

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 1303 of 2026**

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M/S AERO TECH SOLUTIONS & ANR.

Versus

U TECH FASTEN PVT LIMITED COMPANY & ORS.

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Appearance:

MR NAKUL PRADHAN with MR S R RATHOD(13626) for the Applicant(s)

No. 1,2

MR MEET THAKKAR, APP for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY**Date : 30/01/2026****ORAL ORDER**

1. Heard Mr. Nakul Pradhan, learned advocate for the Petitioners.

2. Mr. Nakul Pradhan, learned advocate submits that the Petitioners herein have been arraigned as an accused on the basis of prosecution launched by the respondent no.2 - original complainant under the provision of Section-138 of the N.I. Act and on the strength of the prosecution, the court concerned has taken cognizance upon the facts by issuing process against the Petitioners. As soon as the Petitioners came to know about the registration of the complaint, they have immediately approached this Court by way of the present Petition. He further submits that at the time of registration of the complaint, the complainant has come with a specific case that the notice issued by him under Section-138 of N.I. Act, through R.P.A.D. post has not been duly served upon accused no.2 and envelope has been returned with the postal endorsement that room is closed. Those particular facts are

mentioned in the operative part of the complaint. Despite the said fact, the compliance of the provision of Section-138(B) was not being made by the complainant before the institution of the complaint and the compliance of said provision is mandatory in nature and therefore, the order passed by the court concerned to issue process against the Petitioners, is prima-facie, against the settled proposition of law. He has put reliance upon decision of Hon'ble Apex Court rendered in the case of M/s. Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. reported in AIR 1998 SC 128 and submitted that 'by summoning the person before the court as an accused in a criminal case is a serious action on the part of the court concerned and before taking cognizance of the fact, the court concerned has to verify each and every aspect of the allegations levelled against the Petitioners in the body of the complaint. Prima-facie, it seems that the court concerned has not taken the important aspects into consideration at the time of taking cognizance of the facts of the matter.

3. Considering the above-stated factual aspects of the matter, there is merit in the matter. Hence, Issue Notice to the respondents, returnable on 06.05.2026. Learned Additional Public Prosecutor waives service of notice for and on behalf of the respondent -State of Gujarat.

In the meantime, let there be an ad-interim order in terms of Para- 8(B).

Direct service is permitted.

(M. R. MENGDEY,J)

SAKSHI MAURYA