



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

CRIMINAL WRIT PETITION NO. 312 OF 2026

1. Shyamsunder S/o Shivnarayan Sarda
Aged 63 years, Occ: Business,
R/o 114-1, Shivaji Ward, Bhandara
2. Surendramohan S/o Mangaldas
Chadda,
Aged 65 years, Occ: Business,
R/o Shivaji Ward, Station Road,
Bhandara

...Petitioners

// VERSUS //

1. Basant Bhikamchand Kela
Aged 42 years, Occu. : Business,
R/o Plot No. 21, Shop No. 4,
Radhakrishnan Apartment,
Wardhaman Nagar, Nagpur
2. Manoj Shrikrishan Maheshwari,
Aged 62 years, Occu. Business
R/o Sheikh Colony, Beside Reliance
Petrol Pump, Mother Terresa Marg, Raj
Nagar, Nagpur

... Respondents

Shri M.R.Joharapurkar, Advocate for the petitioner.
Shri D.V.Mahajan, Advocate for the respondent no.1.
Ms. Ritu P.Jog, Advocate for the respondent no.2.

CORAM : MEHROZ K. PATHAN, J.
DATED : 12th AUGUST, 2026.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By way of present petition, the petitioners are challenging the order dated 01.02.2020 passed by the learned 19th Joint Civil Judge, Senior Division, Nagpur and ACJM (Special 138 of NI Act), Nagpur issuing process against the petitioners including other Director for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred as 'N.I. Act') . The said order dated 01.02.2020 came to be challenged before the learned District Judge-21 and Additional Sessions Judge, Nagpur and learned Sessions Judge by its order 06.03.2026 has dismissed the revision.

3. Petitioners Shri Shyamsunder Sarda and Shri Surendramohan S/o Mangaldas Chadda are thus before this Court challenging orders passed by the Revisional Court as well as trial Court issuing process under Section 138 of N.I.Act.

4. Shri Joharapurkar, learned counsel for the petitioners submits that the complaint is filed by the complainant without giving necessary details that the Directors had signed the cheque. The complaint also lacks in the necessary averments about the role played by each of the Director

in day to day affairs of the company. There is general averment made by the complainant that all Directors are responsible for the day to day affairs of the company.

5. Shri Joharapurkar, learned counsel further submits that presently Shri Shyamsunder Sarda as well as Shri Surnedramohan Chadda had already resigned from the post of Directors in the year 2008 and necessary information was already submitted to the Registrar of the Company. Form No. 32 of the Registrar of the Companies was updated by recording the resignations of both the petitioners on 25.10.2008. Learned counsel for the petitioners further submits that the said information was also notified in the website of the Ministry of the Corporate Affairs wherein information dated 28.01.2021 shows that the date of cessation of the membership of the present applicants in the company of Shivmangal Ispat Private Limited as on 25.10.2008. He further submits there is total non application of the mind by the learned trial Court in issuing the process mechanically. There is no discussion by the learned trial Court as to the role of each Director whether they have signed the disputed cheque or not and hence impugned order issuing process without recording satisfaction, is liable to be quashed and set

aside. He further submits that Revisional Court also failed to take into consideration the specific grounds raised by the petitioners herein about the non mentioning of the roles of each of the Director in the complaint. Absence of the necessary averments in the complaint was required to be dealt with specifically when the grounds were raised to that effect by the petitioners. Learned Revisional Court has only recorded one of the grounds of the Form No. 32 raised by the petitioners and has rejected revision on the ground that the said Form No. 32 is not supported by certificate under Section 65-B of the Evidence Act. Impugned orders are thus erroneous, illegal, hence calls for interference of this Court under its extra ordinary and supervisory jurisdiction under Articles 226 and 227 of the Constitution of India.

6. As against this Shri Mahajan, learned counsel for the respondent no.1 strongly opposed the petition on the ground that the petitioners were the Director of the said company. Apart from Form No. 32, petitioners have failed to show any such proposal for resignation from the company, was moved by them and accepted by the company. There is no resolution of the Board of Directors of the Company brought on record to show that the petitioner's resignation was accepted by the

Company. Merely relying upon the downloaded copy of Form No. 32 from the Registrar of the Company was not sufficient enough. He further relied upon the judgment of Division Bench of this Court in the case of Suhas Bhand Vs. State of Maharashtra and others reported in 2009 SCC Online Bom 1245 to submit that the petitioners ought to have submitted atleast a certified copy from the Registrar of the Company and also should have placed the resolution of the Board of Directors on record. The learned trial Court after verifying the complaint had found that all the Directors are responsible for the day to day affairs of the company and has rightly issued the process under Section 138 of N.I.Act. He further submits that learned Revisional Court has also taken into consideration the submissions made by the petitioners that they ceased to be the Directors of the Company and have found that mere submissions on the basis of downloaded copy of Form No. 32 issued by the Registrar of the Company would not be sufficient enough to claim that the petitioners ceased to be Directors of the Company. The Revisional Court has rightly stated that the absence of certificate under Section 65-B of the Evidence Act, the Form No. 32 ought to be relied by the petitioners, have no value

in the eyes of law and has rightly rejected the revision passed by the petitioners.

7. Shri Mahajan, learned counsel for the respondent no.1/complainant submits that the unsupported and unverified documents from the registrar of the company were filed for the first time before the Revisional Court and hence, the revisional court was right in rejecting the same. The petitioners being Directors of the company is liable to be prosecuted under Section 138 read with Section 141 of N.I.Act. Hence, the complaint against the petitioners is therefore maintainable. He therefore prays for maintaining the order dated 01.02.2020 passed by the learned trial Court as well as order dated 06.03.2026 passed by the learned Revisional Court by issuing process against the petitioners and prays for dismissal of the writ petition.

8. I have gone through the judgment dated 01.02.2020 passed by the learned Civil Judge, Senior Division, Nagpur and ACJM (Special 138 of NI Act), Nagpur whereby learned trial Court has issued process for an offence punishable under Section 138 of N.I.Acts. I have also gone through the judgment dated 06.03.2026 by which the revision filed by the petitioners herein came to be rejected by the learned Additional

Sessions Judge, Nagpur. The perusal of the order dated 01.02.2020 would show that the same is cryptic non reasoned order and it appears to have been passed merely relying upon the complaint and the statement of the complainant recorded under Section 200 of Code of Criminal Procedure and smacks of non application of mind to the averments in the complaint. The petitioners herein have filed the revision application before the learned District and Sessions Judge, Nagpur, challenging the aforesaid order dated 01.02.2020, thereby making a specific claim that the petitioners are no more Directors of the accused company from 25.10.2008 and that the form no. 32 was already presented before the Registrar of the Company and Ministry of Corporate affairs. It was further stated that the petitioners are neither Directors of Shivmangal Ispat Private Limited nor Sharda Shri Ispat Limited and there is no question of committing any offence on the part of the petitioners. Hence, prayed for setting aside of the order of issuance of the summons by the learned trial Court.

9. The petitioners relied upon form no.32 and the information downloaded from the website of the Ministry of the Corporate Affairs to show that the petitioners have ceased to be Directors of the company

Shivmangal Ispat Private Limited from 25.10.2008 and the further data from the website shows that Shivmangal Ispat Private Limited is registered with the Registrar of the Companies and Nitin Maheshwari and Deviki Karnani are shown to be Directors of the said company. Respondent/complainant though opposed the said contention that the petitioners have resigned from the company as a Director, however, the respondent/complainant has failed to submit any contrary document to show that the petitioners have not resigned from the company and were still managing the day-to-day affairs of the company.

10. Perusal of the judgment of Hon'ble Supreme Court in the case of Kamalkishor Shrigopal Taparia Vs. India Ener-Gen Private Limited and another reported in 2025(7) SCC 393, would show that the Hon'ble Supreme Court after considering the various precedents were pleased to hold that mere resignation of the Director does not conclusively establish the liability under Section 138 read with Section 11 of the N.I.Act. The liability is contingent upon specific allegations demonstrating the Director's active involvement in the company's affairs at the relevant time when the cheque was issued. The Hon'ble Supreme Court further relied upon the record and submissions of the parties and

was pleased to hold that the appellant therein was neither a signatory to the dishonoured cheques nor was he actively involved in the financial decision-making of the company. Moreover, the appellant herein had resigned from the post of independent non-executive director, duly notified through Form DIR-11 and DIR-12 to the Registrar of Companies. The petitioners herein have also resigned on 25.10.2008. That the said information was also notified in the website of the Ministry of the Corporate Affairs wherein information dated 28.01.2021 shows that the date of cessation of the membership of the present applicants in the company of Shivmangal Ispat Private Limited as on 25.10.2008.

11. The Hon'ble Supreme Court in the case of K.S. Mehta Vs. Morgan Securities and Credits Pvt. Ltd. reported in 2025 SCC Online SC 492 was pleased to observe as under:

“18. The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such attendance does not automatically translate into control over financial operations.”

12. In the present case also, the complainant has made only general averments that all the accused persons are responsible for day-to-day affairs of the company. However, the complainant has failed to disclose the specific role of each of the accused persons demonstrating the petitioner's active involvement in the Company's affair at the relevant time. Thus, for want of necessary ingredients in the complaint as well as in view of the law laid down by the Hon'ble Supreme Court in the aforesaid judgment, a case is made out for interference of this Court under its extra ordinary jurisdiction. The lack of specific allegations as against each of the petitioners who have already resigned on 25.10.2008 and the law laid down by the Hon'ble Supreme Court, the continuation and proceedings would amount to abuse of process of law, I am thus inclined to pass the following order.

ORDER

- i. Writ petition is allowed;
- ii. Impugned order dated 01.02.2020 passed by the learned 19th Joint Civil Judge, Senior Division, Nagpur and ACJM (Special 138 of NI Act), Nagpur in Criminal Complaint Case No. 30065 of 2019 issuing process is hereby quashed and set aside, only as against the petitioners.

- iii. Impugned order dated 06.03.2026 passed by the the learned District Judge-21 and Additional Sessions Judge, Nagpur in Criminal Revision No. 459 of 2021, is hereby quashed and set aside.
- iv. The complaint as against the present petitioners namely Shyamsunder S/o Shivnarayan Sarda and Surendramohan S/o Mangaldas Chadda stands dismissed. The complaint as against the other accused persons may proceed on its own merits.
- v. Since the complaint is filed in the year 2019, the learned trial Court is directed to make an endeavour to complete the trial as expeditiously as possible and not beyond the one year.

Rule is made absolute in the aforesaid terms.

[MEHROZ K. PATHAN, J.]