

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

CRIMINAL WRIT PETITION NO. 5923 OF 2025

WITH

INTERIM APPLICATION NO. 4160 OF 2025

**SANTOSH
SUBHASH
KULKARNI**

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Ramizabi @ Munni Hanif Shaikh

..Petitioner

Versus

Prasad Harishchandra Bhoir and Anr.

...Respondents

Mr. Kunal D. Nawale, Advocate for the petitioner.

Mr. A. D. Kamkhedkar, APP for the Respondent No. 2 - State.

CORAM: N. J. JAMADAR, J.

DATE : 18th NOVEMBER 2025

ORDER:

1. Heard, learned Counsel for the petitioner.
2. The petitioner assails the legality, propriety and correctness of the judgment and order dated 25.08.2025 passed by the learned Additional Sessions Judge, Panvel, in Criminal Revision Application No. 19/2025 whereby the Revision preferred by the petitioner against an order dated 29.04.2024 passed by the learned Judicial Magistrate, First Class, Uran, thereby issuing process against the petitioner for an offence punishable under Section 138 of the Negotiable

Instruments Act, 1881 (“the Act of 1881”) came to be dismissed.

3. Mr. Nawale, the learned Counsel for the petitioner, submitted that, the complaint does not disclose the necessary facts which constitute the ingredients of the offence punishable under Section 138 of the N.I. Act, 1881. Inviting the attention of the Court to paragraph No. 9 of the complaint, Mr. Nawale would urge that the complainant has simply asserted that a demand notice was addressed to the petitioner-accused on 05.02.2024 and it was returned with the remarks “addressee left”. The complainant has not further asserted that, the drawer failed to make the payment of the amount covered by the cheque within 15 days of the receipt of the said notice, and, thus, the cause of action did not accrue, as envisaged by clause (c) of the proviso to Section 138 of the N.I. Act, 1881. Therefore, the learned Magistrate was in gross error in issuing process, and the learned Sessions Judge failed to correct the patent error.

4. The learned Additional Sessions Judge justifiably repelled the challenge by placing reliance on the judgments of the Supreme Court in the cases of ***K. Bhaskaran Vs. Sankaran***

***Vaidhyan Balan and Anr.*¹ and *C. C. Alavi Haji Vs. Palapetty Muhammed and Anr.*².**

5. In the case of ***K. Bhaskaran*** (supra), the Supreme Court has enunciated that when a notice was returned by the sendee as unclaimed, such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) of the proviso to Section 138 of the N.I. act, 1881. Thus, the submission on behalf of the petitioner that in the absence of the further averments in the complaint that the accused failed to pay the amount covered by the cheque, the cause of action did not accrue within the meaning of Section 142(1)(b) of N.I. Act, 1881, does not merit countenance.

6. The case of ***C. C. Alavi Haji*** (supra), the Supreme Court has in terms enunciated that a person who does not pay within 15 days of the receipt of the summons from the Court along with copy of the complaint under Section 138 of the N.I. Act, cannot obviously contend that there was no proper service of notice as required under Section 138 of the Act, 1881 by ignoring statutory presumptions to the contrary under

1 (1999) 7 SCC 510

2 (2007) 6 SCC 555

Section 27 of the General Clauses Act and Section 114 of the Evidence Act.

7. In the absence of a specific averment in the complaint that the accused failed to pay the amount covered by the cheque despite the service of notice may not necessarily be fatal in all cases, especially where the notice is returned unserved.

8. If on the basis of the averments in the complaint, verification of the complainant and the documents placed on record, the Court finds that a *prima facie*, case under Section 138 of the N.I. Act is made out, the challenge to the order of issue of process cannot be sustained. That being the case at hand, the petition does not deserve to be entertained.

9. Hence, the petition stands dismissed.

10. In view of the dismissal of the petition, Interim Application No. 4160/2025 also stands disposed of.

[N. J. JAMADAR, J.]