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

CRIMINAL WRIT PETITION NO. 4384 OF 2016

1 Dr. Sagar Raghunath Phatkare … Petitioner
BAMS, Aged – 41, Doctor,
Shree Clinic, Moghe Complex,
Shivaji Chowk, Devrukh,
Taluka – Sangameshwar, Dist. Ratnagiri

Versus

1. Smt. Nandini Ashok Rao
Housewife, At Post – Devrukh,
Taluka – Sangameshwar, Dist. Ratnagiri

2. The State of Maharashtra … Respondents

WITH
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Adv. S. C. Mangle a/w. Adv. Ashitosh S. Jambilkar for the Petitioner.
Adv. S.S. Chaudhari, A.P.P. for the Respondent-State.

Coram : RANJITSINHA RAJA BHONSALE, J.

Reserved on : 8th May 2026.

Pronounced on : 29th June 2026.

JUDGMENT :

1. By the present three Petitions filed under Article 227 of the Constitution of India and Section 482 of the Criminal Procedure Code (for short, "Cr.P.C.") (now 528 BNSS) the Petitioner seeks to quash and set-aside the Orders all dated 21st July 2016 passed by the learned Judicial Magistrate First Class, Devrukh, in S.C.C. No. 163 of 2016, S.C.C. No. 164 of 2016 & S.C.C. No. 165 of 2026.

2. Record indicates that the Respondent No.1 (original complainant) has been duly served. Though served, the Respondent No.1 did not appear. In order to give an opportunity to the Respondent No.1 to appear and be represent, the matter was adjourned on 13th March 2026. On 16th March 2026, when the matter was called out Advocate Ms. Neha G. Deshpande appeared and undertook to file Vakalatnama on behalf of the Respondent No.1 on or before 27th March 2026. As the Vakalatnama was not received and filed within stipulated time, this Court by order dated 7th April 2026, in order to grant an opportunity to the Respondent No.1 to appear, adjourned the matter to 30th April 2026.

3. On 30th April 2026, none appeared for the Respondent No.1. The matter was heard and adjourned to 7th May 2026 for further consideration. On 7th May 2026 once again the Respondent No.1 chose not to appear.

4. By an Order dated 5th January 2017, this Court was pleased to stay the proceeding before the learned Judicial Magistrate, First Class, Devrukh, Ratnagiri. Considering the fact that (i) the Petition is of the year 2016, (ii) the Respondent No.1 though served has chosen not to appear in the matter and/or (iii) the lawyer for the Respondent No.1, who despite of the undertaking to file Vakalatnama could not do so due to not receiving instructions, the hearing of the matter was proceeded with.

5. The question which arises in the aforesaid Petitions is common and therefore all the Writ Petitions are heard together and being disposed of by the common Judgment.

6. Certain facts that would be necessary to consider the issues involved in the present Petitions are as under :

6.1. In the year 2015, the Petitioner allegedly borrowed loan of Rs.18,00,000/- from the husband of the Respondent No.1 i.e. Ashok Rao. For the repayment of the said loan, the Petitioner issued three cheques i.e. (a) Cheque No. 002749, dated 10th February 2016, drawn on the Bank of India, for an amount of Rs.6,00,000/-, (b) Cheque No. 122826, dated 10th February 2026, drawn on the Bank of Maharashtra for an amount of Rs.6,00,000/- and (c) Cheque No. 002748, dated 12th February 2016, drawn on the Bank of India, Branch Devrukh, for an amount of Rs.6,00,000/-.

6.2. The said Mr. Ashok Rao expired on 25th February 2016. The Respondent No.1 deposited the aforesaid three cheques on 16th April 2016 with the Janata Sahakari Bank Limited Pune, Branch Devrukh, where the Respondent No.1 held a joint account with her late husband Mr. Ashok Rao. That, the cheques were returned by the bank on 20th April 2016 dishonored with a remark “funds insufficient”.

6.3. The Respondent No.1 issued a demand notice dated 18th May 2016 in connection with the said dishonored cheques. On 19th May 2016, the Petitioner received the demand notices. On 1st July 2016, the Respondent No.1 filed complaints bearing S.C.C. No. 163 of 2016, S.C.C. No 164 of 2016 & S.C.C. No 165 of 2016 respectively, before the learned Judicial Magistrate First Class, Devrukh, District Ratnagiri.

6.4. By orders dated 21st July 2016, the learned Judicial Magistrate First Class, Devrukh, District Ratnagiri was pleased to issue process against the Petitioner in all the complaints for an offence punishable under Section 138 of The Negotiable Instruments Act, 1881 (for short, "N.I. Act"). The Petitioner seeks to challenge the said orders of issuance of process.

7. Mr. Mangle, learned Advocate appearing for the Petitioner submits that:-

7.1 It is an undisputed fact that, the cheques were given in the name of late Mr. Ashok Rao, who is the husband of the Respondent No.1. That, the cheques were admittedly deposited in the bank, after the death of Mr. Ashok Rao and were subsequently dishonoured.

7.2. Under the provisions of N.I. Act, a notice for dishonor under Section 138 can be issued only at the instance of a "payee" or a "holder in due course" as is contemplated under the provisions of N.I. Act. That, Respondent No.1 cannot be termed as a "payee" and or a "holder in due course" and for that reason, the proceedings under Section 138 of N.I. Act were not maintainable.

7.3. The Respondent No.1 could not have initiated the proceedings under Section 138, as the original cheques were issued in the name of her husband and admittedly, it is not pleaded in the complaints or in the notices that the cheques were endorsed for valuable consideration. In view of the aforesaid facts, the complaints as filed ought not to have been entertained.

7.4. It was open for Respondent No.1 to initiate civil proceedings under the law, as advised for recovery of the said amount, as the legal heir of the late Mr. Ashok Rao. That, even for claiming the recovery of the said amount, it would have been necessary for the Respondent No.1 to have the heirship certificate or a succession certificate or a probate, as the case may be, to establish her relationship and right with Mr. Ashok Rao for being a original payee.

7.5. There is no order from the competent Civil Court in favour of Respondent No.1, declaring her to be the legal heir of the original payee, the complaints at the behest of Respondent No.1 for an offence punishable under Section 138 of N.I.Act would not be acceptable.

8. As stated herein above, the learned Advocate for the Respondent No.1 though served has not filed the Vakalatnama nor appeared in the matter.

9. Mr. S. S. Chaudhari, learned A.P.P. appearing for Respondent No.2, submits that, admittedly the money has been taken by the Petitioner. That, it is his duty to repay the amounts. That, considering the interest of justice, appropriate orders may be passed. She further submits that Respondent No.2 is a formal party and leaves the matter to the discretion of this Hon'ble Court.

10. Considering the above submissions, it would first be necessary to consider the provisions of the Negotiable Instrument Act (N.I. Act) and the rights of the parties to initiate the proceedings under Section 138 of N.I. Act.

11. Sections 7, 8, 9, 138 & 139 of N.I. Act are required to be considered. The sections are reproduced, herein below for convenience and read as under:-

> **Section 7: "Drawer" and "Drawee" –** The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".
>
> *"7. **"Drawee in case of need": -** When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".*
>
> ***"Acceptor". -** After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".*
>
> ***"Acceptor for honour". -** When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".*
>
> ***"Payee". -** The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "Payee".*

Section 8: "Holder". - *The "holder" of promissory note, bill or exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.*

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

Section 9: "Holder in due course". - *"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.*

Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account. - *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of* *the cheque, or with both:*

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

*139. **Presumption in favour of holder.**— It shall be presumed, unless the contrary is proved, that 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."*

12. Perusal of the provisions of N.I. act would indicate that under Section 7, the term "payee" is defined to be the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid. Section 8 defines "Holder" to mean the holder of a promissory note, bill or exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. It is further provided that, where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. Section 9 of N.I. Act defines the term "Holder in due course" to mean any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

13. Section 138 provides for dishonor of cheque for insufficiency, etc., of funds in the account. It is provided that, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Clause (a) of the proviso to Section 138 provides that, nothing in the section would apply unless the cheque has been presented to the bank within six months from the date on which it is drawn or within the period of its validity whichever is earlier. Clause (b) of the proviso specifically states that, the provisions of Section 138 of N.I. Act shall not apply unless the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Clause (c) of the proviso to Section 138 specifically states that, the provisions of Section 138 of the N.I. Act shall not apply unless the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. The provisions of the Section 138 of the Act would be applicable to a debt or other liability which is legally enforceable or other liability.

14. A perusal of Section 138 clearly indicate that a complaint under Section 138 would be initiated only by the payee or the holder in due course. In the present case, the Respondent No.1 is neither the payee nor the holder in due course. The perusal of the complaint filed under Section 138 by the

Respondent No.1 indicates that, there is no pleadings to the said effect. The Respondent No.1 in the complaint, in paragraph No.4, has only stated that the cheques were given in the name of the husband of the Respondent No.1. In paragraph No.6 of the complaint, it is stated that the husband of the Respondent No.1 expired on 25th February 2016. The cheques have been deposited on 16th April 2016. In the complaint, Respondent No.1 has not stated that, she was the "payee" or the "holder in due course". There is no endorsement on the said cheques or otherwise even in the notice dated 17th May 2016.

15. Perusal of the order(s) of issuing process dated 21st July 2016 read as under :

> ***"Order below Exh.1 in S.C.C. No.163/2016***
>
> *Read complaint and statement of complainant on oath below Exh.2 by way of affidavit. Perused the documents on record. Heard Learned Adv. Sulochana D. Kinare for complainant. The complainant has made out prima facie case that accused has issued cheque bearing cheque no.002749 in his favour and it was dishonoured for want of funds in the account of the accused. The complainant has thereafter issued notice to the accused within stipulated period and demanded the cheque amount and the notice is served on accused on the date 19.5.2016 and thereafter, accused has failed to pay cheque amount to complainant within stipulated time. So, complainant has made out prima facie case against accused for the offence p/u/s.138 of Negotiable*

Instruments Act, 1881. Hence I pass the following order : -

-:ORDER:-

Issue process against accused Sagar Raghunath Fatkare, R/o.Guravwadi road, Middle Lane, Devrukh, Tal. Sangmeshwar, Dist.Ratnagiri for the offence

p/u/s. 138 of Negotiable Instruments Act on P.F. r/o.

Sd/-

Devrukh *(S.N. Sarde)*

Date : 21/07/2016 *J.M.F.C., Devrukh"*

That, in S.C.C. Nos. 164 of 2016 and 165 of 2015, same order is passed except the number of cheque i.e. Cheque Nos. 122826 & 002748.

16. A *prima facie* perusal of the order(s) would indicate that, the order(s) proceed on a completely incorrect premise that, the cheques were issued in favour of the complainant and it is only for want of funds that, the accused has failed to pay cheque amount to the complainant and therefore, a prima facie case against the accused for the offence punishable under Section 138 of N.I. Act has been made out. On the basis of the said reasons, the process has been issued.

17. Perusal of the order would *prima facie* indicate that the question, as to, whether the complainant was the "payee" or the "holder in due course" has not even been considered or gone into by the learned Judicial Magistrate First Class, Devrukh. The order has proceeded on the basis that, the cheques have been issued in the name of the complainant.

18. The rebuttal presumption under Section 139 of the NI Act is that, it is presumed unless the contrary is proved is that the holder of the cheque received the cheque for discharge of whole or any part of any debt or other liability. I note here that, the said presumption is in favour of the holder of the cheque. The term “holder” is defined under Section 8 to mean, any person entitled in his own name to the possession of the cheque and to receive or recover the amount due thereon from the parties. In case of the loss or destruction of the cheque, it is again the holder of the cheque who is entitled to make a claim. A conjoint reading of Section 139 and Section 8 would indicate that the presumption of receiving a cheque in discharge in whole or part of any debt or other liability is in favour of the holder.

19. Section 142 of N.I. Act deals with cognizance of offences and begins with a non obstante clause. Under clause (a) of Section 142, it is specifically provided that no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. In other words, Section 142 (1)(a) prescribes a eligibility criterion for taking cognizance of the offences under the said Act. The N.I. Act being a special statute, under Section 142 prescribes the manner in which cognizance of an offence can be taken. The NI Act, a special statute prescribes for the manner and the procedural aspect and the section begins with an non obstante clause. Considering the said provisions it would be necessary for the courts to take cognizance of the offence and the liability as per criterion prescribed by the statute and to ensure that, the same is complied and satisfied with in letter and spirit.

20. In this regard it would also be necessary to refer to the Judgment of this Court (Aurangabad bench) passed in Vishnupant s/o Chaburao Khaire Vs. Kailas S/o Balbhir Madan in Criminal Writ Petition No. 842 of 2009 dated 25th January 2010 has observed that :-

> *"**27.** The present Respondent complainant is not the person named in the instrument nor he is a person to whom or to whose order money by the instrument is directed to be paid. Admittedly, there is no endorsement on the cheque by the deceased payee in favour of the Respondent complainant. So, it is not that the amount under the instrument was directed to be paid to him. The holder in due course is defined as the person who for consideration is entitled to the possession of the bearer cheque or payee or endorsee thereof. It is submitted that as a legal representative of the deceased payeefather, the respondent complainant, is entitled to possession of the valuable security/movable property left by his deceased father and also to receive or recover the amount thereunder. It is not disputed that the complainant could have filed a civil suit on the basis of the dishonoured cheque for recovery of the amount stated in the said cheque. The*

question is whether the respondent complainant could file complaint in view of specific wording of Section 142(a). It is argued that the respondent complainant has not become possessor of the property for consideration, but it is because of death of his fatherpayee. He is also not endorsee.

28. *If we consider the scheme of Chapter XVII of the N.I.Act regarding penalties in case of dishonour of certain cheques for insufficieny of funds in the account, it is clear that under proviso (b) to Section 138 of the N.I.Act the payee or the holder in due course of the cheque, as the case may be, is to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within [thirty] days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. As per proviso (c), if the drawer of such cheque fails to make payment of the amount due under the cheque to the payee or to the holder in due course as the case may be within fifteen days of receipt of notice, then the offence is complete. It may be noted that this requires that the person demanding the amount must have right to demand the money and secondly, he must be in a position to give full discharge to the person who is to make the payment. If a person to whom payment is to be made is not in a position in law to give full discharge and indemnity for payment made, nonpayment to him cannot be an offence.*

29. *We may refer to certain provisions of the Succession Act in this respect. Section 211 speaks that the executor or administrator, as the case may be, of a deceased person is his* *legal representative for all purpose, and all the property of the deceased person vests in him as such. Section 273 of the Succession Act is regarding conclusiveness of probate or letters of administration. As per this section, probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the [State] in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted. Similarly, under Section 381, succession certificate with respect to debts and securities specified therein, is conclusive as against person owing such debts or liable on such securities and affords full indemnity to all persons as regards all payments made or dealings had, with the person to whom the certificate is granted. In other words, only in case the legatee or heir is armed with succession certificate or probate or letters of administration, he would be entitled to give full discharge and indemnity to the drawer of the cheque. Unless he can give such indemnity it cannot be said that he has authority to issue notice and non payment of amount mentioned in the notice within 15 days is an offence.*

30. *By demise of payee itself, it cannot be said that any of the heirs or legatees get right to issue notice under proviso (b) to Section 138 of the N.I. Act and then lodge a complaint* *under Section 142 (a) of the said Act as if he automatically enters into the shoes of the deceased payee.*

31. *When we consider the rights of the heirs or legatees to recover the amount of debt and securities of the deceased, we must also recognize right of the debtor and person holding security to have full indemnity and full discharge in case he makes payment to such legal heir or legatee. We find such indemnity and full discharge of liability provided to maker, acceptor or endorsee respectively of a negotiable instrument on payment under Section 82 of the N.I.Act.*

32. *So in my considered opinion, only a person who is authorized by succession certificate, letters of administration or probate granted by the court, is entitled to call upon the drawer to pay the amount of dishonour cheque, by issuing notice under proviso(b) of to Section 138 of the N.I.Act and he would be entitled to file complaint under Section 142 of the Act as he would be then really entering into the shoes of the deceased payee."*

21. The Hon'ble Supreme Court in the case of *Naresh Potteries Vs. Aarti Industries & Anr.*[1] has observed that:-

*"**11.** The solitary question that we are called upon to answer is as to whether the complaint filed by the appellant herein under section 138 of the Negotiable Instruments Act is in accordance with the requirement under section 142 of the Negotiable Instruments Act.*

1 (2025) 256 Comp Cas 606 : 2025 SCC OnLine SC 18

12. *The relevant provision of the Negotiable Instruments Act that falls for our consideration is as follows:*

> *"142. Cognizance of offences.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), — (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;…"*

13. *Ordinarily, under section 190 of the Code of Criminal Procedure, a Magistrate is empowered to take cognizance of an offence upon receiving a complaint of facts which constitute such offence. Prior to taking such cognizance, in accordance with and as provided by section 200 of the Code of Criminal Procedure, the Magistrate is required to examine upon oath the complainant and witness present, if any. However, section 142 of the Negotiable Instruments Act creates a legal bar on the court from taking cognizance of any offence punishable under section 138 of the Negotiable Instruments Act except upon a complaint, in writing, made by the payee, or as the case may be, the holder in due course of the cheque.*

14. *The law on the subject-matter at hand is no longer res integra and has been well-settled by a series of judgments passed by this court.*

15. *This court in the case of National Small Industries Corporation Ltd.v. State (NCT of Delhi) [2008 SCC OnLine SC 1710] had an occasion to consider the validity of a complaint under section 138 of the Negotiable Instruments Act and the satisfaction of the* *requirement under section 142 thereof, as well as to determine as to who could be considered to be the complainant/representative in a case where the complaint is to be filed by an incorporated body. This court held as follows :*

> *"The term 'complainant' is not defined under the Code. Section 142 of the Negotiable Instruments Act requires a complaint under section 138 of that Act to be made by the payee (or by the holder in due course). It is thus evident that in a complaint relating to dishonour of a cheque (which has not been endorsed by the payee in favour of anyone), it is the payee alone who can be the complainant. The Negotiable Instruments Act only provides that dishonour of a cheque would be an offence and the manner of taking cognizance of offences punishable under section 138 of that Act. However, the procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code. Section 200 of the Code requires that the Magistrate, on taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses. The requirement of section 142 of the Negotiable Instruments Act that the payee should be the complainant, is met if the complaint is in the name of the payee. If the payee is a company, necessarily the complaint should be filed in the name of the company. Section 142 of the Negotiable Instruments Act does not specify who should represent the*

company, if a company is the complainant. A company can be represented by an employee or even by a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney…

Resultantly, when in a complaint in regard to dishonour of a cheque issued in favour of a company or corporation, for the purpose of section 142 of the Negotiable Instruments Act, the company will be the complainant, and for purposes of section 200 of the Code, its employee who represents the company or corporation, will be the de facto complainant. In such a complaint, the de jure complainant, namely, the company or corporation will remain the same but the de facto complainant (employee) representing such de jure complainant can change, from time to time. And if the de facto complainant is a public servant, the benefit of exemption under clause (a) of the proviso to section 200 of the Code will be available, even though the complaint is made in the name of a company or corporation."

(emphasis supplied)"

22. Considering the facts of the present case and the provisions of N.I. Act and the case laws, as stated above, it would be clear that the N.I. Act provides that it is only the "payee" or the "holder in due course", who can institute a complaint under Section 138 of N.I. Act. In the present case, admittedly, the cheques have been deposited after the death of the husband of Respondent No.1. It is not the case of the Respondent No.1 that, she was armed with an order of a Court or a judicial order proceeded to file the complaint(s) under Section 138 of N.I. Act, neither is the Respondent No.1 the "payee" or nor is there any endorsement indicating that the Respondent No.1 is "holder in due course".

23. In view of the aforesaid facts and circumstances, the Respondent No.1 could not have initiated the proceedings under Section 138 of the N.I. Act. The Respondent No.1 ought to have approached the civil court seeking appropriate declaration making her entitle to comply with the provisions of N.I. Act, so as to enable her to file and prosecute the proceedings under Section 138 of N.I. Act.

24. The inherent powers under Section 482 of the Code of Criminal Procedure are to be exercised with care and caution and the judicial discretion has to be exercised in a fair judicious manner and in cases which warrant exercise the invocation of the inherent powers to either prevent the abuse of process of law or in the interest of justice.

25. The Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs.Bhajan Lal & Ors.*[2], while enumerating the powers under Section 482 of the Indian Penal Code and Article 226 of the Constitution of India, in Paragraph No.102 has observed as under :-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the*

2 1992 Supp (1) SCC 335

principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.."

26. That, the present case would fall under category (6) of the categories as enumerated in Paragraph No.102 of the judgment of *State of Haryana & Ors. Vs.Bhajan Lal & Ors. (supra).* Therefore, by exercising the jurisdiction vested under Section 482 of Cr.P.c., I am inclined to quash the proceedings in question.

27. All the Petitions are allowed in terms of prayer clause (b) of each Petition.

28. As the Respondent No.1 was served and has not appeared, let the said order be informed to the Respondent No.1 to enable her to take appropriate steps, if advised.

[RANJITSINHA RAJA BHONSALE, J.]

OMKAR SHIVAHAR KUMBHAKARN

Digitally signed by OMKAR SHIVAHAR KUMBHAKARN Date: 2026.07.06 13:30:04 +0530