IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 15820 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
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MOHAN MOTIRAM JAYAKAR
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR SHAISHAV S PANDIT(7363) for the Applicant(s) No. 1
MR MEET THAKKAR, APP for the Respondent(s) No. 1
MR P M DAVE for the Respondent No.2

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 10/07/2026

ORAL JUDGMENT

1. Learned advocate Mr. P. M. Dave appears for the respondent no.2. Registry shall accept the Vakalatnama of the learned advocate for the respondent no.2.

2. Rule returned forthwith. Learned APP Mr. Thakkar waives service of Rule on behalf of the Respondent - State.

3. By way of the present petition, the petitioner has prayed for quashing and setting aside the impugned order dated

26.12.2019 passed by the NI Act, Court No. 34, Metropolitan Magistrate, Ahmedabad in Criminal Case No. 116617 of 2019 issuing summons to the petitioner.

4. Heard Learned Advocates for the respective parties.

5. Learned Advocate submitted that the allegations are specifically directed against Accused No. 4, in his capacity as the Whole-time Director and Authorised Signatory, and Accused No. 9, in his capacity as the Managing Director and Authorised Signatory of Accused No. 1 Company, who had entered into the Operating Agreement dated 14.08.2014, relating to the Finance Lease Agreement dated 19.06.2014 pursuant to the Sanction Letter dated 13.06.2014. He submitted that the allegations are primarily against Accused Nos. 2, 4, 8, and 9.

6. It was further argued that the complaint contains only a bald and omnibus averment regarding the consent and connivance of Accused Nos. 2 to 14, as stated, which by itself is insufficient to attract the provisions of Section 141 of the Negotiable Instruments Act. The entire complaint remains conspicuously silent regarding any specific role attributed to the present applicant, namely Accused No. 11. The learned Advocate, in particular, invited the attention of this Court to Form DIR-11 to demonstrate that the present petitioner had tendered his resignation before the competent authority on 30.03.2019, and that the resignation became effective from the said date.

7. Learned Advocate would further draw attention to the letter dated 04.04.2019 addressed to the Board of Directors by the present petitioner expressing his inability to continue as a Director of the company and tendering his resignation for the reasons stated therein. Similarly, he has pointed out the letter dated 27.08.2019 written by the company, when the petitioner was a Director, addressed to the BSE and NSE with regards to his resignation. Thus, it is argued that on the dates of issuance of the cheques, i.e., 28.09.2019 and 04.10.2019, comprising six cheques amounting to Rs.16,89,00,000/-, the present petitioner was neither a Director nor a signatory to the impugned cheques. Thus, it is prayed that the petition may be allowed.

8. Learned Advocate P. M. Dave for the Respondent No.2 states that the averments made in the complaint would reflect that the alleged offence was committed with the consent and connivance of the present accused No. 3, and that the statutory notices were also issued. Learned Advocate would submit that the notices in respect of the dishonoured cheques were also served upon all the Directors, including the present petitioner. Learned Advocate would further submit that there are clear-cut averments in paragraph 2 of the complaint that accused Nos. 2 to 14, i.e., the other Directors, were responsible for the day-to-day management of the company. Under such circumstances, when a clear-cut averment has been made in the complaint while invoking Sections 138, 141 and 142 of the NI Act, no case is made out for quashing the complaint.

9. It is required to be noted that the cheques in question have not been signed by the present petitioner. Mere description of the petitioner as a Director in the complaint does not, by itself, fasten vicarious liability under Sections 138 and 141 of the Negotiable Instruments Act, 1881. In the absence of specific averments demonstrating that the petitioner was, at the relevant point of time, in charge of and responsible for the conduct of the business of the Company, criminal liability cannot be imposed merely on account of his designation as a Director.

10. In this regard, the Hon'ble Supreme Court, in National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and Another, reported in (2010) 3 SCC 330, has observed as under:

> *“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent was in charge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.*

11. Therefore, Hon’ble Supreme Court has distinguished the case of persons who are in-charge of and responsible for the conduct of the business of the Company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141,

the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.

12. In N.K. Wahi v. Shekhar Singh, (2007) 9 481 Hon’ble Supreme Court has (Para:8) observed:

> *“8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the Court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”*

13. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another, (2005) 8 SCC 89, Hon’ble Supreme Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.

14. Thus, upon perusal of the material placed on record by the petitioner, it is evident that the petitioner was neither a signatory to the dishonoured cheques nor was he actively involved in the financial decisions or the day-to-day affairs of the Company. The complaint does not contain any specific averments indicating as to how the present petitioner was responsible for the issuance or dishonour of the cheques in question.

15. Learned advocate Mr. Dave for the respondent no.2 is unable to dispute the fact that prior to issuance of the cheque the applicant has resigned from the company on 30.03.2019, and the said aspect is supported by Form No. DIR-12. The cheque was issued on 28.09.2019 and 04.10.2019 and was dishonoured on 14.10.2019 i.e. after five months from the date of resignation, and in that background, it cannot be said that on the date when the offence is committed, the applicant was connected with the company in any manner. This Court has referred the decision rendered by the Hon'ble Apex Court in the case of Adhiraj Singh v. Yograj Singh and Others rendered in Criminal Appeal arising out of S.L.P. (Crl.) No(s). 16051-16052 of 2023 wherein in the identical situation, the Hon'ble Apex Court has held as under:

> "*7. Having considered the submissions made by learned counsel for the parties, we find that in the present case on the date of issuance of the cheques, the appellant had already resigned. The fact regarding resignation is not in dispute. It is also not in dispute that the cheques issued by the Company were signed by another competent person on behalf of the Company. Once the facts are plain and clear that when the cheques were issued by the Company, the appellant had already resigned and was not a director in the Company and was not connected with the company, he cannot be held responsible for the affairs of the Company in view of the provisions as contained in Section 141 of the NI Act.*"

16. In view of the above, the captioned petition stands allowed. The impugned order dated 26.12.2019 passed by the NI Act, Court No. 34, Metropolitan Magistrate, Ahmedabad in

Criminal Case No. 116617 of 2019 along with all consequential proceedings arising therefrom qua the present petitioner, stands quashed and set aside.

17. Rule is made absolute to the aforesaid extent.

(M. K. THAKKER,J)

AMIT ITALIAN