

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

**CRIMINAL WRIT PETITION NO.6097 OF 2024
WITH
CRIMINAL WRIT PETITION NO.487 OF 2025**

SATISH
RAMCHANDRA
SANGAR

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Date: 2025.07.11
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Suresh Sharma

...Petitioner

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr.Vishal Hegde a/w Mr.R.P.Shirole, Ms.Aishwarya Jose, Ms.Anuja Apte and Mr.Rohit Maurya:-	Advocates for Petitioner.
Ms.Rashmi S. Tendulkar:-	APP for Respondent No.1 -State.

CORAM : S. M. MODAK, J.

DATE : 8th JULY 2025

P. C. :-

1. Heard learned Advocate for the Petitioner / convicted Accused.
2. He is the Accused No.3 in the impugned cases filed before the Court of Metropolitan Magistrate – Ballard Pier as per two separate judgments dated 8th June 2023. The Accused No.1 – Company, he and the Accused No.2 were convicted for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (“**NI Act**”). Instead of filing the statutory Appeal as per the

provisions of Section 374 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”), he has filed these two Petitions and he is requesting the Court to exercise the supervisory jurisdiction under Article 227 of the Constitution of India, 1950.

3. So, the issue is “*whether the Petitions can be entertained even though there is a remedy of statutory Appeal available.*” Learned Advocate requested at least to issue a notice to the Respondent No.2. However, I have felt it necessary to hear him at an admission stage and accordingly, the learned Advocate for the Petitioner is directed to argue the matters.

4. He made the following submissions:-

- (a) Taking recourse of the supervisory jurisdiction under Article 227 of the Constitution is not barred totally even though the statutory Appeal is available. He placed reliance on the observations in case of *Radhey Shyam and Another V/s. Chhabi Nath and Others*¹.
- (b) About merits, he made the following submissions:-
 - (i) He was not Director of the company but an employee being an Accountant. There is appointment letter on Page No.63 and the resignation letter dated 30th September 2017 (Page No.65).

1 (2015) 5 Supreme Court Cases 423

- (ii) Even though he is one of the signatories to the cheque in the capacity of Authorized Signatory, he does not fall within the meaning of 'drawer' and hence, cannot be prosecuted under Section 138 of NI Act.
- (iii) He invited my attention to the wrong description in the judgment being a Director and the observations of the Court on dispensing with 313 statement (Para No.4 of the judgment). Learned Judge has dispensed with the statement of the Accused.
- (iv) He emphasized on non-service of notice on him. It is for the reason, the notice is served on the Company address. It is permissible when the notice is issued to the Director. The addresses mentioned in the Complaint and the notice is that of Company. Even he challenged the order of 'issue process' dated 30th October 2017. At that time, the learned Judge has referred to the record of Registrar of Companies. Whereas, according to him, the learned Judge ought to have seen the record, he must not have issued the process against this Petitioner (Because, not being a Director, his name was not appearing in the Registrar of Companies record.
- (v) He has tried to distinguish in between the word '*authorized signatory*' and the word '*drawer*'. He placed reliance on the observations in case of ***Lyka Labs Limited and Another V/s. State of Maharashtra and Another and other Petitions***². (The relevant observations are in the issues framed by the Court,

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Para No.2 and the sub-paras, Para No.18, Para No.19, Para No.20, Para No.31 and the conclusion in Para No.52).

- (vi) A normal principle about taking cognizance of offence and not the offender, is not applicable to the prosecution under Section 138 of the NI Act, he placed reliance on the observations in case of ***N. Harihara Krishnan V/s. J. Thomas***³. In Para No.22, it is observed:-

“Every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque.”

In Para No.27, there is a discussion about the ingredients of the offence under Section 138 and compliances to be made.

- (vii) He placed reliance on the observations in case of ***Pooja Ravinder Devidasani V/s. State of Maharashtra and Another***⁴. It is on the point of satisfying the requirements of Section 141 of the NI Act. It lays down what are the obligations on the Magistrate prior to taking cognizance.

The relevant observations are in Para No.6.

5. The law on the point of compliance as per the provisions of Section 138 and Section 141 is well settled. The notice has to be served on the person. There has to be a proof of the notice. So also, if an

³ (2018) 13 Supreme Court Cases 663

⁴ (2014) 16 Supreme Court Cases 1

artificial entity is prosecuted, if natural persons have been joined as an Accused, they have to meet the requirements of Section 141 of the NI Act. It is also true, at the time of issuing the process, the Court has to be satisfied about the *prima facie* case against the Accused.

6. The Petitioner may be having an arguable case but the issue is “*whether they can be raised in a Writ Petition.*” In case of **Radhey Shyam** (*supra*), the issue was about maintainability of the Petition under Article 227 of the Constitution. They were challenging the orders of the Civil Court. This is on the background of amendment carried out in Section 115 of the Code of Civil Procedure, 1908 (“CPC”). The observations in case of **N. Harihara Krishnan** (*supra*) are on the background of case pending for trial. Similarly, in case of **Pooja Ravinder Devidasani** (*supra*), the quashing Petition in a complaint under Section 138 of NI Act was dismissed and that is why, the matter reaches to the Supreme Court. Whereas, in case of **Lyka Labs Limited** (*supra*), the issue about payment of the interim compensation as per Section 143A of NI Act was involved. The meaning of the word ‘*drawer*’ and ‘*authorized signatory*’ are interpreted. Finally, it is observed “*an authorized signatory does not fall within the meaning of*

drawer in terms of Section 143A of the NI Act.”

7. At this stage, the learned Advocate seeks liberty to withdraw these Petitions and inclined to avail of the statutory remedies. **After hearing the dictation, he has made that submission.** In view of that, I have not made further observations. He seeks some protection so that he can approach the Appellate Court. **It is for the reason, he will be sent to Jail if the conviction judgment is put to execution.** In view of that, following order is passed:-

ORDER

- (i) Both the Writ Petitions are disposed of as not pressed.
- (ii) **The orders of conviction dated 8th June 2023** passed in both the cases (C.C. No.5303/SS/2016 and C.C. No.5305/SS/2016) **be not implemented against this Petitioner for a period of 4 weeks from today.**
- (iii) Liberty granted to avail of the statutory remedies of an Appeal.
- (iv) All contentions are kept open.

[S. M. MODAK, J.]