IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1386 OF 2024

Parth s/o Bhadresh Mehta
Age : 36 years, Occupation : Business,
Address Flat No.1701, Ocean 360,
Walkeshwar Road, Mumbai-400006.
...PETITIONER

-VERSUS-

1. The State of Maharashtra.

2. M/s Mahavir Ginning and Pressing
Having its office at 207, Arhat Market,
Laxman Chowdy, Mondha Road,
Tal. & Dist.Aurangabad.
Through its Proprietor
Shri Devendra Indrachand Challani,
Age : Major, Occupation : Business,
Resident of CIDCO, Aurangabad,
Tal. & Dist. Aurangabad.
...RESPONDENTS

…

Shri Abhaykumar D. Ostwal, Advocate for the petitioner.
Shri D.B. Bhange, APP for respondent No.1/ State.
Shri Pramod Patni, Advocate for respondent No.2/ complainant.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 07 October 2025
Pronounced on : 07 November 2025

JUDGMENT :-

1. Heard.

2. Rule. Rule made returnable forthwith and by

consent of parties, heard finally.

3. By this petition under Article 227 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'), the petitioner seeks to quash and set aside the order of issuance of process dated 19.06.2017 passed by the learned Judicial Magistrate, First Class, Aurangabad, in S.C.C. No.3602/2017 as well as the said proceedings filed by respondent No.2/ complainant against the petitioner (original accused No.3) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

4. Respondent No.2/ complainant filed private complaint bearing S.C.C. No.3602/2017 before the learned JMFC, Aurangabad, on 06.06.2017, contending therein that accused No.1 is a limited company and accused Nos.2 to 4 are its directors and they are actively participating in the affairs of the said company. It is contended that the accused persons purchased cotton bales from the complainant from time to time on credit basis and accused No.1/ company had issued two cheques for amounts of Rs.80,09,315/- and Rs.80,09,316/- dated 15.01.2017 and 15.02.2017, respectively, drawn on Union Bank of India, Lower Parel Branch, Mumbai. It is alleged that the said cheques were signed by accused No.2, who was authorized to sign the

cheques. Since the said cheques were dishonoured, therefore, respondent No.2/ complainant filed the said complaint for the offence punishable under Section 138 of the NI Act. On 19.06.2017, the learned JMFC, on the Roznama itself, was pleased to pass the order of issuance of process.

5. Learned advocate Shri Ostwal for the petitioner submitted that the impugned order of issuance of process is not even signed by the learned JMFC and it is passed without conducting an enquiry under Section 202 of the CrPC. The impugned order is passed only on Roznama. According to learned advocate, cheques in question were neither signed by the petitioner, nor was he authorized Director of the company to sign the cheques at the relevant time. The petitioner was only non-executive director of the company during the relevant period when the cheques in question were issued. The petitioner was not incharge of day to day affairs and was also not responsible for the company's day to day business. In this regard, he pointed out Form No.DIR 12 regarding appointment of the petitioner as non executive director of the company on 07.05.2016 and Form No.DIR 11 regarding resignation as non executive director on 01.11.2017. He submitted that even the impugned order of issuance of process is not duly signed by the learned JMFC.

Learned advocate, therefore, submitted that the impugned order of issuance of process as well as the proceedings initiated by respondent No.2 are abuse of process of law and, same need to be quashed and set aside.

6. On the other hand, learned advocate Shri Patni appearing for respondent No.2/ complainant submitted that under Section 141(1) of the NI Act, the law does not prescribe to specify precise administrative role of the directors of the company to establish liability for cheque dishonour. According to learned advocate Shri Patni, general averments that the director was incharge of and responsible for the company's business, are sufficient at the complaint stage. Respondent No.2/ complainant has pleaded general role of all accused. Therefore, burden lies on the directors to prove during trial that they were not incharge of and responsible for the company's business.

7. Learned advocate Shri Patni further submitted that under Sections 138 and 145 of the NI Act, the learned Magistrate can summon accused without holding an enquiry under Section 202 of the CrPC. Therefore, the provisions of Section 202(2) of the CrPC are inapplicable to complaints filed under Section 138 of the NI Act.

8. In support of his above submissions, learned

advocate Shri Patni has relied on following judgments:-

(a) HDFC Bank Limited v. State of Maharashtra and another, 2025 LiveLaw (SC) 624.

(b) Paresh P. Rajda vs. State of Maharashtra and another, (2008) 7 SCC 442.

(c) Sunil Todi and others vs. State of Gujarat and another,
(2022) 16 SCC 762.

(d) Madhu Malu Gadekar vs. State of Maharashtra, 2008 All M.R. (Cri.) 2474.

(e) S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan, (2023) 10 SCC 685.

(f) Expeditious Trial of Cases under Section 138 of NI Act. Suo Motu Writ Petition (Crl.) No.2 of 2020, decided on April 16, 2021. (2021) 16 SCC 116.

9. Learned advocate Shri Patni tendered the copy of the order dated 31.07.2025 passed in Criminal Writ Petition No.1453/2024 (Parth Bhadresh Mehta vs. The State of Maharashtra and another) and submitted that similar type of petition filed by the present petitioner is dismissed by this Court. He, therefore, prayed for dismissal of this petition.

10. After hearing learned advocates for the respective parties, I have perused impugned orders and available record. It is evident from the Roznama that the process was issued against

the petitioner, however, there is no signature of the learned JMFC. This position is not disputed by learned advocate for respondent No.2. Learned advocate Shri Ostwal has invited my attention to the judgment of this Court in the case of the present petitioner reported in ***2019 SCC OnLine Bom. 405 : (2019) 5 MhLJ 771 (Parth Bhadresh Mehta and others vs. The State of Maharashtra and another***) wherein, it is held that the provision of Section 202 of the CrPC is mandatory in nature and that needs to be followed even when the complaint is filed under Section 138 of the NI Act. In the said matter, the order of issuance of process against the petitioner came to be quashed and set aside and the said matter was remanded back to the learned JMFC in order to follow the procedure laid down under Section 202 of the CrPC. The facts of said case (2019) 5 MhLJ 771 are identical with the facts of the present case. In the present case, admittedly the petitioner is not residing within territorial jurisdiction of the learned JMFC, who has passed the impugned order of issuance of process.

11. In ***Criminal Application No.1182/2017*** filed by the petitioner at the Principal Seat challenging the order of issuance of process under Section 138 of the NI Act, this Court vide order dated 24.09.2019 has allowed the said application and observed

that Section 141(1) of the NI Act contemplates that where if the person committing the offence under Section 138 of the NI Act is a company, every person who, at the time of the offence was committed, was incharge of and was responsible to the Company for the conduct of its business 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. In view of this specific, clear and unambiguous provision, vicarious liability of a person of being prosecuted for commission of an offence by the company, would arise only if at the time when the offence is alleged to have been committed, he was in-charge of and was responsible to the company for conduct of its business. Therefore, it is imperative on the part of the complainant to make specific averment in the complaint that a particular person was incharge of and was responsible to the company for the conduct of its business. In absence of such averment, initiation of the proceedings against a person who has not been specifically attributed to have a role in the company's business, cannot be sustained.

12. Now coming to the case in hand, respondent No.2/ complainant has filed the complaint against accused No.1 company for allegedly issuing two cheques drawn on the Union

Bank of India, Lower Parel Branch, Mumbai. The said cheques came to be dishonoured and, therefore, the complaint is filed. The cheques in question were dated 15.01.2017 and 15.02.2017 and it is also admitted by respondent No.2/ complainant that the petitioner has not signed those cheques. The record shows that the petitioner was appointed on 07.05.2016 as non executive director of the company and resigned as such on 01.11.2017. Thus, during the period of alleged offence, the petitioner was not incharge of and was not responsible for day to day affairs of the company. Paragraph No.3 of the impugned complaint filed by respondent No.2 reads thus:-

> *"3) The accused No.1 is a Limited Company engaged in the business of trading in cotton bales and its export. The accused Nos.2 to 4 are the directors of the said Company and they are actively participating in the affairs of the said company. All the accused persons knows the entire transaction entered into with the present complainant and other suppliers also."*

13. A bare perusal of the above paragraph No.3 would reveal only general allegations against the petitioner and no specific role is mentioned. The accusations are general in nature without pointing out who is responsible for the conduct of business of the company at the time of issuance of cheques. Such specific averment is *sine qua non* for proceeding against the director of the company. Hence, compelling the petitioner to face

trial in such circumstances would amount to abuse of the process of the Court.

14. Though learned advocate Shri Patni has relied upon several judgments, however, they are clearly distinguishable on facts. In ***HDFC Bank Ltd. v. State of Maharashtra*** **and** ***Sunil Todi v. State of Gujarat (supra)***, the Hon'ble Supreme Court dealt with cases where there were specific averments in the complaint that the directors were in charge of and responsible for the conduct of the business of the company. In contrast, the present complaint contains only omnibus and general allegations without any particulars as to the role of the petitioner. Likewise, in ***S.P. Mani (supra)***, the Hon'ble Supreme Court reiterated that general averments may suffice at the threshold only where the complaint otherwise discloses active participation or control of the accused over the company's affairs. No such material exists in the present case. Therefore, the ratio of decisions relied on by respondent No.2 is inapplicable to the facts of this case.

15. Though learned advocate Shri Ostwal for the petitioner has placed reliance on several decisions of the Hon'ble Supreme Court and this Court, it is not necessary to reproduce each of them in detail, since the legal position on the necessity of specific averments under Section 141 of the NI Act and the

mandatory nature of inquiry under Section 202 Cr.P.C. is well settled. The principle laid down therein has been duly considered while adjudicating the present petition.

16. In view of the above discussion, the Criminal Writ Petition is allowed. The impugned order of issuance of process dated 19.06.2017 as well as the proceedings bearing S.C.C. No.3602/2017 pending on the file of the learned JMFC, Aurangabad, are quashed and set aside, to the extent of the petitioner.

17. Rule is made absolute in the above terms.

kps (SUSHIL M. GHODESWAR, J.)