

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**Cr. Writ Petition NO. 985 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)

*Versus*

The State Of Maharashtra And Anr ...Respondent(s)

**WITH**

**Cr. Writ Petition NO. 986 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)

*Versus*

The State Of Maharashtra And Anr ...Respondent(s)

**WITH**

**Cr. Writ Petition NO. 987 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)

*Versus*

The State Of Maharashtra And Anr ...Respondent(s)

**WITH**

**Cr. Writ Petition NO. 988 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)

*Versus*

The State Of Maharashtra And Anr ...Respondent(s)

**WITH**

**Cr. Writ Petition NO. 989 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)

*Versus*

The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 990 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 991 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 992 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 993 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 994 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 995 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 996 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 997 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 998 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 999 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 1000 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 1001 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 1002 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 1003 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH**  
**Cr. Writ Petition NO. 1004 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)  
*Versus*  
The State Of Maharashtra And Anr ...Respondent(s)

**WITH  
Cr. Writ Petition NO. 1005 OF 2017**

Raaja Pukhraj Jain ...Petitioner(s)

*Versus*

The State Of Maharashtra And Anr ...Respondent(s)

Mr.Jitenra Bakliwal for the Petitioner in all petitions

Ms.Veera Shinde, APP, for the Respondent – State

Mr.M.G. Shukla for Respondent No.2

**CORAM: MRS.MRIDULA BHATKAR, J.**

**DATED: 25<sup>th</sup> January, 2019**

**PC:-**

1. Rule. Mr.Patil, the learned APP and Mr.Shukla waive notice on behalf of respondent State and respondent No.2 respectively. By consent of the parties, Rule made returnable forthwith and heard finally.
2. The petitioner in all these Writ Petitions is one and the same and facing prosecution under sections 138 r/w 141 of the Negotiable Instruments Act and hence, all these petitions are being disposed of by this one and common order.
3. The process is issued vide various orders passed in October, 2013 on different dates by the 20<sup>th</sup> Court, Mazgaon, Mumbai in 21

complaints. It is convenient to give a chart detailing all the cases of issuance of process in the criminal complaints as follows:

| W.P. No. | Complaint No. (CC No.) | Court                                         | Cheque Amount | Process Date | Complainant Name              |
|----------|------------------------|-----------------------------------------------|---------------|--------------|-------------------------------|
| 985/17   | 1047/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 20,00,000 | 18/10/2013   | Neena Ashok Shah              |
| 986/17   | 1048/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 25,00,000 | 18/10/2013   | Menka V. Kelkar               |
| 987/17   | 1000/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 10,00,000 | 5/10/2013    | Dilip Kumar Nagpal            |
| 988/17   | 1001/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 7,00,000  | 5/10/2013    | Ram Chand Nagpal              |
| 989/17   | 1002/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 10,00,000 | 5/10/2013    | Ramchand Nagpal               |
| 990/17   | 1003/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 10,00,000 | 5/10/2013    | Atmaram Broking Co. Pvt. Ltd. |
| 991/17   | 1004/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 10,00,000 | 5/10/2013    | Suresh Atmaram Nagpal         |
| 992/17   | 1049/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 10,00,000 | 31/10/2013   | Madhusudhan B. Agarwal        |
| 993/17   | 1033/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 7,50,000  | 17/10/2013   | Kamlesh Lamba                 |
| 994/17   | 1034/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 10,00,000 | 17/10/2013   | Kamlesh Lamba                 |
| 995/17   | 1035/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 15,00,000 | 17/10/2013   | Kamlesh Lamba                 |
| 996/17   | 1036/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 7,50,000  | 17/10/2013   | Kamlesh Lamba                 |
| 997/17   | 1037/SS/2013           | 20 <sup>th</sup> Court, Mazgaon Court, Mumbai | Rs. 15,00,000 | 17/10/2013   | Kamlesh Lamba                 |
| 998/17   | 1038/SS/2013           | 20 <sup>th</sup> Court,                       | Rs. 5,00,000  | 17/10/2013   | Geeta Jagasia                 |

|         |              |                                                     |               |            |                                    |
|---------|--------------|-----------------------------------------------------|---------------|------------|------------------------------------|
|         |              | Mazgaon Court,<br>Mumbai                            |               |            |                                    |
| 999/17  | 1050/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs. 10,00,000 | 31/10/2013 | Purushottam<br>B. Agarwal –<br>HUF |
| 1000/17 | 1051/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs. 10,00,000 | 31/10/2013 | Purushottam<br>B. Agarwal –<br>HUF |
| 1001/17 | 1093/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs. 20,00,000 | 31/10/2013 | Atmaram And<br>Sons .              |
| 1002/17 | 1094/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs. 6,00,000  | 31/10/2013 | Atmaram and<br>Sons.               |
| 1003/17 | 1095/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs. 7,00,000  | 31/10/2013 | Atmaram and<br>Sons .              |
| 1004/17 | 1096/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs. 9,00,000  | 31/10/2013 | Atmaram and<br>Sons .              |
| 1005/17 | 1097/SS/2013 | 20 <sup>th</sup> Court,<br>Mazgaon Court,<br>Mumbai | Rs.7,00,000   | 31/10/2013 | Atmaram and<br>Sons .              |

4. The complainant has received 21 cheques from the company which is respondent No.1 in all the criminal complaints. Respondent Nos.2 to 11 in all the complaints are the Chairman, Managing Director, Joint Managing Director, Directors and General Manager or Chief Financial Officer of Respondent No.1 company. All the 21 cheques were issued in favour of the complainant in 2013. As the cheques were dishonoured, a statutory notice was issued by the complainant. Reply was given denying the liability

by the respondents in the complaint and thereafter, all these complaints were filed and the orders of issuance of process were issued.

5. Learned Counsel for the petitioner has submitted that he is challenging the orders of issuance of process only on one point that the petitioner who is accused No.4 in all the complaints was only a non-executive independent additional director of the company. In support, he relied on Form No.32 under the Companies Act where the status of the petitioner/accused No.4 is shown as an additional director and his designation is shown as additional director and the category as independent. He relied on the online resignation form for the same submitted by the petitioner/accused. He argued that in the entire complaint, no specific role is attributed to the petitioner and for the issuance of process, it is necessary for the complainant to give specific role to the person. No process can be issued against an independent or additional director, who has no role in the working of the company. The person, who has expertise or has special knowledge in that field, is appointed as an independent or additional director. This fact is to be considered in the Writ Petitions. In support, he relied



on the judgment of the Supreme Court in the case of **Pooja Ravinder Devidasani vs. State of Maharashtra**<sup>1</sup>. He submitted that in this case, the High Court had committed an error and therefore, the Supreme Court has set aside the order of the High Court confirming the order of issuance of process against the independent non-executive director. He further relied on the judgment of a learned Single Judge of this Court in a group of Writ Petitions being **Writ Petition No.834 of 2014 and others (Alok Sharma & Ors. vs. State of Maharashtra & Ors.)** decided on 10.2.2015. He also relied on the judgment of a learned Single Judge of this Court dated 7.11.2017 in **Writ Petition No.661 of 2017 (Raaja Pukhraj Jain vs. The State of Maharashtra & anr.)**. He submitted that in the said Writ Petition, the cheque was issued by the present accused No.1 company.

6. Learned Counsel for Respondent No.2/original complainant while opposing these petitions has submitted that the complainant has averred against the petitioner/accused specifically that the fact that he was an independent non-executive additional director is disputed seriously by the complainant. He pointed out the date of the resignation is much later than the issuance of cheques.

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7. Perused the complaint. There are specific averments against the accused Nos.2 to 11. It is averred that they all were present whenever the discussions and meetings were held in respect of loan transactions. It is also mentioned that though the accused No.2 has signed all the cheques, representations were made by all the accused Nos.2 to 11 to the complainant for advancing the loan. There are total 21 loan transactions. All the cheques were dishonoured. The present petitioner/accused was appointed as the director on 13.2.2012. The cheques were issued in the year 2013. As per the case, he resigned from the company on 26.9.2013. However, the cheques were dishonoured earlier to that and the complainant has issued statutory demand notices dated 10.8.2013 and they were received on 12.8.2013. Thus, the resignation was given after receiving the legal notice from the complainant.

8. It is true that if at all, there is non-executive independent director, the law under section 141 is settled that the person, who has an expertise having special knowledge is taken in the company for his guidance and if at all he is not involved in the day to day activities of the company, he cannot be held responsible for

the act done by the other active directors, without his knowledge. In such a manner, the vicarious liability cannot be saddled on the non-executive independent director. However, whether a person is non-executive and independent director or not is disputed and if it is not clearly shown, then, this Court cannot give benefit to the petitioner/accused on the basis of only the law settled by this Court and the apex Court.

9. In the case of **Pooja Ravinder Devidasani vs. State of Maharashtra** (supra), the Supreme Court had set aside the order of the High Court as the issue was not dealt with in a proper perspective. It was also mentioned that no specific role was attributed to the appellant in the said case. The Supreme Court in the said case held that the appellant was neither a Director of the accused company nor in-charge of or involved in the day to day affairs of the company at the time of commission of the alleged offence. In the present case, as discussed above, the date of issuance of cheque was earlier to the date of the resignation of the petitioner. Moreover, my attention is drawn to exhibit A and also exhibit D to this petition, which is form No.32 where at one stage, the designation is declared as additional director and category is

shown as independent and in the resignation letter, the designation is shown as director and the category is kept blank. If this discrepancy in the form filled up by the petitioner is pointed out at this stage, this Court cannot accept the submissions of the learned Counsel and believe that the petitioner/accused No.4 was an independent director. This becomes a disputed fact which cannot be decided and considered at the stage of issuance of process.

10. In the case of **Alok Sharma & Ors. (supra)**, a learned Single Judge of this Court had after reproducing section 149(6) of the Companies Act, where independent director is defined, has further elaborated in para 5 the said definition which cannot be disputed. An additional director or independent director may be an expert so also other directors also be experts and having special knowledge. So, the fact that he was working as an independent director and was not concerned with the day to day activity and when the cheques were issued, he had no knowledge, this fact is to be proved to establish the status of the petitioner as an independent non-executive additional director.

11. Similarly, in the case of **Raaja Jain (supra)**, the present petitioner/accused was the petitioner in the said matter wherein this Court relied on the case of **Alok Sharma (supra)** in which form No.32 was shown and which disclosed that he was appointed on 13.2.2012 and he resigned on 26.9.2013, however, it is evidence and the learned Judge has also further mentioned that in para 7 of the judgment that it is further evidence from from No.32 that he has further mentioned that the records reveal that the applicant herein was not associated with the company in September 2011 i.e., on the date of the initial transactions. It is not applicable to the present case, if the chronology of the issuance of dishonouring of the cheque, dates of notices, issuance of notices and the date of resignation by the petitioner are taken into account.

12. In the circumstances, there is no merit in these petitions and accordingly, all the petitions are dismissed. Rule stands discharged accordingly.

**(MRS. MRIDULA BHATKAR,J.)**