**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.3139 OF 2024**

Milind Mukund Joshi & Anr. …Petitioners

*Versus*

The State of Maharashtra & Anr. …Respondents

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Mr. Aabad Ponda, Senior Advocate a/w. Ms. Bindi Dave and Ms. Dhruvi Mehta i/b. Wadia Ghandy & Co., for the Petitioners.
Ms. Savita M. Yadav, APP, for Respondent No.1-State.
Mr. Y. S. Bhate, for Respondent No.2.

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**CORAM: MADHAV J. JAMDAR, J.**
**DATED : $13^{th}$ JULY 2026**

**PC:-**

**1.** Heard Mr. Ponda, learned Senior Counsel appearing for the Petitioners, Ms. Yadav, learned APP appearing for Respondent No.1-State and Mr. Bhate, learned Counsel appearing for Respondent No.2.

**2.** By the present Writ Petition, the Petitioners who are the original accused Nos.5 and 6 are seeking quashing of Criminal Case No.42/SW/2016 filed under Section 276B read with 278B of the Income Tax Act, 1961. The Petitioners are also challenging the order dated $24^{th}$ October 2016 passed below Exhibit-1 in C.C.

No.42/SW/2016 by the learned Chief Judicial Magistrate, 38th Court, Ballard Pier, Mumbai below Exhibit-1 in C.C. No.42/SW/2016 as also the orders dated 4th March 2022 and 4th August 2022 issuing process and summons.

**3.** It is the main submission of Mr. Ponda, learned Senior Counsel appearing for the Petitioners that Petitioner No.1-Milind Mukund Joshi (accused No.5) and Petitioner No.2-Manavendra Kumar Sinha (accused No.6) are merely Nominee Directors of accused No.1- Company, M/s. Hanjer Biotech Energies Pvt. Ltd.. He therefore, submits that by no stretch of imagination, can they be held liable for the actions of the Company. To substantiate the said contention, he relied on the decision of the Supreme Court in the case of ***Sunita Palita & Ors. vs. Panchami Stone Quarry***[1] and more particularly, on paragraph Nos.34 to 37, 42, 44 and 45 of the same. He also relied on the decision of a Single Judge in the case of ***Homi Phiroz Ranina & Ors. vs. State of Maharashtra & Ors.***[2] and more particularly, on paragraph Nos.9 to 11 of the same.

**1** (2022) 10 SCC 152
**2** 2003(3) Mh.L.J.34

**4.** On the other hand, Mr. Bhate, learned Counsel appearing for Respondent No.2 submitted that although the Petitioners are Nominee Directors, they are liable for the conduct of the Company's affairs.

**5.** It is the allegation in the said complaint being Criminal Case No.42/SW/2026 that Hanjer Biotech Engineering Pvt. Ltd. deducted Rs.83,17,219/- during Financial Year 2012-2013 but delayed in depositing the same with the Government within the prescribed time and an amount of Rs.11,23,435/- still remains unpaid, thereby committing the offence under Section 276B of the said Act. The complaint further alleges that the Petitioners are vicariously liable for the Company's default by virtue of Section 278B of the said Act (which is in *pari materia* to Section 141 of the Negotiable Instruments Act, 1881 and similar vicarious liability provisions in other statutes.

**6.** A perusal of the record and more particularly the details available on the website of the Ministry of Corporate Affairs shows that Petitioner No.1-Milind Mukund Joshi, was a Nominee Director of accused No.1-M/s. Hanjer Biotech Energies Pvt. Ltd.. His appointment as a Nominee Director is from 9th June 2009 and he ceased to hold office on 5th July 2013. Similarly, Petitioner No.2 was also a Nominee Director of Accused No.1-M/s. Hanjer Biotech Energies Pvt. Ltd., w.e.f. 9th June 2009 and he ceased to be a Nominee Director on 15th October 2012.

**7.** The Supreme Court has discussed this aspect in ***Sunita Palita*** (supra) in paragraphs 34 to 37, 42, 44 and 45. The said paragraphs read as under:

> *"**34.** While it is true that inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the section, the Court is duty-bound to exercise its jurisdiction under Section 482CrPC when the exercise of such power is justified by the tests laid down in the said section. Jurisdiction under Section 482CrPC must be exercised if the interest of justice so requires.*
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> ***35.** The High Court rightly held that when a complaint was filed against the Director of a company, a specific averment that such person was in charge of and responsible for the conduct of business of the company was an essential requirement of Section 141 of the NI Act. The High Court also rightly held that merely being a Director of the company is not sufficient to make the person liable under Section 141 of the NI Act. The requirement of Section 141 of the NI Act was that*

*the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company. This has to be averred as a fact.*

***36.*** *The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company and responsible to the company for the conduct of its business by virtue of the office they hold as Managing Director or Joint Managing Director. These persons are in charge of and responsible for the conduct of the business of the company and they get covered under Section 141 of the NI Act. A signatory of a cheque is clearly liable under Sections 138/141 of the NI Act.*

***37.*** *The High Court, however, failed to appreciate that none of these appellants were Managing Director or Joint Managing Director of the accused Company. Nor were they signatories of the cheque which was dishonoured.*

***42.*** *Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] .* ***The materials on record clearly show that these appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company.*** *Moreover, when a complaint is* *filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.*

***44.*** *Even though the High Court deprecated the adoption of a hypertechnical approach in construing pleadings, to quash criminal proceedings, the High Court adopted a hypertechnical approach in rejecting the application under Section 482CrPC, on a cursory reading of the formalistic pleadings in the complaint, endorsing the contents of Section 141 of the NI Act, without any particulars.* ***What the High Court overlooked was, the contention of these appellants that they were non-executive independent Directors of the accused Company, based on unimpeachable materials on record.*** *The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the accused Company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act.*

***45.*** *As held by this Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015)*

*3 SCC (Cri) 378] the impleadment of all Directors of an accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act."*

(Emphasis added)

**8.** Thus, what the Supreme Court has held that the Managing Director or Joint Managing Director are responsible for the conduct of the business of the Company. In paragraph 44, it has been held that if there is unimpeachable material on record to show that the accused are non-executive independent Directors of the accused-Company, they cannot be held responsible for the conduct of the affairs of the Company.

**9.** A learned Single Judge in the case of ***Homi Phiroz Ranina*** (supra) and paragraphs 9 to 11 has held as under:

"9. *It must be fairly stated that at the time of hearing of the said application for discharge, the attention of the Court was not drawn to the case of M.A. Unneerikutty v. Deputy Commissioner of Income-Tax, I.T.R. 281 and 606, Kerala High Court which clearly states that it is necessary that complainant must lead and show some acceptable materials that the partners were incharge of and responsible for the conduct of the business of firm* *to make them also vicariously responsible along with it. A mere allegation to that effect will not be sufficient. There should be credible material to show their active involvement in the conduct and management of the business of the firm.*

*10. **The complaint filed by the Commissioner of Income Tax states that accused Nos. 2 to 9 at the material time were incharge of and responsible to accused No. 1 for the conduct of its business and therefore legally liable under section 194(1)(2) read with section 204 of the said Act to deduct income tax and to pay the tax so deducted to the credit of the Central Government within one week from the last date of the month in which the deduction is made. Apart from the averment that accused/applicants were incharge of and responsible to the Company for the conduct of its business there is no material whatsoever which prima facie shows that the applicants/accused were in fact incharge of the affairs of the Company and responsible for the conduct of its business and day to day affairs**.*

*11. **Unless the complaint disclosed a prima facie case against the applicants/accused of their liability and obligation as Principal Officers in the day to day affairs of the Company as Directors of the Company under section 278(b) the applicants cannot be prosecuted for the offences committed by the Company. In the absence of any material in the complaint itself prima facie disclosing responsibility of the accused for the running of the day to day affairs of the Company process could not have been issued against them. The applicants cannot be made to undergo the ordeal of a trial unless it could be prima facie showed that they are legally liable for the failure of the Company in paying the amount deducted to the credit of the Company. Otherwise, it would be a travesty of justice to prosecute them and***

> ***ask them to prove that the offence is committed without their knowledge. The Supreme Court in the case of Shyam Sundar v. State of Haryana reported in (1989) 4 SCC 630 : A.I.R. 1984 page 53 held as follows:—***
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> > *"It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible, for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof no partner could be convicted.""*

**10.** Thus, in view of the law laid down by the Supreme Court in the case of ***Sunita Palita*** (supra) and as also by a learned Single Judge in ***Homi Phiroz Ranina*** (supra) and considering the factual position that the Petitioner were only Nominee Directors for a limited period, a case is made out for granting the reliefs sought in the Writ Petition.

**11.** The Writ Petition is allowed in terms of prayer clauses (a) and (b), which read as under:

"*a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, direction or order in the nature of certiorari and/or exercise inherent powers to quash and set aside, as against the Petitioners, the said Complaint being Criminal Case No.42/SW/ of 2016 filed under Section 276B read with Section 278B of the Income Tax Act, 1961 before Ld. Additional Chief Metropolitan Magistrate, 38th Court, at Ballard Pier, Mumbai, Exhibit A hereto;*

*b) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, direction or order in the nature of certiorari and/or exercise inherent powers to quash and set aside, as against the Petitioners, the Impugned Orders being Orders dated 24th October 2016, 4th March 2022 and 4th August 2022 passed by the Ld. Magistrate in the said Complaint, Exhibit B, Exhibit B1 and Exhibit B2 hereto;*"

**12.** It is clarified that the said Criminal Case No.42/SW/2016 is quashed only qua the Petitioners i.e. accused Nos. 5 and 6 and the same shall continue as against the rest of the accused.

**13.** Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

**[MADHAV J. JAMDAR, J.]**

SONALI MILIND PATIL
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Date: 2026.07.25 14:42:58 +0530