**(2026) 02 BOM CK 1594**

**In the Bombay High Court, Aurangabad Bench**

**Case No :** Criminal Application No. 344 Of 2020, Connected With Criminal Application No. 345 Of 2020, Criminal Application No. 346 Of 2020

Clc Industries Limited (Spentex Industries Ltd.) APPELLANT

Vs

Prakash Cotton, Aurangabad RESPONDENT

**Date of Decision :** 12-02-2026

**Acts Referred:**
Negotiable Instruments Act, 1881 — Section 138
Code of Criminal Procedure, 1973 — Section 205, 273, 482
Companies Act, 2013 — Section 34

**Citation :** (2026) 02 BOM CK 1594

**Hon'ble Judges :** Y.G. Khobragade, J

**Bench :** Single Bench

**Advocate :** Ashwin Sakolkar, Sanket Kulkarni, Abhay Dilip Ostwal

**Final Decision :** Dismissed

# Judgement

Y.G. Khobragade, J

1. Needless to say that, on 22.01.2026, this Court passed the following order:-

“1. Advocate Mr. Ashwin Sakolkar appears through video conferencing and submits that today itself he has received instructions on behalf of applicant nos.2 to 4 to appear in the present application and seeks one week time to file Vakalatnama. Mrs. Rashmi Kulkarni made a statement that she has instruction to appear for applicant no.7 only and she prayed for time to file appropriate application seeking permission to file an independent application by deleting the name of the applicant no.7 from this application.

2. Mr. Ostwal the learned counsel appearing for the non-applicant strongly objected for adjournment. Needless to say that on 12.02.2020, this Court passed an order and issued notice to the non-applicant and granted stay to the proceeding SCC No.10855/2018. The said complaint pertains to offence punishable under Section 138 of the N.I. Act for dishonour of three different

cheques amounting to Rupees One Crore and Fifty Lakhs as described in para 9 of the complaint.

3. By the present application under Section 482 of the Cr.PC. The applicants who are original accused nos.1 to 9 have challenged the order dated 31.01.2019, whereby the learned trial Court issued process as against the present applicants for the offence punishable under Section 138 read with Section 141 of the N.I. Act. Though, advocate Mr. Sakolkar made a statement that he has instructions to appear on behalf of the applicant nos.2 to 4 and advocate Mrs. Rashmi Kulkarni made a statement that she has instructions to appear on behalf of applicant no.7. However, nothing has been justified when present application was filed by all the accused persons as to how at this stage different applicants can engage different advocates and whether such practice is permissible under the Advocates Act and Rules as well as under the High Court Appellate Side Rules. Since the present application pertains to offence punishable under Section 138 of the N.I. Act and it is ideally pending since 2020 and even after lapse of 5 – 6 years, the applicants are playing tricks and trying to delay the proceeding. One more adjournment is granted subject to payment of cost of Rs.10,000/- each which will be payable by the applicants nos.2, 3, 4 and 7 each to the non-applicant.

4. Stand over to 09.02.2026. The earlier interim order, if any, to continue till then.”

2. On 09.02.2026, this Court has passed the following order:-

“1. Heard the learned counsel Mr. Kulkarni, appearing for applicant No. 7 and Mr. Ostwal, learned counsel appearing for the sole respondent, at length.

2. None appeared for the respondent Nos. 2 to 4.

3. The learned counsel appearing for the applicant No. 7 made a statement about depositing of costs under order dated 22. 01.2026. The learned Counsel appearing for the sole respondent affirmed for the receipt of the costs.

4. When all these three matters i.e. Criminal Application Nos.344 of 2020, 345 of 2020 and 346 of 2020 are called out, the learned counsel Mr. Kulkarni has made a statement that, he has only instructions to appear on behalf of applicant No. 7, i.e. Mr. Rajinder Kumar Jain, however, he has no instructions to appear on behalf of other applicants.

5. The present applicants are the original accused in SCC No.10855 of 2018, SCC No. 9286 of 2018 and SCC No. 10854 of 2018. All these complaints are filed under Section 138 of the Negotiable Instruments Act, for the dishonour of cheques, which are the subject matter of the respective complaints.

6. After verification of the complaints, the learned Judicial Magistrate First Class, Aurangabad passed separate orders of issuance of process in all these three complaints, which are as under:-

Sr.No. Number of case Date.

 

1) SCC No. 9286 of 2018 12.02.2019

2) SCC 10855 of 2018 31.01.2019

3) SCC 10854 OF 2018 08.03.2019

7. Being aggrieved by above all these three different orders, the accused/ applicants have filed these three applications bearing No. 346 of 2020, 345 of 2020 and 344 of 2020, challenging the order of issuance of process. The applicants/ accused further pray for quashment of complaints bearing Nos. SCC 9286 of 2018, SCC 10855 of 2018 and SCC 10854 of 2018.

8. On 12.02.2020, this Court passed order and issued notice to the respondents/ complainant and further proceedings bearing SCC 9286 of 2018, SCC 10855 of 2018 and SCC 10854 of 2018 are stayed. Thereafter, on 12.11.2025, none appeared on behalf of the applicants, therefore, the matter was kept for passing of the order of dismissal on 19.11.2025.

On 19.11.2025, this Court passed following order:

"1. Learned advocate Shri Deshmukh appearing for the applicants states that since the main arguing counsel Shri Arun Agrawal has passed away, he is required to take instructions from the applicant.

2. Since the arguing counsel has expired, it would be appropriate to issue notice to the applicants returnable on

17. 12.2025.

3. Interim relief granted vide order dated 12.02.2020 to continue till then".

9. As per the service report, the applicant Nos. 1) CLC Industries Limited, 5) Mr. Deepak Diwan, 6) Mr. Kapoor Chand Garg and 8) Ms.Shivani Gupta, refused to accept the notices, therefore, there is presumption that the applicant Nos. 1, 5, 6 & 8 are duly served but they remain absent. The notice of applicant No. 9 still await.

10. Though the learned counsel Mr. Ashwin Sakolkar, appeared on behalf of respondent Nos. 2 to 4 before this Court, on 22.01.2026, through vidco conferencing, but he failed to file the Vakalatnama till date. Therefore, the present applications are liable to be dismissed as against the applicant Nos. 1, 2 to 4, 5, 6 and 8, accordingly they are dismissed.

11. At this stage, Mr. Kulkarni, learned counsel appearing for applicant No. 7 and the learned counsel Mr. Ostwal, appearing for non applicant/respondent have jointly made a request for taking instructions, to see as to whether the applications shall be continued or not as against the present applicant No. 7, on the ground that the present applicant No. 7 is nominated as Director of Axis Trustee Bank, appointed by the SEBI as Nominee Director.

12. Stand over to 12.02.2026.

 

13. The earlier interim relief granted is hereby stand vacated as against these applicants, except the applicant No. 7, Mr. Rajinder Kumar Jain and applicant No. 9, Ms. Charul Jain.

LATER ON :-

1. At about 5.00 p.m., the learned counsel Mr. Sakolkar, appeared for applicant Nos. 2 to 4 and orally requested for recalling of the order of dismissal in respect of applicant Nos. 2 to 4, on ground that when the matter was called out he was busy before another Court.

2. Since the learned counsel Mr. Sakolkar, has made a request today itself, therefore, the said order of dismissal against applicant Nos. 2 to 4 is hereby re-called.

3. Stand over to 12.02.2026."

3. In view of above order, the present applications are dismissed as against applicant Nos. 1, 5, 6 and 8.

4. I have heard Mr. Sakolkar, the learned counsel appearing for applicant Nos. 2 to 4 and 9 for sufficient time. Today, Mr. Sakolkar, made a statement that on 10.02.2026, he has filed Vakalatnama on behalf of respondent No.9. Mr. Kulkarni, the learned counsel for applicant No.7 and Mr. Ostwal, the learned counsel for the Non-applicant/ original Complainant.

5. By the present applications, the applicants who are the accused in Summary Criminal Case Nos. 10855 of 2018, 9286 of 2018 and 10854 of 2018, respectively, have filed the present applications, challenging orders dated 31.01.2019, 12.02.2019 and 8.03.2019, respectively therein, whereby, the learned Judicial Magistrate, Aurangabad issued process u/s 138 of Negotiable Instruments Act.

6. After hearing the learned Counsels appearing for the respective parties, in these 3 separate applications following legal questions are arises for my consideration as under:

i. Whether the applications u/s 482 of Cri. P. C., challenging the order of issuance of process as well as seeking quashment of the criminal proceeding are maintainable through the power of attorney?

ii. Whether these proceedings are maintainable at the behest of the applicants / original accused, the Directors and Non-Executive Directors of the main accused No. 1/Company when the applications u/s 482 of Cri.P C., are dismissed against the accused No.1?

7. The learned counsel appearing for the respective applicants canvassed that, the applicant No. 1 / original accused no. 1 is a Company incorporated under the provisions Companies Act, 1956 and engaged in the business of manufacturing and export of "Cotton Yarn/Synthetic Blended Yarns". The Applicants 2 to 4 are

 

the Directors of the Applicant no. 1 Company, whereas the applicant Nos. 5 to 9 are Nominee/Independent Non-Executive Directors of the Applicant No. 1 Company. All the Applicants 2 to 9 are residing at New Delhi and Kanpur (UP). Therefore, to prosecute these applications, the applicants have executed Power of Attorney in favour of Shri Rajkumar Mukundwar. since the proceedings for the offence punishable u/s 138 of Negotiable Instruments Act, are in quasi civil nature, therefore, the applications u/s 482 of Cri. P. C. challenging the order of issuance of process and quashment of proceedings u/s 138 of Negotiable Instruments Act, is maintainable.

8. Per contra Mr. Ostwal, the learned counsel appearing for the Non-applicant / original complainant canvassed that, the procedure contemplated under the Code of Criminal Procedure required to be followed while conducting the complaints u/s 138 of the Negotiable Instruments Act. So also, Sec. 138 of the Negotiable Instruments Act is in the nature of punitive and in personam. Therefore, unless such party is a minor, an insane person or is suffering from any other disability, which in law, is recognised as sufficient to permit any other person i.e. next friend, to move the Court on his behalf as a guardian or a next friend, initiation of proceedings, so as to challenge the legality and validity of the orders, passed against him, to seek redressal of the grievance except through the next friend or guardian is maintainable. However, the applicants have not come with specific plea under what special circumstances present applicants have empowered their power of Attorney Holder to file these applications. It is further canvassed that, the applicants have not produced copy of Power of Attorney on record to show that, Mr. Rajkumar Mukundwar is authorised to file these applications, hence, prayed for dismissal of these applications.

9. Needless to say that, the proceeding under Section 138 of the Negotiable Instruments Act, is quasi civil nature but it is in punitive nature for the said offence. The offence under the Indian Penal Code or any other Special Law always in the personam and it can not be inheritable or act of crime and punishment not transferable to any other person. So also, the Offender/Accused is to suffer sentence, in case awarded by the Court of Law after conclusion of the trial.

10. In Amit Ahuja Vs. Gian Prakash Bhambri, MANU/PHYSICAL HEARING/1159/2010 : 2010 (3) R.C.R. (Criminal) 586 = 2010 Supreme (P&H) 1597, it is held that, it is only the accused person against whom a criminal case has been registered or a criminal complaint has been filed, who can file a petition under Section 482 of Cri. P. C. in the High Court for quashing the complaint, the summoning order, and the subsequent proceedings, no third person can fight a proxy war on his behalf under the garb of public interest litigant. The aggrieved party, which is affected by an order is required to seek redress of its grievance by questioning the legal validity or correctness of the same except if the aggrieved party is suffering from some disability i.e. unless such party is a minor, an insane person, or is suffering from any other disability, which in law, is

 

recognized as sufficient to permit any other person i.e. next friend to move the Court on his behalf. On behalf of minor, or insane person, a guardian or a next friend initiates proceedings so as to challenge the legality and validity of the order passed against him to seek redressal of the grievance as under the law. Such a person having disability, cannot be said as competent to file a petition except through next friend or guardian. If, in criminal cases, until and unless, a person aggrieved, suffers from some disability, recognized by law, a stranger or some other person, is allowed to fight the proxy war, then the every purpose of criminal justice system shall be defeated.

11. It is further held that, Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular Act should be done by a party-in-person. When the Code of Criminal Procedure requires the appearances of an accused in a Court, it makes no compliance if a power of attorney holder appears for him. It is different thing that a party can be permitted to appear through Counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code of Criminal Procedure empowers the Magistrate to dispense with "the personal attendance of the accused and permit him to appear by his pleader", if he sees reasons to do so. Section 273 of the Code speaks the powers of the Court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case the appearance of the accused be made through a power of attorney holder.

12. However, in case in hand, the applicants / original accused have instituted the present applications u/s 482 of Cri.P.C. questioning legality and validity of Orders dated 31.01.2019, 12. 02.2019 and 08.03.2019 passed by the learned Judicial Magistrate, Aurangabad, in Summary Criminal Case Nos. 10855 of 2018, 9286 of 2018 and 10854 of 2018, respectively and prayed for quashment of the said complaints u/s 138 of the Negotiable Instruments Act, without specifying about their disability through the Power of Attorney. Therefore, taking into consideration the law laid down in Amit Ahuja, cited supra as well as Sec. 205, 273 and 235 of Criminal Procedure Code and Sec. 2 of the Power of Attorney Act, I am on view that, the application for quashment of the complaint and challenging the order of issuance of process is not maintainable through the power of attorney holder. Accordingly, I answered the question no. (i) in negative.

13. In respect of question no. (ii), Mr. Sakolkar, the learned counsel appearing for applicant Nos. 2 to 4 and 9 canvassed that, the applicants 2 to 4 & 9 are the Directors of the Applicant no. 1/ original accused no. 1 CLC Industries Limited. These applicants/accused are not having control and responsible for day to day affairs of the Applicant No. 1 Company. So also, the applicants received notice dated 16.04.2018 from the State Bank of India u/s 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act read with Rule 4 (v) of the Rules and as per said notice. The SBI have attached

 

movable and immovable properties of Bhadresh Trading Corporation Limited with which the Memorandum of Understanding dated 20.12.2017 was executed. Therefore, it was legal compulsion that the applicant no. 1 Company issued a cheque No. 001300 dated 31.05.2018 in sum of Rs. 25 lakhs drawn of R.B.I. Hauzkhas Branch, New Delhi in favour of it's Banker, which resulted issuance of directions to stop payment against the cheque issued in favour of the Non-applicant/Complainant. So also, after service of mandatory notice, the applicants issued reply dated 17.10.2018 and brought to the notice of Non-applicant/ original Complainant about legal impediment. Therefore, though the application u/s 482 of Cri.P.C. dismissed as against the applicant no. 1/Company is maintainable in respect of other applicants/Directors.

14. Mr. Sanket Kulkarni, the learned Counsel appearing for the applicant No. 7 canvassed that, the Applicant No. 7 Shri Rajinder Jain is an independent non executive director of the Applicant No. 1 Company and he does not have control over the day to day affairs of it. Therefore, the complaints u/s 138 of the N.I. Act as well as issuance of process as against the applicant no. 7 is not maintainable.

15. Per contra, Mr. Ostwal, the learned counsel appearing for the Non-applicant/ original complainant canvassed that, the Non-applicant has specifically made averment in complaint Nos. 10855 of 2018, 9286 of 2018 and 10854 of 2018 that, the Applicants/Accused Nos. 2 to 9 are the Directors of the Applicant/ Accused no. 1/Company and they are indulged in handling and managing the day to day affairs and business of the applicant no.1. So also, Accused Nos. 2 to 9 are actively involved in the day to day functioning and activities of the Accused no. 1/Company in its regular course of business, hence, they are liable for the decisions taken on behalf of the accused no. 1/Company. Therefore, considering the facts and circumstances of these complaints, the learned Judicial Magistrate, Aurangabad passed the Orders dated 31.01.2019, 12. 02.2019 and 08.03.2019 in Summary Criminal Case Nos. 10855, 9286, and 10854 of 2018 and issued process against the applicants/accused, which is justifiable. So also, all these complainants for the offence punishable u/s 138 of N.I. Act are not the abuse process of law, hence, prayed for dismissal of the applications.

16. Needless to say that, initially, all these applications u/s 482 of Cri. P. C., are instituted by the accused No. 1 / Company registered under the Companies Act and accused Nos. 2 to 9, who are Directors of the accused No. 1/Company. The applicants/Accused Nos. 2 to 4 and 9 have not denied that they are not Directors of the accused No. 1/Company and not managing regular course of business and they are not liable for the decisions taken on behalf of the accused No. 1/ Company. Though the applicant No. 7 claimed that, he is an independent non executive director of the Applicant No. 1 / Company and he does not have control over the day to day affairs of it, the applicants have not produced on record the copy of reply issued to the statutory notice stating the said defense.

17. Section 34 of the Companies Act, provides that, where an offence under this act has been committed by a company, every person who at the time of offence

 

was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

18. It is thus seen that, the vicarious liability of a person for being prosecuted for an offence committed under the Act by a Company arises, if at the material time he was in charge and was also responsible to the company for the conduct of its business. Therefore, the company i.e. applicant no. 1 CLC Industry Ltd., is considered the primary offender for the offence punishable u/s 138 of N.I. Act and as such the present application u/s 482 of Cri.P.C. is dismissed as against the Company, therefore, in my considered view the application for quashment of the complaints for the offence u/s 138 of NI Act as well as challenge to the orders of issuance of process, is not maintainable at the behest of Directors only.

19. In Nilesh Agrawal V. Income Tax Office, the Delhi High Court held that, the Directors generally cannot challenge an order of issuance of summons in a Criminal complaint without impleading the company, as the company is considered the primary offender in corporate crimes and that prosecuting directors without the company is an abuse process of law.

20. It is matter of record that, as per the order dated 9. 02.2026, these applications are dismissed as against applicant Nos.1, 5, 6 and 8. Since the applicants are questioned legality and validity of orders of issuance of process dated 31.01.2019, 12. 02.2019 and 08.03.2019 passed in Summary Criminal Case Nos. 10855 of 2018, 9286 of 2018 and 10854 of 2018 and prayed for quashment of proceedings, but the applications u/s 482 of Cri. P. C. are dismissed in respect of the main applicant/Accused No.1 Company who issued the cheques in question for discharging legal liabilities. The applicants are being Directors of the applicant/Accused No. 1 Company, therefore, the applicants Director of the said Company cannot alone challenge order of issuance of process and seeks quashment of proceeding in absence of the applicant No.1. Therefore, I am on view that, the present applications are not tenable in eyes of law at the behest of these applicants/accused. Accordingly, all these Criminal Applications are dismissed.

21. The trial of the complaint be expedited.

 