



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

CRIMINAL APPLICATION (APL) NO. 164 OF 2025

Madhav S/o Jagannath Patil,
Aged About 67 years, Occu :
Agriculturist, R/o Brahmanpuri,
Taluka Shahada, Distt. Nandurbar.

....APPLICANT

....**VERSUS**....

1) The State of Maharashtra (Notice
be served on A.G.P)

2) Nemichandji S/o Bhikamchandji
Abad, Aged About 61 years, Occu :
Business, R/o Opposite Abad
Bhavan Wani, Tq. Wani, Distt.
Yavatmal.

Deleted as per
Court's order
dated
22/09/2025

~~3) Devendra Tractor Agencies,
Through Shri Rajendra Ramanlal
Bhavsar, Aged About 45 years,
Occu : Business, R/o Near Gayatri
Hospital, Infront of Central Bank,
Shivecolony stop, Jalgaon, Distt.
Jalgaon~~

....NON-APPLICANTS

Shri T.S.Deshpande, Advocate for applicant.
Shri N.R.Patil, APP for respondent no. 1/State.
Shri R.S.Bhoyar, Advocate for respondent no. 2.

CORAM : RAJNISH R. VYAS, J.

DATE: 22/09/2025

ORAL JUDGMENT

Heard.

2. **Admit.**

3. The matter is taken up for final disposal by consent of both the parties.

4. The learned counsel for the applicant makes a request to this Court to grant him permission to delete the name of non-applicant no. 3 from the cause title. Permission is granted. The applicant to delete the non-applicant no. 3 forthwith.

5. By way of instant Criminal Application (APL), the applicant who is original accused has challenged the order issuing process under Section 138 of the Negotiable Instrument Act (in short, "the N.I. Act") so also order dismissing his Criminal Revision Application passed by Additional Sessions Judge - 2, Kelapur before this Court.

6. In short, it is the case of the applicant that a complaint under Section 138 of the Negotiable Instrument Act

was filed against the applicant and he was shown of one of the partners of the firm. According to the learned counsel for the applicant, there are no pleadings which would attract the liability under Section 138 and 141 of the N.I. Act since the necessary averments are missing.

7. Per contra, Mr. Rushikesh Bhoyar, learned counsel for the original complainant and present non-applicant no. 2 has contended that it would be a matter of trial to arrive at the conclusion as to whether the applicant was In-charge of the affairs of the company or was responsible for day to day functioning of the company (in this case, “the firm”).

8. With the help of both the learned counsels, I have gone through the averments made in the complaint. So far as the present applicant is concerned, he is shown as accused no. 3 in the Criminal Complaint No. 1587/2011. The averments in the complaint are reproduced herein below:

“Then after complainant Shri. Nemichandji Bhikamchandji Abad tried to contact accused no. 02 Shri. Rajendra Ramnanlal Bhavsa, one of the partners of accused no. 01 firm and also accused no. 03, but they

always avoided willfully. Accused no. 02 and 03 both are manage day to day affairs of the accused no. 01 firm and both are responsible for the affairs of accused no, 01 firm, individual work of partner/agent on behalf of firm or for firm. Hence being partners of accused no. 01 firm both accused no, 02 and 03 are responsible & labial for each liability of accused no. 01 firm or individual partner."

9. My attention is also invited to page 12 in a complaint wherein the following averments are made:-

"Accused no. 03 named Shri. Madhav Jagannath Patil is partner of the accused no. 01 firm. Both accused no. 02 and 03 are actively engaged in the business of the accused no. 01 firm and manage day to day affairs of the firm, for its day to day affairs and conduct of the business of the accused no. 01 firm. Both accused no. 01 and 02 are responsible for the act of the accused, no. 01 firm, individual work of partner/agent on behalf of firm or for firm."

10. I have considered the provisions of Section 138 and 141 of the N.I. Act. The explanation of Section 141 of the N.I. Act reads as under:-

*"Explanation.--For the purpose of this section,--
(a) "company" means any body corporate and includes a firm or other association of individuals."*

Sub-section 1 of Section 141 of the N.I.Act reads as under:-

“If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

11. In the aforesaid background, the averments made in complaint are tested. Admittedly, there is no averment in complaint that the applicant was In-charge of the company (in present case “the firm”). In order buttress his argument, the learned counsel for the applicant has relied upon the judgment in the case of **Siba Thomas V/s. Somany Ceramics Limited** reported in **(2024) 1 SCC 348**, wherein in para 12, Hon’ble Apex Court has observed as under:-

“Bearing in mind the afore-extracted recitals from the decisions in Gunmala Sales (P.) Ltd. v. Anu Mehta {(2015) 1 SCC 103} and S.P. Mani & Mohan Dairy v. Snehalatha Elangovan {(2023) 10 SCC 685} case, we have carefully gone through the complaint filed by the respondent. It is not averred anywhere in the complaint that the appellant was in charge of the conduct of the business of the company at the relevant time when the offence was committed.”

12. The learned counsel for the complainant has invited my attention to the ratio laid down by the Hon'ble Apex Court in the case of **Gunmala Sales (P.) Ltd.** (*supra*). Needless to mention the case of **Gunmala Sales (P.) Ltd.** (*supra*) was considered by the Hon'ble Apex Court in the judgment referred above. In that view of the matter, since there are absolutely no averments in the complaint regarding applicant being In-charge of the company, I am of the opinion that continuation of prosecution against the applicant would not be in the interest of justice. Therefore, order issuing process as well as order dismissing Revision Application are liable to be quashed and set aside. As such, the Criminal Application (APL) is **allowed**.

13. The order issuing notice process dated 05/11/2011 passed by the learned Judicial Magistrate First Class, Wani, District Yavatmal so also order dismissing Criminal Revision Application No. 03/2019 passed the learned Additional Sessions Judge-2, Kelapur on 30/09/2024 are hereby quashed and set aside.

14. It is made clear that the complaint would proceed against other accused.

15. Accordingly, the application is **disposed of**.

(RAJNISH R. VYAS, J.)

B.T.Khapekar