IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2961 OF 2024

1) Shri. Sudhir Sharadchandra Gandhi Age: 54 Years, Occ. Business R/o. B-23, A, Avanti Nagar, Solapur.	]]]]	
2) Shri. Sadik Maulali Pathan Age: 43 years, Occu. Business R/o. Plot No. 80, Mantri Chandak Estate, Hotagi Road, Solapur.	]]]]	
3) Shri. Mallikarjun Lingappa Advani, Age: 51 years, Occu. Business R/o. 4, Datta nagar, near Kumthekar Hospital, Solapur.	]]]]	… Petitioners

<u>Versus</u>

1) Shri. Prashant Abasaheb Deshmukh Age: 53 years, Occu. Business, R/o. 28, Shradha Empire, Railway Line, Solapur.	]]]]	
2) Shri. Sudarshan Satendra Ayagole Age: 42 years, Occu. Business R/o. Flat No. 3, Raghunandan Apartment, behind Kinara Hotel, Hotagi road, Solapur.	]]]]]	
3) The State of Maharashtra Through office of Public Prosecutor High Court Bombay	]]]	… Respondents.

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Mr. Hrishikesh Sopan Shinde, Advocate for Petitioners.

Mr. Vikrant Vishwanath Phatate, Advocate for Respondent No. 1.

Mr. Hrishikesh M. Khupsare i/by Mr. Milind Harhare for Respondent No. 2.

Ms. Mahalakshmi Ganapathy, Additional P.P., for Respondent No. 3-State.

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CORAM : ABHAY J. MANTRI, J.
DATE : AUGUST 14, 2026

ORAL JUDGMENT :

1. Heard. ***Rule.*** Rule made returnable forthwith and heard finally with the consent of the learned Advocate appearing for the Petitioners, the learned Advocates appearing for Respondent Nos. 1 and 2, and the learned APP for the State. Perused the record and the judgment relied upon by the learned Advocate for the Petitioners.

2. Feeling aggrieved and dissatisfied with the Judgment and Order dated 10th August, 2023, passed by the learned Additional Sessions Judge, Solapur, in Criminal Revision Application No. 38 of 2022, whereby the order of issuance of process dated 20th December, 2021 passed by the learned Judicial Magistrate First Class, Solapur below Exhibit-1 in S.C.C. No. 6755 of 2021, issuing process against the Petitioners and Respondent No. 2 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, ***"the N. I. Act"***), was confirmed, the Petitioners have preferred this Writ Petition.

3. Mr. Prashant Abasaheb Deshmukh, Respondent No. 1, filed a complaint against the Petitioners and Respondent No. 2, seeking issuance of process against them for the offence punishable under Section 138 of the N. I. Act. The said complaint was registered as SCC No. 6755 of 2021.

4. Respondent No. 1 alleged that, on account of business transactions, there was a dispute between him and the Petitioners and Respondent No. 2. Therefore, he had instituted Special Civil Suit No. 201 of 2017 against the Petitioners and Respondent No. 2, seeking recovery of Rs. 50,00,000/- along with interest. In the said suit, the parties, i.e., the Petitioners and Respondent Nos. 1 and 2, arrived at a settlement and filed the Compromise pursis/ consent terms before the learned Civil Judge, Senior Division, Solapur. By filing the consent terms, the Petitioners and Respondent No. 2 agreed to be jointly and severally liable for payment of Rs. 1,00,00,000/- to Respondent No. 1. Pursuant to the said Compromise pursis, Respondent No. 2 had issued one cheque of Rs. 12,50,000/- in favour of Respondent No. 1-Prashant. The said cheque was dishonoured. Therefore, Respondent No. 1 issued notices to Respondent No. 2 as well as the Petitioners and filed the case bearing S.C.C. No. 6755 of 2021 against them.

5. The learned JMFC, Court No. 3, Solapur, after considering the material on record, issued process against Respondent No. 2 and the Petitioners for the offence punishable under Section 138 of the N. I. Act. Being aggrieved by the said order, the Petitioners have preferred Criminal Revision Application No. 38 of 2022 before the learned Sessions Court. The learned Additional Sessions Judge, Solapur, after considering the material on record, by order dated 10th August, 2023, rejected the said Revision

Application and confirmed the order passed by the learned Magistrate. Disgruntled by the same, the Petitioners have preferred this Writ Petition.

6. Learned Advocate for the Petitioners vehemently contended that the Petitioners are neither signatory of the cheque in question, nor was the said cheque issued from their bank account but was issued from the personal savings bank account of Respondent No. 2. Therefore, the question of fastening of liability on the Petitioners for encashment of the cheque does not arise. The responsibility for issuance of the said cheque was only that of Respondent No. 2. He further contended that, though the Compromise pursis was filed before the learned Civil Judge, Junior Division, that does not mean that the Petitioners are liable or responsible for issuance of the cheque in question, as the same was issued from the personal saving Bank account of Respondent No. 2. Therefore, no criminal liability can be attracted against the Petitioners. As such, he urged that the order passed by the learned JMFC for issuance of process against them, as well as the order passed by the learned Additional Sessions Judge, are contrary to the settled position of law and are liable to be quashed and set aside.

7. To buttress his submission, he has placed reliance on the Judgment of the Hon’ble Supreme Court in ***Alka Khandu Avhad Vs. Amar Syamprasad Mishra and another***[1] (for short, ***‘Alka’)*** and drew my attention to paragraph Nos. 9 and 10 of the said decision and submitted that, in view of

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the law laid down in the said decision, issuance of a cheque from a personal account of Respondent No. 2 does not fasten joint liability upon Petitioners. As such, he urged that the Petition be allowed.

8. Learned Advocate for Respondent No. 1 strenuously opposed the Petition, contending that, in view of the Compromise pursis, the Petitioners are also jointly and severally liable for the issuance of the cheque by Respondent No. 2 in favour of the Respondent No.1 and, therefore, the orders passed by the learned JMFC and confirmed by the learned Additional Sessions Judge, Solapur, are just and proper and requires no interference. He drew my attention to paragraph No. 1 of the Compromise pursis and the signatures thereon. He submitted that the Petitioners, with Respondent No. 2, have jointly and severally admitted their liability to pay the amount of Rs. 1,00,00,000/- to Respondent No. 1 and, therefore, he urged for dismissal of the Petition.

9. Learned Advocate for Respondent No. 2 adopted the argument of learned Advocate for Respondent No.1 and further submitted that the learned Additional Sessions Judge, in paragraph No. 19, has dealt with the controversy arising between the parties and rightly held that the Petitioners are also liable to pay the amount in question and, therefore, issuance of process against them is just and proper. Hence, he urged for dismissal of the Petition.

10. It is pertinent to note that, during the course of arguments, on a query put to learned Advocate for Respondent No. 2, he fairly submitted that the cheque in question was issued by Respondent No. 2 from his personal saving Bank account and not from the joint account of the Petitioners and Respondent No. 2. Similarly, he admitted that no partnership firm is/was in existence consisting of the Petitioners and Respondent No. 2.

11. Having heard the rival contentions of the parties and having gone through the record, a moot question arises for consideration:

"*Whether the Petitioners can be held jointly liable and responsible for the dishonour of the cheque drawn by the Respondent No. 2 on an account maintained by him, and the cheque was issued for the discharge, in whole or part, of any debt or liability*?"

12. At the outset, admittedly, the cheque in question was issued by Respondent No. 2 from his personal account maintained by him and not from the account jointly maintained by the Petitioners and Respondent No. 2. Similarly, as per the submissions of the learned Advocate for Respondent No. 2, undisputedly no partnership firm is/was in existence between the Petitioners and Respondent No. 2.

13. On perusal of the Compromise pursis, it reveals that, in paragraph No. 1, the Petitioners and Respondent No. 2 jointly and severally admitted that they are liable to pay Rs. 1,00,00,000/- to Respondent No. 1.

However, in paragraph No. 2 of the consent terms, it is only mentioned that Respondent No. 2 - Sudarshan had issued a cheque of Rs. 12,50,000/- in favour of Respondent No. 1 from his personal bank account maintained by him. Nowhere is it mentioned that the said cheque was issued by him on behalf of the Petitioners, or for payment of the amount on their behalf or issued the same to discharge the joint liability with the Petitioners. Therefore, it does not appear from the consent terms/Compromise Pursis that the Petitioners are liable and responsible for the issuance of the cheque by Respondent No. 2 from his personal Bank account maintained by him in favour of Respondent No. 1. Therefore, I do not find substance in the argument advanced by learned Advocates for Respondent Nos. 1 and 2 that the said cheque was issued by Respondent No. 2 towards the joint liability of the Petitioners also, as nowhere in the consent terms the same is mentioned. Therefore, the averments in the consent terms do not support the contention of Respondent Nos. 1 and 2.

14. Apart from that, as per the dictum laid down by the Hon'ble Supreme Court in ***Alka** (supra)*, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him, and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability. The said cheque has been returned unpaid by the bank; such person can be said to have committed an offence under Section 138 of the

N. I. Act. It does not speak about the joint liability of other persons. Even in the case of joint liability, in case of individual persons, a person other than the person who has drawn the cheque on the account maintained by him cannot be prosecuted for the offence punishable under Section 138 of the N. I. Act. ***A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and he was a signatory to the cheque.***

15. That being so, having considered the facts in the case at hand, it appears that the learned Trial Court as well as the Revisional Court have not considered the settled legal position and have erred in holding that the Petitioners are also jointly and severally liable in respect of issuance of the said cheque in question and in passing the order issuing process against them. As such, it cannot be said that Petitioners can be held jointly liable and responsible for the dishonour of cheque drawn by the Respondent No. 2 on an account maintained by him. Hence I answer the point/question in the negative.

16. In such an eventuality, and in view of the law laid down by the Hon'ble Supreme Court in the case of ***Alka*** *(supra),* the said order cannot be sustained in the eyes of law and is liable to be quashed and set aside.

17. As a result, ***the Petition is allowed in terms of prayer clause (b).***

18. Accordingly, the order of issuance of process passed by the learned J.M.F.C., Court No. 3, Solapur, below Exhibit-1 in S.C.C. No. 6755 of 2021, and confirmed by the learned Additional Sessions Judge, Solapur, in Criminal Revision Application No. 38 of 2022, vide order dated 10th August, 2023, are hereby quashed and set aside, to the extent of Petitioners/Original Accused Nos. 2 to 4 only.

19. Rule is made absolute in the above terms.

20. The Registry is directed to inform the Trial Court accordingly.

21. The Petition stands ***disposed of*** with no order as to costs.

(ABHAY J. MANTRI, J.)

TALLE SHUBHAM ASHOKRAO

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Date: 2026.08.18 14:29:53 +0530