proceedings. They contended that the complaint was barred by limitation and that the Ld. CJM had issued summons without conducting the mandatory enquiry under Section 202 of the CrPC, despite the accused residing outside the territorial jurisdiction of the court.

The Kerala HC accepted the latter contention and quashed the complaint on the ground that the Ld. CJM had failed to conduct the statutory enquiry under Section 202 of the CrPC. The Kerala HC, however, did not interfere with the order condoning delay under Section 473 of the CrPC. Aggrieved by the quashing of the complaint, the State preferred an appeal before the Supreme Court.

Issue

The principal questions before the Supreme Court were whether:

1. the complaint was barred by limitation under Sections 468 and 469 read with Section 473 of the CrPC; and,
2. the failure of the Ld. CJM to conduct an enquiry under Section 202 of the CrPC rendered the summoning order invalid when the complaint had been filed by a public servant acting in discharge of official duties.

Analysis and findings

Re: Limitation for taking cognisance

The Supreme Court observed that under Section 468 of the CrPC, the period of limitation for offences punishable with imprisonment exceeding 1 (one) year but not exceeding 3 (three) years is 3 (three) years. However, Section 469 of the CrPC governs the commencement of the limitation period. It provides that the period may begin from the date when the offence becomes known or from the date when the identity of the offender becomes known.

In the present case, the Supreme Court noted that the initial complaint received by the Drugs Inspector merely raised a suspicion regarding improper labelling of the vaccine. The identity of the entities responsible for manufacturing and distributing the drug emerged only after the Drugs Inspector conducted inspections, verified invoices and distribution records, and recorded statements from persons involved in the supply chain. Consequently, the Supreme Court held that the limitation period would commence from the point at which the identity of the alleged offenders became known during the course of investigation, which was on April 18, 2006. Since, the complaint had been filed on January 20, 2009, that is, within a period of 3 (three) years in accordance with Section 468(2)(c) read with Section 469(1)(c) of the CrPC, the bar under limitation is not made out.

The Supreme Court further observed that even if there had been some delay, the Ld. CJM had exercised powers under Section 473 of the CrPC to condone the delay on the ground that the complaint had been filed after a detailed enquiry and that taking cognisance was necessary in the interests of justice. The Supreme Court held that the Kerala HC had correctly refrained from interfering with the order condoning the delay.

Requirement of enquiry under Section 202 of the CrPC

The central issue concerned the requirement of an enquiry under Section 202 of the CrPC when the accused resides outside the territorial jurisdiction of the Ld. CJM. The respondents argued that after the 2005 amendment to the CrPC, the Ld. CJM was mandatorily required to postpone issuance of process and conduct an enquiry in such circumstances. They contended that the absence of such an enquiry rendered the summoning order invalid.

The Supreme Court acknowledged that the amendment to Section 202 of the CrPC was intended to protect persons residing outside the jurisdiction of the court from unnecessary harassment through frivolous complaints. However, the Supreme Court emphasised that the provision must be interpreted in the context of the broader procedural framework governing complaints instituted by public servants.

The Supreme Court observed that the complaint in the present case, had been filed by a Drugs Inspector, a gazetted officer authorised under Section 32 of the D&C Act to institute prosecutions. The complaint was based on documentary evidence collected during official inspections and investigations conducted in the discharge of statutory duties. In such circumstances, the Supreme Court held that the complaint could not be treated at par with a private complaint filed by an individual without prior investigation.

Relying on *Cheminova India Limited vs. State of Punjab*², the Supreme Court noted that certain procedural relaxations exist when complaints are filed by public officials in discharge of their official duties. The Supreme Court reasoned that the Ld. CJM's omitted to conduct a Section 202 enquiry. In a case where a statutory authority had already collected substantial material, this omission should not automatically result in quashing the proceedings.

The Supreme Court further held that the accused could not derive undue advantage from an omission attributable to the Ld. CJM. The relevant consideration was whether sufficient material existed on record to justify issuance of process. In the present case, the complaint was supported by inspection reports, seized documents and statements recorded during the investigation, which provided a *prima facie* basis for proceeding against the accused.

Conclusion

The Supreme Court concluded that the Kerala HC had erred in quashing the complaint solely on the ground that the Ld. CJM had not conducted an enquiry under Section 202 of the CrPC. The Supreme Court held that the complaint filed by the Drugs Inspector was based on material collected during a statutory investigation and that the absence of a Section 202 of the CrPC enquiry did not justify termination of the prosecution at the threshold.

The Supreme Court further clarified that the limitation period under the CrPC may commence from the date on which the identity of the offender becomes known during investigation and that delay in taking cognizance may be condoned under Section 473 of the CrPC in the interests of justice.

Accordingly, the Supreme Court set aside the order of the Kerala HC quashing the complaint and restored the criminal proceedings before the Ld. CJM, emphasising that allegations relating to misbranding of drugs affecting public health should ordinarily be examined through trial rather than being terminated at the preliminary stage.

² 2021 SCC OnLine SC 573

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This Prism is prepared by:



Dheeraj Nair
Partner



Vishrutyi Sahni
Principal Associate



Muskaan Gupta
Associate



Sahir Seth
Associate



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