IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3522 of 2019

Kalpana Dutta
Vs.
M/S. Srei Equipment Finance Private Ltd. & Anr.

For the petitioner	:	Ms. Torsha Min Bahar
For the opposite party	:	Mr. Sachit Talukdar Mr. Sachin Singh Mr. Tirtharaj ghosal
Heard on	:	21.08.2025
Judgment on	:	27.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The criminal proceeding being Case no. CS/407394/14 under section 138 read with section 141 of the Negotiable Instrument Act 1881, (in short N.I. Act) has been assailed by the petitioner herein.

2. The allegation levelled in the complaint is that MS Karunamoyee Construction Pvt. Ltd. entered into a loan cum hypothecation agreement with the opposite party no.1 M/S Srei Equipment Infrastructure Finance Pvt. Ltd and to discharge part debts and/or liabilities against the said agreement, the company issued three cheques drawn on Bank of Baroda through its directors in favour of opposite party no.1. It is further alleged that said cheques were deposited for encashment within the validity period but the cheques were dishonoured on the ground *'fund insufficient and payment stopped by the drawer'.*

3. The complainant through his advocate sent demand notice but since the payment was not made in terms of demand notice, the aforesaid complaint case has been filed by opposite party no.1 herein under section 138/141 of the N.I. Act.

4. During pendency of the said proceeding the petitioner herein made a prayer before the court below for discharging her from the said proceeding on the ground that she was not a director at the time of issuance of cheques and that she resigned from the post of the directorship long back on 19.07.2012 as reflected in Form no. 32.

5. Learned Court below upon hearing the parties by an order dated 19^{th} August, 2019 rejected such prayer made by the petitioner *interalia* on the ground that there is no specific provision under the Code, by which the accused person can be discharged in a summon procedure case.

6. Being aggrieved by the said order Ms. Bahar, learned Counsel appearing on behalf of the petitioners submits that she had resigned as Director from the company much before the alleged cause of action arose and it is settled law that Form 32 under the Companies Act is a document of unimpeachable character and of sterling quality and as such can be looked into to trace whether a Director had indeed resigned from a company on a particular date. He further submits that the cheques referred to in the complaint were issued on 15.12.2013, 15.01.2014 and 15.02.2014 i.e. long after resignation of the petitioner from the company, which took effect on and from 19.07.2012. He also argued that the petitioner herein was neither a signatory of the said cheque nor the petitioner was in any manner whatsoever involved with the daily affairs of the accused company. In this context he relied upon the judgment of ***Rajesh Viren Shah Vs. Redington (India) Ltd.,*** reported in **AIR 2024 SC 1047**. He further pointed out that in affidavit in opposition, the opposite party no. 1 has admitted that the petitioner was not the Director of the accused company during the issuance of cheque but the petitioner has been implicated alleging that she was a guarantor of a separate loan agreement and therefore liable to be prosecuted under the provisions of the N.I. Act.

7. Ms. Bahar in this context further argued that liability of a guarantor comes under the ambit of Indian Contract Act and only attracts in case of civil liability and not in the case of criminal liability under section 138 or 141 of the N.I. Act. In this context he also relied upon the case of ***Dilip Hariramani Vs. Bank of Baroda*** reported in **AIR 2022 SC 2258**. He further contended that once the opposite party no.1/complainant has implicated the petitioner as a Director before the trial court, the complainant cannot implicate him as a guarantor before this Revisional Court. Accordingly she prayed for quashing of the impugned proceeding.

8. Mr. Sachit Talukdar learned Counsel appearing on behalf of the opposite party /complainant argued that it is not in dispute that the subject criminal proceeding originates from loan cum hypothecation agreement entered between the opposite party no.1 and the accused company on 15th

September, 2011 and pursuant to such agreement a sum of Rs. 95, 90,000/- was advanced for purchasing two Hydrolic Excavator. In connection with the said agreement the petitioner herein and the another accused Subir Dutta executed a personal guarantee on 15th September, 2011.

9. Mr. Talukdar further contended that it is explicit from the record that transaction commenced between the parties immediately upon execution of the loan agreement and immediately thereafter the loan was advanced to the accused person. The petitioner thickly participated in the subject transaction and had executed aforesaid personal guarantee against the loan advanced to the accused company. His further contention is that it is apposite to state that the petitioner participated in discussions between the parties over subject transaction and made flowery representations regarding nature of business of the accused company and played vital role in facilitating the subject transaction. Therefore, cumulative appreciation of the agreement entered between the parties clearly indicates that the involvement of the petitioner in the subject transaction is independent of her portfolio holding in the company and she has not been arraigned merely as a Director of the accused company, specific role has been attributed to the petitioner and attribution of such specific role is sufficient to attract her prima facie involvement in commission of the alleged offence. Accordingly, in view of the peculiarity involved in this case, mere resignation of the petitioner from Directorship of the accused company prior to issuance of cheque and/ or dishonour of the same has no bearing in the eyes of law.

10. Mr. Talukdar further argued that it is settled principle of law that in a criminal proceeding triable under chapter XX of the Code, there is no provision for discharging the accused, once the Magistrate issued process against the accused persons and in absence of any such provision the magistrate is duty bound to proceed with the case to its logical conclusion, once process has been issued.

11. Mr. Talukdar referring said Form 32 contended that the Director namely Subir Dutta, who is the husband of the petitioner, while filing up the Form 32 indicated that he has been authorized by way of a resolution dated 01.08.2012 to fillup the said form but the resolution which has been uploaded and has been made a part of Form 32 is dated 19.07.2012 and accordingly said mismatch in the resolution has got no sanction of law, as it also strikes at the root of the authority in the individual filling up the Form 32. Since the resolution dated 01.08.2012 is not part of Form 32, the same raises question as to the authority of the Director filing the Form 32 and also the credibility of the said Form 32 filed by the accused company particularly in the backdrop of the fact that the two Directors of the company i.e. the petitioner and the Subir Dutta are husband and wife and such discrepancy in the document which has been relied by the petitioner is not beyond scrutiny and has to be proved at the time of trial.

12. Mr. Talukdar further referring section 252 of the Company Act states that a private limited company should have a minimum of two directors. In the facts of the present case, if the date of resignation of the petitioner is taken as reflected in Form 32, then under such circumstances the accused no.1/company fails to satisfy the criteria laid down in section 252 since the only director remaining subsequent to the resignation of the petitioner would have been her husband Subir Dutta. Therefore, in view of the fact that company would not have the minimum number of directors as provided in the statute, the resignation of the petitioner could not have said to have taken effect. Though there had been appointment of a new director but said appointment cannot be said to be a valid appointment, since the same took place by way of a resolution lacking sanction of law. In this context, he also referred section 174 of the Company Act which provides for a quorum required to hold for a valid meeting in respect of a Private Ltd. Company.

13. In the instant case if the resignation of the petitioner is accepted w.e.f. 19.07.2012, then the quorum for the meeting held on 19.07.2012 was not met and the meeting itself could not be conveyed and no resolution also could have been taken. However the petitioner in support of her prayer for quashing has heavily relied upon the resolution dated 19.07.2012. ignoring the settled positon of law that the sole director can not unilaterally call for a meeting and pass decision therein. Therefore, the Form 32 filed on the basis of such resolution cannot be accepted.

14. He further contended that the petitioner did not respond the demand notice and such absence of any response to the demand notice sent by the complainant raises questions as regards genuineness about petitioners claim of resignation. The opposite party in this context relied upon a judgment of **Telengana and Andhra Pradesh High Court** reported in **2015 SCC Online Hyd 118.** Therefore, taking into consideration the aforesaid facts and circumstances of the case revolving around the petitioners alleged resignation, it appears that it is not a fit case to quash the impugned proceeding invoking courts jurisdiction under section 482 of the Code.

15. Before going to further details let me reproduce the relevant averments made in the complaint.

<u>"Most Respectfully Sheweth:</u>

1. *That the complainant is a private limited Company incorporated under the companies Act 1956 having its corporate office and/or place of business at 7th Floor "OLISA house"4, Government place (North), Kolkata 700001(formerly at 6A Kiran Shankar Roy Road, 2nd Floor, Room No.12 and 13, Kolkata-700001). The complainant company has duly empowered the petitioner i.e. Mr. Sk. Abidur Raaman to file the present case and to take all necessary steps on connection therewith on its behalf by authority of an Power of Attoreny executed in his favour. A copy of the said Powser of Attorney is annexed herewith marked as "Annexure A".*
2. *That the accused No.1 is a provate Limited Company, incorporated under the companies Act, 1956, having its office and/or place of business mentioned above in the cause title. The accuysed No.2 and 3 are the Directors of the said accused No.1 private limited Company and they are also the persons-in-charge, responsible for and looking after the day to day business affairs of the said accused no.1/company when the said offence was committed. The said accused no.1/company is being manged and controlled by the accused no.2 and 3.*
3. *That accused persons in discharge of part legal debts and/or liablities arising out of a loan cum Hypotencation Agreement Nos. HL0049224, HL0049224 & HL0049224 entered into by and between the complainant and the accused persons, the accused persons issued a cheque in favour of the complainant company. The details of the said cheque is mentioned herein under:*

Cheque Nos.	*Dates*	*Amounts*	*All cheques drawn on*
556574, 556575 & 556576	*15th December 2013, 15th January, 2014 & 15th February, 2014*	*Rs. 2,96,000/- Rs. 2,96,000/- & Rs. 2,96,000/-*	*Bank of Baroda-Paikpara 700002.*

4. *That the complainant begs to submit that the above mentioned agreement was entered into by and between the complainant and the accused persons at the above mentioned corporate office of the complainant company. As per the said agreement the loan amount was disbursed by the complainant to the accused persons from its above mentioned corporate office and the accused persons towards the discharge of their part debts and liabilities arising out of the above mentioned agreement issued and/or handed over the above mentioned cheque to the complainant at the above mentioned corporate office of the complainant company."*

16. It is now necessary to quote section 141 of the Negotiable Instrument Act,

> **"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."*

17. In ***S.M.S. Pharmaceutical Ltd. Vs. Neeta Bhalla and another***, reported in **(2005) 8 SCC 89** a three Judges Bench of the Apex Court has laid down the law regarding necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. Since section 141 of N.I. Act is a departure from the rule in criminal law against vicarious liability, it has been clearly held that a complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein and if the magistrate is satisfied that there are averments which bring the case within the parameters of section 141, he would issue the process. Para 19 of the said judgment may be reproduced below:-

> **18.** *In view of the above discussion, our answers to the questions posed in the reference are as under:*
>
> ***(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.*
>
> ***(c)*** *The answer to Question (c) has to be in the 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 the 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 the 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.*

19. Now on perusal of the above quoted averments made in the complaint it is clear that the averments required under section 141 of the N.I. Act has been averred in the complaint and the company has also been made a party and such averment persuaded the magistrate to issue process against the Director/Petitioner

20. Now where specific averments required under the section, has been made against Director/accused in the written complaint but still he has come before High Court seeking quashment of proceeding, what shall be the guiding principles, have been laid down by Apex Court in para 34 of ***Gunmala Sales Pvt. Ltd. Vs. Anu Mehta and others*** reported in **(2015) 1 SCC 103**

> ***34.*** *We may summarise our conclusions as follows:*
> ***34.1.*** *Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time*

when the offence was committed, the Magistrate can issue process against such Director.

34.2. *If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.*

34.3. *In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.*

34.4. *No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.*

21. Therefore, in the present context I need to look into whether despite the presence of the basic averments in the complaint, the proceeding still liable to be quashed because of some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which clearly indicates that the Director/petitioner could not have been concerned with the issuance of cheques and asking him to stand the trial would be an abuses of process of the court.

22. In the instant case the “unimpeachable” document relied by petitioner in support of quashment is Form 32 along with resolution regarding petitioner’s resignation. In this context at the cost of repetition it can be said that the specific case of the petitioner /accused no.3 is that she resigned from the directorship long back w.e.f. 19.07.2012 as reflected in Form no. 32. Whereas the cheques referred to the complaint were issued on 15.12.2013, 15.01.2014 and 15.02.2014 which is long after the resignation of the petitioner from the company. Her further case is that the petitioner was neither a signatory to the said cheques nor the petitioner was in any manner whatsoever involved with the daily affairs of the accused company. Her further contention is though opposite party no.1 admitted that the petitioner was not a director of a accused company during the issuance of cheque but the petitioner was a guarantor of loan transaction and thus, she has a liability under section 138/141 of the N.I. Act arising out of the said loan agreement. However, liability of a guarantor comes under the ambit of the Indian contract Act and only attracts civil liability and not criminal liability under section 138 or 141 of the N.I. Act.

23. Such argument made on behalf of the petitioner has bene seriously opposed by the opposite party herein, raising the following issues:-

> ***(a)*** *that there appears to be anomaly as regards the date of the resolution because Form 32 shows that the Director namely Subir Dutta (husband of the petitioner) while filling up the Form 32 indicated that he has been authorized by way of a resolution dated 01.08.2012 to fill up the said Form no. 32 but the resolution which has been uploaded and has been made a part of the said form is dated 19.07.2012. Accordingly his contention is that the resolution authorising an individual to act on behalf of the company to fill up the Form no. 32 has to be in accordance with the statute and must have the sanction of law. The mismatch in the resolution strikes at the root of the authority of the individual filling up the form. The alleged resolution dated 0108.2012 has also not been made part of from 32 and thereby the opposite party raised question as to the credibility of Form 32 filed by the accused no.1/company specially when the company had only two directors i.e. the petitioner and her husband Subir Dutta*
>
> ***(b)*** *section 252 of the companies Act states that a private company should have a minimum of two directors and therefore, if the date of the resignation of the petitioner is taken as shown in the Form 32, then the accused no.1/company fails to satisfy the criteria laid down in section 252 since the only director remaining subsequent to the resignation of the petitioner and the company would not have had the minimum no. of Directors as prescribed in the statute and therefore her resignation could not*

have said to have taken effect. Form 32 states that the same had been filed for two purposes i.e. appointment to a new Director and resignation of the petitioner but the appointment of a new Director cannot be said to have been a valid appointment since the same took place by way of a resolution lacking sanction of law.

(c) *Section 174 of Companies Act provides for a quorum required to hold a valid meeting in respect of a Private Limited Company. Section 174(1) of the Act prescribes that in case of any company other than Public Limited Company, the quorum for a meeting shall be a minimum of two members. Therefore, if the resignation of the petitioner is accepted to be w.e.f. 19.07.2012 then the quorum for the meeting held on 19.07.2012 was not met and in the absence of quorum the meeting itself could not be conveyed and no resolution having the sanction of law could therefore have said to have been passed.*

(d) *In support of the contention that the resolution dated 19.07.2012 does not have the sanction of law, the case of opposite party is that the sole Director cannot unilaterally call for a meeting and pass decisions thereof. As a corollary the resolution purportedly authorising her husband Subir Dutt to fill the Form 32 cannot said to be a valid resolution having the sanction of law. A company acts through its Board of Directors. A Board translates its decision into resolutions. In the present case the Board itself was non-existent on 19.07.2012 and thereby any decision taken vide any resolution devoid of legal sanction.*

(e) *The anomaly in Form 32, the unilateral manner in which a sole director calls for a Board Meeting, and proceeds to appoint a new director and accept the resignation of another and further proceeds to authorize himself to fill Form 32 are actions which dents the character of the Form 32 relied upon by the petitioner and the same cannot be said to be beyond scrutiny in view of the severe irregularities and anomalies and in view thereof the petitioner is required to prove the factum of resignation at the time of trial.*

(f) *The resignation letter is a part of Form 32 uploaded by the accused no. 1 company but the petitioner has neither attached with the petition her copy of the resignation letter with proof of service of the same upon the accused no. 1 company nor has pleaded in the petition, the manner in which she tendered her resignation. Quoting para 2, of the complaint the opposite party submits that the Form 32 is filled up not by a director resigning but by the company concerned but here the petitioner nowhere indicated the manner how her resignation has been tendered. In the absence of any proof of service of the resignation letter the factum of petitioner's resignation remains a disputed question of fact which is to be establishes at the time of trial. In this context counsel for the opposite party made strenuous argument that the petitioner even though claims to have resigned prior to the cheques having been issued but she did not respond to the demand notice by putting forth the said stand and the absence of any response to the demand notice sent by the complainant raises question as regard the petitioners claim of resignation. Further argument advance by the petitioner is that High Court is authorized to exercise its jurisdiction under section 482 to quash a proceeding by placing reliance on Form 32, only if the same is beyond any scrutiny i.e. the document relied by petitioner is unimpeachable and of sterling quality.*

24. Therefore the situation as it stands in the instant case is that the averments made in the complaint clearly discloses offence against the petitioner herein. Now whether the allegations sought to be levelled by opposite party questioning petitioners resignation, has any impact upon the transaction or not has to be decided on the basis of evidence to be laid during the course of trial. In the instant case on a careful reading of the complaint it cannot be said that the complaint does not disclose the commission of an offence or the ingredients of the offence under section 138 read with section 141 are absent on the basis of allegations made in the complaint. Whether the allegations levelled in the complaint that there was no valid resignation on the part of the director petitioner at the time of issuance of the cheque has to be decided on the basis of the evidence to be led during the course of trial, but at this stage without trial it can hardly be said that the documents relied by petitioner are of sterling quality or impeachable in character, specially when opposite party has raised the credibility of said Form-32 in the backdrop of above mentioned reasons, which are need to be scrutinized and tested at the time of trial.

25. In ***M. Krishnan Vs. Vijay Singh and another*** , reported in **(2001) 8 SCC 645** the Apex Court held that the revisional or inherent power for quashing the proceeding at the initial stage can be exercised only where the allegations made in the complaint or the FIR do not prima facie disclose the commission of an offence or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reach a just conclusion that there were sufficient ground for proceeding against the accused. Accordingly it is not a case where it could be said that even if the allegations in entirety accepted, no case is made out. It has been reiterated time and again by the Apex Court that the High Court while exercising power under Article 226 of the Constitution of India or section 482 of

Cr.P.C. has to adopt a very cautious approach. Therefore ultimate finding of the Trial Court that he has reason to proceed against the accused/petitioner does not suffer from any perversity, or impropriety and therefore does not call for interference by this court.

26. In view of above discussion **CRR 3522 of 2019** stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)