



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

CRIMINAL WRIT PETITION NO.176 OF 2024

Smt. Anuradha W/o K.G Narayan Kumar; Aged about 58 years; Occupation- Private; R/o 31 B Narayanan Street, Sivasampuram Extn. Sriganapalayam, Salem-636007. Tamil Nadu.

...Petitioner

// VERSUS //

1. Mr. Bihari Ramprasad Kanor; Aged about 64 years, Occupation : Self employed; R/o Behind Faji Chambers, Sadar, Gandhi Chowk, Nagpur.
2. M/s Yatharth Infrastructure; A Partnership Firm, through its partner, Shri Deepak Wasudeorao Hatwar, Age: Major, having its registered office at 40 Arihant apartment, beside Ajanta Hall, Medical Square, Nagpur.
3. Shri Deepak Hatwar, Age: Major, Partner of M/s yatharth Infrastructure; R/o 40 Arihant apartment, beside Ajanta Hall, Medical Square, Nagpur.
4. Smt. N. Anuradha Hatwar, Age: Major, Partner of M/s Yatharth Infrastructure; R/o Plot No.44, Bapu Nagar, Bhande Plot Square, Umred Road, Nagpur.

... Respondents

Mr R.S. Sundaram, Advocate for Petitioner.

Mr J.S. Chilotra, Advocate for Respondent Nos.2 and 3.

CORAM : ANIL S. KILOR, J.

DATED : 10/03/2025

ORAL JUDGMENT

1. Heard Shri Sundaram, learned counsel for the petitioner and Shri Chilotra, learned counsel for the respondent Nos.2 and 3. None for the complainant/respondent No.1 who is the contesting respondent though served long back.

2. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the parties.

3. In the present matter, the challenge is raised to the issuance of process against the petitioner who has been added as an accused in a proceeding under Section 138 Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I. Act"), after ten years of filing of such complaint. The petitioner was joined as an accused vide order below Exh.50 dated 13.01.2023.

4. It is the case of the petitioner that he neither served with statutory notice under Section 138 of the N.I. Act, nor notice on application Exh.50 moved by the complainant/respondent No.1 to join him as an accused.

5. Having gone through the record and the impugned order, it is evident that there is no mention in the order about issuance of notice to the petitioner before passing the order below Exh.50 moved by the complainant to join the petitioner as an accused. Even as regards the statutory notice, the learned Magistrate has observed that, it is the matter

of evidence.

6. Thus, it is evident that the learned Magistrate did not even take the pains to find out whether statutory notice issued to the petitioner under Section 138 of the N.I. Act, before directing to join him as an accused.

7. In the circumstances, orders joining the petitioner as an accused and issuing of process against the petitioner, are erroneous. Having held so, the petition needs to be allowed. Accordingly, I pass the following order :-

- i) The writ petition is **allowed**.
- ii) The order below Exh.50 dated 13.01.2023, passed by the 17th Joint Civil Judge Sr. Div. and Addl. Chief Judicial Magistrate (Special Court under Section 138 of NI, Act), Nagpur, and order below Exh. 1 dated 08.09.2023, passed by the 16th Jt. C.J.S.D. and ACJM, (Spl. Court for S.138 N.I. Act), Nagpur, are hereby quashed and set aside.

Rule is made absolute in above terms.

(ANIL S. KILOR, J)

C.L.Dhakate