

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4801 OF 2025**

Mashkoor Ahmad ... Petitioner
versus
The State of Maharashtra and Ors. ... Respondents

Mr. Dharmesh Joshi with Ms. Akshita Vakharia, for Petitioner.
Mr. A.D.Kamkhedkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 9 OCTOBER 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to a judgment and order dated 2 July 2025 passed by the learned Additional Sessions Judge in Criminal Revision Application No.223 of 2025, whereby the revision application filed by the Petitioner against an order of issue of process for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, came to be dismissed on the ground that the revision was barred by law of limitation.
3. The Petitioner was a director of Greenbird Constructions Pvt. Ltd. (A1). Respondent No.2 filed a complaint CCNo.286/Sum/2024 against Greenbird Constructions Pvt. Ltd., and its directors, including the Petitioner (A4) with the allegations that the complainant had advanced a sum of Rs.56,00,000/- to the accused No.1 by way of Inter Corporate Loan. A cheque drawn by the

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2025.10.13
19:48:49 +0530

accused towards repayment of the said deposit was dishonoured on presentment. The accused failed to comply with the demand in the notice dated 10 May 2024. Hence, the complaint for the offence punishable under Section 138 read with 141 of the N.I.Act, 1888. The Petitioner (A4) was also stated to be in-charge of and responsible for the conduct of the day to day affairs and business of accused No.1 Company.

4. By an order dated 4 September 2024, learned Magistrate directed that the process be issued against the accused, including the Petitioner, for the offence punishable under Section 138 read with Section 141 of the N.I.Act, 1881.

5. Being aggrieved, the Petitioner filed a Revision Application before the Court of Session, asserting that the Petitioner had joined the accused No.1 Company on 13 May 2021, and, on 20 April 2024, the Petitioner had resigned from accused No.1 Company. He was not a director of accused No.1 Company when the subject cheque was given, and the date the cheque was presented for encashment. Learned Sessions Judge dismissed the revision application observing, inter alia, that the revision application was barred by limitation.

6. It may be necessary to note that the Respondent No.2 complainant had appeared before the learned Sessions Judge and given consent to allow the revision and quash the order of issue of process. Since the learned Sessions

Judge was of the view that the revision application was barred by limitation, the learned Sessions Judge opined that the order of issuance of process cannot be set aside for the only reason that the complainant settled the dispute with the Petitioner.

7. By an order dated 18 September 2025, notice was ordered to be issued to the Respondents. An affidavit of service is filed to the effect that Respondent No.2 has been duly served.

8. None appears for the Respondent No.2 – complainant.

9. Learned Counsel for the Petitioner invited attention of the Court to the covering letter dated 3 May 2017 under which the subject cheque, bearing No.000470 drawn for Rs.56,00,000/-, was issued towards the repayment. Evidently, the transaction of Inter-Corporate Deposit was of the year 2017. The Petitioner gave consent to become a director of accused No.1 Company on 13 May 2021. Form No.DIR-12 indicates that the Petitioner ceased to be a director of Greenbird Constructions Pvt. Ltd. (A1) with effect from 20 April 2024. The cheque in question was presented for encashment on 25 April 2024. Thus, the Petitioner was not the director of accused No.1 company on the date the transaction of Inter-Corporate Deposit was entered into and the subject cheque was delivered, and, on the day, the said cheque was presented for encashment.

10. It is well settled by a catena of decisions that, in the complaint under

Section 138 read with Section 141 of the N.I.Act, 1881, it must be alleged that the person who is sought to be held liable by invoking vicarious liability was in charge of and responsible to the company for the conduct of the business of the company at the time when the offence was committed. A general statement that the accused was in charge of and responsible to the company for the conduct of the business of the company, without anything more so as to spell out the role of such person is not sufficient to invoke the provisions contained in Section 141 of the Act. The complainant ought to show as to how and in what manner the accused was responsible. (**Hitesh Verma V/s. Health Care at Home India Pvt. Ltd. and Ors.**¹; **Ashoke Mal Bafna V/s. Upper India Steel Manufacturing and Engineering Company Ltd.**² and **Kamalkishor Shrigopal Taparia V/s. India Ener-Gen Pvt. Ltd. and Anr.**³)

11. In the case at hand, there are allegations against Respondent Nos.2 and 3 that they are the authorized signatories. Qua the Petitioner (A4), general allegations appear to have been made. In any event, the Petitioner did not seem to be the director of the accused No.1 company on the day the cheque was issued, and presented for encashment.

12. These factors coupled with the fact that the complainant appeared before the revisional Court and gave its consent for quashing the order of issuance of process against the Petitioner, impels this Court to allow the

1 (2025) 7 SCC 623

2 (2018) 14 SCC 202

3 (2025) 7 SCC 393

Petition and quash and set aside the impugned order as well as the order of issuance of process.

13. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 2 July 2025 stands quashed and set aside.

(iii) The order dated 4 September 2024 passed by the learned Magistrate issuing process for an offence punishable under Section 138 read with 141 of the N.I.Act, 1881, also stands quashed and set aside qua the Petitioner only.

Writ Petition stands disposed.

(N.J.JAMADAR, J.)