2026:BHC-AS:10536

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5631 OF 2025

Vandana Jagdish Ahuja ... Petitioner
versus
Ashok S. Bhagia and Anr. … Respondent

WITH
WRIT PETITION NO.5655 OF 2025

Vandana Jagdish Ahuja ... Petitioner
versus
Ashok S. Bhagia and Anr. … Respondent

WITH
WRIT PETITION NO.5669 OF 2025

Vandana Jagdish Ahuja ... Petitioner
versus
Ashok S. Bhagia and Anr. … Respondent

WITH
WRIT PETITION NO.5670 OF 2025

Vandana Jagdish Ahuja ... Petitioner
versus
Ashok S. Bhagia and Anr. … Respondent

WITH
WRIT PETITION NO.5672 OF 2025

Vandana Jagdish Ahuja ... Petitioner
versus
Ashok S. Bhagia and Anr. … Respondent

Mr. Yashpal M. Thakur, for Petitioner in all Petitions.
Mr. Niranjan Mundargi i/by Mr. Siddhikesh Ghosalkar, for Respondent No.1 in WP No.5631 of 2025.
Mr. Nikhil Mengde with Mr. Shashank Podyala i/by Mr. Siddhikesh Ghosalkar, for Respondent No.1 in WP Nos.5655 of 2025, 5672 of 2025, 5670 of 2025 and 5669 of 2025.
Mr. A.R.Metkari, AGP for Respondent No.2 in all matters.

CORAM: N.J.JAMADAR, J.

DATE : 26 FEBRUARY 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. As common questions arise for consideration in an almost identical fact situation in all the Petitions, they were heard together and are being decided by this common judgment.

3. Respondent No.1 in each of the Petitions lodged complaints for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (the Act, 1881) against M/s. Ahuja Properties & Associates (A1) – a partnership firm, and Mr. Jagdish Bhagwandas Ahuja (A2), Mr. Gautam Jagdish Ahuja (A3) and Vandana Jagdish Ahuja (A4); the Petitioner herein, the alleged partners of accused No.1 Firm.

4. It was, inter alia, averred that the accused had availed financial assistance from the complainant. There was default in repayment of the said amount. Eventually, the matter was referred to arbitration. In the arbitral proceedings, the complainant and accused Nos.1 to 3 filed consent terms, whereunder accused Nos.1 to 3 agreed to repay the specified amounts to the complainant in terms of the Schedule agreed upon between the parties. The cheques drawn by the accused pursuant to the consent terms were, however,

dishonoured upon presentment. Hence, the complaint for the offence punishable under Section 138 read with Section 141 of the Act, 1881, upon failure of the accused to comply with the demand, despite service of the statutory notice.

5. In the complaints, it was further alleged that the accused Nos.2 to 4 were the partners and in-charge of the affairs of the business of accused No.1 at the time of the transaction.

6. By an order dated 14 March 2024, the learned Magistrate issued process against the accused for the offence punishable under Section 138 read with Section 141 of the Act, 1881.

7. The Petitioner – (A4) assailed the said order of issuance of process before the Court of Session by filing Criminal Revision Applications. By the impugned order dated 8 October 2025, the learned Additional Sessions Judge rejected the Criminal Revision Applications observing, inter alia, that the Petitioner had contended that she had retired from the accused No.1 partnership firm but failed to place on record documents to substantiate the said claim. Reference was made to the provisions of the Indian Partnership Act, 1932, which prescribe the manner in which the retirement of a partner is required to be notified.

8. Being aggrieved, the Petitioner has invoked the writ jurisdiction.

9. I have heard Mr. Yashpal M. Thakur, learned Counsel for the Petitioner,

Mr. Niranjan Mundargi, learned Counsel for Respondent No.1 in WP No.5631 of 2025, Mr. Nikhil Mengde, learned Counsel for Respondent No.1 in rest four Petitions and Mr. Metkari, learned AGP for the State.

10. Mr. Thakur, learned Counsel for the Petitioner, submitted that, the learned Additional Sessions Judge has rejected the revision applications without adequately delving into the contentions raised by the Petitioner that there was no material to show that the Petitioner was a partner of Accused No.1 firm. It was further urged that the learned Additional Sessions Judge did not examine the nature of the underlying transactions, in pursuance of which the subject cheques were allegedly issued. It was the specific case of the complainant that the cheques were issued pursuant to the consent terms executed between the complainant and accused Nos.1 to 3 only, before the arbitral Tribunal. The Petitioner was not a party to the said consent terms. Neither the Petitioner is a partner of accused No.1 firm. Nor is she the signatory to the subject cheques. In these circumstances, the provisions contained in Section 141 of the Act, 1881, were not at all attracted qua the Petitioner.

11. To lend support to the aforesaid submissions, Mr. Thakur invited attention of the Court to the Firm Registration Certificate issued by the Registrar of Firms and the copy of the consent terms executed before the arbitral Tribunal.

12. In contrast, Mr. Mundargi, learned Counsel for Respondent No.1 in WP No.5631 of 2025, would urge that, in the complaint, the complainant has made a categorical assertion that the Petitioner was one of the partners of the accused No.1 firm. Therefore, at this stage, the courts below were justified in declining to delve into the questions of facts which warrant adjudication at the trial to determine whether the Petitioner is not a partner of accused No.1 firm.

13. Mr. Mundargi laid emphasis on the fact that, in the previous transactions, the Petitioner has drawn the cheques in favour of the complainant in the capacity of the partner of M/s. Ahuja Properties and Associates. Therefore, it cannot be said that, there was no material to demonstrate, prima facie, that the Petitioner is a partner of accused No.1 firm.

14. To lend support to the submission that, at this stage, a detailed enquiry is not warranted, Mr. Mundargi placed reliance on a judgment of the Supreme Court in the case of **Shivappa Reddy V/s. S. Srinivasan**[1]. In the said case, the Supreme Court emphasised the necessity of compliance with the mdnate of the provisions contained in the Partnership Act, to sustain the plea that a person has retired from the partnership firm.

15. Mr. Mengde, learned Counsel for Respondent No.1 in rest of the Petitions, adopted and supplemented the submissions of Mr. Mundargi.

16. I have carefully perused the material on record. From the perusal of

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the impugned orders, it appears that the learned Additional Sessions Judge concentrated on only one aspect of the matter, namely, the failure of the Petitioner to demonstrate prima facie that she had retired from the partnership firm.

17. Mr. Thakur made an attempt to urge that, actually it was the case of the Petitioner that she was never a partner of Accused No.1 firm and not that she had retired from the said firm.

18. In this backdrop, this Court considered it appropriate to direct the Petitioner to place relevant material on record, including the partnership deed and the consent terms filed before the Arbitral tribunal, in discharge of the liability purportedly incurred thereunder the cheques were allegedly drawn.

19. A copy of the partnership deed dated 16 August 2007, whereby and whereunder the accused No.1 firm was constituted with effect from 1 August 2007 indicates that the Petitioner was not one of the eleven partners, who initially constituted the said firm. A copy of the Firm Registration Certificate issued by the Registrar of Firms, indicates that, though as many as 8 partners retired from the said firm with effect from 1 April 2015, the Petitioner was not inducted as a partner of the said firm. Evidently, there is, prima facie, no material to show that the Petitioner was subsequently admitted as a partner of accused No.1 firm.

20. It would be contextually relevant to note that, to the consent terms

before the Arbitral Tribunal, which were executed between the complainant and accused Nos.1 to 3 only, incontrovertibly, the Petitioner is not a party. Indisputably, the Petitioner is also not the signatory to the subject cheques.

21. In the face of the aforesaid material, which, prima facie, yet with an element of certainty, indicates that the Petitioner was neither a partner of accused No.1 firm, when it was constituted; nor she was admitted as a partner of accused No.1 firm subsequently, a bare assertion in the complaint that the Petitioner is also one of the partners of the accused No.1 firm is not sufficient to make the Petitioner undergo the ordeal of trial.

22. The endeavour on the part of the complainant to bank upon the alleged representations made in the past and the cheques drawn by the Petitioner purportedly in the capacity of a partner and authorized signatory of the accused No.1 firm, does not merit countenance.

23. In the face of the material which clearly demonstrates that the Petitioner has never been a partner of accused No.1 firm, no constructive criminality can be fastened upon the Petitioner by invoking the provisions contained in Section 141 of the Act. Moreover, in the case at hand, the complainant draws support and sustenance to the legal enforceability of the liability from the consent terms executed before the arbitral tribunal, wherein accused Nos.1 to 3 had incurred the obligations to repay the specified amounts in terms of the Schedule incorporated therein. The Petitioner is not a party to the said

consent terms.

24. In the totality of circumstances, the learned Magistrate erred in issuing process against the Petitioner as well, by invoking the provisions contained in Section 141 of the Act, 1881. Learned Additional Sessions Judge failed to correct the error by concentrating on only one aspect of the matter and overlooking the absence of foundational facts to invoke the provisions contained in Section 141 of the Act, 1881 qua the Petitioner. Resultantly, both the orders deserve to be quashed and set aside.

25. Hence, the following order :

ORDER

(i) The Writ Petitions stand allowed.

(ii) The impugned orders dated 8 October 2025 passed by the learned Additional Sessions Judge in the respective Criminal Revision Applications stand quashed and set aside.

(iii) The orders dated 14 March 2024 in CC Nos.2030/SC/2023, 2038/SC/2023, 2031/SC/2023, 2039/SC/2023 and 2032/ *SC*/2023 of issuance of process for the offences punishable under Section 138 read with Section 141 of the Act, 1881 stand quashed and set aside qua the Petitioner (A4) only.

(iv) Complaints to proceed against rest of the accused in accordance with law.

(v) Rule made absolute to the aforesaid extent.

(vi) No costs.

(N.J.JAMADAR, J.)