



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 810 OF 2024

Sou. Kanchan Ankush Palve
Age: 37 Years, Occu: Business,
R/o. Shriram, Plot No.91, Aishwarya Nagari,
Pipeline Road, Shriram Chowk, Savedi
Ahmednagar

... PETITIONER
(Ori. Accused No.1)

VERSUS

1. Nitin Arjun Shinde
Age: 46 Years, Occu: Business,
R/o. Plot No.2, Behind Parijat Apartment,
Sahakarnagar, Savedi, Ahmednagar
District : Ahmednagar
2. Shri Gautam Swami Hospital & Research
Centre Private Ltd.,
Sr. No.86, A1, Plot No.91, Aishwarya Nagari,
Savedi, Ahmednagar

Present Address: At Present:
T.P No.4 Plot No.47-1,2,3,4
Crystal Hospital, Savedi Road,
Ahmednagar

3. Shri Gautam Swami Hospital & Research
Centre Private Ltd. Through its directors.
- (i) Shri Ganesh Sarjerao Fasale
Age: 34 Years, Occ: Business,
R/o. Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar

- (ii) Dr. Dnyaneshwar Narayan Darade
Age: 45 Years, Occ: Doctor,
R/o. Shikshak Colony,
Malibabhulgaon, Pathardi,
Ahmednagar

At present: Devnath Clinic, Kharbanda
Kasar, Tal Pathardi, District Ahmednagar

- (iii) Dr. Jitendra Chaganrao Dhavale
Age: 43 Years, Occ: Doctor,
R/o: Katorewadi, Kamargaon,
Tal: Nagar, Dist: Ahmednagar

- (iv) Laxmikant Vinayak Pargaonkar
Age: 46 Years, Occ: Service,
R/o: Gauri, House No.13/B, Anandban
Colony, Pipeline Road, Near Bajarang
High School, Savedi, Ahmednagar

... **RESPONDENTS**
(Res. No.1 is Ori. Complainant,
Res. Nos.2 to 3(i to iv) are Ori
Accused Nos. 2 to5)

WITH
CRIMINAL WRIT PETITION NO. 395 OF 2024

Sou. Kanchan Ankush Palve
Age: 37 Years, Occu: Business,
R/o. Shriram, Plot No.91, Aishwarya Nagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar

... **PETITIONER**
(Ori. Accused No.1)

VERSUS

1. Bhaskar Chandrabhan Kadam
Age: 46 Years, Occ: Business,
R/o: House No.80, Khadoba Road,
Umbracha Mala, Majarsumba,
Tal: Nagar, District: Ahmednagar

2. Shri Gautam Swami Hospital & Research
Centre Private Ltd., Through its Director,
Shri. Ganesh Sarjerao Fasale
Age: 34 Years, Occ: Business,
R/o: Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar

3. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Dr. Dnyaneshwar Narayan Darade
Age: 45 Years, Occ: Doctor,
R/o: Shikshak Colony,
Malibabhulgaon, Pathardi, Ahmednagar

At present: Devnath Clinic, Kharbanda
Kasar, Tal Pathardi, District Ahmednagar

4. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Dr. Jitendra Chaganrao Dhavale
Age: 43 Years, Occ: Doctor,
R/o: Katorewadi, Kamargaon,
Tal: Nagar, Dist: Ahmednagar

5. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Laxmikant Vinayak Pargaonkar
Age: 46 Years, Occu. Servicr,
R/o: Gauri, House No.13/B, Anandban
Colony, Pipeline Road, Near Bajarang
High School, Savedi, Ahmednagar

... **RESPONDENTS**

(Res. No.1 is Ori. Complainant.
Res. Nos. 2 to 5 are Ori.Accused
Nos. 2 to 5)

**WITH
CRIMINAL WRIT PETITION NO. 396 OF 2024**

Sou. Kanchan Ankush Palve
Age: 37 Years, Occu: Business,
R/o. Shriram, Plot No.91, Aishwarya Nagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar

... PETITIONER
(Ori. Accused No.1)

VERSUS

1. Rupali Manoj Jagtap
Age: 46 Years, Occ. Business,
R/o. Gopal Smruti, Bhutkarwadi, Savedi,
Ahmednagar
District : Ahmednagar
2. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Shri Ganesh Sarjerao Fasale
Age: 34 Years, Occ: Business,
R/o: Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar
3. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Dr. Dnyaneshwar Narayan Darade
Age: 45 Years, Occ: Doctor,
R/o: Shikshak Colony,
Malibabhulgaon, Pathardi, Ahmednagar

At present: Devnath Clinic, Kharbanda
Kasar, Tal Pathardi, District Ahmednagar
4. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Dr. Jitendra Chaganrao Dhavale
Age: 43 Years, Occ: Doctor,
R/o: Katorewadi, Kamargaon,
Tal: Nagar, Dist: Ahmednagar

5. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Laxmikant Vinayak Pargaonkar
Age: 46 Years, Occu. Servicer,
R/o: Gauri, House No.13/B, Anandban
Colony, Pipeline Road, Near Bajarang
High School, Savedi, Ahmednagar ... **RESPONDENTS**
(Res. No.1 is Ori. Complainant.
Res. Nos. 2 to 5 are Ori. Accused
Nos. 2 to 5)

**WITH
CRIMINAL WRIT PETITION NO. 398 OF 2024**

Sou. Kanchan Ankush Palve
Age: 37 Years, Occu: Business,
R/o. Shriram, Plot No.91, Aishwarya Nagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar

... **PETITIONER**
(Ori. Accused No.1)

VERSUS

1. Vikram Sukhadev Athare
Age: 68 Years, Occ: Nil,
Through his constituted attorney
Yogesh V. Athare
Age: 42 years, Occ: Business,
Both residing at Parewadi,
Post Mandve, Tal: Pathardi,
District: Ahmednagar
2. Shri Gautam Swami Hospital & Research
Centre Private Ltd., through its Director,
Shri Ganesh Sarjerao Fasale
Age: 34 Years, Occ: Business,
R/o: Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar

3. Shri Gautam Swami Hospital & Research Centre Private Ltd., through its Director,
Dr. Dnyaneshwar Narayan Darade
Age: 45 Years, Occ: Doctor,
R/o: Shikshak Colony,
Malibabhulgaon, Pathardi, Ahmednagar
At present: Devnath Clinic, Kharbanda
Kasar, Tal Pathardi, District Ahmednagar
 4. Shri Gautam Swami Hospital & Research Centre Private Ltd., through its Director,
Dr. Jitendra Chaganrao Dhavale
Age: 43 Years, Occ: Doctor,
R/o: Katorewadi, Kamargaon,
Tal: Nagar, Dist: Ahmednagar
 5. Shri Gautam Swami Hospital & Research Centre Private Ltd., through its Director,
Laxmikant Vinayak Pargaonkar
Age: 46 Years, Occu. Servicr,
R/o: Gauri, House No.13/B, Anandban
Colony, Pipeline Road, Near Bajarang
High School, Savedi, Ahmednagar
- ... RESPONDENTS**
(Res. No.1 is Ori. Complainant.
Res. Nos. 2 to 5 are Ori.Accused
Nos. 2 to 5)

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Mr. Pratik P. Kothari, Advocate for Petitioner in all Writ Petitions
Mr. A. S. Gandhi, Advocate for Respondent No.1 in all Writ Petitions

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.02.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides at the stage of admission.

2. By the present Petitions under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the Petitioner in all these Petitions are prayed for quashment of criminal proceeding pending on the file of the learned Additional Chief Judicial Magistrate, Ahmednagar, for the offences punishable under Sections 138 of the Negotiable Instruments Act, as under:-

Sr. No.	Criminal W.P. No.	Criminal Complaint Number	Cheque Number and Date	Cheque amount (Rs.)
1.	810 of 2024	SCC No.3130 of 2023 Addl. CJM, Ahmednagar (Court No.19)	000011 06.02.2023	15,00,000/ -
2.	395 of 2024	SCC No.3084 of 2023 Addl. CJM, Ahmednagar (Court No.16)	000012 06.02.2023	15,00,000/ -
3.	396 of 2024	SCC No.3128 of 2023 Addl. CJM, Ahmednagar (Court No.17)	000013 06.02.2023	15,00,000/ -
4.	398 of 2024	SCC No.3129 of 2023 Addl. CJM, Ahmednagar (Court No.18)	000014 06.02.2023	15,00,000/ -

3. In above complaints, all the Petitioners are Accused and the Respondent No.1 is the original complainant. For the sake of brevity, I would like to refer the parties to the present Petition in their original capacity.

4. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is a matter of record that the above referred cheques in the tabular form were issued on 06.02.2023 in favour of the complainant by the accused Shri Ganesh Sarjerao Fasale from his Saving Account No.002002100023953 for discharging legal liabilities. However, all above cheques are dishonoured on account of "funds insufficient". The complainant issued the mandatory notice u/s 138 of NI Act to the accused persons i.e. (1) Gautam Swami Hospital and Research Centre and it's Directors i.e. 2(1) Kanchan Ankush Palve, 2(2) Ganesh Sarjerao Fasale, 2(3) Dr. Dnyaneshwar Narayan Darade, 2(4) Jitendra Chhaganrao Dhawale, 2(5) Dr. Laxmikant Vinayak Pargaonkar.

5. Even after service of notice, the Respondents/accused allegedly not complied with the mandatory notice, therefore, the complainant filed separate complaints under Section 138 of the Negotiable Instruments Act and prayed for appropriate punishment.

6. The learned counsel for the accused No.2(1) canvassed in vehemence that, all above cheques which are the subject matter of the above complaints are issued by Shri Ganesh Sarjerao Fasale [accused

No.2(2)] from his personal saving account and all above cheques are not issued from the account of accused No.1 Firm. So also, those cheques were not issued for discharging legal liabilities of the accused No.1 firm. Therefore, the Accused No. 1 firm and it's directors are not personally responsible for dishonour of all these cheques of the complaints. Therefore the complaint as against the present Petitioner/original accused No.2(1) is not maintainable.

7. It is further canvassed that, on 23.08.2021, a partnership firm was executed between the complainant and accused No.2(2) Shri Ganesh Sarjerao Fasale being Chairman of the accused No.1 firm. The present Petitioner/original accused No.2(1)] was already resigned from the Directorship of accused No.1 firm with effect from 21.08.2021 prior to issuance of cheques and resignation of the Accused No. 2(1) accepted by the Board of Directors of the accused No.1 firm. Therefore, on the day of issuance of cheques i.e. 06.02.2023, the Petitioner/accused No.2(1) was not Director of the accused No.1 firm. Therefore, the Petitioner/accused No.2(1) is not responsible for dishonour of the cheques in question, hence, prayed for quashment of all four complaints.

8. To buttress these submissions, the learned counsel for the Petitioner placed reliance on ***Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi, MANU/SC/0720/2015 : AIR 2015 SC 2579***, wherein it is held that, as per Section 138 of the N.I. Act, the drawer of the cheque from whose account cheques are issued for discharge of any debt or other liability and cheques are dishonoured.

9. It further relied on Judgment dated 06.01.2015 passed by this Court in ***Criminal Writ Petition No.1271 of 2023 (Sou. Kanchan Ankush Palve Vs Athare Patil Memorial Hospital & Research Centre Pvt. Ltd., and others)***, wherein it is held that, on the day of issuance of the cheque, the accused was resigned from the post of Directorship and said resignation was accepted by the Board of Directors of the Company. So also, entry was effected with the Registrar under the Companies Act prior to issuance of instrument involved in the complaint. Therefore, the accused was not responsible for the transaction.

10. Per contra, the learned counsel appearing for the Respondent/original complainant canvass that, the Petitioner is one of the Director of Accused no. 1 Shri Gautam Swami Hospital and

Research Centre Private Limited and responsible for day to day business of accused No.1 firm. The Petitioner accused and other Directors of the accused No.1 firm were authorized the accused No.2(2) Shri Ganesh Sarjerao Fasale to enter into an agreement on behalf of the accused No.1 firm. Therefore, the accused No.2(2) issued independent cheques in question in favour of the complainant for discharging legal liabilities. However, all cheques for sum of Rs.15,00,000/- are dishonoured. Therefore, merely the Petitioner/ original accused No.2(1) tendered resignation, it does not ipso-facto relieved her from legal liability of the Respondent No.1 firm. Therefore, prayed for dismissal of the Petitions.

11. In support of these submissions the learned counsel for the complainant relied on ***Suhas Bhand Vs. State of Maharashtra and another, 2009(3) Bom.C.R. (Cri) 784 : 2009 All.M.R.(Cri) 2614***, wherein the Division Bench of this Court held in para No.33 as under:-

“33. A reading of these judgments makes for the following legal propositions with regard to the resignation of a Director of a registered Company:

(i) If the accused in a criminal prosecution under Section 138 of the Negotiable Instruments Act produces a certified copy of Form No.32 certified by the ROC and there is no dispute of the factum of his resignation, the accused is entitled to be discharged from the prosecution.

(ii) If his resignation is not accepted or admitted by the complainant upon production of the certified copy of Form No.32, the accused would have to prove the truth of the contents of the said certified copy i.e. the factum of his resignation. Such accused cannot be discharged simplicitor upon production of a certified copy of Form No.32.

(iii) If the complainant produces any evidence showing the continuance of the accused as Director of the Company after the date of the resignation claimed by him as per the certified copy of Form No.32 produced by him, such accused cannot be discharged simplicitor upon production of such certified copy of Form No.32. He would have to lead evidence to prove the factum of his resignation. Similarly the complainant would be entitled to prove the factum of his continuing as Director. The trial under Section 138 read with Section 141 of the Negotiable Instruments Act would, therefore, proceed.”

12. Needless to say that, the Respondent complainant in all these Petitions have filed criminal complaint SCC Nos. 3130 of 2023, 3084 of 2023, 3128 of 2023 and 3129 of 2023 for dishnour of cheque numbers 000011, 000012, 000013 and 000014 issued on 06.02.2023 for an amount of Rs.15,00,000/- each. However, all these cheques are dishonoured due to insufficient fund in account of the Accused No.2(2) Shri Ganesh Sarjerao Fasale.

13. I have gone through the record. It is matter of record that, all the cheques subject matters of all the complaints are issued from Saving Account of the accused No.2(2) who is one of the Director of accused No.1 Hospital and Research firm. The complainant has not

disputed fact that all these cheques are are issued from the personal saving account of accused No.2(2). The complainant has not made averment that, subject matter of cheques are issued from account of the respondent No.1 firm. Therefore, it is abundant clear that, when cheques are issued from Saving Account of the accused No.2(2) and those cheques are dishnoured in such circumstances all the Directors of the accused No.1 firm cannot held to be liable for prosecution for dishonour of the cheques.

14. Moreover, the Petitioner/accused No.2(1) already resigned from the post of Director of the accused No.1 Hospital and Research firm on 21.08.2021 prior to issuance of subject matter of cheques. Therefore, considering the law laid down in case of ***Pooja Ravinder Devidasani Vs. State of Maharashtra, AIR 2015 SC 675***, and ***Rajesh Viren Shah Vs. Radington (India) Ltd., 2024 AIR (SCW) 1047; 2024 (3) Mh.L.J. 650***, when the cheque was issued after acceptance of the Director and no allegations are levelled against the Director, therefore, merely being a Director of the company, he cannot be prosecuted for the offence under Section 138/141 of the Negotiable Instruments Act.

15. In *Sunita Palita and Others Vs. Panchami Stone Quarry, AIR 2022 SC 3548; 2022 (10) SCC 152*, it is held that, the Director of a company, who was not In-charge or responsible for conduct of the business of the company at the relevant time, would not be liable for prosecution. As per the decision in case of SMS Pharmaceuticals Limited cited (supra), the liability under section 138/141 of the N.I. Act arises from being In-charge of and responsible for conduct of the business of the company at the relevant time, when the offence was committed and not on the basis of merely holding a designation or office in a company. It would be a travesty of justice to drag Directors, who may not be even be connected with the issuance of a cheque or dishonour thereof, such as Director, (Personnel), Director (Human Resources Development) etc., into criminal proceedings under the N.I. Act, only because of their designation.

16. In *Ajay Rampal Sarda Vs. Pankaj Ravilal Shah and another, 2021 All M.R. (Cri) 284; 2021 (3) Mh.L.J.(Cri) 50*, it is held that, in absence of averments in the complaint under Section 138 that at the time of commission of an offence, the person accused was in-charge of the conduct of business of the firm and responsible for

issuance of cheque. Merely because, the applicant was the partner in the partnership firm is not sufficient to make him liable for offence under N.I. Act, particularly, when no specific role is attributed to the applicant in the complaint. The applicant cannot be deemed to be in-charge of and responsible for the conduct of the day to day affairs of the business. The requirement is that the person sought to be liable, should be in charge of and responsible for the conduct of the business of the firm at the relevant time.

17. Reverting back to the present case, the cheques subject matter of different complaints as described above, are not issued from the account of the accused No.1 Hospital and Research firm, but all these cheques are issued from saving account of accused No.2(2). Therefore, to my judicious conscious for dishonour of the cheques in all these Petitions, the present Petitioner who was not Director of accused No.1 firm cannot be prosecuted. Therefore, continuation of the criminal proceedings as against the present Petitioner would certainly amount to abuse of process of law, hence, all above complaints instituted u/s 138 of N.I. Act against the present Petitioner are liable to be quash and set aside.

18. In view of the above, I am inclined to grant these Petitions and proceed to pass the following order:-

:: ORDER ::

- (i) All the Writ Petitions are allowed.
- (ii) Criminal Complaint Nos. (i) SCC Nos.3130 of 2023, (ii) 3084 of 2023, (ii) 3128 of 2023 and (iv) 3129 of 2023 pending on the file of the learned Chief Judicial Magistrate, Court Nos.16, 17, 18 and 19, Ahmednagar, are hereby quashed and set aside to the extent of the present Petitioner/original accused No.2(1).
- (iii) No order as to costs.
- (iv) Accordingly, the Rule is made absolute.

[Y. G. KHOBRAGADE, J.]

SMS