IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5004 OF 2025

Jindal Drugs Pvt. Ltd. ... Petitioner
versus
The State of Maharashtra and Anr. … Respondents

Mr. Rafique Dada, Sr. Advocate with Ms. Fereshte Sethna, Mr. Zubair Dada, Mr. Mohit Tiwari, Mr. Prakalathan Bathey, Ms. Naomi Ting, Ms. Sushmita Chauhan, Ms. Aditi Shrivastava and Ms. Tarang Saraogi i/by DMD Advocates, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.
Mr. Abad Ponda, Sr. Advocate with Ms. Isha Jani, Ms. Sachi Udeshi, Mr. Sujith Nair i/by Wadia Ghandy and Co., for Respondent No.2.

SWAROOP SHARAD PHADKE

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Date: 2026.04.29 22:40:08 +0530

CORAM: N.J.JAMADAR, J.

RESERVED ON : 22 JANUARY 2026
PRONOUNCED ON : 29 APRIL 2026

JUDGMENT :

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

2. This Petition under Article 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assails the legality, propriety and correctness of the judgment and order dated 28 August 2025 passed by the learned Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application No.123 of 2025, whereby the revision preferred by the Petitioner (A1) against the order passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, on 4 January 2024 of issue of process

against the Petitioner (A1), and its directors for an offence punishable under Section 138 read with 141 of the Negotiable Instruments Act, 1881, came to be dismissed.

3. Shorn of unnecessary details, the background facts leading to this Petition, can be stated as under :

3.1 The Petitioner (A1) is a Private Limited Company. Accused No.2 is alleged to be a director and signatory to the subject cheque. Accused No.4 is its Managing Director and accused Nos.3, 5 and 6 are the whole-time directors of accused No.1 Company.

3.2 The petitioner (A1) is a family run company . A3 is the family patriarch. Accused No.4 is the son of accused No.3. Rest of the accused are the wife and children of accused No.4. Respondent No.2 – complainant is another son of accused No.3.

3.3 In the wake of disputes among the family members of accused No.3, an Arbitrator came to be appointed. On 4 January 2017, consent terms were executed amongst accused Nos.2 to 6, and Krishnabai Jindal, the wife of accused No.3, on the one part, and the Complainant and Jayshree Jindal, wife of the complainant, on the other part. Pursuant thereto, a consent award came to be passed on 11 January 2017.

3.4 The Petitioner Company is not a party to the said consent terms or consent award.

3.5 The Complainant asserts, under the consent award, the Complainant and his branch was entitled to business and assets aggregating to the value of Rs.400 Crores. The accused Nos.3 and 4 acknowledged that the said amount was payable to the Complainant as a legal debt and liability. In accordance with the consent award, the Complainant and his wife resigned as directors of the Petitioner (A1), and the Complainant incorporated a new Company “Jindal Cocoa Pvt. Ltd.”.

3.6 The complainant asserts, the accused did not comply with the terms of the consent award. Thus, the complainant and his wife were constrained to file Execution Application being (L) No.1452 of 2017 before this Court to execute the consent award. Instead of perfecting the title to the assets agreed to be transferred to the Complainant and the Company incorporated by the Complainant, the Petitioner (A1) instituted a suit being Suit No.314 of 2018 against the Complainant, his wife, and Jindal Cocoa Pvt. Ltd.

3.7 While the disputes were subjudice, in or around June 2018, accused No.3 assured the complainant that all the accused intended to honour the consent award and would settle all the disputes with the complainant and offered him an additional amount of Rs.100 Crores or cash equivalent (“Additional Arrangement”). For the said purpose, accused No.3 handed over the subject cheque drawn for Rs.37 Crores payable on 20 November 2020 and title documents of some immovable properties under a letter dated 19

November 2020. However, upon presentment on 19 January 2021, the subject cheque was returned unencashed with the remarks ‘payment stopped by the drawer’.

3.8 Under the consent award, and the additional arrangement, which was agreed upon between the parties, the complainant claims the complainant was still entitled to a further amount of Rs.84.98 Crores.

3.9 As the accused committed default in payment of the amount covered by the cheque, despite service of the demand notice and took a false stand that the subject cheque was drawn by way of a gift, the complainant was constrained to file the complaint for the offence punishable under Section 138 read with 141 of the N.I.Act, 1881.

3.10 By an order dated 4 January 2024, learned Magistrate was persuaded to issue process against the Petitioner and accused Nos.2 to 6.

3.11 Being aggrieved, the Petitioner preferred a revision before the learned Sessions Judge raising multifold grounds. By the impugned judgment and order dated 28 August 2025, the learned Additional Sessions Judge dismissed the revision opining, inter alia, that, though the cheque did not appear to have been issued in the discharge of the legal debt of the Petitioner, yet, it appeared to be issued towards the discharge of the “other liability”. Learned Magistrate had applied his mind and recorded adequate reasons for the issuance of process against the Petitioner and its directors,

and, thus, no interference was warranted in the exercise of the revisional jurisdiction.

3.11 Being further aggrieved, the Petitioner has invoked the writ and inherent jurisdiction of this Court.

4. I have heard Mr. Rafique Dada, the learned Senior Advocate for the Petitioner, and Mr. Aabad Ponda, learned Senior Advocate for Respondent No.2 – complainant, at length. The learned Senior Advocates took the Court through the pleadings and material on record.

5. Mr. Dada, learned Senior Advocate for the Petitioner, took a slew of exceptions to the order passed by the learned Magistrate. First and foremost, Mr. Dada would urge, the order passed by the learned Magistrate betrays complete non-application of mind, and the learned Sessions Judge committed an error in not correcting the error in the exercise of jurisdiction by the learned Magistrate.

6. Secondly, Mr. Dada submitted that the Courts below lost sight of the fact that there was no privity between the Petitioner and the complainant. The Petitioner was not a party to the consent award. The Petitioner neither owed any debt to, nor any liability towards, the complainant. Thus, the complainant could not have laid any claim arising out of the consent award qua the Petitioner company.

7. Thirdly, nothing was due on the date the cheque was allegedly drawn in

favour of the complainant, even under the consent terms. On the contrary, Mr. Dada submitted that, under the consent terms, the complainant was to make a provision for the differential amount of Rs.99 Crores; being the amount by which the value of the assets allotted to the complainant exceeded the share of the complainant in the family assets. The complainant did not comply with his part of the bargain. Consequently, even under the consent terms, till the complainant complied with the conditions precedent, no amount was due and payable to the complainant.

8. Fourthly, the additional arrangement, referred to in the complaint, under which the subject cheque was allegedly drawn, was in the nature of a without prejudice settlement. There was no final concluded settlement. The complainant even did not comply with the conditions, subject to which the amount was offered under the letter dated 19 November 2020. The complainant did not give any acknowledgment of the settlement. At best the purported additional arrangement, was an additional offer made by Shrikrishan P. Jindal (A3), in the capacity of the father to the son – the complainant, in the without prejudice negotiatons; which were not accepted by the complainant. Thus, the complaint in question, on the basis of the cheque which was drawn sans any debt or liability, is a clear abuse of the process of the Court, and, therefore, the complaint deserves to be quashed qua the Petitioner Company, submitted Mr. Dada.

9. Per contra, Mr. Ponda, learned Senior Advocate for the Complainant submitted that the scope of interference with an order of issuance of process is further constricted by the dismissal of the revision application preferred by the Petitioner by the impugned order. In such a situation, the powers under Section 528 of the BNSS are required to be exercised even more sparingly and cautiously.

10. Mr. Ponda would urge, the petition proceeds on an erroneous impression that the cheque ought to have been drawn in discharge of the debt or liability of the drawer himself. The offence under Section 138 of the Act, 1881 can also be committed where the cheque has been drawn in discharge of “other liability”, provided it is a legally enforceable. The liability need not be that of the drawer himself.

11. Mr. Ponda further submitted that, at this juncture, this Court cannot delve into the contentious issues whether the cheque was drawn in discharge of legally enforceable or liability as that is a matter to be adjudicated at the trial. The contentions raised by the Petitioner, according to Mr. Ponda, are in the realm of defences, which cannot be considered while exercising the jurisdiction under Section 528 of BNSS. The Petitioner (A1) would get an efficacious opportunity to rebut the statutory presumptions at the trial.

12. Even otherwise, on the merits of the matter, Mr. Ponda submitted that the material on record does not lend any support to the contention of the

Petitioner that the subject cheque was issued as a part of without prejudice settlement. Thus, the question whether the subject cheque was a part of without prejudice settlement, or drawn merely by way of a gift, as contended in reply to the statutory notice and also in the Petition, enters in the arena of adjudicatory facts. Reference was made by Mr. Ponda to the documents annexed to the Petition and the financial statements of the Petitioner to demonstrate that the Petitioner, which is essentially a family Company, cannot feign ignorance of the transactions, as was sought to be projected.

13. To begin with, there is not much controversy over the genesis of the dispute. Relationship between the parties is also not in dispute. It is a common ground that, in the wake of familial disputes, an Arbitrator came to be appointed to resolve the disputes. Consent terms were executed before the Arbitrator; pursuant to which consent award came to be passed on 11 January 2017. The consent award, however, did not put an end to the disputes and the parties continued to be entangled in litigation.

14. It is the claim of the complainant that, in order to put an end to the dispute, accused No.3, the father of the complainant and accused No.4, assured the complainant that all the accused would settle all the disputes with the complainant and offered him an additional Rs.100 Crores or cash equivalent. Towards payment of the outstanding dues, Shrikrishan Jindal (A3) handed over the subject cheque drawn by the Petitioner company. It

was signed by Ishaan Jindal (A2) in the capacity of its director and authorized signatory. Accused No.3 also handed over title documents of some immovable properties as additional assets, under the letter dated 19 November 2020.

15. At this stage, there is not much controversy over the issue of the letter dated 19 November 2020 by the accused No.3 to the complainant. Vide said letter, as a part of agreement and understanding, the following assets and title documents were either delivered to the complainant or were stated to be already in the possession of the complainant :

Assets	Value (INR Crs.)
Flat No.264, Tahnee Heights	40
Flat No.111, Peacock Palace	15
Office at Maker Chambers VI	8
Cheque No.014283 on HDFC Bank	37
Total	100

16. The cheque at Item No.4 is the subject cheque drawn for the sum of Rs.37 Crores by the Petitioner company. Under the said letter, the complainant was called upon to acknowledge receipt of possession of assets, related property documents and cheque towards the full and final cash payment.

17. In the Petition, the Petitioner asserts, the said cheque was drawn as Shrikrishan (A3) had requested for a loan of the said amount to facilitate the

payment thereof, as a gift to Respondent No.2 – complainant, on the occasion of wedding of Respondent No.2's daughter. Thus, the cheque was drawn. However, on the instructions of Shrikrishan (A3) that he did not intend to avail the said loan on account of continuous discord with the complainant, the Petitioner issued the stop payment instructions on 23 November 2020.

18. Evidently, the issue of cheque is not disputed. A counter version in regard to the purpose for which the cheque was drawn by the Petitioner is sought to be pressed into service. In this context, the principal submission sought to be canvassed by Mr. Dada that the complainant had not drawn the cheque towards the discharge of its debt or liability, deserves consideration.

19. The provisions of Section 138 are explicitly clear. Penal liability arises when any cheque drawn for the discharge in whole or in part of any debt or other liability is dishonoured and the other concomitant ingredients are fulfilled. Section 139 incorporates the presumption of law that, unless contrary is proved, the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part of any debt or "other liability".

20. The use of the expressions "any cheque" and "any debt" or "other liability" expands the scope of the offence envisaged by the provisions contained in Section 138 of the Act. The legislature has not used the expression "any cheque drawn in discharge of his/its debt or liability". Even if

the cheque is drawn for the discharge of the liability of another person, if it is legally enforceable, the drawer cannot be permitted to wriggle out of the penal liability.

21. In the case of **ICDS Ltd. V/s. Beena Shabeer and Anr.**[1], the import of the expressions “where any cheque” and “other liability” was expounded by the Supreme Court in the following words :

> “8. The High Court, as noticed above, did allow the Petition upon a categorical finding that being a cheque from the guarantor it could not be said to have been issued for the purpose of discharging any debt or liability and the complaint under Section 138 of the Negotiable Instruments Act, 1881, thus cannot be maintained.
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> 9. As noticed hereinbefore, the principal reason for quashing of the proceeding as also the complaint by the High Court was by reason of the fact that Section 138 of the Act provides for issuance of a cheque to another person towards the discharge in whole or in part of any debt or liability and on the factual context, the High Court came to a conclusion that issuance of the cheque cannot be co-related for the purpose of discharging any debt or liability and as such complaint under Section 138 cannot be maintainable.
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> 10. The language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words "Where any cheque". The above noted three words are of extreme significance, in particular, by reason of the user of the word "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of

1 (2002) 6 SCC 426

any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.

11. The issue as regards the co-extensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions o Section 138 of the Act: 'Any cheque' and 'other liability' are the two key expressions which stands as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the Statute. Any contra interpretation would defeat the intent of the legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus does not lend any assistance to the contentions raised by the respondents." (emphasis supplied)

22. Following the aforesaid pronouncement, in another judgment in the

case of **Bijoy Kumar Moni V/s. Paresh Manna and Anr.**[2], the Supreme Court further clarified that, Section 138 of the NI Act does not envisage that only those cases where a cheque was issued towards the discharge of the personal liability of the drawer towards the payee gets dishonoured would come within the ambit of the provision. The observations in paragraph Nos.52 are instructive and hence extracted below:

> "52. Section 138 of the NI Act does not envisage that only those cases where a cheque issued towards the discharge of the personal liability of the drawer towards the payee gets dishonoured would come within the ambit of the provision. The expression "of any debt or other liability" appearing in Section 138 when read with the Explanation to the provision is wide enough to bring any debt or liability which is legally enforceable within its fold. Thus, the requirement under the provision is that the debt or any other liability has to be legally enforceable and the emphasis is not on the existence of such debt or other liability between the drawer and the payee. A number of decisions of this Court have clarified that even those cases where a person assumes the responsibility of discharging the debt of some other person, and in furtherance thereof draws a cheque on an account maintained by him, which subsequently gets dishonoured upon being presented before the drawee, would be covered by Section 138 if the payee is able to establish that there was some sort of an arrangement by way of which the debt was assumed by the drawer."
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> *(Emphasis supplied)*

2 2024 SCC Online SC 3833

23. In view of the aforesaid position in law, the substratum of the submission of Mr. Dada that, in the absence of privity between the Petitioner (A1) and the complainant, and the Petitioner (A1) not being a party to the consent award and, consequently, not being liable to satisfy the consent award, the Petitioner could not have been prosecuted for an offence punishable under Section 138 of the Act, 1881, though the subject cheque was drawn on an account maintained by the Petitioner (A1), falls through.

24. As a second limb of the submission, Mr. Dada would urge, even otherwise, nothing was due and payable under the consent award on the date the subject cheque was drawn for a sum of Rs.37 Crores. A reference was made to clause 4 of the consent award, under which the complainant was to make good the excess amount of Rs.99.25 Crores and, only thereafter, business transfer under the consent terms was to be effected by slump sale or a business transfer agreement.

25. I am afraid, at this juncture, and in this proceeding, this Court would be justified in delving into all these issues, including the explanation sought to be offered that the subject cheque was issued by way of a gift by Shrikrishan (A3). The financial statements of Petitioner (A1) do indicate that the Petitioner (A1) was fully cognizant of the terms of settlement amongst the directors of the Petitioner (A1), on the one part, and the complainant and his family members and the proposed company, on the other part. The financial

statements for the year ending March 2019, thus, inter alia, record that, under the family settlement arrangement, the aggregate value of assets agreed to be transferred was higher than the complainant's share of entitlement by approximately 99.25 crores, and, thus, adjusting for this amount, book value of net assets to be transferred has been fully provided for. The Petitioner (A1), thus, prima facie, cannot completely disassociate itself from the consent award, as if it had no knowledge whatsoever with the said consent award. These contentions are essentially the defences of the Petitioner (A1) which the Petitioner would be required to pursue at the trial to dislodge the presumptions contained in sections 118, 138 and 139 of the Act, 1881.

26. The submission of Mr. Dada that the subject cheque was delivered by way of 'without prejudice arrangement' between the parties is again a matter which falls in the arena of factual controversy. At this juncture, the unrebutted assertions in the complaint and the documents annexed with the complaint can only be taken into account to appreciate whether a prima facie case for an offence punishable under Section 138 read with Section 141 of the Act, is made out. All these contentions and documents, sought to be relied upon in support of such contentions, which are in the nature of defences, cannot be legitimately delved into. Nor can be it said that the pleadings and documents in other proceedings between the parties constitute documents of such unimpeachable and sterling quality that this court, while exercising power

under Section 528 of BNSS 2023, would be justified in basing its findings on such documents.

27. Having considered the matter of sustainability of the impugned order of issue of process through the prism of prima facie case, this Court is inclined to hold that the view of the learned Magistrate and the learned Additional Sessions Judge that, prima facie the cheque seemed to have been drawn in discharge of “other liability”, appears sustainable.

28. Multitude of defences sought to be raised by Mr. Dada are essentially the matters for trial. Those grounds, at this stage, do not sustain a prayer for quashing of the complaint qua the Petitioner (A1).

29. Hence, the following order :

ORDER

(i) The Writ Petition stands dismissed.

(ii) Rule discharged.

(iii) No costs.

(iv) It is, however, clarified that the observations made hereinabove are confined to determine the prayer of quashing the complaint, and the trial court shall decide the complaint on its own merits and in accordance with law without being influenced by any of the aforesaid observations.

(N.J.JAMADAR, J.)

30. At this stage, Ms. Sethna, learned Counsel for the Petitioner, seeks stay to the execution and operation of this order.

31. Since the challenge in the Petition is to an order passed by the learned Additional Sessions Judge, thereby dismissing the revision application against the order of issuance of process, the prayer for stay does not merit countenance. Hence, oral application for stay stands rejected.

(N.J.JAMADAR, J.)