

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :

NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. OF 2026

In the matter of:

Sanjay Hariram Agarwal,

aged about 60 years, Occupation: Business,

r/o 7, Hari Seva Street, Kidderpore, Kolkata – 700 023.

...PETITIONER

v.

1. Wardha District Central Co-operative Bank Ltd.,

Wardha, through its General Manager,

r/o Wardha, Tah. & Dist. Wardha.

(Original Complainant)

...RESPONDENT NO. 1

TO,

THE HONOURABLE CHIEF JUSTICE AND HIS
LORDSHIP'S COMPANION JUDGES OF THIS
HONOURABLE HIGH COURT OF
JUDICATURE AT BOMBAY: NAGPUR BENCH.

**CRIMINAL MISCELLANEOUS PETITION UNDER SECTION 482 OF THE
CODE OF CRIMINAL PROCEDURE, 1973 (CORRESPONDING TO
SECTION 528 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA,
2023) FOR QUASHING OF PROCEEDINGS IN S.C.C. NO. 303384/2002
PENDING BEFORE THE LEARNED JUDICIAL MAGISTRATE FIRST
CLASS, COURT NO. 2, WARDHA.**

THE HUMBLE PETITION OF THE PETITIONER ABOVENAMED:

1. The Petitioner is Accused No. 1 in S.C.C. No. 303384/2002, Wardha District Central Co-operative Bank Ltd. v. Sanjay Hariram Agarwal & Anr., pending on the file of the

learned Judicial Magistrate First Class, Court No. 2, Wardha (“the Trial Court”). The case is a private complaint under Section 138 of the Negotiable Instruments Act, 1881 (“the N.I. Act”), instituted on 29.05.2002 by Respondent No. 1, Wardha District Central Co-operative Bank Ltd. (“the Bank”).

2. The Petitioner was a Director of Home Trade Limited (“HTL” or “the Company”), a company registered under the Companies Act and registered with SEBI and a member of the Bombay, National, and Pune Stock Exchanges. HTL was also registered in the books of Reserve Bank of India for dealing in Government Securities vide registration No. 6-11/82. The company was engaged in lawful trading of Government Securities through recognized exchanges. The alleged transactions were carried out in the ordinary course of business. The Company, and not the Petitioner, is the alleged account-holder on whose account the alleged cheques forming the subject matter of the complaint were drawn.
3. According to the complaint, the allegations in brief are that the complainant purchased certain Government securities from the company and then wanted to withdraw the same. When the complainant insisted for return of money, it is alleged that two cheques, namely Cheque No. 695186 dated 20.04.2002 for Rs. 26,75,15,270/- and Cheque No. 695187 dated 20.04.2002 for Rs. 1,28,12,500/-, both drawn on Maharashtra State Co-operative Bank Ltd., Fort, Mumbai, were issued towards discharge of the liability of the Company. The Petitioner is alleged to have signed the cheques as authorised signatory of the Company, i.e. in a representative capacity, and not in his personal capacity. The Petitioner does not admit the allegation, and the same is averred here only to show the complainant’s own case.
4. The cheques are alleged to have been presented and returned unpaid on 23.04.2002. It is alleged that the Bank thereafter issued a demand notice dated 24.04.2002 addressed only to the 11 accused who were natural persons. Admittedly, no notice of demand under proviso (b) to Section 138 of the N.I. Act was ever issued to the Company. A copy of the demand notice is annexed as **[Annexure A-1]**.
5. The complaint was filed on 29.05.2002 only against eleven individuals, shown as Accused Nos. 1 to 11, being directors of the Company. The Company, which was the drawer of the cheques, was not arraigned as an accused. A copy of the complaint is annexed as **[Annexure A-2]**. By order dated 04.09.2002, the Trial Court issued

process against the individual accused. A copy of the order dated 04.09.2002 is annexed as **[Annexure A-3]**.

6. Nearly ten years after the complaint was filed, and long after the one-month period prescribed by Section 142(1)(b) of the N.I. Act had expired, the Bank moved an application (Exh. 72) dated 19.03.2012 seeking to add the Company as Accused No. 2 and to discharge Accused Nos. 2 to 11 from the array of accused. A copy of the application is annexed as **[Annexure A-4]**.
7. By order dated 28.03.2012, the Trial Court allowed the application by adding company as accused no. 2 and discharging accused no. 2 to 11 as existed earlier. The order reads as follows:

“Heard counsel for complainant who submitted there is expert opinion that signature of Sanjay Agarwal on cheque. Therefore, he wants to proceed with this complaint against accused no. 1 being director of company i.e. Home Trade Company Ltd and he wants to add this title to main complaint. If present application is allowed no prejudice will be caused to any party as Sanjay Agarwal already joined at the time of filing complaint. Counsel for complainant accepts to discharge accused no. 2 to 11 from this complaint and want to joined ‘A company registered under the company law i.e. Home Trade Ltd’ as accused no. 2.

Hence application is allowed. Permission is granted to add accused no. 2 in the title and accused no. 2 to 11 are hereby discharged from array of accused in title of complaint. Complainant to carry out amendment to that effect.”

The order dated 28.03.2012 is annexed as **Annexure A-5**.

8. It is submitted that the application was moved and the order was passed at a time when summons had not yet been served upon the Petitioner, and was decided without notice to or hearing of the Petitioner. In the order dated 14.08.2012, it is recorded that the summons are not yet served by that time. A copy of the order dated 14.08.2012 is annexed as **Annexure A-6**.
9. It is also submitted that no notice was issued to the Company before or after the said order and no application for condonation of delay was filed by the Bank. The Trial Court recorded no finding of “sufficient cause”, and did not re-consider the complaint for the purpose of taking cognizance against the Company. The Company was merely added “in the title”.

10. It is submitted that the petitioner has filed an application praying for substituting names of Directors of accused company as mentioned in the original complaint as accused persons. It came to be rejected by the Magistrate Court and then the Revision against the same has also been dismissed. A copy of the order of the Court of Sessions Judge, Wardha dated 25.09.2013 is annexed herewith as **Annexure -7**. The point that the complaint was not maintainable from inception and that the defect is incurable after the expiry of limitation, was not raised and was not adjudicated in the said revision.
11. The complainant's examination-in-chief was filed on 08.10.2012. The matter has since remained at the stage of cross-examination of the complainant's witness.
12. On 29.01.2026, the Petitioner filed an application (Exh. 266) before the Trial Court submitting that the complaint was not maintainable in law, inasmuch as the cheques were drawn on the account of the Company, the Company was not arraigned as an accused within the period of limitation prescribed under Section 142 of the N.I. Act, and no statutory notice was ever issued to the Company, and praying that the Petitioner be discharged / acquitted and the proceedings be dropped. A copy of the application Exh. 266 is annexed as **[Annexure A-8]**.
13. By the order dated 28.09.2026 below Exh. 266, the Trial Court though agreed with the substantial legal position pleaded by the Petitioner, rejected the application as it does not have the jurisdiction for granting the prayer. A copy of the order dated 28.09.2026 is annexed as **[Annexure A-9]**. The relevant paragraphs of the order are extracted here:

“22. It is also necessary to distinguish between the substantive legal position and the procedural jurisdiction of this Court. On the substantive issue, in view of *Aneeta Hada*, *Himanshu* and, in particular, the subsequent authoritative pronouncement in *Manjula Kapoor*, the objection raised by the accused is legally substantial and cannot be regarded as a mere irregularity which can automatically be cured by subsequent impleadment of the company. However, this Court cannot exercise a general power of review and recall its earlier order issuing process merely by

treating the present application as an application for discharge or acquittal.

(...)

24. The fact that the company was subsequently impleaded pursuant to order below Exh.72 dated 28/03/2012 therefore requires consideration in the light of the aforesaid binding principles. However, whether this Court itself can set aside or recall that order, and whether the consequential proceedings are liable to be quashed, are matters which must be considered within the jurisdiction vested in the competent superior Court.”

14. That in view of the law, the complaint is not maintainable in law. The Petitioner has no other equally efficacious remedy. Save and except filing the present quash petition.
15. The Trial Court and the complainant are situated at Wardha and the cause of action arose in Wardha, within the territorial jurisdiction of this Hon’ble Court at Nagpur Bench.
16. In view of the foregoing facts and circumstances, and the material placed on record, the Petitioner humbly submits that the continuation of the impugned proceedings is wholly unwarranted in law. The complaint, as instituted, was not maintainable against the Petitioner, the defect is fundamental and incurable, and it was not and could not have been cured by the order dated 28.03.2012. Accordingly, the Petitioner most respectfully seeks quashing of the proceedings in S.C.C. No. 303384/2002, on the following, amongst other, grounds:

17. GROUNDS:

A. That the cheques were drawn on the account of the Company, which is the drawer and the principal offender, and a complaint in which the Company is not arraigned is not maintainable.

A.1. It is an undisputed position that the cheques were issued towards discharge of the liability of the Company. The offence under Section 138 of the N.I. Act is committed by the person who draws the cheque on an account maintained by him. Where the account is that of a

company, the company, as a juristic person, is the drawer, and the offence is committed by the company.

A.2. Section 141 of the N.I. Act does not create an independent offence against a director. It merely makes the persons in charge of and responsible for the conduct of the business of the company vicariously liable where the offence has been committed by the company. The Petitioner cannot be liable in his own self for a cheque drawn on the Company's account.

A.3. In *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661, a three-Judge Bench of the Hon'ble Supreme Court held as under:

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. **Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.** One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted. (...)

59. In view of our aforesaid analysis, **we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.** We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. (...)”

A copy of the judgment in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 is annexed as **Annexure A-10**.

A.4. This was reiterated in *Himanshu v. B. Shivamurthy*, (2019) 3 SCC 797, on facts closely resembling the present case, where the Hon'ble Supreme Court held:

“11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.

(...)

13. **In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.**

14. We, accordingly, are of the view that **the High Court was in error in rejecting the petition under Section 482 CrPC.**”

A copy of the judgment in Himanshu v. B. Shivamurthy, (2019) 3 SCC 797 is annexed as **Annexure A-11**.

- A.5. The same position has now been authoritatively reiterated by the Hon’ble Supreme Court in *Manjula Kapoor v. State of Himachal Pradesh & Anr.*, 2026 SCC OnLine SC 1521. There, the complaint under Section 138 had been filed only against the director and authorised signatory; the company on whose account the cheque was drawn was not arraigned; and no demand notice had been served on the company. When the proceedings were at the stage of recording statement of accused under Section 313 CrPC, the accused filed a petition before the High Court for quashing the proceedings as the company is not the accused. The Hon’ble High Court though accepted the legal position, took the view that, the Trial Court could have taken recourse to the powers under Section 319 CrPC to arraign the Company as accused and the High Court directed the Trial Court to act in terms supra. The Hon’ble Supreme Court held that where a cheque is drawn on a company’s account, prosecution of the company is a mandatory precondition for fastening vicarious liability on its director or authorised signatory. On the question of whether the Court can implead the company in such circumstances held as follows:

“12. Now we shall consider whether recourse can be had to the provisions of Section 319 of CrPC to arraign the company as an accused when the complaint fails to implead the company. To appropriately answer the issue we must have a look at the provisions of Section 142 which deals with cognizance of the offence punishable under Section 138 of NI Act. Section 142 of NI Act provides that notwithstanding anything contained in CrPC 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; and such complaint must be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. Clause (c) of the proviso to Section 138 gives 15 days' time to the drawer to make payment upon service of notice of demand. This would imply that cause of action crystallises when the drawer of such cheque fails to make payment of the amount concerned within fifteen days of the receipt of the notice contemplated in clause (b) of the proviso to Section 138. **Therefore, the statute fixes a time period within which the complaint is to be made for an offence punishable under Section 138.**

13. No doubt, the Court empowered to take cognizance has the power, under the proviso to sub-section (1) of Section 142 of NI Act, to take cognizance of a complaint made after the prescribed period upon being satisfied that the complainant had sufficient cause for not making the complaint within such period. **But this power must not be used to circumvent the provisions of the Act and allow the complainant to remove fatal defects in the course of the proceedings when the complaint itself deserved dismissal at the threshold.**

14. **Here, the complaint suffered from a fatal defect for its failure to implead the Company as an accused on whose account the cheque was drawn. In such circumstances, no cognizance on that complaint could have been taken in view of the decision in Aneeta Hada (supra). Hence, all further proceedings on the complaint were bad in law.”**

A copy of the judgment in Manjula Kapoor v. State of Himachal Pradesh & Anr., 2026 SCC OnLine SC 1521 is annexed as **Annexure A-12.**

- A.6. The complaint in the present case, as filed on 29.05.2002 against eleven individuals, and as on 04.09.2002 when process was issued, did

not arraign the Company. No valid cognizance could have been taken on it, and the process issued on 04.09.2002 was without jurisdiction.

B. That no statutory notice of demand was ever issued to the Company, and the offence under Section 138 never became complete as against the Company.

B.1. The proviso to Section 138 of the N.I. Act prescribes three cumulative conditions, namely presentation of the cheque within the period of its validity, a written demand made on the drawer within thirty days of receipt of information of dishonour, and failure of the drawer to pay within fifteen days of receipt of the notice. Only when all three are satisfied is the offence complete as against the drawer.

B.2. It is undisputed that no notice was issued to the Company. The offence was therefore never completed as against the Company, the drawer. In the absence of an offence by the Company, there is no offence in respect of which the Petitioner can be vicariously liable under Section 141.

B.3. The period of thirty days within which the notice could be issued expired in 2002. No notice can now be issued to the Company, and the preconditions of Section 138 can never now be fulfilled as against it. In *Himanshu* (supra), the Hon'ble Supreme Court accordingly held that the company could not be subsequently arraigned where no notice of demand had been served on it.

C. That the defect is fundamental and incurable, and could not be cured by the order dated 28.03.2012 below Exh. 72.

C.1. In *Manjula Kapoor* (supra), the Hon'ble Supreme Court, relying on *N. Harihara Krishnan v. J. Thomas*, (2018) 13 SCC 663, held that where a complaint suffers from so fundamental a defect that no cognizance can be taken on it, the Court cannot take recourse to Section 319 of the Code to cure the defect, because there is no valid institution of a proceeding in the first place. It quashed the complaint and all consequential proceedings, although the trial had commenced.

C.2. If Section 319, a statutory power vested in the Court, cannot be used to bring in a company that was left out of a Section 138 complaint, a

fortiori a mere permission “to add accused no. 2 in the title”, granted on the complainant’s application Exh. 72 for which the Code contains no provision at all, cannot cure the defect. The order dated 28.03.2012 is wholly without jurisdiction.

C.3. This Hon’ble Court (Nagpur Bench) has taken the same view. In ***Harikisan Vithaldasji Chandak v. Syed Mazaruddin Syed Shabuddin*, 2023 SCC OnLine Bom 955**, after considering *Aneeta Hada*, and *Himanshu*, this Hon’ble Court held:

“19. (...) If the cheque is drawn on the account of company or firm, then the principal offender is the company or firm and therefore, in the absence of the company or firm being arraigned as accused in the complaint, the prosecution against the Directors or Partners cannot be maintained. It, therefore, goes without saying that if the company or firm is not a party to the complaint and the application is made to add the company or firm as a party to remove such defect, the same cannot be entertained.

(...)

26. The legal flaw in the complaint, as stated above, is not a curable infirmity or defect. This defect cannot be allowed to be cured or rectified by granting the amendment. The grant of amendment would relate back to the date of dishonour of the cheque. Notice was not issued in this case to the partnership firm. The partnership firm has not been arrayed as an accused. Even in the amendment application, no prayer was made to add the partnership firm as an accused. In the facts and circumstances, I am of the view that the learned Magistrate was not right in granting the amendment. Therefore, the order passed by the learned Magistrate is required to be quashed and set aside.”

A copy of the judgment in *Harikisan Vithaldasji Chandak v. Syed Mazaruddin Syed Shabuddin*, 2023 SCC OnLine Bom 955 is annexed as **Annexure A-13**.

C.4. In ***Satheesan Kuttappan v. P.P. Sudhakaran*, 2023 SCC OnLine Bom 2216**, this Hon’ble Court, following *Himanshu*, held that a company or firm that was not arraigned as accused in the complaint cannot be subsequently allowed to be added, since there was no demand notice against it and the preconditions of Section 138 were not complied with as against it. A copy of the judgment in *Satheesan*

Kuttappan v. P.P. Sudhakaran, 2023 SCC OnLine Bom 2216 is annexed as **Annexure A-14**.

C.5. As such the incurable infirmity will not be cured by the order dated 28.03.2012 and as such the proceedings against the Petitioner are not maintainable.

D. That the addition of the Company in 2012 was hopelessly barred by limitation, and no condonation was sought or granted.

D.1. Section 142(1)(b) of the N.I. Act requires a complaint to be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. The proviso to Section 142(1)(b) permits the Court to take cognizance after the prescribed period only if the complainant satisfies the Court that he had sufficient cause for not making the complaint within such period.

D.2. The cause of action arose on 23.04.2002 when the Complainants received banker's memo regarding dishonour of cheques. No demand notice was issued to the company, and limitation expired in or about June 2002. The Company was brought on record only on 28.03.2012, almost ten years later, without notice to it, without any application for condonation, and without any finding of sufficient cause. The addition could not, in law, relate back to 29.05.2002.

D.3. The Hon'ble Supreme Court in *Manjula Kapoor* (supra) held that the power under the proviso to Section 142(1)(b) must not be used to circumvent the provisions of the Act so as to permit the complainant to remove fatal defects in the course of the proceedings where the complaint itself deserved dismissal at the threshold.

E. That the law declared in *Aneeta Hada* and the subsequent decisions applies to this pending complaint.

E.1. In *Ajit Balse v. Capt. Ranga Karkere*, (2015) 15 SCC 748, which arose from a complaint of the same time (C.C. No. 4700 of 2002), the Hon'ble Supreme Court rejected the contention that *Aneeta Hada* could not be applied retrospectively and held that the decision, though prospective, is applicable to all pending cases, including trial, appeal,

revision and special leave petition. It set aside the conviction of a director on the sole ground that the company had not been impleaded. The present complaint is a pending trial and is *a fortiori* covered. The relevant excerpt from *Ajit Balse* is as follows:

“6. The learned counsel appearing on behalf of the respondent contended that the judgment in Aneeta Hada case cannot be made applicable retrospectively in respect of cases where the conviction took place much prior to the judgment. However, on such ground the relief cannot be denied to the accused. The decision in Aneeta Hada case may be prospective but that will be applicable to all the pending cases including the trial, appeal or revision or special leave petition/appeal pending before this Court.”

A copy of the judgment in *Ajit Balse v. Capt. Ranga Karkere*, (2015) 15 SCC 748 is annexed as **Annexure A-15**.

- F. That continuation of the proceedings is an abuse of the process of law, being barred by the express provisions of the N.I. Act. The case falls within category namely where there is an express legal bar engrafted in the concerned Act to the institution and continuance of the proceedings. Sections 138, 141 and 142 of the N.I. Act constitute such a bar, since the Company cannot now be validly prosecuted. Since the Company cannot now be validly prosecuted, no conviction of the Petitioner under Section 141 can ever lawfully be recorded. Compelling the Petitioner to continue to face examination in a trial which can only end in an unsustainable result is a futile exercise which results in harassment and amounts to a gross abuse of process.
18. That the Petitioner has a strong *prima facie* case, and interim relief is necessary. The Trial Court has itself found the Petitioner's objection to be legally substantial, and the law as declared by the Hon'ble Supreme Court is squarely in his favour. The balance of convenience lies with the Petitioner. The trial is at the stage of examination of witnesses, and unless further proceedings are stayed the Petitioner will be compelled to participate in a trial which is void *ab initio*, rendering this petition infructuous. No prejudice will be caused to the Respondents if the proceedings are stayed.
19. That, in view of the foregoing, the entire proceedings against the Petitioner are unsustainable in law. The inherent and supervisory powers of this Hon'ble Court are accordingly invoked to prevent abuse of the process of the Court and to secure the

ends of justice. The Petitioner craves leave to add to, alter or amend any of the above grounds and to rely on further judgments at the time of hearing.

PRAYER

In view of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue a writ / order / direction calling for the record and proceedings of S.C.C. No. 303384 from the Court of the learned Judicial Magistrate First Class, Court No. 2, Wardha; and
- b) Quash and set aside the complaint in S.C.C. No. 303384/2002, Wardha District Central Co-operative Bank Ltd. v. Sanjay Hariram Agarwal & Anr., and all consequential proceedings arising therefrom; and
- c) Pending the hearing and final disposal of this petition, stay further proceedings in S.C.C. No. 303384/2002 pending before the learned Judicial Magistrate First Class, Court No. 2, Wardha, and
- d) Grant ad-interim relief in terms of prayer (e); and
- e) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to secure the ends of justice.

Place: Nagpur

Date: / / 2026

PETITIONER

Through

COUNSEL FOR THE PETITIONER

LIST OF ANNEXURES

Annexure	Particulars
A-1	A copy of the demand notice.
A-2	A copy of the complaint.
A-3	A copy of the order dated 04.09.2002.
A-4	A copy of the application.
A-5	The order dated 28.03.2012.
A-6	A copy of the order dated 14.08.2012.
A-7	A copy of the order of the Court of Sessions Judge, Wardha dated 25.09.2013.
A-8	A copy of the application Exh. 266.
A-9	A copy of the order dated 28.09.2026.
A-10	A copy of the judgment in Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661.
A-11	A copy of the judgment in Himanshu v. B. Shivamurthy, (2019) 3 SCC 797.
A-12	A copy of the judgment in Manjula Kapoor v. State of Himachal Pradesh & Anr., 2026 SCC OnLine SC 1521.
A-13	A copy of the judgment in Harikisan Vithaldasji Chandak v. Syed Mazaruddin Syed Shabuddin, 2023 SCC OnLine Bom 955.
A-14	A copy of the judgment in Satheesan Kuttappan v. P.P. Sudhakaran, 2023 SCC OnLine Bom 2216.
A-15	A copy of the judgment in Ajit Balse v. Capt. Ranga Karkere, (2015) 15 SCC 748