



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

CRIMINAL WRIT PETITION NO. 235 OF 2025

Shri Shankar S/o. Sukkal Kohpare,

-- VERSUS --

Shri Ramchandra S/o. Shrawan Baraskar and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. H.I. Kothari, Advocate for the Petitioner.

None for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 28, 2025.

Rule. Rule made returnable forthwith. Heard the learned counsel for the petitioner.

2. The order impugned in the present petition is dated 20/09/2024, passed below Exh.1 in S.C.C. No.1117/2024 by the Judicial Magistrate First Class, Court No.2, Bhandara, whereby process was issued against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The learned counsel appearing for the petitioner

submits that the petitioner is neither the drawee nor the signatory of the cheque, and therefore, while issuing the order of process, the Court has lost sight of this fact and without application of mind has issued the order of issue process. He has invited my attention to the impugned order and has relied upon the judgment of the Supreme Court in the case of *Alka Khandu Avhad VS Amar Syamprasad Mishra*, AIR 2021 SC 1616.

4. Though the respondents are served, none appeared on their behalf, in spite of repeated chances given to them to put in their appearance.

5. Upon hearing the learned counsel for the petitioner and upon perusal of the impugned order, the complaint, and the cheques which are placed before me, it appears that the said cheques were issued against some property transactions. It further appears that the agreement in respect of purchased property was executed between the petitioner and the respondents, however, for some reason, it was not materialized. Therefore, the petitioner returned an amount of Rs.5,00,000/- and Rs.2,00,000/- to the respondents through cheques. Those

cheques appears to have been encashed. However, the two cheques bearing No.171792 for Rs.3,00,000/- and cheque bearing No.171793 for Rs.3,00,000/- issued by the respondent No.2 were dishonored, and two complaints came to be filed under Section 138 of the Negotiable Instruments Act, 1881.

6. Admittedly, the cheques were issued by the respondent No.2 – Sarita Shankar Kohpare. The Supreme Court in the case of *Alka Khandu Avhad (supra)*, in paragraph No. 7 has held as under:-

“7. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

- i) that the cheque is drawn by a person and on an account maintained by him with a banker;*
- ii) for the 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; and*
- iii) the said cheque 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.*

Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other

liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque. ”

7. Applying the ratio laid down by the Supreme Court (*supra*), so far as the present case is concerned, there is no such joint account, however, the cheque was issued by the respondent No.2, therefore, unless and until the cheque was issued either through a joint account or by a person who was a signatory to the cheque, said person even after having a joint liability cannot be prosecuted.

8. Considering the above exposition of law, the Trial Court has committed error in issuing process against the petitioner, and therefore, the order of issue process does not sustain in law. The Court ought to have applied its mind before issuing process. Hence, the following order:-

ORDER

- (1) The Writ Petition is **allowed**;
- (2) The order dated 20/09/2024 passed below Exh.1 by the Judicial Magistrate First Class, Court No.2, Bhandara, in S.C.C. No.1117/2024 is hereby quashed and set aside;
- (3) Rule is made absolute in above terms.

[M.M. NERLIKAR, J]

PIYUSH MAHAJAN