IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.105 OF 2025

APPLICANTS	:	1	**Sau. Reena Sandip Chauhan**, Aged about 35 years, Occ: Teacher.
		2	**Smt. Vanubai Laxman Chauhan**, Aged about 61 years, Occ: Household both are R/o. Mainline, Darwha Tq. Darwha, Distt. Yavatmal.
			..VERSUS..
RESPONDENTS	:	1	**Pradip Ramdas Nimkar**, aged about 45 years, Occ: Business, R/o. Near BSNL office Yavatmal Road, Darwha, Tq. Darwha & Distt. Yavatmal.
		2	**Sandip Laxman Chauhan**, aged 38 years, Occ: Business, R/o. Main-line Darwha Tq. Darwha, Distt. Yavatmal.

Mr M. M. Khan, Advocate for Applicants.
Mr A. M. Balpande, Advocate for Non-Applicant No.1.

CORAM : M. W. CHANDWANI, J.
DATED : 23rd APRIL, 2025.

ORAL JUDGMENT

1. Heard.

2. The order of issuance of process dated 16.01.2024 passed against the present applicants by the learned Judicial Magistrate First Class, Darwha in Summary Criminal Case No.57 of 2024 has been challenged by them in this application on the ground that the applicants are not the drawers of the alleged cheque. Just because

they were joint account holders, they cannot be held liable for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the N.I. Act”).

3. It is not necessary to go into the matrix of the case in detail. Suffice to say that respondent No.1 filed Summary Criminal Case No.57 of 2024 against the present applicants and respondent No.2 for the offence punishable under Section 138 of the N.I. Act, alleging that the cheque bearing No.000036 dated 20.11.2023 was issued by respondent No.2 from the joint account of the applicants and respondent No.2 in favour of respondent No.1 for the amount of Rs.7,04,000/- which came to be dishonored. After the process of issuance of notice, applicants and respondent No.2 committed the offence punishable under Section 138 of the N. A. Act, by not paying the amount of Rs.7,04,000/-.

4. Mr. M. M. Khan, learned counsel appearing on behalf of the applicants submitted that it is the person who has drawn a cheque for payment of any amount of money to another person for discharge of his legal liability who is liable to be convicted under Section 138 of the N.I. Act, if the said cheque returns unpaid on account of insufficient funds or for the reason that it exceeds the

amount that has to be paid from the account by an agreement made with the bank. According to him, just because the applicants have a joint account with respondent No.2 from which the cheque has been drawn by respondent No.2 in favour of respondent No.1, the applicants cannot be held liable for the offence punishable under Section 138 of the N.I. Act. This aspect has not been considered by the learned Magistrate while issuing process on the complaint filed by respondent No.1. To buttress his submission, he seeks to rely on the decision of this Court in the case of ***Aarti Shailesh Shah vs. Satish Vasant Dharukkar and Anr.***, ***2024 ALL MR (Cri) 722***, wherein this Court by relying on the case of ***Aparna A. Shah vs. Sheth Developers Pvt. Ltd. and Ors.***, (***2013) 8 SCC 71*** has held that prosecution cannot stand against the person who holds a joint account with the accused.

5. Per contra, Mr. A. M. Balpande, learned counsel appearing on behalf of respondent No.1 vehemently objected the application on the ground that the first sentence of the complaint mentions that the applicants and respondent No.2 run a business of sale and purchase of agriculture products in the name of New Bajrang Trading Company. Taking help of this nomenclature, it has

been argued that New Bajrang Trading Company is a Company and therefore, the applicants and respondent No.2 are liable for the offence punishable under Section 138 of the N.I. Act. It is also one of the arguments of the learned counsel for respondent No.1 that the applicants and respondent No.2 belong to the same family and therefore, they form a Joint Hindu Family. The cheque issued by respondent No.2 from the joint account of the applicants and respondent No.2 binds the applicants as well as in case of dishonor of cheque, make them liable for the offence punishable under Section 138 of the N.I. Act. To buttress his submission he seeks to rely on the case of ***Riya Bawri and Others vs. Mark Alexander Davidson and Others***, ***(2023) 15 SCC 304***, wherein, the Hon'ble Supreme Court in paragraphs 18 and 21 of its decision has held as under :

> ***"18.*** *The specific allegations made against the accused in the complaint, including the respondent no.1, were that they were in- charge of and were responsible for the affairs of respondent no.3 firm, for conduct of the business affairs of the firm. Thus, they were liable to be proceeded against and punished. The offence has been committed with the consent and connivance of the Accused 2 to 4, which included the respondent 1.*
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> ***21.*** *It is well settled that the final judgment of the trial Court will depend on the evidence adduced before it. As there are specific allegations against the Respondent 1 in the complaint and he was admittedly a partner in the partnership firm when the rent deed was executed, he is liable to face prosecution. Powers under Section 482 of the Code can be exercised by the High Court in*

case when it comes across unimpeachable and incontrovertible evidence to indicate that the partner of the firm did not have any concern with the issuance of cheques. The case in hand is not of that kind."

Reliance is also placed on ***Rina Sanjiv Kamdar vs. Murlidhar T. Tilwani and others***, ***2025 (1) Mh.L.J. (Cri) 138***, wherein this Court in para 11 has held as under :

> *"11. A learned Single Judge of this Court in the case of Dadasaheb Rawal (supra) has discussed the scope of the term "Association of Individuals" in paragraph 11, as under:*
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> *"11. Section 141 is comprehensive. It would cover all types of business organisations which are shown therein. The definition is inclusive and is used to convey something more than what is defined. Consequently, the term "association of individuals" will include Hindu Undivided Family of which the business is said to be a joint concern. Section 138 of the Negotiable Instruments Act, 1881 is enacted in order to safeguard the credibility of commercial transactions and to prevent bouncing of cheques by providing personal liability against the drawer of the cheque. In case of a cheque issued by the firm, the drawer of the cheque is the firm. In case of cheque issued by the business firm of Joint Hindu Family, all the members can be roped into as the drawers of the cheques though signatory is one of them. Under these circumstances, the impugned order is unsustainable. The learned Sessions Judge failed to see that quashing of the process at the premature stage was not called for in view of the Explanation appended to Section 141 of the Negotiable Instruments Act. In any case, at such a premature stage, the process ought not to have been quashed against the respondent Nos. 1 and 2. The prospective defence of the respondent Nos. 1 and 2 could not be a sufficient ground to quash the order of process issued against them. Needless to say, the impugned order is patently illegal and liable to be interfered with and deserves to be set aside."*

6. A submission is also made by the learned counsel for respondent No.1 that the notice under Section 138 of the N.I. Act has been served on the applicants and respondent No.2, but no

reply has been filed by them. To support his contention, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of ***Ashok Singh vs. State of Uttar Pradesh and Another***, ***2025 SCC OnLine SC 706***. An attempt has been made to argue that since no reply was given to the notice issued under Section 138 of the N.I. Act, therefore, a presumption has to be drawn that there is a legally enforceable liability against the applicant. There is no such law/presumption, therefore, I do not find force in the argument of the learned counsel for respondent No.1.

7. The sum and substance of the argument of the learned counsel for respondent No.1 is that the proceedings cannot be quashed against the applicants at this stage as the evidence is yet to be recorded in the complaint filed by respondent No.1.

8. With the able assistance of the learned counsels appearing on behalf of applicants and respondent No.1, I have gone through the complaint. Rather, a statement is made by the learned counsel for respondent No.1, on instructions, that Bajrang Trading Company is not a company but is a proprietorship firm. However, the learned counsel for respondent No.1 still seeks reliance on

Section 141 of the N.I. Act and vehemently submitted that the proceedings against the applicants cannot be quashed. A bare perusal of complaint does not reveal that respondent No.1 in his complaint has alleged that Bajrang Trading Company is a registered Company under the Companies Act or the said business belongs to Joint Hindu Family. Even otherwise, there is no whisper that the applicants are responsible for the day-to-day affairs of Bajrang Trading Company or its members constitute a Joint Hindu Family. Therefore, the submission of the learned counsel for respondent No.1 that Section 141 of the N.I. Act, will be applicable is fallacious and requires to be rejected outrightly. This takes me to Section 138 of the N.I. Act, which reads as under :

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account.***—*Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
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> *Provided that nothing contained in this Section shall apply unless—*
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> *(a) the cheque has been presented to the bank within a period of*

six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this Section, "debt or other liability" means a legally enforceable debt or other liability."

9. Thus, Section 138 of the N.I. Act makes it clear that it is the person who has drawn the cheque who is responsible for dishonor of the said cheque issued by him on account of insufficient funds and shall be liable for punishment if he does not pay the cheque amount within the statutory period even after receipt of notice under Section 138 of the N.I. Act. In the case of *Aparna A. Shah* (supra), the Hon'ble Supreme Court in para 23 has held as under :

*"**23.** The learned Single Judge of the Madras High Court in Devendra Pundir v. Rajendra Prasad Maurya, 2008 Cri. LJ 777 (Mad), following decisions of this Court, has concluded thus:*

"7. This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision of Fine Tubes (supra) is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the sole proprietrix of the concern namely, "Kamakshi Enterprises" and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise."

> *After saying so, learned Single Judge, quashed the proceedings initiated against the petitioner therein and permitted the Judicial Magistrate to proceed and expedite the trial in respect of others."*

10. Thus, the observation made by the Hon'ble Supreme Court in the case of *Aparna A. Shah* (supra) is squarely applicable to the facts of the present case. Therefore, the prosecution against the applicants cannot stand. Reliance placed by the respondent No.1 on the decisions in the case of *Riya Bawri* (supra), *Rina Sanjiv Kamdar* (supra) and *Ashok Singh* (supra) is misplaced. Hence, the application is **allowed**. Consequently, the order of issuance of process dated 16.01.2024 passed against the present applicants by the learned Judicial Magistrate First Class, Darwha in Summary Criminal Case No.57 of 2024 is hereby set aside.

11. It is submitted by both the learned counsels appearing on behalf of the respective parties that they may seek the recourse of settlement through mediation or Lok Adalat.

12. Accordingly, the criminal application stands disposed of.

(M. W. CHANDWANI, J.)

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