

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

**CRR 2286 OF 2024
CRAN 1 OF 2024**

**PRAVIN KUMAR AGARWAL AND ORS.
-VS-
DDEV PLASTIKS INDUSTRIES LIMITED**

For the Petitioners : Mr. Anirban Dutta,
Mr. Shivam Bhimsaria,
Ms. Akansha Singhania

For the Opposite Party : Mr. Francis Samson Correa,
Ms. Sunny Nandy,
Ms. Sneha Singh,
Ms. Yamini Tiwari

Reserved on : 01.09.2026

Pronounced on : 11.09.2026

UDAY KUMAR, J.: –

1. The present criminal revisional application under Sections 401 and 397 read with Section 482 of the Code of Criminal Procedure, 1973, has been instituted by the Petitioners namely Pravin Kumar Agarwal, Jitendra Mohan Gupta, and Abhishek Gupta, arrayed as Accused Nos. 2, 4, and 5 in the underlying complaint, seeking the complete quashing and/or setting aside of criminal proceedings in Case No. CS/26720 of

2024 under Sections 138 and 141 of the Negotiable Instruments Act, 1881, currently pending before the Court of the Learned Metropolitan Magistrate, 20th Court at Calcutta, including the initial summoning order dated 6th April, 2024, whereby process was issued against them.

- 2.** The factual canvas, as culled out from the pleadings, complaint, and records, reveals that the Opposite Party Company, M/s. Ddev Plastiks Industries Limited, is incorporated under the Companies Act, 2013, with its registered office at 2B, Pretoria Street, Police Station Shakespeare Sarani, Kolkata-700071, and is engaged in the business of manufacturing and supplying polymers, polyethylene, PVC compounds, and allied products. Sometime in the year 2022, officials of the Opposite Party approached Shri Mahendra Kumar Gupta, the Managing Director and authorized signatory of M/s. Gupta Power Infrastructure Limited (Accused No. 1 Company)—a company incorporated under the Companies Act, 1956, having its registered office at EN-62, Sector-V, 7th floor, Salt Lake City, Kolkata-700091, which manufactures cables, conductors, wires, and offers electrical infrastructure solutions. Business transactions for the supply of goods commenced thereafter, handled exclusively by Mahendra Kumar Gupta as the person in charge of day-to-day operations.
- 3.** In the regular course of business, Accused No. 1 Company placed multiple purchase orders, and the Opposite Party supplied subject goods (polymers, polyethylene, and PVC compounds) to its satisfaction. Between July 2022 and February 2023, 18 separate invoices were raised against various purchase orders, totaling a running commercial

debt/liability of Rs. 2,86,78,374/-. Towards the partial discharge of this existing debt and/or liability, four account payee cheques were issued, executed, and tendered to the complainant. All four cheques were drawn on the Bank of Baroda, CFS Bhubaneswar Branch, exclusively signed and issued by Accused No. 3, Mahendra Kumar Gupta, in his capacity as the Managing Director and authorized signatory of Accused No. 1 Company. Specifically, Cheque No. 000833 dated 06.01.2024 for Rs. 9,00,000/- was returned unpaid on 25.01.2024 with the remark "Funds Insufficient"; Cheque No. 000832 dated 13.01.2024 for Rs. 9,00,000/- was returned unpaid on 16.01.2024 with the remark "Exceeds Arrangement"; Cheque No. 000831 dated 20.01.2024 for Rs. 9,00,000/- was returned unpaid on 22.01.2024 with the remark "Exceeds Arrangement"; and Cheque No. 000830 dated 27.01.2024 for Rs. 9,00,000/- was returned unpaid on 30.01.2024 with the remark "Exceeds Arrangement". The complainant presented these cheques through its banker, State Bank of India, but all instruments bounced upon presentation.

4. Through Arvind Kumar Singh, the learned advocate, the Opposite Party dispatched a statutory demand notice dated 8th February, 2024, under Section 138(b) of the N.I. Act via Speed Post with A/D to the Company and its directors. Tracking reports from the India Post official website confirmed that the notice was delivered on 9th February, 2024. As the accused persons failed to make payment within the statutory 15-day grace period following constructive service, the Opposite Party instituted the formal complaint case being Case No. CS/26720 of 2024

on 5th March, 2024, before the Learned Chief Metropolitan Magistrate at Calcutta, which was subsequently transferred to the Learned Metropolitan Magistrate, 20th Court at Calcutta.

5. On 6th April, 2024, the authorized representative of the Opposite Party, Mr. Choudhary Birendra Rai, filed an affidavit under Section 145 of the N.I. Act and was examined under Section 200 of the Cr.P.C., recording his initial *ezahar*. Upon perusing the original documents, the complaint, and citations presented by the complainant's counsel, the Learned Metropolitan Magistrate, 20th Court at Calcutta, concluded that a *prima facie* case under Sections 138 and 141 of the N.I. Act had been established against Accused No. 1 Company and all five co-accused persons, including the present Petitioners, who are Whole-Time Directors, and Mahendra Kumar Gupta, the Managing Director. Consequently, the Magistrate issued process/summons under Section 204 of the Cr.P.C. against the Petitioners for appearance on 22nd May, 2024, prompting the filing of the present criminal revisional application.
6. Mr. Anirban Dutta, Learned counsel appearing on behalf of the Petitioners vehemently contended that the impugned criminal proceedings and the summoning order dated 6th April, 2024, constitute an egregious abuse of the judicial process and are legally unsustainable in the eyes of law. The primary thrust of the submissions cantered on the absolute absence of any statutory foundation required to rope in the Petitioners, who are non-signatory Whole-Time Directors, under the stringent provisions of vicarious criminal liability governed by Section 141 of the Negotiable Instruments Act, 1881.

7. He further submitted that the Petitioners are completely unconnected with the issuance, execution, or signing of the subject cheques. The four dishonoured instruments were exclusively drawn, signed, and issued by Accused No. 3, Shri Mahendra Kumar Gupta, in his capacity as the Managing Director and designated authorized signatory of the principal company, M/s. Gupta Power Infrastructure Limited, who alone was in charge of, managed, and controlled all day-to-day business operations, financial dealings, and commercial negotiations with the Opposite Party Company, whereas the present Petitioners had no knowledge whatsoever of these business transactions or the creation of any debt.
8. Placing heavy reliance on celebrated judicial pronouncements of the Hon'ble Supreme Court namely *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.* [(2005) 8 SCC 89], learned counsel submitted that vicarious criminal liability under Section 141 of the N.I. Act cannot be inferred merely on the basis of a corporate designation, title, or office held in a company, and that a meticulous perusal of the complaint reveals a fatal vacuum of specific foundational averments in support of the bald allegations against the petitioners.
9. Expanding on this proposition, counsel argued that Section 141 of the N.I. Act is conjunctive in its operation, requiring both that the person was in charge of and responsible to the company for the conduct of its business, and that a clear nexus is established. A meticulous perusal of the petition of complaint in Case No. CS/26720 of 2024 reveals a fatal vacuum in this regard; the complaint merely incorporates bald,

omnibus, and mechanical recitals tracking the verbatim text of Section 141 without specifying the individual portfolios, roles, or direct transactional participation of the Petitioners. He emphasized that non-signatory directors cannot be roped in en masse through template pleadings without specific factual allegations.

10. Learned counsel further submitted that the Learned Metropolitan Magistrate committed a patent error of law and failed to exercise judicial application of mind at the pre-summoning stage. The Magistrate issued process under Section 204 of the Cr.P.C. without verifying whether the mandatory foundational ingredients necessary to attract the legal fiction of vicarious liability were actually disclosed in the body of the complaint. In the absence of such specific averments, establishing a *prima facie* case against the Petitioners was legally impossible.

11. Finally, invoking the first proviso appended to Section 141(1) of the N.I. Act, learned counsel submitted that a person is shielded from punishment if the offence was committed without their knowledge or despite exercising due diligence. Given that the unimpeachable records and regular communications demonstrate that Mahendra Kumar Gupta exclusively handled the dealings and the Petitioners possessed zero knowledge of the transactions, compelling the Petitioners to undergo the ignominy, trauma, and rigors of an adversarial criminal trial would result in a grave travesty of justice. Consequently, learned counsel urged this Court to exercise its extraordinary and inherent jurisdiction under Section 482 read with Sections 401 and 397 of the Cr.P.C. to

quash the impugned proceedings and the summoning order qua the Petitioners to prevent an absolute abuse of the process of law.

- 12.** Conversely, Mr. Francis Samson Correa, learned counsel appearing on behalf of the Opposite Party Company vehemently supported the legality, correctness, and jurisdictional soundness of the impugned summoning order, contending that the criminal revisional application is completely devoid of merit and an attempt by the Petitioners to evade statutory liabilities.
- 13.** He further submitted that a meticulous perusal of the petition of complaint in Case No. CS/26720 of 2024 reveals that it explicitly contains categorical, robust, and statutory averments satisfying the rigorous thresholds of Section 141 of the Negotiable Instruments Act. The complaint categorically asserts that the Petitioners are Whole-Time Directors and Key Managerial Personnel who were actively managing the financial operations, commercial affairs, and day-to-day management of the accused company at the relevant time of the commission of the offence.
- 14.** Addressing the core defence raised by the Petitioners, it is submitted that the Petitioners cannot take shelter behind the plea of being non-signatories to the dishonoured cheques. In the corporate architecture of a private limited company, an authorized signatory acts on behalf of the company pursuant to collective powers, delegation, or board resolutions passed collectively by the Board of Directors. Therefore, shielding oneself behind a co-director who physically signed the instrument is

impermissible and treats the corporate veil as a tool to bypass legal accountability.

15. Learned counsel urges that Whole-Time Directors stand on a distinct footing compared to independent or non-executive directors. By virtue of their executive status and active responsibilities, they fall squarely within the statutory ambit of persons in charge of the company's business. Furthermore, whether a Whole-Time Director was actually in control of the specific transaction, possessed active knowledge, or exercised due diligence are mixed questions of fact and law. Such factual contentions and evidentiary defences must be tested and adjudicated during a full-fledged trial after leading oral and documentary evidence, and this Court ought not to conduct a "mini-trial" or evaluate defence evidence under its revisional or inherent jurisdiction.

16. Learned counsel additionally submitted that under the statutory framework of Section 141 of the N.I. Act, particularly the first proviso appended to sub-section (1), once the foundational requirements and the dishonour of the instrument are established, the burden shifts onto the accused directors to prove that the offence was committed without their knowledge or that they exercised all due diligence. The word "proves" inherently contemplates a full-scale trial where the accused must discharge their evidentiary burden. Furthermore, learned counsel contends that the plea regarding the non-joinder of necessary parties raised by the Petitioners is entirely foreign and alien to the established principles of criminal jurisprudence. Consequently, the Learned

Magistrate committed no perversity or illegality in taking cognizance and issuing process, and the revisional application is liable to be dismissed with exemplary costs.

17. The core questions that arise for determination by this Court are:

Firstly, whether the petition of complaint contains the requisite specific, foundational averments necessary to attract the legal fiction of vicarious criminal liability under Section 141 of the Negotiable Instruments Act, 1881, against the Petitioners, who are Whole-Time Directors and non-signatories to the cheques; and

Secondly, whether the continuation of criminal proceedings against the Petitioners warrants judicial interference and quashing at the pre-trial threshold under Section 401/397 read with Section 482 of the Code of Criminal Procedure, 1973.

18. I will now embark on the discussion on the merits of the first question formulated for determination, for which it is necessary to examine whether the petition of complaint satisfies the strict statutory thresholds required to invoke vicarious criminal liability under Section 141 of the Negotiable Instruments Act, 1881. The crux of the controversy is cantered on whether a mechanical repetition of operational phraseology alleging that the petitioners, as Whole-Time Directors, were "in charge of and responsible for the conduct of the business of the company" suffices to sustain a criminal prosecution when they are admittedly non-signatories to the dishonoured instruments.

- 19.** Turning to the statutory architecture, Section 141 of the N.I. Act creates a legal fiction whereby the commission of an offence by a company extends penal liability to every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business. The provision reads as follows:

“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.”

- 20.** Being an exception to the normal canons of criminal jurisprudence, which abhor vicarious liability unless expressly provided by statute, Section 141 demands a strict interpretation. The foundational principles governing this domain were authoritatively laid down by the Hon’ble Supreme Court in *S.M.S. Pharmaceuticals (supra)*, wherein a three-judge Bench unequivocally held:

"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 the question posed in sub-para (b) has to be in the 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 the 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.

- 21.** This exposition of law was further refined and reinforced in *National Small Industries Corporation Limited v. Harmeet Singh Paintal & Anr.* [(2010) 3 SCC 330], where the Apex Court underscored that a person can be made vicariously liable only if they were actively associated with the commercial dealings in question, and that the criminal process

cannot be utilized as an instrument of harassment against individuals who had no functional control over the issuance of the cheques. Subsequently, in *Sunita Palita & Ors. v. Panchami Stone Quarry* [(2022) 10 SCC 152], the Supreme Court reiterated that while active roles of Whole-Time Directors or managing directors who run day-to-day affairs may sometimes stand on a slightly different footing compared to independent or non-executive directors, the baseline requirement remains intact: the complaint must contain specific, requisite foundational allegations connecting the individual director to the specific transaction and the operational mechanics leading to the dishonour of the instrument. Boilerplate pleadings that merely name the board of directors en masse, without anything more, do not meet the threshold mandated by law and the authoritative judicial precedents discussed above.

- 22.** Evaluating the facts of the present case against this robust legal backdrop, a meticulous scrutiny of the petition of complaint in Case No. CS/26720 of 2024 reveals a manifest and fatal vacuum. The complainant has merely introduced an omnibus paragraph tracking the verbatim text of Section 141 of the N.I. Act, asserting that all the accused directors were in charge of the company's affairs. Crucially, however, it is undisputed that the subject cheques were exclusively drawn, signed, and issued by Accused No. 3 in his capacity as the Managing Director and designated authorized signatory, who exercised exclusive dominion over the financial accounts and day-to-day operational management. There is not a single whisper in the complaint

specifying any individual overt act, specific operational portfolio, or direct transactional participation attributable to the present petitioners regarding the procurement of goods or the issuance of the specific cheques in question.

- 23.** To permit a criminal prosecution to proceed on the strength of such generalized, template pleadings would subvert the protective shield that Section 141 erects against arbitrary prosecution. The legal fiction contained therein cannot be stretched to rope in every occupant of a corporate boardroom without foundational facts. Therefore, answering the first question for determination, this Court holds that the petition of complaint manifestly lacks the requisite specific, foundational averments necessary to legally attract vicarious criminal liability under Section 141 of the Negotiable Instruments Act against the present petitioners, who are non-signatory Whole-Time Directors.
- 24.** Now, I will proceed to discuss the second question formulated for determination namely, whether the continuation of criminal proceedings against the Petitioners warrants judicial interference and quashing at the pre-trial threshold under Section 401/397 read with Section 482 of the Code of Criminal Procedure, 1973, where this Court must evaluate the extent of its inherent and revisional powers when the foundational pre-requisites for an offence are patently missing.
- 25.** The parameters governing the exercise of jurisdiction under Section 482 of the Cr.P.C. for quashing criminal complaints are well-settled through a catena of decisions by the Hon'ble Supreme Court, most notably in the landmark guidelines set out in *State of Haryana v. Bhajan Lal* [1992

Supp (1) SCC 335], wherein the Apex Court categorically held that where the allegations made in the complaint, even if taken at face value, do not prima facie constitute any offence or make out a case against the accused, the High Court is duty-bound to exercise its inherent powers to prevent an abuse of the process of any court and to secure the ends of justice.

- 26.** In the context of proceedings under Section 138 read with Section 141 of the Negotiable Instruments Act, the Supreme Court in *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.* [(1998) 5 SCC 749] emphasized that summoning an accused in a criminal case is a serious matter. Criminal law cannot be set in motion as a matter of course. The order of the magistrate summoning the accused must reflect an application of judicial mind to the facts of the case and the law applicable thereto. When the complaint fails to disclose the basic ingredients of vicarious liability against specific directors, the very assumption of jurisdiction by the magistrate to issue process is vitiated by a patent error of law.
- 27.** Applying these principles to the matter at hand, this Court finds that the Learned Metropolitan Magistrate, 20th Court at Calcutta, while passing the impugned summoning order dated 6th April, 2024, failed to appreciate the crucial distinction between the primary liability of the company and the secondary, vicarious liability sought to be fastened upon non-signatory Whole-Time Directors under Section 141. The initial *ezahar* recorded under Section 200 of the Cr.P.C. and the perusal of original documents merely established the dishonour of the cheques

issued by the principal company through its Managing Director, but completely overlooked the absolute absence of specific averments detailing the role of the present Petitioners.

28. While it is true that disputed questions of fact cannot ordinarily be adjudicated in a petition for quashing, this principle applies when a valid, legally sustainable foundation has been laid in the complaint. Where the complaint suffers from a foundational defect and fails to disclose the statutory ingredients necessary to constitute an offence under Section 141 against specific individuals, forcing those individuals to undergo the trauma, ignominy, and expense of a protracted criminal trial would be a direct negation of justice. Answering the second question for determination, I hold that the continuation of criminal proceedings against the Petitioners in Case No. CS/26720 of 2024 pending before the Learned Metropolitan Magistrate, 20th Court at Calcutta, constitutes an absolute abuse of the process of the court, thereby warranting the immediate exercise of this Court's revisional and inherent jurisdiction under Sections 401 and 397 read with Section 482 of the Cr.P.C. to quash the proceedings and the summoning order dated 6th April, 2024, insofar as they relate to the present Petitioners.

29. Upon a comprehensive survey of the statutory scheme and the settled exposition of law, this Court reiterates the core legal principle that vicarious criminal liability under Section 141 of the Negotiable Instruments Act, 1881, cannot be fastened upon a director of a company solely by virtue of their official designation or corporate title. The statutory text necessitates an explicit factual foundation within the

four corners of the complaint, demonstrating precisely how and in what manner a non-signatory director was in charge of, and responsible to, the company for the conduct of its business at the relevant time. A mere mechanical reproduction or verbatim recitation of the statutory phraseology without specific averments regarding individualized overt acts is legally inadequate to sustain a criminal prosecution. Furthermore, the pre-summoning stage mandates a rigorous application of judicial mind by the Magistrate to verify whether the foundational ingredients of vicarious liability are prima facie disclosed against each named accused before issuing process under Section 204 of the Code of Criminal Procedure, 1973. Where the complaint suffers from a patent lack of such foundational averments, the initiation and continuation of criminal proceedings against such individuals constitute an egregious abuse of the judicial process.

- 30.** Accordingly, the criminal revisional application being CRR 2286 of 2024, is allowed and disposed of.
- 31.** The impugned criminal proceedings arising out of Case No. CS/26720 of 2024 under Sections 138 and 141 of the Negotiable Instruments Act, 1881, pending before the Court of the Learned Metropolitan Magistrate, 20th Court at Calcutta stands hereby quashed and the order dated 6th April, 2024 issuing summons is set aside, solely in respect of the present Petitioners, namely Pravin Kumar Agarwal, Jitendra Mohan Gupta, and Abhishek Gupta.
- 32.** Connected application (CRAN 1/2024) is also disposed of accordingly.
- 33.** There shall be no order as to costs.

34. Let a copy of this judgment along with the Trial Court Records be transmitted down immediately to the courts below for information and necessary compliance.
35. Case diary, be returned to the Learned Counsel for the State.
36. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)