



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

932 CRIMINAL WRIT PETITION NO.382 OF 2025

Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Laxmikant Vinayak Pargaonkar,
Age-50 years, Occu-Business,
R/o. 13B, Gauri Ghar, Anandban Colony,
Pipeline Road, Near Bajrang School,
Savedi, Ahmednagar

...PETITIONER
[Ori. Accused No. 5]

VERSUS

1. Vikram Sukhdev Athare,
Age-65 years, Occu-Nil,
Through his constituted Attorney,
Yogesh Vikram Athare,
R/o. Parewadi, Post. Mandve,
Tq. Pathardi, Dist. Ahmednagar
2. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Kanchan Ankush Palve,
Age-36 years, Occu-Business,
R/o. Shriram, Plot No. 91, Aishwaryanagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar
3. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Shri Ganesh Sarjerao Fasale,
Age-34 years, Occu-Business,
R/o. Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar
4. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Dnyaneshwar Narayan Darade
Age-45 years, Occu-Doctor
R/o. Shikshak Colony, Malibabhulgaon,
Pathardi, Ahmednagar

at present, Devnath Clinic, Kharbanda
Kasar, Tq. Pathardi, Dist. Ahmednagar

5. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Jitendra Chaganrao Dhavale,
Age-43 Years, Occu-Doctor,
R/o. Katorewadi, Kamargaon,
Dist.Ahmednagar

WITH

CRIMINAL WRIT PETITION NO.402 OF 2025

Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Laxmikant Vinayak Pargaonkar,
Age-50 years, Occu-Business,
R/o. 13B, Gauri Ghar, Anandban Colony,
Pipeline Road, Near Bajrang School,
Savedi, Ahmednagar

...PETITIONER
[Ori. Accused No. 5]

VERSUS

1. Nitin Arjun Shinde,
Age-46 years, Occu-Business,
R/o. Plot No. 2, Behind Parijat Apartment,
Sahakarnagar, Savedi, Dist. Ahmednagar
2. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd.
Sr. No. 86, A-1, Plot No. 91, Aishwaryanagari,
Savedi, Ahmednagar

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 Pvt Ltd., Through its Director
- i. Kanchan Ankush Palve,
Age-36 years, Occu-Business,
R/o. Shriram, Plot No. 91, Aishwaryanagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar

- ii. Shri Ganesh Sarjerao Fasale,
Age-34 years, Occu-Business,
R/o. Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar
- iii. Dr. Dnyaneshwar Narayan Darade,
Age-45 years, Occu-Doctor,
R/o. Shikshan Colony,
Malibabhulgaon, Pathardi, Ahmednagar

At present, Devnath Clinic, Kharbanda
Kasar Tq. Pathardi, Dist. Ahmednagar
- iv. Dr. Jitendra Chaganrao Dhavale,
Age-43 Years, Occu-Doctor,
R/o. Katorewadi, Kamargaon,
Dist.Ahmednagar

WITH
CRIMINAL WRIT PETITION NO.416 OF 2025

Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Laxmikant Vinayak Pargaonkar,
Age-50 years, Occu-Business,
R/o. 13B, Gauri Ghar, Anandban Colony,
Pipeline Road, Near Bajrang School,
Savedi, Ahmednagar

...PETITIONER
[Ori. Accused No. 5]

VERSUS

- 1. Bhaskar Chandrabhan Kadam,
Age-46 years, Occu-Business,
R/o. House No. 80, Khandoba Road,
Umbracha Mala, Majarsumba, Dist. Ahmednagar
- 2. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Kanchan Ankush Palve,
Age-36 years, Occu-Business,
R/o. Shriram, Plot No. 91, Aishwaryanagari,
Pipeline Road, Shriram Chowk, Savedi,

Ahmednagar

3. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Shri Ganesh Sarjerao Fasale,
Age-34 years, Occu-Business,
R/o. Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar
4. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Dnyaneshwar Narayan Darade
Age-45 years, Occu-Doctor
R/o. Shikshak Colony, Malibabhulgaon,
Pathardi, Ahmednagar
at present, Devnath Clinic, Kharbanda
Kasar, Tq. Pathardi, Dist. Ahmednagar
5. Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Jitendra Chaganrao Dhavale,
Age-43 Years, Occu-Doctor,
R/o. Katorewadi, Kamargaon,
Dist.Ahmednagar

WITH
CRIMINAL WRIT PETITION NO.417 OF 2025

Shri Gautam Swami Hospital & Research
Centre Pvt Ltd., Through its Director
Dr. Laxmikant Vinayak Pargaonkar,
Age-50 years, Occu-Business,
R/o. 13B, Gauri Ghar, Anandban Colony,
Pipeline Road, Near Bajrang School,
Savedi, Ahmednagar

...PETITIONER
[Ori. Accused No. 5]

VERSUS

1. Rupali Manoj Jagtap,
Age-46 years, Occu-Business,
R/o. Gopal Smruti, Bhutkarwadi, Savedi,
Ahmednagar

2. Shri Gautam Swami Hospital & Research Centre Pvt Ltd., Through its Director
Kanchan Ankush Palve,
Age-36 years, Occu-Business,
R/o. Shriram, Plot No. 91, Aishwaryanagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar
3. Shri Gautam Swami Hospital & Research Centre Pvt Ltd., Through its Director
Shri Ganesh Sarjerao Fasale,
Age-34 years, Occu-Business,
R/o. Flat No.204, Om Residency,
Opp. Gaikwad Hospital, Tapovan Road,
Savedi, Ahmednagar
4. Shri Gautam Swami Hospital & Research Centre Pvt Ltd., Through its Director
Dr. Dnyaneshwar Narayan Darade
Age-45 years, Occu-Doctor
R/o. Shikshak Colony, Malibabhulgaon,
Pathardi, Ahmednagar
at present, Devnath Clinic, Kharbanda
Kasar, Tq. Pathardi, Dist. Ahmednagar
5. Shri Gautam Swami Hospital & Research Centre Pvt Ltd., Through its Director
Dr. Jitendra Chaganrao Dhavale,
Age-43 Years, Occu-Doctor,
R/o. Katorewadi, Kamargaon,
Dist.Ahmednagar

Mr. Pratik P. Kothari, Advocate for the petitioner

CORAM : ABHAY J. MANTRI, J.

DATE : 20th NOVEMBER, 2025

ORAL JUDGMENT :

1. In all these petitions, an identical question of law is involved, and in all the complaints, the accused persons are the same.

Therefore, all four petitions are taken together for consideration.

2. Heard. **Rule.** Rule is made returnable forthwith and heard finally with the consent of the learned advocate for the petitioners.

3. None appeared for the respondents, though they served. The original complainant in all matters was served with the notices of admission, and a second notice was issued for the final disposal of the petitions. Despite the foregoing facts, no one appeared on behalf of the complainants.

4. I have perused the impugned orders, whereby processes were issued against the petitioners and the record.

5. By these petitions, the petitioners are invoking the inherent jurisdiction of this court under Section 528 of the Bhartiya Nyaya Sanstha (for short, '**BNS**') for quashment of all the proceedings bearing SCC Nos. 3129/2023, 3128/2023, 3084/2023 & 3130/2023 respectively pending before the learned Additional Chief Judicial Magistrate/learned Magistrate, Ahmednagar (For short the '**learned Magistrate**') whereby the learned Magistrate has issued summons to the accused therein for the offence punishable under Section 138 of the Negotiable Instruments Act (for short the '**N. I. Act**').

6. For the sake of convenience, I would like to mention the facts of all the petitions in tabular form as follows :

Sr. No.	Criminal WP	Cri. Complaint No.	Cheque No./Date	Cheque Amount
1.	810/2024	SCC No.3130/2023 Addl. CJM, Ahmednagar (Court No. 19)	000011 06-02-2023	15,00,000/-
2.	395/2024	SCC No.3084/2023 Addl. CJM, Ahmednagar (Court No.16)	000012 06-02-2023	15,00,000/-
3.	396/2024	SCC No.3128/2023 Addl.CJM, Ahmednagar (Court No.17)	000013 06-02-2023	15,00,000/-
4.	398/2024	SCC No.3129/2023 Addl. CJM, Ahmednagar (Court No.18)	000014 06-12-2023	15,00,000/-

7. In these petitions, the petitioner is accused No. 5, and the respondent No.1 is the complainant. The respondent No. 2, Director, is not a necessary party to the petitions. Therefore, no notice was issued to it.

8. It is pertinent to note that in all four petitions, the petitioner and respondent No.2 are the same. Only the name of respondent No. 1 differs.

9. For the sake of brevity, I would like to refer to the facts of Writ Petition No. **382/2025**.

10. Having heard the learned advocate for the petitioners and gone through the impugned orders and record, at the outset, it

appears that respondent No.1-original complainant, has filed the proceedings under section 138 of the N.I. Act against the petitioners. In the said complaint in para No. 3, the complainant has categorically stated that accused No. 2, i.e. Ganesh Fasle, has issued a cheque for himself and on behalf of accused Nos. 1, 3 to 5, towards the payment of Rs. 15 lakhs. Said cheques bear the signature of accused No. 2 Ganesh only.

11. Similarly, the learned advocate for the petitioners tendered a copy of the notice dated 27-03-2023 issued by Nitin Arjun Shinde [respondent No.1/ Ori. Complainant in Cri. WP/402/2025] through his advocate to the accused Nos. 1 to 4 on record across the bar. The same is taken on record and marked as 'X' for identification purposes.

12. On perusal of the said notice, from para No. 3 of the notice, it emerges that the complainant has categorically stated that the accused No. 2, i.e. Ganesh, has issued cheques for himself and on behalf of accused/respondent Nos. 1, 3 to 5 to repay the amount of Rs. 15 lakhs to the complainant.

13. The learned advocate for the petitioners vehemently contended that the averments in the notice, as well as the complaint itself, indicate that one Ganesh issued cheques for himself and from his account only. Therefore, it would not be sufficient to attract the

provisions of Section 138 of the N.I. Act against the petitioners, as the said cheques were not issued from the Bank account of respondent No. 2, the company, or from the account of any Director of the company. However, the said cheques were issued from the individual account of the accused No. 2, Ganesh, and therefore, the provisions of Section 138 cannot be attracted. On that ground alone, the issuance of the process order has to be quashed and set aside.

14. To buttress his submission, he has relied on the judgment of the Hon'ble Apex Court in *P. J. Agro Tech Ltd and Ors Vs Water Base Ltd (2011)2 SCC (Cri) 164* and pointed out para 9 of the said decision, which reads as under

“9. In the instant case, the cheque which had been dishonoured may have been issued by the respondent No.11 for discharging the dues of the appellant No.1 Company and its Directors to the respondent No.1 Company and the respondent company may have a good case against the appellant No.1 Company for recovery of its dues before other for a, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The Appellant company and its Directors cannot be made liable under Section 138 of a Criminal or a quasi-criminal provision, which has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.”

15. He also relied on the judgment in *Jugesh Sehgal Vs Shamsher Singh Gogi 2010(1)Bom CR903* and pointed out para 8 and 10

of the said judgment, which reads as under :

“8. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iv) that the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque, or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such a cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

10. In the case before us, it is clear from the facts, briefly noted above, and in para 3 of the complaint as extracted, that on receipt of the return memo from the bank, the complainant is stated to have realized that the dishonoured cheque was issued from an account which was not maintained by accused No.1--the appellant herein, but by one Shilpa Chaudhary. As a matter of fact, and perhaps having gained the said knowledge, on 20th January, 2001, the complainant filed an FIR against all the accused for offences under Sections 420, 467, 468, 471, 406 of the Indian Penal Code (IPC). Thus, there is hardly any dispute that the cheque, subject matter of the complaint under Section 138 of the Act, had not been drawn by the appellant on an account maintained by him in the Indian Bank, Sonapat branch. That being so, there is little doubt that the very first ingredient of Section 138 of the Act, enumerated above, is not satisfied and consequently the case against the appellant for having committed an offence under Section 138 of the Act cannot be proved.”

16. He further submitted that in view of the law laid down in the judgments mentioned above, the ingredients of section 138 of the N.I. Act, are not attracted against the present petitioners, and therefore, in view of the mandate laid down therein, the order of issuance of process against the petitioners is liable to be quashed and set aside. He further submitted that in view of the observations made in para 15 of the judgment in *Jugal Sehgal (supra)*, this court can exercise its jurisdiction under Section 482 of the Code of Criminal Procedure /528 of the BNS Act to quash the complaint under Section 138 of the N.I. Act.

17. Having gone through the record, I found substance in his contention in that regard. It clearly appears from the notices and complaints that cheques were issued from the individual bank account of accused No. 2-Ganesh. Therefore, as per the law laid down in the above judgments, in my view, the provision of section 138 of the N.I. Act is not attracted against the petitioners. On that ground alone, the petitions are liable to be allowed.

18. Apart from that, the learned advocate for the petitioners also submitted that in *Kanchan Vs Nitin in Criminal Writ Petition No. 810/2024*, this court has dealt with the same issue and, considering the facts of that case, quashed the proceedings. *Kanchan* is one of the Directors of the respondent No.2 company. In the complaint,

Kanchan is named as Accused No. 1. Therefore, he submitted that these petitions are covered by the order of this court, as the facts in *Kanchan* and the facts of the case at hand are identical. Therefore, he urged that the petitions be allowed.

19. Considering the above discussion and gone through the record, I am of the opinion that all the petitions are covered by the judgment of this court in *Kanchan* and the law laid down in *P. J. Agro Tech Ltd (supra)* and *Jugesh Sehgal (supra)* are squarely applicable to the case at hand and therefore, in my view, passing of the order of issuance of process by the learned Magistrate is illegal and contrary to the settled position of law and thus, same is liable to be quashed and set aside against the applicant in the inherent powers of this court.

20. As a result, all the criminal writ petitions are allowed in terms of the prayer clause B.

21. All the proceedings bearing SCC Nos.3129/2023, 3128/2023, 3084/2023 & 3130/2023, respectively, pending before the learned Additional Chief Judicial Magistrate/learned Magistrate, Ahmednagar, stand quashed and set aside against the Petitioner/accused No.5.

22. Rule is made absolute. No order as to costs.

[ABHAY J. MANTRI, J.]

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