IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2579 of 2024

Sanjeeva Shukla @ Sanjiv Shukla
Vs
Sumit Krishna Rohatgi

For the Petitioner	:	Mr. Sandipan Ganguly, Sr. Adv. Mr. Khalid Ali, Ms. Priyanka Sarkar.
For the Opposite Party	:	None.
Judgement reserved on	:	24.08.2026
Judgment delivered on	:	24.08.2026

Shampa Dutt (Paul), J.:

1. Affidavit of service filed be taken on record.

2. The revisional application has been preferred praying for quashing of the proceedings of Case No. AC-2373 of 2021 under Sections 138/141 of the Negotiable Instruments Act, 1881 pending before the Court of the Learned Judicial Magistrate, 2nd Court, Alipore and all orders passed therein.

3. The petitioner's case in short is that the present revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been preferred challenging the proceeding of Complaint

Case No. AC-2373 of 2021 under Sections 138 and 141 of the Negotiable Instruments Act, 1881, pending before the Learned Judicial Magistrate, 2nd Court at Alipore.

4. The petitioner is one of the Directors of Accused No. 1 Company, namely, Credforce Asia Limited. The petitioner has been arraigned solely on account of his designation as a Director. The complaint neither alleges that the petitioner was in charge of and responsible for the conduct of the business of the Company at the relevant time nor attributes any role to him in the transaction culminating in the dishonour of the cheque.

5. Learned senior counsel Mr. Ganguly has argued on behalf of the petitioner on filing written notes that in the present case the complainant has not satisfied the mandatory requirements under Section 141 of the Negotiable Instruments Act, 1881.

6. It is further argued that Section 141 of the Negotiable Instruments Act creates a legal fiction by extending vicarious criminal liability to persons who have not personally committed the offence under Section 138. Being a penal provision creating vicarious liability, it is settled law that the provision must receive strict construction.

7. Mr. Ganguly further states that the sine qua non for invoking Section 141(1) is a specific averment in the complaint that, at the time of commission of the alleged offence, the accused was "in charge of and responsible to the Company for the conduct of its business." Mere designation as a Director does not satisfy the statutory requirement.

8. It is further submitted that the expressions "was in charge of" and "was responsible to the Company for the conduct of the business of the Company" occurring in Section 141(1) cannot be read disjunctively. The Legislature has consciously employed the conjunctive word "and", making both requirements cumulative. Unless the complaint specifically alleges that the accused fulfilled both conditions at the relevant time, the statutory mandate of Section 141 remains unfulfilled and no vicarious criminal liability can be fastened.

9. It is submitted that, it is now well settled that for launching a prosecution against a Director under Sections 138 and 141 of the Negotiable Instruments Act, the complaint must contain clear, specific and unambiguous averments regarding the role played by such Director in the affairs of the Company. The complainant is required to plead how and in what manner the Director was in charge of, and responsible for, the conduct of the business of the Company. Every Director is not, by virtue of holding office, deemed to be in charge of the affairs of the Company. In the absence of such foundational pleadings, prosecution of a Director is legally unsustainable.

10. Mr. Ganguly, in support of his argument submits that mere designation as a Director is insufficient to attract vicarious criminal liability under Section 141 of the Negotiable Instruments Act and has relied upon the following judgments:-

(a) Ashok Shewakramani & Ors. Vs. State of Andhra Pradesh & Anr. reported in (2023) 8 SCC 473.

(b) Siby Thomas V. Somany Ceramics Limited, reported in (2024) 1 SCC 348.

(c) Rahul Tantia V. State of West Bengal, reported in 2023 SCC OnLine Cal 2618.

11. It is stated that no specific role has been attributed to the petitioner. Apart from describing the petitioner as a Director, the complaint is completely silent regarding:-

(a) the role played by the petitioner in the affairs of the Company;

(b) his participation in the transaction in question;

(c) his involvement in the issuance or execution of the cheque;

(d) his responsibility for the dishonour of the cheque; or

(e) any overt act or omission attributable to him so as to attract criminal liability.

12. It is stated that the complaint does not disclose that the petitioner negotiated with the complainant, authorised the issuance of the cheque, participated in the underlying transaction, or exercised control over the business of the Company in relation to the transaction in question. In the absence of any such allegations, continuation of the criminal proceeding against the petitioner is wholly unwarranted and as such the petitioner prays that the proceedings in the complaint is liable to be quashed.

13. In spite of due service, the opposite party/complainant is not being represented in the present case. The matter was then heard in full.

14. In **Pawan Kumar Goel v. State of U.P & Anr.** reported in **2022 (16) SCALE,** the Supreme Court held:-

> ***"22.*** *The observations made in the aforesaid judgment is also a complete answer to the arguments advanced by learned counsel for the appellant that in the absence of any prohibition under the NI Act, the amendment in the complaint is permissible and the impleadment of an additional accused subsequent to filing of the complaint, would not be barred. At this juncture, we may also refer to the following observations made in the case of N. Harihara Krishnan Vs. J. Thomas (Supra):-*
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> *27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the Act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority*

of law to investigate the offence under Section 138, there would be no person against whom a court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

31. *The Bench answered the questions posed in the reference as under:-*

"19. (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that 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.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these

> *persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub- section (2) of Section 141."*

15. In **Shaleen Khemani & Ors. Vs. The State of West Bengal & Anr.** reported in **(2018) 1 C Cr. LR (Cal) 515, the Court held:-**

> *"**13.** In view of the aforesaid discussion, I am unable to accept the contentions of the learned Counsel for the opposite party no. 2 that merely because the petitioners were directors/additional directors of the company it has to be inferred that they were in-charge of the affairs of the company. It is also pertinent to note that specific overt acts of the petitioners have also not been articulated in the petition of complaint so as to establish the extent of their involvement in the affairs of the said company."*

16. For launching a prosecution against the Directors of a Company under Section 138 read with Section 141 of the NI Act, there has to be a specific allegation in the complaint in regard to the part played by them in the transaction in question. It is also laid down that the allegations has to be clear and unambiguous showing that the Directors were in charge of and responsible for the business of the Company. This was done to discourage frivolous litigation and to prevent abuse of the process of law.

17. It is trite law that in a petition of complaint, the complainant is required to aver as to how and in what manner a director was in charge of the business of the accused company and was responsible for the conduct of the accused company's business. Every Director need not be and is not in fact, in charge of the

business of the accused company. In absence of the specific role qua the participation of a director in the alleged transaction with the complainant, no director can be implicated by virtue of Section 141 of the NI Act.

18. **On perusal of the petition of complaint** filed by the complainant before the trial Court. It appears on careful perusal that the company and its three directors have been made accuseds in the present case. In their capacity as directors, a general statement has been made by the complainant that these directors are engaged in managing the day to day business and regular affairs of the company, at all material point of time. **No specific allegation or any specific act has been attributed to the said accused persons individually. It appears that even the allegation of the cheque being issued has been stated as being issued "by accused persons". The complainant has also stated that the complainant reposed sufficient trust and faith on the representation of the accused persons and accepted the cheque as good as cash. Nowhere in the petition of complaint has the complainant stated as to which of the directors/accused persons had signed the cheque.**

19. The demand notice sent by the learned advocate of the complainant was also sent to all the accused persons. **As such it appears that there is no specific allegation or averment in the petition of complaint as to which of the accused persons had signed the cheque and was thus responsible for the said**

cheque being dishonoured. The complainant/opposite party also did not appear before this Court in spite of being served which has been recorded in the order dated 29.08.2025 in this case. As such it appears that there is no specific averment against any of the petitioners in the present case.

20. This Court relies upon the judgment of the Supreme Court:-

(i) In **Sunil Todi & Ors. V. State of Gujarat & Anr.** reported in **2021(14) SCALE,** wherein the Court held:-

> *"**42.** Section 141 of the NI Act stipulates that if a company is alleged to have committed an offence under Section 138, then every person who 'was in charge of, and responsible to, the company for the conduct of the business of the company' shall also be deemed guilty of the offence. The proviso provides an exception if she proves that the offence was committed without her knowledge or that she had exercised due diligence. In **Sunil Bharati Mittal v. CBI, (2015) 4 SCC 609**, a three judge Bench of this Court observed that the general rule is that criminal intent of a group of people who undertake business can be imputed to the Company but not the other way around. Only two exceptions were provided to this general rule: (i) when the individual has perpetuated the commission of offence and there is sufficient evidence on the active role of the individual; and (ii) the statute expressly incorporates the principle of vicarious liability. Justice Sikri writing for a three-judge Bench observed:*
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> *"43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision. 44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section*

141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

44. *The test to determine if the Managing Director or a Director must be charged for the offence committed by the Company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e., whether the individual was in-charge of and responsible for the affairs of the company during the commission of the offence. However, the determination of whether the conditions stipulated in Section 141 of the MMDR Act have been fulfilled is a matter of trial. There are sufficient averments in the complaint to raise a prima facie case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process."*

In the present case there is no sufficient averments nor a prima facie case against the accused persons.

(ii) In ***Sunita Palita vs M/s. Panchami Stone Quarry, Criminal Appeal No.....of 2022 (arising out of SLP (Crl.)***

No. 10396 of 2019) on 1 August, 2022, the Supreme Court held:-

> *"**36.** The High Court rightly held that when a complaint was filed against the Director of a company, a specific averment that such person was in charge of and responsible for the conduct of business of the company was an essential requirement of Section 141 of the NI Act. The High Court also rightly held that merely being a Director of the company is not sufficient to make the person liable under Section 141 of the NI Act. The requirement of Section 141 of the NI Act was that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company. This has to be averred as a fact.*
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> ***37.** The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company and responsible to the company for the conduct of its business by virtue of the office they hold as Managing Director or Joint Manging Director. These persons are in charge of and responsible for the conduct of the business of the company and they get covered under Section 141 of the NI Act. A signatory of a cheque is clearly liable under Section 138/141 of the NI Act.*
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> ***41.** There can be no doubt that in deciding a Criminal Revisional Application under Section 482 of the Cr.P.C. for quashing a proceeding under Section 138/141 of the NI Act, the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of the said Sections has to be borne in mind. The provisions of Section 138/141 of the NI Act create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also those persons in charge of or responsible for the company or the business of the company. Every person connected with the company does not fall within the ambit of Section 141 of the NI Act.*
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> ***43.** Liability depends on the role one plays in the affairs of a company and not on designation or*

> *status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra). The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) a non-Executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.*
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> ***46.*** *As held by this Court in National Small Industries Corporation Ltd. v. Harmeet Singh Paintal4 quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) the impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act."*

21. Thus, it is clear from the materials on record, that the statements in the petition of complaint **are only general in nature. It has also not been stated as who/which of the accuseds signed the cheque in this case. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain *(N. Harihara Krishnan vs. J. Thomas, (2018) 13 SCC 663).***

22. In ***Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Anr.*** reported in **2023 INSC 692**, the Court held:-

> ***"19.*** *Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of subsection 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also*

responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act. Sub-section 1 of Section 141 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 deeded 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.]"

***20.** On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between.*

***21.** Therefore, even by giving a liberal construction to what is averred in paragraph 1 of the complaints, we are unable to accept the submission made by the learned counsel appearing for the second respondent that these averments substantially comply with sub-section (1) of Section 141 of the NI Act."*

Herein the court has once again cleared the position and the requirements under Section 141 of the N.I. Act.

23. From the petition of complaint it is clear that the requirements under Section 141 of the Negotiable Instruments Act as laid down by the Supreme Court in ***Pawan Kumar Goel v. State of U.P & Anr. (Supra) (para 31)*** are totally absent in this case and allowing the proceedings to continue in respect of the petitioner in such circumstances, would clearly amount to abuse of the process of law.

24. **The revisional application being CRR 2579 of 2024 is allowed.**

25. The proceedings of Case No. AC-2373 of 2021 under Sections 138/141 of the Negotiable Instruments Act, 1881 pending before the Court of the Learned Judicial Magistrate, 2nd Court, Alipore, **is quashed, in respect of the petitioner namely Sanjeeva Shukla @ Sanjiv Shukla.**

26. All connected applications, if any, stands disposed of.

27. Interim order, if any, stands vacated.

28. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

29. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)