

**Umesh Sharma, Managing Director, Aristo Pharmaceuticals Ltd. and  
Ranjit Sharma, Director, Aristo Pharmaceuticals Ltd. Vs S.G. Bhakta,  
Drugs Inspector, Food and Drug Administration, Jt. Commissioner,  
Aurangabad Division, Food and Drug Administration and The State of  
Maharashtra**

**Court:** Bombay High Court (Aurangabad Bench)

**Date of Decision:** Oct. 8, 2002

**Acts Referred:** Companies Act, 1956 " Section 2(24), 2(26)  
Constitution of India, 1950 " Article 227  
Criminal Procedure Code, 1973 (CrPC) " Section 319, 482  
Drugs and Cosmetics Act, 1940 " Section 16(1), 18, 18(1), 27, 3  
Foreign Exchange Regulation Act, 1947 " Section 23C  
Negotiable Instruments Act, 1881 (NI) " Section 138, 141  
Prevention of Food Adulteration Act, 1954 " Section 17, 17(2)

**Citation:** (2003) BomCR(Cri) 1522 : (2002) CriLJ 4843

**Hon'ble Judges:** N.V. Dabholkar, J

**Bench:** Single Bench

**Advocate:** Shirish Gupte, B.B. Yenge and Joydeep Chatterji, for the Appellant; Kishor Patil, APP, for the Respondent

## Judgement

N.V. Dabholkar, J.

By these writ petitions under Article 227 of the Constitution of India, original accused Nos.3 and 4 challenge the

orders passed by learned Chief Judicial Magistrate, Aurangabad on 14.6.2002, in Criminal Case No. 80348/1997 (earlier Criminal Case No.11

of 1995) and Regular Criminal Case No.179 of 1996 (earlier Criminal Case No.675 of 1994) below Exhibits 33 and 34 in the first matter and

Exhibits 23 and 24 in the second matter. By orders below Exhibits 33 and 23, in the respective criminal cases, learned Chief Judicial Magistrate

rejected the applications of petitioners/accused Nos. 3 and 4 requesting to recall the process issued against them on the ground that they were not

incharge of the business of the company, nor responsible to the company for conduct of the business. Since it was admitted position that accused

Nos. 3 and 4 are the Managing Director and Director respectively of M/s Aristo Pharmaceuticals Limited (for short, "the company") (original

accused No. 5), the learned Chief Judicial Magistrate was of the view that they were responsible for the act of the company, having control over it,

although they reside out of Station.

So far as applications Exhibits 34 and 24 are concerned, the petitioners had requested for exemption from personal appearance till decision of

Exhibits 23 and 24. Those were rejected in view of disposal of applications Exhibits 33 and 23. Even when the matter is now being argued before

this Court, since exemption was sought from personal appearance till decision of applications for recall of the process, applications Exhibits 34 and

24, with decision of applications Exhibits 33 and 23 on 14.6.2002; have become infructuous, so also the challenge to rejection of applications

Exhibits 34 and 24.

2. Both the matters are taken up for hearing together and are being disposed of by this common judgment, in view of the fact that identical

questions of fact and law arise in both the matters and only variance is regarding date of collection of samples of drugs manufactured by the

accused No. 5 company.

3. Heard learned counsel for the respective parties.

Rule.

By mutual consent, Rule is made returnable forthwith.

4. The factual matrix giving rise to present criminal cases can be stated in brief as follows: (Henceforth for the sake of brevity, criminal case from

which Writ Petition No. 261 of 2002 arises is referred to as ""first case"" and the other one as ""second case"").

So far as first case is concerned, Shri P.N. Shende, Drugs Inspector, Food and Drugs Administration, Nagpur paid visit to M/s Thakkar Medico

Traders, 89, Central Avenue, Nagpur 440 019 on 17.11.1993. He drew sample of Scarab Lotion of batch No. 85093-G, manufactured in July

1993, for which the date of expiry was June, 1995 by following the prescribed procedure laid down under the Act.

So far as second case is concerned, Shri V.N. Ransube, Drugs Inspector visited M/s Maharashtra Medical Stores, 17 Kherwadi Road, Bandra

(E), Bombay 400 051 and had drawn sample of Scarab Lotion of batch No.85082-H, manufactured in August 1992 for which date of expiry was

July 1994.

The Government Analyst, upon analysis, sent the analytical report No.M-6952/93 and M-2145/93 dated 7.6.1994 in the respective matters

reporting in both the matters;

Content of gamma benzene hexachloride and Citrimide in the sample are more than Schedule V limits.

In the first matter, Gamma Benzene Hexachloride was 124.5 % of the labelled amount, whereas it was 128% in the second instance. Similarly

Citrimide in the sample of first case was 270% of the labelled amount and it was 226% of the labelled amount in the second case.

Since both the traders from whom the respective samples were collected by respective Drugs Inspectors informed that they had purchased the

said drug from the said company, the prosecutions were launched by the Drugs Inspector, Aurangabad, attached to the office of Joint

Commissioner, Aurangabad Division, Food and Drugs Administration, Aurangabad for the offences u/s 18(a)(i) of the Drugs and Cosmetics Act,

1940 (for short, "the said Act" hereinafter). In the said prosecutions, petitioners/original accused Nos.3 and 4 filed applications Exhibits 33 and 23,

as discussed earlier, for recalling the process issued against them by the learned Chief Judicial Magistrate, which were rejected by the impugned

order dated 14.6.2002 and hence the writ petitions.

5. Apart from the arguments on merits, learned Senior Counsel Shri Gupte for petitioners, has taken a serious exception to the impugned order on

the ground that the impugned orders suffer from non application of mind, although he conceded that both the applicants as well as their Advocates

were absent when the learned Judge dealt with the applications. Shri Gupte pointed out that the learned Judge has dealt with the applications on

merits and rejected those by observing that petitioners, as the Managing Director and Director respectively, were in control of the company and

therefore, responsible for the acts of the company. Shri Gupte has taken me through the text of Exhibit "C", which is the copy of application

presented before the learned Chief Judicial Magistrate, and pointed out that even in application para 4, reliance was placed upon the judgments

reported at 1998 Cr.L.J.3287 State of Haryana Vs. Brij Lal as also 2000 Cr.L.J.4442 Pannalal Choksi Vs. State of Maharashtra.

The first one is the judgment of Supreme Court and the later one is the judgment of the learned Single Judge of this Court, both being the cases

under the said Act, as the cases in the present writ petitions and in both the matters, the prayer of accused Directors of manufacturing companies

was for quashing the complaint. According to Advocate Shri Gupte, the learned Judge while dealing with the applications in absence of petitioners

and their counsel, but on merits, could not have ignored the contents of the application and if he was willing to go ahead with the matter in absence

of petitioners and their counsel, he was duty bound to consider the application in its entirety and in any case, he could not have ignored the ratio

laid down by the apex Court and this Court, which was relied upon expressly by the contents in the application.

The submission of Sr.Counsel Shri Gupte regarding the impugned order, to above effect are fully justified. The learned Judge has dealt with the

matter in a hurried and slipshod manner, without referring to the grounds on which the process was prayed to be recalled and speedy disposal of

the application, at the cost of non-consideration of submissions in the application, is required to be deprecated in harsh words.

6. Shri Gupte, Sr. Counsel has relied upon those two cases, which were relied upon in the application and in addition couple of more cases. It was

argued that by the text of the complaint itself, it was evident that the original accused Nos.1 and 2, the manufacturing chemist and the Assistant

Manager, Quality Control were the persons, having control over the manufacture and composition of various ingredients in the drug. Petitioners as

Directors had no control over the manufacturing activities, much less there are any averments to that effect in the complaint and therefore, in the

light of ratio laid down by the apex Court as well as this Court in the cases relied upon, the Magistrate could not have rejected the applications.

According to Shri Gupte, these were fit cases wherein process was required to be recalled, so far as the original accused Nos.3 and 4 / petitioners

are concerned.

7. Section 18(1)(i) of the said Act prohibits manufacture for sale of drug, which is not of standard quality or misbranded, adulterated or spurious.

According to Section 16(1)(a) "standard quality" in relation to a drug means that drug which complies with the standard set out in the II Schedule.

Section 27 provides penalty for manufacture, sale etc. of the drug in contravention of the provisions of Chapter IV of the said Act and for the

purpose of cases at hand, the residuary clause (d) of the said Section would be applicable. The drug is defined by Section 3(b) of the said Act.

None of these provisions are either referred to or disputed by Shri Gupte, Sr. Counsel in the present matter.

8. Since, the prosecution has relied upon Section 34 of the said Act regarding offences by companies, Shri Gupte, Sr. Counsel has referred to text

of Section 34(1) and contended that the contents of the complaint do not attract the ingredients of the said section, so as to invite prosecution of

Directors i.e. petitioners. Said provision reads as follows :

34. Offences by companies. - (1) Where an offence under this Act has been committed by a company, every person who at the time the offence

was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;.....

According to Shri Gupte, Sr. Counsel, the complaint does not contain any averment, which will indicate that petitioners / Directors were in charge

of and responsible to the company for the conduct of business on the date the drug was manufactured or the day on which the samples of the said

drug were collected by the Drugs Inspector. According to Shri Gupte, paras 2, 3 and 16 of the complaint are the only paragraphs, which contain

averments in an attempt to fasten the responsibility on the respective accused persons. These paragraphs are being reproduced herein below, for

ready reference.

2. That accused No.1 is the manufacturing Chemist who manufactured the not of standard quality drug and accused No. 2 is the quality control

chemist under whose supervision the not of standard quality product was analysed.

3. That accused No. 3 and 4 are the Directors of M/s Aristo Pharmaceuticals Ltd. situated at E-6, M.I.D.C. Chikalthana, Aurangabad.

16. That, the complainant, therefore, charges that accused No. 1 and 2 who are incharge of Production and Testing of the (drug) not of standard

quality and the accused No. 3 and 4 are the directors of the accused No.5 for manufacturing and selling on or about 17.11.1993 a not of standard

quality drug and thus accused Nos. 1,2,3,4 and 5 have committed an offence .....

9. The case of KPG Nair Vs. M/s Jindal (2001 All Mah.Reporter (Criminal) 1206 (SC)) was a matter u/s 138 of the Negotiable Instruments Act.

Application u/s 482 of the Code of Criminal Procedure seeking to quash the proceedings was dismissed by the High Court, by holding that

averments in the complaint by the respondent company along with statements of witnesses, prima facie go to show that at the relevant time, the

appellant being the Director of the accused company was also in charge and responsible for the business of the same. In fact, appellant had not

signed the cheque, but was sought to be prosecuted in view of Section 141 of the Negotiable Instruments Act in his capacity as Director of the

accused company at one time. It was argued on behalf of the complainant, that it was required to be inferred that appellant was in charge of and

responsible to the company for the conduct of its business. However, nowhere it was stated that on the date when the offence was committed,

appellant was in charge or was responsible to the accused company for conduct of its business. Provisions of Section 141 of the Negotiable

Instruments Act are pari materia with the provisions of Section 34(1) of the said Act.

It was held by the Supreme Court that the substance of the allegations should necessarily fulfill the requirements of ingredients of Section 141(1)

for being proceeded against for the offence, which is alleged to have been committed. According to apex Court, the allegations in the complaint did

not, either in the express words or with reference to the allegations contained therein, make out a case that at the time of commission of offence,

the appellant was in charge of and was responsible to the company for the conduct of its business. Consequently, the appeal was allowed and the

proceedings were quashed.

In brief, in absence of allegations regarding appellant being in charge of and responsible to the company, the Director, it was held; cannot be

prosecuted.

10. State of Haryana Vs. Brij Lal Mittal and Others, was the second case relied upon by petitioners. This was a complaint for the offence u/s 27 of

the said Act. The process issued against three Directors of the manufacturer company, was quashed by the High Court, as filed after expiry of shelf

life of the drug. The apex Court, although held that quashing was not justified on that ground, upheld the order on different grounds. The apex

Court considered the scope and ambit of vicarious liability that can be imposed by virtue of Section 34(1) of the said Act and observed that,

simply because the person is Director of the company, it does not necessarily mean that he fulfills the above requirements. From the complaint in

question, it was found that except the bald statement that respondents were Directors of the manufacturer, there was no other allegation to indicate

that prima facie they were in-charge of the company and also responsible to the company for the conduct of business.

11. Thus, as a result of observations in both these cases, it can be said that although Section 34(1) creates a presumption as to the guilt, once it is

shown that the person was in charge of and responsible to the company for conduct of business, the section by itself does not create a presumption

that the person merely by being a Director was in charge and responsible to the company, which fact is required to be averred in the complaint and

duly proved.

In the matter of Iqbal Vs. State of Maharashtra (2002 (1) FAC 321), the learned Single Judge followed the same view. In this matter under the

Food Adulteration Act, one Gyan Bahadur, Supervisor was nominee of the company by specific resolution passed on 31.5.1993 u/s 17(2) of the

Food Adulteration Act. So far as Directors of the company, it was observed by the learned Single Judge that Director, Manager, Secretary or

other officers could be proceeded against only if the complaint showed that the offence was committed with the consent or connivance of these

persons and in absence of allegations regarding the same, they could not be proceeded against. In this matter, there were no averments against the

Directors, alleging that the offence was committed with their consent or connivance.

12. Pannalal Vs. State of Maharashtra 2000 4) M.L.J.674 is a judgment of learned Single Judge of this Bench. Two Criminal Writ Petitions under

Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, seeking quashment of proceedings under the

Prevention of Food Adulteration Act and Drugs and Cosmetics Act are dealt with in the said judgment. The Court was seized of interpretation of

Section 34 of the Drugs and Cosmetics Act, as also Section 17 of the Prevention of Food Adulteration Act, which provisions are *pari materia*,

except the distinction that under the Drugs and Cosmetics Act, there is no provision to declare a nominee of the company as u/s 17(2) of the

Prevention of Food Adulteration Act.

The petitioners in both the writ petitions were Directors of the respective companies and their main grievance was that they were not in charge of

and were not responsible to the company for the conduct of business. While considering the said submission, learned Single Judge has relied upon

observations of the apex Court in the matter of Girdhari Lal Gupta Vs. D.H. Mehta and Another, , wherein the Supreme Court had interpreted the

provisions of Section 23C of Foreign Exchange Regulation Act, 1947, which provision is analogous to the provision of Section 34 of the Act of

1940 and Section 17 of the Act of 1954. The Supreme Court observed as follows :

.....It seems to us that in the context a person in charge must mean that the person should be in overall control of the day-to-day business of the

company or firm. This inference follows from the wording of Section 23C(2). It mentions director, who may be a party to the policy being

followed by a company and yet not be in charge of the business of the company. Further it mentions manager, who usually is in charge of the

business but not in overall charge. Similarly, the other officers may be in charge of the only some part of the business.

It was held that what is legally required is overall control over the day-to-day business of the company and the firm. If this element is present then

only the directors of the company are responsible. Since in the reported matter, there was no whisper in the complaints that petitioners were in

charge of and were also responsible to the company for the conduct of business, the applications were allowed and orders of issuing summons as

well as the proceedings before the trial Court were quashed.

13. In the matter of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , Food Inspector had filed a prosecution against the

Manager (respondent No. 1) and Directors (respondents Nos. 2 to 5) of M/s Upper Ganges Sugar Mills, alongwith the company itself. The

appeal by special leave was preferred by the Municipal Corporation of Delhi against the judgment of Delhi High Court quashing the proceedings

taken against the respondents Nos. 1 to 5. The only point that was canvassed before the Supreme Court was that on the allegations in the

complaint a clear cut case was made out against all the respondents and the trial court ought not to have quashed the proceedings on the ground

that the complaint did not disclose any offence. According to respondents, even taking the allegations of the complaint ex-facie true, no case for

trial was made out at all. The main clause of the complaint which was subject matter of the dispute read as follows :

5. The accused No.3 is the Manager of accused No. 2 and accused Nos. 4 to 7 are the Directors of accused No. 2 and as such, they were in-

charge of and responsible for conduct of the business of accused No. 2 at the time of sampling.

Accused No. 3 was respondent No.1 Manager and accused Nos. 4 to 7 Directors were respondents Nos. 2 to 4 of company respondent No.5.

The Supreme Court held,

So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be

vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not

even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act

committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable.

Consequently, the order of the High Court was upheld so far as the Directors were concerned and it was set aside as against the

Manager/respondent No. 1.

Taking into consideration the ratio laid down, which is identical in all the cases relied upon by the learned counsel for the petitioners, at the stage of

issuing process, the complaint must contain the allegations by which the Directors of the company can also be proceeded against, when the

company is alleged to be guilty of offence. In the absence of such allegations, there cannot be a presumption that the Directors were in charge of

and responsible to the company for conduct of the business of the company.

The averments fixing the liability upon individuals, as contained in the complaint are reproduced in para No. 8 (ante). In fact, the contents in para

No. 16 of the complaint relating to petitioners also depict some incompleteness in clause, ""..... and the accused Nos. 3 and 4 are the Directors of

the accused No. 5 for manufacture and selling on/or about 17.11.1993 not of standard quality drug...."" and do not contain any averments

attributing their roll of persons in charge of day to day business. In para No.3 also it is simply said that accused Nos. 3 and 4 are the Directors of

the company. There are no specific allegations or averments, not even in the form of bald statement or reproduction of relevant clause from Section

34 to the effect, "" in charge of and responsible to the company for conduct of business"", much less as against accused Nos. 1 and 2, in para no. 2

of the complaint, wherein, it is specifically said that accused No. 1 is Manufacturing Chemist and accused No. 2 is the Quality Control Chemist,



under whose supervision the product was respectively manufactured and analysed.

In view of the ratio from various cases relied upon and absence of specific averments against petitioners/accused Nos. 3 and 4 in the complaint,

the arguments advanced by the learned counsel for petitioners will have to be accepted.

14. Observations of the Supreme Court in the matter of Ram Kishan Rohatagi (supra) have compelled me to invite attention of learned counsel to

the fact that in the complaint Exhibit "A" accused Nos. 3 and 4 are described in a different manner, so far as their status vis-a-vis company is

concerned. Accused No. 4 is described as "Director" whereas, accused No. 3 is described as "Managing Director". All the ratios relied upon and

conclusions drawn by me above, would be mutatis mutandis applicable to accused No. 4, but it becomes necessary to consider whether the

accused No. 3 who is described as Managing Director, can be treated on the same footing as the Director.

I have drawn attention of learned counsel for petitioners to the dictionary meaning of word "management" which means administration, control,

supervision etc. It was argued by Shri Gupte, Sr. Counsel that merely because accused No. 3 is described as "Managing Director", that by itself

will not be sufficient to draw a presumption that he was in charge of or responsible to the conduct of business of the company. He may be having

control over matter such as policy decision, but not on the production or manufacture of the objectional drug. In the absence of specific averments

that he was in charge of and responsible to the conduct of the company, so far as it related to manufacture of the drug, he would not be liable for

prosecution along with company and there are no averments in the complaint attracting ingredients required by Section 34(1) and therefore, mere

description of accused No. 3 as Managing Director will not be sufficient to sustain the process issued against him.

15. In the matter of Ram Kishan Rohatagi (supra), the apex Court was concerned with the case of Manager and not that of Managing Director.

For the purpose of finding out distinction in the roles played by these two authorities in the life of a company, I have referred to the definitions of

these terms from the Companies Act, 1956. Section 2(24) defines the word "Manager" as follows :

2(24) : Manager means an individual (not being the managing agent) who, subject to the superintendence, control and directions of the Board of

Directors, has the management of the whole or substantially the whole of the affairs of company, and includes a Director or any other person

occupying the position of Manager by whatever name called and whether under the contract of service or not.

Section 2(26) defines, "Managing Director" thus;

2(26) : Managing Director means a Director, who by virtue of an agreement with the company or a resolution passed by the company in the

general meeting or by its Board of Directors or by virtue of its memorandum or articles of association is entrusted with substantial powers of the

management, which would not otherwise be exercisable by him and includes the Director, occupying the position of Managing Director by

whatever name called.

The distinction between Manager and Managing Director is that, while the Manager by virtue of his office has the management of whole or

substantially whole of the affairs of the company, the Managing Director has to be entrusted with such powers of the management as may be

thought fit. The powers of management are required to be delegated upon the Managing Director, either by an agreement with the company or by

a resolution passed by the Board of Directors in its general meeting or by virtue of its memorandum or article of association. It is not the name by

which the person is called but the position he occupies and the functions and duties which he discharges that determines whether in fact, he is in

charge of and responsible to the company or not.

Taking this distinction into consideration, there need not be a presumption of accused No. 3 being in-charge of or responsible to the company for

production of objectional drug. Although Food Inspector has obtained information from the company itself that the respondent No.3 is the

Managing Director, further details such as agreement between him and the company or resolution passed by the Board of Directors etc. by which

substantial powers of management are conferred upon accused No. 3, are neither obtained nor incorporated in the complaint.

16. On reference to Section 34 as a whole, there is a presumption of being guilty against the person, who is in-charge of and responsible to the

company, and such a person is liable to be punished unless he proves that offence was committed, without his knowledge or in spite of exercise of

due diligence to prevent the commission of offence. By virtue of sub-section (2) which is given overriding effect over sub-section (1) by non-

obstante clause in its opening part, the prosecution is obliged to prove that the offence has been committed with the consent or connivance of or is

attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, before drawing a presumption of guilty

against such individual.

Taking into consideration the overriding effect given to sub-section (2) it will be responsibility of the prosecution to first indicate and prove that

objectionable drug was manufactured with the consent or in connivance of the Managing Director or production of the said drug is attributable to

any neglect on the part of the Managing Director, only thereafter, he would be presumed to be the person in charge of and is responsible to the

company for conduct of business and will be obliged to establish absence of knowledge or exercise of due diligence in order to seek exoneration.

17. In the recent judgment in the case of U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, , the order issuing process

passed by the Chief Judicial Magistrate against the Directors of M/s Mohan Meakins for the offence under the Water (Prevention and Control of

Pollution) Act, 1974 was quashed by the Sessions Judge. The Pollution Control Board moved the High Court in revision, which was dismissed by

the High Court. While dismissing the appeal preferred by the Pollution Control Board and directing the trial court to proceed with the case,

supreme Court observed in para No. 12;

In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the

Managers or Directors of the Company can also be proceeded against, when the Company is alleged to be guilty of the offence.

The complaint contained averments that accused persons i.e. Directors/Managers/Partners of M/s Mohan Meakins were responsible for

constructing the proper works and plant for the treatment of their highly polluting trade effluent so as to conform to the standard laid down by the

Board. It also alleged that accused persons were deliberately avoiding to abide by the provisions of the said Act. It was in the light of factual

averments in the complaint, the Supreme Court was of the view that the Directors and Managing Directors of the company were liable to be

proceeded against according to law.

In the matter at hands, except the bare statement that accused Nos. 3 and 4 are the Directors of the company, there are no averments that they are

in charge of or responsible to the company, not even in the form of bald statement.

18. Before closing, reference to paragraphs Nos. 17 and 19 of the judgment in the matter of Ram Kishan Rohatagi (supra) is inevitable. After

referring to the powers to proceed against other persons appearing to be guilty of offence as contained in Section 319 of the Code of Criminal

Procedure, 1973 in para No. 17 of the judgment, the Supreme Court made following observations in para No.19;

In the circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who

have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance

against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred

on the court and should be used very sparing and only if compelling reasons exist for taking cognizance against the other person against whom

action has not been taken. .... We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would,

however, make it plain that the mere fact that the proceedings have been quashed against respondents 2 to 5 will not prevent the court from

exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before

it.

19. The Writ Petitions are, therefore, allowed and the process issued against petitioners shall stand recalled, however, by clarifying, as in the case

of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , that mere fact that process against the petitioners is recalled will not

prevent the trial court from exercising its discretion, if it is fully satisfied that the case for taking cognizance against them has been made out on the

additional evidence that may be led before it.

Rule is accordingly made absolute, with clarification.