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

921 CRIMINAL WRIT PETITION NO. 1280 OF 2023

Sou. Kanchan Ankush Palve
Age: 36 Years, Occ: Business,
R/o Shriram, Plot No.91, Aishwarya Nagari,
Pipeline Road, Shriram Chowk, Savedi,
Ahmednagar. **... PETITIONER**

V/s.

1. Dr. Anil Suryabhan Athare
Age: 69 Years, Occ: Medical Practitioner,
R/o: Opp. Zopadi Canteen,
Nagar- Manmad Road, Savedi, Ahmednagar

2. Shri Gautam Swami Hospital & Research
Centre Private Ltd., having its registered
office at, Survey No. 86/A1,
Plot No. 91, Aishwarya Nagari,
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 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.

4. 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.

5. Shri Gautam Swami Hospital & Research
Centre Private Ltd., Through its Director,
Dr. Jitendra Chaganrao Dhavale
Age: 45 Years, Occ: Doctor,
R/o: Katorewadi, Kamargaon,
Tal: Nagar, Dist: Ahmednagar.

6. Shri Gautam Swami Hospital & Research
Centre Private Ltd., Through its Director,
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.

7. Shri Gautam Swami Hospital & Research
Centre Private Ltd., Through its Director,
Dr. Yuraj Takale
Age: 32 Years, Occ: Doctor,
R/o: Hanumantgaon, Chikhali,
Tal: Aashti, District: Beed ... **RESPONDENTS**

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Mr. Kothari Pratik P. a/w. Ms. Nandini Chittal, Advocate for the Petitioner
Mr. Vikram R. Dhorde, Advocate for the Respondent No.1

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CORAM : Y.G. KHOBRAGADE, J.
DATE : 10.01.2025

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 petition the under Article 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C., the Petitioner has prayed for quashment of criminal proceeding bearing SCC No. 7207/2022

pending on the file of the learned Additional CJM, Ahmednagar (Court No.15) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The present Petitioner is the Original Accused No.3 and present Respondent No.1 is the Original Complainant in criminal proceeding bearing SCC No. 7207/2022. For the sake of brevity, the parties to the present petition are referred 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 cheque No.064824 was issued on 01.08.2022 for an amount of Rs. 30,70,000/- (Thirty lakhs Seventy Thousand Rupees only) drawn on Federal Bank, Branch Ahmednagar in favour of the Complainant from the account of Crystal Hospital and Research Centre, which is sister concern firm of Shri Gautam Swami Hospital & Research Centre Private Ltd. The present Petitioner/Original Accused No.3 was impleaded as one of the Director of Shri Gautam Swami Hospital & Research Centre Private Ltd. The Complainant alleged that other accused along with the present Petitioner are Directors of the Shri Gautam Swami Hospital & Research Centre Private Ltd., which is registered under the provisions of the Companies Act, 1956.

5. The learned counsel appearing for the Petitioner canvassed that on 20.08.2021, the present Petitioner/Original Accused No.3 resigned from the Directorship of the Shri Gautam Swami Hospital & Research Centre Private Ltd. and her resignation was already accepted by the Board of Directors and necessary entry was already taken by the Registrar under the Companies Act on 20.08.2021. The cheque in question has been issued on 01.08.2022 i.e. subsequent to the resignation of the Petitioner from the post of Director. Therefore, continuation of proceeding against the present Petitioner would amount to abuse of process of law and the Petitioner is not concerned with the day to day transaction of the Accused-Company, hence, prayed for quashment of the proceeding as well as the order of issuance of process as against the Petitioner/Accused No. 3.

6. To buttress these submissions, the learned counsel appearing for the Petitioner placed reliance on the case of **Pooja Ravinder Devidasani V/s. State of Maharashtra; AIR 205 SC 675**, wherein, the Hon'ble Supreme Court has held in paragraph Nos. 27 to 30 as under:

> *"27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability.*

But in this case, 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. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be interdicted at the threshold.

29. So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2-complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law."

7. Per contra, the learned counsel appearing for the Respondent No.1/Complainant canvassed in vehemence that at the time of issuance of the

cheque, present Petitioner was the Director of the Accused/Respondent No.1-Company and was responsible for day to day affairs of the Company, therefore, the present Petitioner was impleaded as Accused No.3. Hence prayed for dismissal of the petition. The learned counsel for the Respondent No.7 has prayed for passing suitable orders.

8. Needless to say that Respondent No.1/ Original Complainant filed a complaint bearing SCC No. 7207/2022 for the offence punishable u/s 138 of the Negotiable Instruments Act alleging that the premises constructed on plot No.47 ad-measuring 30,000 sq.ft was given on lease to Shri Gautam Swami Hospital & Research Centre Pvt. Ltd. Company on certain terms and conditions. On 01.08.2022, a cheque bearing No. 064824 was issued in favour of the Respondent No.1/ Original Complainant for an amount of Rs. 30,70,000/- (Thirty Lakhs Seventy Thousand Rupees Only) drawn on Federal Bank, Branch Ahmednagar for discharge of legal liability. However, said cheque was returned unpaid with bank return memo on 06.10.2022. On 21.10.2022, the mandatory notice was issued to the accused persons including the Petitioner. After mandatory compliance, complaint under Section 138 of the N.I. Act came to be instituted.

9. In **Rajesh Viren Shah Vs. Radington (India) Ltd., 2024 AIR (SCW) 1047; 2024 (3) Mh.L.J. 650,** the Hon'ble Supreme Court held that since the

cheque was issued after acceptance of the resignation of the Appellant-Director and no allegation is levelled against the Appellant, so merely being a Director of Company, the Appellant cannot be prosecuted for the offence under Section 138 /141 of the N.I. Act, and observed in paragraph Nos.5, 6, 7 and 8 as under:-

> "*5. Coming to the judicial position, we notice a judgment of this Court in* ***Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15*** *wherein it was observed that:-*
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> > *"The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when the complainant makes necessary averments in the complaint and establishes that fact…"*
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> *6. A Bench of three learned Judges in* ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr., (2005) 8 SCC 89*** *observed:-*
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> > *"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A clear case should be spelled out in the complaint made against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out…"*
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> *7. We also notice this Court to have observed, in regards to the exercise of the inherent powers under Section 482, CrPC, in cases involving negotiable instruments that interference would not be called for, in the absence of "some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court." This principle as held in* ***S.M.S. Pharmaceuticals*** *(supra) was followed in* ***Ashutosh Ashok Parasampuriya and Anr. V. Gharrkul Industries Pvt. Ltd. And Others, 2021 SCC OnLine SC 915****.*

8. We find the High Court, in the impugned order to have elaborately discussed the principles of law in regard to the quashing of such proceedings but, however, not dealt with the factual matrix. Ex facie, we find that the complainant has not placed any materials on record indicating complicity of the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Exh.P.59) issued much prior to the date on which the cheque was drawn and presented for realisation."

10. In **Sunita Palita and Others Vs. Panchami Stone Quarry, AIR 2022 SC 3548; 2022 (10) SCC 152,** the Hon'ble Supreme Court held that Director of a company, who was not In-charge or responsible for the conduct of the business of the company at the relevant time, would not be liable under those provisos. As per the decision of the **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 the 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.

11. In **Ajay Rampal Sarda Vs. Pankaj Ravilal Shah and another, 2021 All M.R. (Cri) 284: 2021 (3) Mh.L.J.(Cri) 50,** the Hon'ble Supreme Court 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.

12. In the case in hand, it *prima facie* appears that on 01.08.2022, the instrument involved in the present petition came to be issued, however, the present Petitioner/Accused No.3 resigned from the post of Directorship of Shri Gautam Swami Hospital & Research Centre Private Ltd., w.e..f 20.08.2021. The Board of Directors of the Respondent No.2/Company accepted resignation of the Petitioner/Accused No.3 and necessary entry has been effected with the Registrar under the Companies Act prior to issuance of the instrument involved in the complaint. Therefore, *prima facie* it appears that on the day of the issuance of the cheque, the present Petitioner/Accused No.3 was not holding any post in the Respondent No.2/Firm and was also not responsible for the transaction. Therefore, considering the law laid down in cases cited supra,

continuation of proceedings as against the present Petitioner would certainly amount to abuse of process of law.

13. In view of above discussion, the Writ Petition is hereby allowed. The Complaint bearing SCC No. 7207/2022 only in respect of the present Petitioner/Accused No.3 pending on the file of the learned Additional CJM (Court No.15), Ahmednagar is hereby quashed and set aside. Consequently, the order of issuance of process dated 14.12.2022 as far as present Petitioner is concerned is also quashed and set aside. Accordingly, Rule is made absolute in above terms. The trial of SCC No. 7207/2022 is hereby expedited. No order as to costs.

[Y.G. KHOBRAGADE, J.]

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