IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.82 OF 2025
AND
CRIMINAL WRIT PETITION NO.83 OF 2025
AND
CRIMINAL WRIT PETITION NO.84 OF 2025
AND
CRIMINAL WRIT PETITION NO.85 OF 2025

KIRAN KOPPULA, s/o
Bhagavan Koppula, Aged 47 years,
R/o. Ornella, 206, Vasant Oasis,
Makwana Road, Marol, Near Keys Hotel,
Andheri East, Mumbai, Mumbai Suburban,
Maharashtra- 400059,
Having his Office at Bungalow No. 5,
Liberty Phase-I, Koregaon Park,
Opposite Lane 6, Pune,
Maharashtra- 411001. ...PETITIONER

VERSUS

1. M/S PIGGY VENTURES PRIVATE LIMITED,
having its Registered Office at Flat no. FF-18,
Cunchelim, Mapusa, Bardez, Goa represented
by its Directors :

   1a. Jose Ryan Agnelo Gomes Prazers
   alias Ryan Prazers, Major in age,
   R/o. House no. 14/388/F,
   Vivenda Prazers, Next to
   Landscape Shire, Caranzalem,
   Panaji, Goa- 403002.

   1b. Jose Ralph De Fatima Gomes Prazers,
   Major in age, R/o.House no. 14/388/F,
   Vivenda Prazers, Next to
   Landscape Shire, Caranzalem,
   Panaji, Goa- 403002.

2. DA URBAN NOMADS COMMUNITY PVT. LTD.
Having its Registered Office at
Bungalow No. 5, Liberty Phase-1,
Koregaon Park, Opposite Lane-6,
Pune, Maharashtra- 411001.
Represented herein by its Directors.

3. Navin Kishore, S/o. Ram Kishore Singh,
Indian National, Major in Age,

R/o. Flat No. C-602, Manglik Apartments,
Plot No. 25, Dwarka Sec-6,
South West Delhi, Dwarka,
Sec-6, Delhi- 11075.

4. Nakul Singh Purohit,
S/o. Ajit Singh Purohit,
Indian National, Major in Age,
R/o. GH1, Bhagat Ki Kothi
Extension Scheme, New Pali Road,
Jodhpur, Jodhpur, Rajashtan- 342005. ...RESPONDENTS

…

Mr. Ajay Menon, Advocate for Petitioner.
Mr. Amogh Prabhudessai, Advocate for Respondent No.1.

…

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 13th AUGUST, 2026.
PRONOUNCED ON : 28th AUGUST, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matters are heard finally at admission stage.

2. The petitioner seeks quashment of Criminal Case Nos.OA/NIA/398/2022/D, OA/NIA/399/2022/D, OA/NIA/46/2023/D and OA/NIA/47/2023/D respectively and also takes exception to orders dated 29.12.2022, 21.08.2023 and 27.03.2023 respectively passed by Judicial Magistrate Junior Division 'D' Court at Panaji/Merces, thereby issuing process against petitioner for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act').

3. The respondent no.1 is company registered under Companies Act through its Directors namely Jose Ryan Agnelo Gomes Prazeres and

Jose Ralph De Fatima Gomes Prazeres. The respondent no.2 is also registered company under Companies Act. It was incorporated by respondent nos.3 and 4 in year 2019. The respondent nos.1 and 2 entered into an agreement dated 01.06.2021 for share purchase and acquisition of business. The respondent nos.2 to 4 agrees to acquire 80% shares holding of equity of respondent no.1 Company. The terms were settled on 01.05.2021, which were subsequently altered and modified by final term-sheet signed on 07.05.2021. As per final term-sheet dated 07.05.2021, respondent nos.2 to 4 agreed to purchase 80% of share holding of respondent no.1 Company for acquisition price of Rs.80,00,000/- out of which sum of Rs.3,00,000/- was paid at the time of signing of agreement and balance was to be paid as per payment schedule of 11 installments. The particulars of cheques which are subject matter of complaints are given as under:

Dated	Return Memo Dated	Amount	Cheque No.	O.A. No.	Complaint Filed On	WPCR No.
25.06.2022	23.09.2022	10,00,000	000118	OA/398/2022	04.11.2022	82/2025
22.09.2022	23.09.2022	10,00,000	000119	OA/399/2022	04.11.2022	83/2025
30.10.2022	02.01.2023	10,00,000	000120	OA/46/2023	15.02.2023	84/2025
30.11.2022	02.01.2023	15,00,000	000121	OA/47/2023	15.02.2023	85/2025

4. It is contention of respondents that respondent/accused failed to follow payment schedule and requested respondent no.1 to not to deposit cheque assuring that they will make good of same by NEFT, but they failed to effect payment. The respondent no.1 deposited cheque, but same was dishonored on account of insufficiency of funds in bank

account of respondent no.2. The respondent no.1 addressed legal notice calling upon accused to pay cheque amount. Despite service of notice, accused failed to make good of payment mentioned in legal demand notice. As such, accused committed an offence punishable under Section 138 of NI Act. The complaint stipulates that upon being aggrieved by act and omission of accused and suffering due to non-payment of cheque, respondent no.1 filed complaint under Section 138 of NI Act. The complaint was presented in Court of Judicial Magistrate First Class, Panaji. The JMFC passed impugned order of issuance of process. Hence, this Writ Petition.

5. Mr. Ajay Menon, learned Advocate appearing for petitioner submits that agreement for share purchase and acquisition of business is entered into between Da Urban Nomads Community Private Limited (DUNCPL) through then Directors i.e. respondent nos.3 and 4. On 01.06.2021 signing amount of Rs.3,00,000/- was paid and 10 additional post dated cheques for amount varying from Rs.5,00,000/- to 15,00,000/- were given by respondent no.2 through respondent no.3 to respondent no.1. On 17.03.2022, petitioner was appointed as additional Director of respondent no.2 Company. On 30.09.2022, he was appointed as Director of Company. The petitioner is neither signatory to cheque nor averments in plaint specifies his role depicting that he was in-charge or was responsible to company for conduct of business. However, impugned order issuing process under Section 138 of N.I. Act

is mechanically passed. He would submit that petitioner had brief tenure as additional Director from 17.03.2022 to 27.06.2023 and brief tenure as Director from 30.09.2022 to 27.06.2023. The petitioner did not perform any executive function nor he was responsible for day to day management of affairs of respondent no.2 Company. The complaint did not disclose specific averments *qua* petitioner nor does it attribute specific role in respect of cheques in question. Relying upon observation of this Court in case of ***Padmakar Dattatray Matkar Vs. Malani Combines and Others***[1] and observation of Supreme Court in cases of ***Kamalkishor Shrigopal Taparia Vs. India Ener-Gen Private Limited and Another***[2] and ***K. S. Mehta Vs. Morgan Securities and Credits Private Limited***[3] he submits that criminal liability cannot be fastened upon every person associated with company. Section 141 of N.I. Act has to be strictly complied with and person upon whom such liability is sought to be fastened must know what is being attributed to him. It would not be sufficient to make bald cursory statement in complaint that Director is in charge of and responsible to company for conduct of business of company without anything more as to role of Director. By inviting attention of this Court to impugned order Mr. Menon submits that requirements of Section 141 of N.I. Act are not considered while issuing process as against petitioner.

1 **2025 SCC OnLine Bom 1910.**
2 **(2025) 7 SCC 393.**
3 **(2025) 7 SCC 615.**

6. Per contra, Mr. Amogh Prabhudesai, learned Advocate appearing for respondent no.1, submits that present petition takes exception to order of issuance of process dated 29.12.2022, whereas present petition has been filed after a lapse of nearly three years, despite availability of an alternate remedy. He would submit that petitioner herein was holding key managerial position in respondent no.2 Company. The respondent no.1 received sum of Rs.15,00,000/- in furtherance to agreement for share purchase and acquisition of business dated 01.06.2021, out of which sum of Rs.10,00,000/- was received from petitioner's personal account. The petitioner was instrumental in running affairs of respondent no.2. There are sufficient averments in complaint to suggest that all three Directors/accused persons were responsible in entering into share purchase agreement and issuance of cheques. The petitioner had preferred application for discharge, which has been dismissed vide order dated 13.12.2023. Relying upon observations of Supreme Court in case of ***Ashutosh Ashok Parasrampuriya and Another Vs. Gharrkul Industries Private Limited and Others***[4] he submits that complaint as a whole needs to be considered, if accused persons were Director of Company and responsible for its business, it may not be proper to split while reading complaint so as to come to conclusion that allegations as a whole are not sufficient to fulfill requirement of Section 141 of NI Act. By relying upon observation of Supreme Court in case of ***N. Rangachari Vs.***

4 **(2023) 14 SCC 770.**

Bharat Sanchar Nigam Limited[5] it is submitted that when cheque issued by company is dishonoured, complainant is expected only to be aware generally of who are in-charge of affairs of company and it would not be reasonable to expect him to know whether person who signed cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed cheque. Once averments in complaint are sufficient to make out element of offence under Section 138 of NI Act, burden is on Board of Directors or Officers in-charge of affairs of company to show that they are not liable to be convicted. Any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at trial such a restriction or to show that at the relevant time they were not in-charge of affairs of the company. By relying upon observations of Supreme Court in case of ***HDFC Bank Limited Vs. State of Maharashtra and Anr.***[6] he submits that if substance of allegation made in complaints fulfill requirements of Section 141 of NI Act, complaint has to proceed and is required to be tried with. While construing complaint, hypertechnical approach should not be adopted and laudable object of preventing bouncing of cheques and sustaining credibility of commercial transactions had to be borne-in-mind.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, core issue that arises for consideration

5 **(2007) 5 SCC 108.**
6 **2025 INSC 759.**

before this Court is whether averments in complaint are sufficient to issue process against petitioner or prosecute petitioner for offence punishable under Section 138 read with 141 of NI Act. Careful reading of complaint depicts that initially agreement for share purchase and acquisition of business was entered into between respondent no.1 and respondent no.2 through Directors i.e. respondent nos.3 and 4. The petitioner was not in picture as office bearer or Director of respondent no.2 Company. He is not signatory to agreement or cheques issued in pursuance to agreement. First time on 17.03.2022 he has been appointed as Director of respondent no.2 Company. The cheques in question were presented on 25.06.2022 and it was returned with remark as 'insufficient funds' on 23.09.2022. The averments in complaint merely state, in general terms, that accused persons failed to adhere to agreed installment payment schedule and that advance cheque issued by accused pursuant to agreement came to be dishonoured. It is further averred that despite service of demand notice, accused persons failed to make payment of cheque amount within stipulated notice period. In entire complaint, there is no particulars attributions as to role of petitioner in day to day business of Company. Section 141 of NI Act reads thus:

*"**141. Offences by companies. —***

(1) If the person committing an offence under section 138 is a company, every person who, at the time the 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 person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—

For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

8. Plain reading of aforesaid provision indicates that in case of offences by Company, every person who, at the time the offence was committed, was in charge of, and was responsible to company for conduct of business of company, shall be deemed to be guilty of offence and shall be liable to be proceeded against. Sub-clause (2) of Section 141 states that notwithstanding anything contained in sub-section (1), in

case of offence by Company, once it is proved that the offence has been committed with the consent or connivance of any director, manager, secretary or other officer of company, such director, manager, secretary or other officer, shall also be deemed to be guilty of that offence and liable to be proceeded against.

9. In case of ***Hitesh Verma Vs. Health Care at Home India Private Limited and Others***[7], Supreme Court observed in paragraph no.4 as under:

> *"4. There are twin requirements under sub-section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-section (1) of Section 141 of the 1881 Act."*

10. Similarly, in case of ***Kamalkishor Shrigopal Taparia*** (supra), Supreme Court laid down following principles:

> *"39. From the above discussion, the following principles emerge:*
> *(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*

7 **(2025) 7 SCC 623.**

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

11. In case of ***K. S. Mehta*** (supra), Supreme Court reiterated principles laid down in case of ***Hitesh Verma*** (supra) and observed that complaints lacking specific averments, that establish direct nexus between financial transactions in question on involvement of accused in company's financial affairs, accused cannot be held vicariously liable under Section 141 of NI Act.

12. In case of ***HDFC Bank Limited*** (supra) Supreme Court relying upon observations in case of ***Monaben Ketanbhai Shah and Another vs. State of Gujarat and Others***[8], held that if substance of allegations made in complaint fulfills requirements of Section 141, complaint has to proceed and is required to be tried with. Further, while construing complaint, hyper-technical approach should not be adopted and laudable object of preventing bouncing of cheques and sustaining credibility of commercial transactions had to be borne-in-mind.

13. The gamut of aforesaid expositions of law makes it crystal clear that Director in Company cannot be deemed to be in-charge and responsible for Company for conduct of its business, unless requirement of Section 141 of NI Act is complied with and factual backdrop to make such requirement is specifically averred in complaint. In present case, averments in complaint are absolutely silent so far as role of petitioner to make out requirement under Section 141 of NI Act. In wake of fact that petitioner was neither party to agreement nor he is signatory to cheque, merely because he was appointed as additional Director at the time of presentation / dishonored of cheque, in absence of specification as to his role in Company, he cannot be prosecuted for offence under Section 138 of NI Act. Pertinently, complaint is absolutely silent as to when petitioner become Director of Company or as to what role he had in day to day business of Company.

8 **(2004) 7 SCC 15.**

14. Perusal of impugned orders dated 29.12.2022, 21.08.2023 and 27.03.2023 respectively, are also silent as to requirement of Section 141 of NI Act, although complaint is filed against Company alleging petitioner to be Director. In this backdrop, observations of Supreme Court in case of ***HDFC Bank Limited*** (supra) would not assist cause of respondent. In that case, there were specific averments made against accused that he was responsible for company's day to day affairs and management. In that case, Supreme Court further observed that accused had granted sanction letter and performance guarantee in pursuance to participation in process for grant of credit loan facility. In those facts, Supreme Court observed that complaint as a whole to be looked into. In present case, complaint is bereft of material particulars. Even upon reading complaint as a whole alongwith documents annexed thereto, there is nothing to gather role of petitioner in commission of offence and for issuance of process.

15. In result, Writ Petitions are allowed in terms of prayer Clause (A).

16. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2026