IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Writ Petition No.1042/2025

Aadit S/o. Mohit Ved (Original Accused No.2),
Aged about 28 years, Occupation: Advocate,
R/o. Plot No. 54 Agney Layout Khamla Pratap Nagar,
Nagpur-22 Currently residing at Plot No.1 Flat No.3
Bhagat Abhirati Apts., Pannase layout, Nagpur-22. .... Petitioner.

///Versus///

Vidya Wd/o Pratap Vaswani (Original Complainant),
Aged about 77 years, Occupation: Household,
R/o. Shri Deshmuk, Rathi Layout, Katol Dist.-Nagpur 441302.
Through her Constituted Power of Attorney
Hitesh Lakhmichand Vaswani, Aged about- 43 years,
R/o Deshmuk, Rathi Layout, Katol, Tah-Katol, Dist.- Nagpur. .... Respondent.

Mr. S.R. Kadam, Advocate for petitioner.
Mr. A.T. Purohit, Advocate a/w Mr. Tufel Sharif, Advocate for respondent.

CORAM : Mehroz K. Pathan, J.
DATE : 14-08-2026.

Oral Judgment

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. The petitioner has approached this Court challenging the order dated 23-03-2023 passed by the Judicial Magistrate First Class, Court No.3 and Special Court under Negotiable Instruments Act, Katol, Nagpur in Summary Criminal Case No.931/2022. Mr. S.R. Kadam, learned counsel for the petitioner submits that the petitioner is not a signatory to the cheque and neither a partner of any firm run by the main accused. The cheque bears the signature of accused no.1 which shows that the petitioner has no connection with

the said cheque which was issued in the name of present respondent/ complainant-Vidya. The respondent/complainant filed the complaint alleging that the accused persons were in need of financial assistance and, accordingly, had obtained an amount of Rs.34,40,900/-. Towards security for the said amount, the accused persons, including the present petitioner, had issued certain cheques, out of which, the present cheque in question bearing No.194215 dated 22-02-2022 to the tune of Rs.2,20,000/- was issued by the accused no.1 Smt. Rajal. The petitioner submits that he is in not responsible for payment of the alleged amount to the complainant. It is further submitted that the respondent has deliberately implicated the petitioner with an intention to wreak vengeance upon the entire family. No specific role, allegation or overt act has been attributed to the present petitioner in the complaint. The learned counsel further relies upon the judgment of the Hon'ble Supreme Court of India in ***Alka Khandu Avhad vs. Amar Syamprasad Mishra and Another,*** reported in **(2021) 4 SCC 675**, wherein the Hon'ble Supreme Court has specifically held that, in a case involving joint liability, a person other than the drawer of the cheque, drawn on an account maintained by him, cannot be prosecuted for an offence under Section 138 of the Negotiable Instruments Act (for short, 'N.I. Act'). He further submits that the issuance of process against the present petitioner is, therefore, an abuse of the process of law and calls for interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

3. The learned counsel for the petitioner further submits that, inadvertently, the petitioner had acted upon the advice of the counsel engaged by him and had earlier preferred a revision before the learned Sessions Judge, Nagpur. However, the said revision came to be withdrawn, unconditionally vide order dated 12-12-2025. The present petition has, therefore, been filed by the petitioner challenging the order issuing process against him. Hence, learned

counsel for the petitioner prays that the present petition be allowed and the impugned order dated 23-03-2023, whereby process has been issued against the present petitioner, be quashed and set aside.

4. As against this Mr. Purohit, learned counsel for the respondent submits that a perusal of the complaint itself would reveal that the complainant has made specific averments with regard to the role played by each of the accused persons and has given the same in detail in the complaint. Even though the cheques were not issued by the petitioner, it is submitted that the petitioner was instrumental in inducing the complainant in delivering the huge amount. The said amount was assured to be returned back by issuing cheque for the amount of Rs.2,20,000/-. The said cheque was deposited by the complainant; however, the same came to be dishonoured. Consequently, after making the necessary compliance and following the procedure, the respondent/complainant filed the complaint against the present petitioner, who happens to be the son of Smt. Rajal, who had issued the cheque. It is, therefore, submitted that the complaint against the present petitioner is maintainable. He relied upon the judgment of the Hon'ble Supreme Court in the case of **S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan**, reported in **(2023) 10 SCC 685**, particularly paragraph 56 thereof, wherein the Hon'ble Supreme Court was pleased to observe that, once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In the present case also, notices were issued to the petitioner as well as to accused No.1, Smt. Rajal. However, the petitioner did not respond to the said notice. It is, therefore, submitted that, by such conduct, the petitioner could be assumed to

be one of the accused persons who had played a major role in inducing the complainant.

5. Mr. Purohit, learned counsel for the respondent, further submits that the complaint was not filed merely for taking action under Section 138 of the N.I. Act, but also alleged commission of other offences under the Indian Penal Code, including cheating, criminal conspiracy, forgery, etc., and appropriate action in respect thereof was also sought in the said complaint. The petitioner being the son of accused no.1, had played a major role in inducing the complainant to deliver such huge amount. Thus, in view of the observations of the Hon'ble Supreme Court in the case of ***S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan*** (supra), the complaint is very much tenable. The Hon'ble Supreme Court has observed that the quashing of the complaint is a serious matter and shall not be interfered with unless a gross case warranting such interference is made out. Hence, the learned counsel submits that the petition filed by the petitioner is devoid of substance and merits and is, therefore, liable to be rejected.

6. Mr. Purohit, learned Counsel for the respondent submits that it was the joint liability of both accused no.1 as well as the present petitioner to pay the aforesaid amount as the petitioner represented the accused no.1- Smt. Rajal and therefore considering the purport of Section 141 of the N.I. Act, the petitioner herein original accused no.2 is also liable for the offence punishable under Section 138 of the N.I. Act with the aid of Section 141 of the N.I. Act. The petitioner would fall within the expression 'other association of individuals' as defined under Section 141(2)(a) of the Negotiable Instruments Act, and would, therefore, be liable to be prosecuted under Section 138 of the N.I. Act. Therefore, in a case involving joint liability, as in the present case where two or more persons are jointly liable, the petitioner would fall within the expression 'other association of individuals'.

Consequently, with the aid of Section 141 of the N.I. Act, the petitioner can be prosecuted and held liable to pay the debt.

7. *Per contra*, a perusal of the complaint shows that, although detailed averments have been made regarding the role played by each of the accused persons, the fact remains that the cheques in question were not drawn or signed by the present petitioner. The petitioner is not shown to be a Director of any such Company. The petitioner and accused No.1, Smt. Rajal, are separate individuals. Merely because the petitioner happens to be a member of the family of accused No.1, Smt. Rajal, he cannot be held liable for the offence under Section 138 of the N.I. Act, particularly in view of the observations made by the Hon'ble Supreme Court in the case of ***Alka Khandu Avhad vs Amar Syamprasad Mishra and another*** (supra). The Hon'ble Supreme Court, in the said case, was pleased to observe as under :-

> *"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*."*

8. The submission of learned counsel for the respondent with regard to the judgment of the Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan*** (supra) can be clearly distinguished, inasmuch as the observations made by the Hon'ble Supreme Court in paragraphs 56 and 57 thereof were in the context of the liability of partners of a company or a partnership firm. In the present case, the petitioner is neither shown to be a partner of any partnership firm nor a Director of any company in which accused No.1, who had issued the cheque in question, is also a member. The petitioner is a separate individual belonging to the family of accused no.1, except for the said relationship there is no other event/act alleged against the applicant which would be sufficient enough to prosecute under Section 138 of the N.I. Act.

9. Section 141 (2)(a) of the N.I. Act reads as under :-

"Section 141(2)(a)- Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that

> *offence and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation.—For the purposes of this section,—*
>
> *(a) "company" means any body corporate and includes a firm or other association of individuals;*
>
> *(b) xxxxx."*

10. Perusal of the aforesaid provision makes it clear that Section 141 of the N.I. Act applies to offences committed by companies. The expression "other association of individuals" occurring in Section 141(2)(a) of the N.I. Act necessarily has to be construed in relation to a company or an association having a legal identity, and not to individual persons merely because they are jointly liable for a debt. In the present case, the petitioner is neither a Director nor a partner of any company or association which issued the cheque. The cheque in question was issued by the mother of the present petitioner. Thus, the petitioner is a separate individual and cannot be treated as a member of an "association of individuals" so as to fall within the definition of "company" under Section 141(2)(a) of the N.I. Act. Furthermore, the petitioner is not a member of any company, nor has any company been arrayed as an accused in the present proceedings. There are also no allegations that any company or association falling within the ambit of Section 141 of the N.I. Act had issued the cheque in question. In the absence of the necessary ingredients for invoking Section 141 of the N.I. Act, the petitioner cannot be prosecuted by taking recourse to the said provision. In such circumstances, in my considered opinion, the continuation of the proceedings against the present petitioner would amount to an abuse of the process of law.

11. Insofar as the submission of learned counsel for the respondent that the complaint has also been filed for taking appropriate action against the applicant/petitioner under Section 420

of the Indian Penal Code (for short, the 'I.P.C.') and other relevant provisions thereof is concerned, it is clear that this Court is dealing only with the impugned order, whereby the learned Trial Court has issued process against the petitioner under Section 138 of the N.I. Act. Insofar as the remaining prayers made by the complainant/respondent for the action under Section 420 and other relevant sections of the I.P.C. are concerned, the complainant/respondent can take appropriate steps for pursuing such action for the remaining prayers made in the complaint.

12. Perusal of the impugned order passed by the learned Judicial Magistrate First Class, Court No.3 and Special Court under Negotiable Instruments Act, Katol, Nagpur, would reveal that the learned Trial Court has failed to apply its mind to the fact that the petitioner is neither a member of any company nor a partner of any partnership firm, and is also not a signatory to the cheques issued by Smt. Rajal. The impugned order, therefore, appears to have been passed mechanically and without proper application of mind. The same is, therefore, liable to be quashed and set aside.

13. In view of the observations made by the Hon'ble Supreme Court in ***Alka Khandu Avhad v. Amar Syamprasad Mishra and Another*** (supra), I am inclined to exercise the discretion under Article 226 of the Constitution of India. Hence, I proceed to pass the following order:

ORDER

(i) The Writ Petition is allowed.

(ii) The impugned order dated 23-03-2023 passed by the Judicial Magistrate First Class, Court No.3 and Special Court under Negotiable Instruments Act, Katol, Nagpur in Summary Criminal Case No.931/2022, is hereby quashed and set aside.

(iii) The respondent/complainant is at liberty to pursue the remedy in respect of the remaining prayers made in the complaint before the concerned learned Magistrate.

14. The Writ Petition is accordingly disposed of in the aforesaid terms.

(Mehroz K. Pathan, J.)

Deshmukh