IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3095 OF 2026

1. Crescent Vanijya Private Limited.
   Having its registered office at 16A,
   Brabourne Road, 5th Floor,
   Kolkata, West Bengal.

2. Anand Kumar Prasad.
3. Gautam Singhi
4. Pratik Choraria
5. Winsome International Limited
6. Ashish Bhinawaniwala
7. Bishwanath Keshri

...Applicants

-VERSUS-

1. The State of Maharashtra.
2. Hindustan Gunny Bags and
   Allied Suppliers.

...Respondents

…

Shri Akshay S. Radikar, Advocate for the applicants.
Shri D.B. Bhange, APP for respondent No.1/ State.
Shri Subodh P. Shah, advocate for respondent No.2.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 26 October 2026
Pronounced on : 31 October 2026

Per Court :-

1. Heard the learned counsel appearing for the respective parties.

2. By this Criminal Application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicants are challenging the proceedings bearing Summary Criminal Case No.1251 of 2025, registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, pending before the learned Judicial Magistrate First Class, Court No.2, Shrirampur, District Ahilyanagar (Ahmednagar). The applicants are also challenging the order dated 16.10.2025 passed by the learned Judicial Magistrate First Class, Shrirampur, District Ahilyanagar, in Summary Criminal Case No.1251 of 2025, whereby process came to be issued against the applicants.

3. According to respondent No.2./ complainant, it had advanced an amount of Rs.7 Crores to the applicants towards investment. Pursuant to the same, a Memorandum of Understanding (MOU) dated 28.08.2024 came to be executed between the parties, governing the repayment of the outstanding amount of Rs.5 Crores. Pursuant to the said MOU, a post-dated cheque dated 15.04.2025 for an amount of Rs.5 Crores came to be issued.

4. It is the case of the applicants that they had made

payments of Rs.20 Lakhs and Rs.30 Lakhs on 09.04.2025 and 03.07.2025, respectively, towards adjustment of the liability. According to the applicants, despite receiving the aforesaid amounts, respondent No.2 presented the cheque for encashment of the amount of Rs.5 Crores on 14.07.2025. The said cheque came to be dishonoured with the endorsement "Payment stopped by the drawer". Pursuant to the dishonour of the cheque, respondent No.2 issued a statutory demand notice under Sections 138, 141 and 142 of the Negotiable Instruments Act on 11.08.2025. The applicants issued a detailed reply to the said notice on 26.08.2025. As the applicants failed to make payment of the cheque amount, respondent No.2 filed the complaint under Section 138 of the Negotiable Instruments Act on 25.09.2025. The said complaint came to be registered as Summary Criminal Case No.1251 of 2025 before the learned Judicial Magistrate First Class, Shrirampur.

5. On 16.10.2025, the learned Judicial Magistrate First Class, Shrirampur, issued process for the offence punishable under Section 138 of the Negotiable Instruments Act. The applicants received the summons on 11.03.2026 and, therefore,

approached this Court challenging the aforesaid order issuing process as well as the consequential issuance of summons in Summary Criminal Case No.1251 of 2025.

6. The learned counsel for the applicants Shri Radikar vehemently argued that the impugned order dated 16.10.2025, issuing process, merely records that process is to be issued under Section 138 of the Negotiable Instruments Act. According to him, such process cannot be issued against all the accused persons, as Section 138 of the Negotiable Instruments Act deals with the offence relating to the cheque in question. The applicants have neither signed nor issued the said cheque. Further, as no process has been issued under Section 141 of the Negotiable Instruments Act, the summons issued to the applicants are contrary to the order issuing process. Therefore, according to the learned counsel, the issuance of process against the applicants is unsustainable in law.

7. The learned counsel further argued that the issuance of process also constitutes an abuse of the process of law for the reason that the subject cheque does not represent the actual subsisting liability on the date of its presentation. Therefore, the

impugned order is illegal and requires to be quashed and set aside.

8. The learned counsel for the applicants further pointed out that the applicants have also filed a civil suit bearing Title Suit no. 1478 of 2025 and the same is pending adjudication before the court of the Learned Civil Judge, 7th Bench, Kolkata. According to him, the proceedings under the Negotiable Instruments Act have been initiated as a counterblast to the said civil suit. Therefore, the prosecution initiated under the Negotiable Instruments Act is malicious in nature and the impugned orders are not sustainable in the eyes of law. He, therefore, submits that the instant Criminal Application deserves to be allowed by quashing the criminal proceedings as well as the impugned orders.

9. *Per contra*, the learned counsel for respondent No.2, Shri Shah submitted that the learned Judicial Magistrate First Class, while passing the order, has clearly observed that the accused have issued the cheque in favour of the complainant towards discharge of a legally enforceable debt. The complainant issued a statutory demand notice in respect of the cheque amount.

However, despite receipt of the said notice, the accused failed to pay the cheque amount within a period of fifteen days. Accused Nos.2 to 5 are the Directors of accused No.1 company, whereas accused No.6 is the parent company of accused No.1 and accused Nos.7 to 9 are its Directors. Moreover, it is revealed that, at the time of commission of the offence, they were in charge of and responsible for the conduct of the business of the said company. Further, the statutory demand notice was issued to all the accused. The reply to the notice given on behalf of the accused shows that they have not denied the said facts. Therefore, *prima facie*, all the ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act are made out against the accused and, accordingly, the learned Judicial Magistrate First Class issued process for the offence punishable under Section 138 of the Negotiable Instruments Act.

10. The learned counsel for respondent No.2 further submitted that there is no illegality or error in the order passed by the learned Judicial Magistrate First Class and it would be too early to conclude the proceedings by quashing the same. The accused have admitted their liability by issuing the cheque and

executing the Memorandum of Understanding between them. The cheque issued in favour of the complainant was presented to the bank and the same came to be dishonoured. Therefore, the accused are liable to be prosecuted for the offences punishable under Sections 138 and 141 of the Negotiable Instruments Act. He, therefore, submits that, at this early stage, it would not be appropriate to record any conclusion regarding the rights and liabilities of the parties and the matter is required to be tried before the learned Judicial Magistrate First Class. He accordingly prayed for rejection of the instant Criminal Application.

11. After going through the submissions advanced by the learned counsel for the applicants as well as learned counsel for respondent No.2, it is a matter of fact that the cheque in question has been issued in favour of respondent No.2 towards discharge of the alleged liability. Accused Nos.1 to 4 are stated to be the Directors of accused No.1 company. Accused Nos.5 and 6 have not approached this Court challenging the impugned order. However, accused Nos.6 to 9 have also been arrayed as accused on the ground that accused No.6 is the parent company of accused No.1 and accused Nos.7 to 9 are its Directors.

12. The learned Trial Court has observed that, at the time of commission of the offence, the said accused persons were in charge of and responsible for the conduct of the business of the company. Further, the statutory demand notice was issued to all the accused. The reply to the notice given on behalf of the accused shows that they have not denied the said facts. Therefore, the grounds raised by learned counsel for the applicants are not sustainable in the eyes of law. It would be too early, at this stage, to record any finding regarding the actual liability of the respective accused persons and the effect of the payments allegedly made by the applicants towards the cheque amount. It is for the Trial Court to ascertain, after appreciating the evidence brought on record, the liability of each of the Directors and the other accused persons.

13. It would also be necessary to observe that the applicants were holding the position of Directors in the parent company and, as such, at the time of the transactions, they were holding official positions in the capacity of Directors and were involved in the transactions between respondent No.2 and the company. The grounds raised by learned counsel for the

applicants, therefore, are not sustainable for the reason that the order issuing process for the offence punishable under Section 138 of the Negotiable Instruments Act cannot be said to be illegal merely because the learned Magistrate has referred to Section 138 and has not separately mentioned Section 141 of the said Act. Section 138 of the Negotiable Instruments Act provides for the offence and the punishment in respect of dishonour of a cheque, whereas Section 141 provides for the liability of persons in charge of and responsible for the conduct of the business of a company, where the offence under Section 138 is committed by the company. Section 142 deals with cognizance of offences. The issuance of process is at a preliminary stage and, therefore, the issues regarding the liability of the respective accused persons can be ascertained after affording an opportunity to the complainant to prove its case against the accused persons in accordance with law.

14. It is also necessary to consider the legal position regarding the order issuing process. It is well settled that, before issuing process under Section 204 of the Code of Criminal Procedure, 1973, the Magistrate is required to arrive at a

satisfaction, on the basis of the examination of the complainant and the witnesses or the inquiry contemplated under Section 202 of the said Code, that there is sufficient ground for proceeding with the complaint. The order directing issuance of process is not a judgment within the meaning of Section 354 of the Code of Criminal Procedure, 1973. The order issuing process is an interlocutory order and not a judgment. The learned Judicial Magistrate First Class has issued process against the applicants after considering the material available on record in the complaint. Therefore, the order issuing process cannot be said to be illegal merely because it does not contain elaborate reasons. It is also well established that the Magistrate issuing process is required to apply his judicial mind and form an opinion as to whether sufficient grounds exist for proceeding against the accused. However, it is not necessary for the Magistrate to record elaborate reasons or grounds for arriving at such satisfaction.

15. In ***Adalat Prasad v. Rooplal Jindal and Others, (2004) 7 SCC 338***, the Hon'ble Supreme Court has held that the condition precedent for issuing process under Section 204 of the Code of Criminal Procedure is the satisfaction of the Magistrate,

either on examination of the complainant and the witnesses or on the inquiry contemplated under Section 202, that there is sufficient ground for proceeding with the complaint. At none of these stages has the Code provided for hearing the summoned accused persons before issuance of process against them. When the learned Magistrate forms an opinion as to whether there exists sufficient ground for issuance of summons, he can pass an appropriate order accordingly. There is no requirement that the Magistrate should give an elaborate narration of the reasons for arriving at such satisfaction. Recording of elaborate reasons is not a prerequisite for determining the validity of the summons issued. Therefore, the order passed by the learned Magistrate cannot be faulted with on the sole ground that the summoning order is not an elaborate reasoned order.

16. In ***Nupur Talwar v. Central Bureau of Investigation and Another, (2012) 11 SCC 465 : 2013 (1) SCC (Cri) 689***, the Hon'ble Supreme Court has considered the legal position relating to the order issuing process and observed that an order issuing process cannot be vitiated merely on the ground that elaborate reasons have not been recorded. Similarly, in ***Kanti Bhadra Shah***

and Another v. State of West Bengal, (2000) 1 SCC 722, the Hon'ble Supreme Court has observed that detailed reasons are not required to be recorded at every stage of the criminal proceedings, including the stage of issuance of process. The Court has emphasized that unnecessary detailed orders at interlocutory stages should not impede the progress of trial proceedings.

17. In view of the aforesaid legal position, the order issuing process passed by the learned Judicial Magistrate First Class cannot be said to be illegal merely because elaborate reasons have not been recorded. On perusal of the impugned order, it appears that the learned Magistrate has applied his judicial mind to the material available on record and has found sufficient grounds to proceed against the accused persons.

18. Though the learned counsel for the applicants has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Alka Khandu Avhad v. Amar Syamprasad Mishra and Another***, **(2021) 4 SCC 675** and ***Hitesh Verma v. M/s Health Care at Home India Pvt. Ltd. and Others***, **(2025) 7 SCC 623**, however, same cannot assist the applicants as the facts of the

aforesaid judgments are distinguishable from the facts of the present case. In *Alka Khandu Avhad* (supra) and in *Hitesh Verma* (supra), the appellants therein were not signatory to the dishonoured cheque. In the present case, the cheque in question is stated to have been issued towards the liability of the company and the applicants are sought to be prosecuted in their capacity as Directors of the company by invoking Section 141 of the Negotiable Instruments Act.

19. It would also be appropriate to refer to the judgment of the Hon'ble Supreme Court in ***M/s Sri Om Sales v. Abhay Kumar @ Abhay Patel and Another, 2025 INSC 1474 : [2025] 12 S.C.R. 1293***. In the said judgment, the Hon'ble Supreme Court has observed that, while considering a prayer for quashing a complaint under Section 138 of the Negotiable Instruments Act, the Court is required to examine whether the allegations made in the complaint, along with the material in support thereof, make out a prima facie case to proceed against the accused. If the necessary ingredients of the offence are prima facie disclosed, the complaint and the consequential proceedings cannot be quashed by undertaking a detailed enquiry into the disputed question as to

whether the cheque was issued towards discharge of a legally enforceable debt or liability. The Hon'ble Supreme Court has further observed that the presumption under Section 139 of the Negotiable Instruments Act can be rebutted by leading evidence during the trial and such disputed questions can appropriately be decided by the Trial Court. In the present case, the applicants have raised contention that they had made payments of Rs.20 Lakhs and Rs.30 Lakhs towards adjustment of the liability before presentation of the cheque and, therefore, the cheque did not represent the actual subsisting liability. However, the said contention involves examination of the disputed questions of fact regarding the nature of the transaction, the liability arising out of the Memorandum of Understanding and the effect of the alleged payments. Such an exercise cannot be undertaken at this preliminary stage. The applicants would be at liberty to raise all such contentions before the learned Trial Court, which shall consider the same independently on the basis of the evidence brought on record. Therefore, in view of the law laid down by the Hon'ble Supreme Court in the aforesaid judgment, no case is made out for interference with the proceedings at this stage.

20. In view of the above discussion, the instant Criminal Application is devoid of merit and deserves to be dismissed. Hence, the Criminal Application is dismissed.

21. It is made clear that the observations made in this order are confined to the adjudication of the present Criminal Application and shall not influence the learned Trial Court while deciding the complaint on its own merits.

kps (SUSHIL M. GHODESWAR, J.)