IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4263 of 2025

With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2026
In R/SPECIAL CRIMINAL APPLICATION NO. 4263 of 2025
With
R/SPECIAL CRIMINAL APPLICATION NO. 4264 of 2025
With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2026
In R/SPECIAL CRIMINAL APPLICATION NO. 4264 of 2025
With
R/SPECIAL CRIMINAL APPLICATION NO. 4266 of 2025

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AMIT NATVERLAL SHAH & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
YUVRAJ G THAKORE(7785) for the Applicant(s) No. 1,2,3
NOTICE SERVED for the Respondent(s) No. 2
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 23/11/2026

JUDGMENT

1. By way of these petitions under Section 528 of the BNSS, the petitioners prayed for quashing and setting aside proceedings of Criminal Case Nos.3573 of 2024, 3574 of 2024 and 3697 of 2024 pending before the learned JMFC, Mehsana qua the petitioners herein.

2. The petitioners herein are the non-working Directors of Kew Fusegear Pvt. Ltd. (hereinafter referred to as the "Company") and are not involved in day-to-day affairs of the

company. That original accused No.2 Mr. Amish Maheshbhai Shah, who is also a Director of the Company, manages day to day affairs of the Company and is also arraigned as Accused no. 2 in the impugned complaint. That the Company is doing business of manufacturing of electronic items like switch, fuse etc. and the Complainant Partnership Firm, as per what is mentioned in the Impugned Complaint, are doing business of metal, pipes etc. It is alleged that a total of Rs. 30,32,878/- is due and payable to the complainant from the petitioner Company i.e. Kew Fusegear Pvt. Ltd. for the goods that have been purportedly supplied by them to the Company and for discharging this debt, Mr. Amish Mahesbhai Shah, Director and authorized signatory of The Company purportedly issued a cheque of Rs. 6,34,073/- bearing cheque No. 347624 dated 20.12.2023, Rs.6,10,261/- bearing cheque No. 34762 dated 2.12.2023 and Rs.8,46,892/- baering cheque No.001424 dated 10.1.2024 (hereinafter referred to as the "Said Cheque"). However, said cheques were dishonoured with endorsement “Funds Insufficient”. Hence, the respondent complainant filed aforesaid complaints.

4. Being aggrieved by the aforesaid issuance of process, the petitioners are before this Court by way of filing present petitions u/s 528 of the BNSS.

5. Learned advocate for the petitioners relied upon the judgment of the Hon’ble Apex Court in case of **Alka Khandu Avhad Versus Amar Syamprasad Mishra, 2021 (4) SCC 675**. He would further submit that the petitioners are not the drawer of the cheque in question and all the allegations are

levelled against original accused No.2 Amishbhai Shah for the transaction inter se between him and the complainant and in that circumstances, the petitioners, who are not the signatory of the impugned cheques, cannot be prosecuted under the provisions of section 138 of the NI Act. These submissions are made to quash issuance of process against the petitioners.

6. Though served, none appears for the private respondent.

7. Learned APP requests to pass necessary orders since the dispute is private between the parties.

8. At the outset, let refer relevant findings of the Hon'ble Apex Court in case of **Alka Khandu Avhad (supra)**. In para, 7, 8 and 8.1 of the Hon'ble Apex Court addressed identical issue, which reads 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.

8. *Now, so far as the case on behalf of the original complainant that the appellant herein - original accused No. 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance.*

8.1 Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. Learned counsel appearing on behalf of the original complainant has submitted that "Company" means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within "other association of individuals" and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be "other association of individuals". Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of

> *individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 r/w Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 r/w Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside."*

9. Criminal liability can be fasten who has signed the cheque and co-holder of account cannot be held liable under section 138 of NI Act. This issue is no more res-integra and it is settled by catena of decisions. Since the petitioner are not signatory to cheques, they cannot be held liable for the offence under section 138 of NI Act.

10. Applying the aforesaid ratio to the facts of present case, if we refer the cheques in question at Annexure B, which are dishonoured and for which, criminal complaints have been lodged, are signed by original accused No.2 Amishbhai Shah. The cheques are drawn from the account of the petitioner firm, in which, all the petitioners are the Directors including original accused No.2 Amishbhai Shah. The FIR does not state any role of the present petitioners in transaction with the complainant and original accused No.2 - Amish Shah. In the aforesaid circumstances, ratio laid down in case of **Alka Khandu Avhad (supra)** squarely applies to the facts of the present case.

11. In the result, the petitions are **ALLOWED** and proceedings of Criminal Case Nos.3573 of 2024, 3574 of 2024 and 3697 of 2024 pending before the learned JMFC, Mehsana are hereby quashed and set aside qua petitioners (1) Amit Natverlal Shah (2) Chandresh Natverlal Shah and (3) Shashin Nayan Shah.

11.1 It is clarified that the criminal case filed and pending against accused Nos.1 and 2 shall be continued in accordance with law. It is expected that the learned trial Court shall decide and dispose of the said criminal case as early as possible within six months from the date of receipt of this order.

12. Consequently, connected Criminal Misc. Applications also stand disposed of.

13. Rule made absolute to the aforesaid extent. Direct service is permitted.

Registry to maintain copy of this order in each matter.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 23/11/2026 17:16:53