



2024:DHC:9583



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 12th December, 2024**
+ **CRL.M.C. 1921/2023 & CrI.M.A.7311/2023**
JYOTI SIWACHPetitioner

Through: **Mr. H.C. Suri and Ms. Payal Agrawal,**
Advocates

versus

STATE & ORS.Respondents
Through: **Mr. Yudhvir Singh Chauhan, APP for**
the State
Mr. Sonal Anand, Mr. Aayush Sai
and Ms. Surbhi Singh, Advocates for
R-2 and R-3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”) [now under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”)] has been filed on behalf of the petitioner seeking the following reliefs:

“a. Quash Complaint alongwith summoning order bearing CC NI Act 7369/2022 under Section 138 read with 141 of the Negotiable Instruments Act pending before the Court of Ms. Abhilasha Singh, Ld. Metropolitan Magistrate-02 (South District), Saket Court, New Delhi against the Petitioner; and

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b. Pass any other order and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.”

2. The brief facts of the case, as per the complaint bearing no. 7369/2022 titled as “*Kulbhushan Bharadwaj vs. Siwach Infrastructure Pvt. Ltd.*”, which led to the filing of the instant petition are as follows:

- a. The petitioner, respondent no. 4-company and respondent no. 5 are the accused in the aforesaid complaint.
- b. The respondent no. 3/complainant was approached by the petitioner and respondent no. 5 herein, representing the respondent no.4-company i.e., “M/s Swiach Infrastructure Private Limited” as being owners of Flat No. 1, Ground Floor, I Wing, Griha Shakti, Ladvali, Karjat, Raigad, Maharashtra – 410206 (hereinafter as the “subject property”) and expressed interest in selling the said subject property to the complainant.
- c. Thereafter, the complainant agreed to pay a sum of Rs. 35,00,000/- as sale consideration and accordingly, made a payment of Rs. 25,00,000/- to the accused herein.
- d. Later, the petitioner and respondent no. 5 handed over a file to the complainant consisting of documents showing the closing of a house loan in favour of one Ms. Yasmin Hashmat Ullah, a resident of 6, Crescent House 27, Sahid Bhagat Singh Road, Colaba, Mumbai, Maharashtra.



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- e. Upon finding the documents contradictory, the complainant visited the State of Maharashtra only to find that the neither the accused were the owners of the subject property, nor the subject property was in the name of Ms. Yasmin Hashmat Ullah.
- f. After confronting the accused regarding the same, the accused promised to refund the said amount of Rs. 25,00,000/- paid by the complainant in lieu of the sale of subject property. Accordingly, a cheque bearing no. 000519 dated 11th September, 2019 for an amount of Rs. 25,00,000/- drawn on HDFC Bank, SCO-39, Sector-56, HUDA District Centre, Gurugram was issued by respondent no. 4-company in favour of the complainant.
- g. The said cheque was presented to the concerned Bank, however, the same was dishonoured and returned as “Payment Stopped by Drawer” vide memo dated 20th September, 2019. The said information was brought to the attention of the accused and upon its request, the said cheque was re-presented in the concerned Bank and the same was dishonoured for “Payment Stopped by Drawer” vide memo dated 21st October, 2019.
- h. Upon non-receipt of the amount, the complainant sent a legal notice dated 2nd November, 2019 demanding the payment of the said amount within 15 days from the receipt of the said notice. However, no such payment was made by the accused.
- i. Aggrieved by the same, the complainant filed the aforesaid complaint before the learned Judicial Magistrate of First Class, Gurugram,



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Haryana under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter as the “NI Act”). Thereafter, the said Magistrate issued summons to the petitioner vide order dated 6th January, 2020 (hereinafter as the “summoning order”).

- j. A Transfer Petition bearing no. 108/2020 was filed by the respondent no.4-company before the Hon’ble Supreme Court and vide order dated 23rd August, 2022, the instant complaint case was transferred from Judicial Magistrate of First Class, Gurugram, Haryana to Saket District Court, Delhi.
- k. Thereafter, the learned Metropolitan Magistrate-02, South District (NI Act), Saket Courts, New Delhi (hereinafter as the “MM”) issued notice vide order 21st December, 2022 under Section 251 of the Code to the respondent no. 4-company through petitioner and respondent no. 5 for the offence punishable under Section 138 of the NI Act.
- l. Aggrieved by the proceedings instituted against her, the petitioner filed the instant petition seeking quashing of the aforesaid complaint and the summoning order.
3. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case as she was not involved in the issuance of the said cheque to the complainant.
4. It is submitted that the petitioner is not involved in the day-to-day activities and affairs of the respondent no.4-company and therefore, she cannot be made liable for the offence committed by the respondent no.4-company.



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5. It is further submitted that the petitioner has never dealt with the complainant and has no knowledge about the issuance of the said cheque to the complainant. Moreover, it is submitted that she is not an authorised signatory of the cheque in question and hence, she was erroneously made a party to the instant complaint.

6. It is submitted that due to her non-involvement in the company's affairs and her absence of knowledge regarding the issuance of the said cheque to the complainant, no offence is made out against her under Sections 138 and 141 of the NI Act.

7. It is submitted that it is a settled position of law that the Directors who are in charge and responsible for the conduct of company's affairs at the relevant time of commission of offence shall be held liable under Sections 138/141 of the NI Act. However, the petitioner was not involved in issuing the said cheque to the complainant and in maintaining the affairs of the company.

8. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

9. *Per Contra*, learned APP for the State vehemently opposed the instant petition and submitted that the learned MM was right in issuing summons against the petitioner as *prima facie* offence has been made out under Section 138 of the NI Act. Therefore, it is submitted that the instant petition is bereft of any merit and is liable to be dismissed.

10. Learned counsel for the respondent no. 2 and respondent no.3/complainant vehemently opposed the instant petition and submitted that



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the aforesaid complaint cannot be quashed by exercising the powers under Section 482 of the Code as sufficient material is available against the petitioner for being liable under Sections 138 and 141 of the NI Act.

11. It is submitted that the learned MM has rightly issued summons against the petitioner after examining the material on record and observing that the payment of Rs. 25,00,000/- was not made by the petitioner despite the issuance of the demand notice dated 2nd November, 2019.

12. It is submitted that the petitioner has been involved in the sale transaction of the subject property since the initial stages and was very much involved in issuing the said cheque to the complainant.

13. It is submitted that the petitioner, being the Director of the company, was involved in the day-to-day company's affairs at the time of issuance of the said cheque to the complainant and therefore, she cannot be absolved from being liable under Sections 138 and 141 of the NI Act.

14. Therefore, in light of the aforementioned submissions, it is prayed that the instant petition may be dismissed.

15. Heard learned counsel for the parties and perused the record.

16. At this juncture, it is pertinent to note that the limited question for adjudication before this Court is whether this Court can exercise inherent powers under Section 482 of the Code (Section 528 of the BNSS) for quashing of the complaint bearing no. 7369/2022 and summoning order dated 6th January, 2020.

17. Therefore, it is pertinent to understand the scope of interference of this Court under Section 482 of the Code i.e., Section 528 of the BNSS, wherein,

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this Court is bestowed with inherent jurisdiction to exercise its powers to either “prevent any abuse of process of law” or “secure the ends of justice”. However, the said terminologies are devoid of any specific definition due to its wide ambit and therefore, the determination as to whether the case falls within the scope of the aforesaid terms lies with the Court and must be testified based on the established principles of law. Moreover, under this provision, the Court must exercise its adverse powers sparingly, cautiously and in exigent cases.

18. However, the Court can exercise its inherent powers under Section 482 of the Code to quash complaints and criminal proceedings emanating therefrom, if it does not constitute a *prima facie* offence against the accused and the same was elaborately dealt with by the Hon’ble Supreme Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others, (2006) 6 SCC 736***.

19. Keeping the aforesaid law in mind, it is pertinent to understand the contention of the petitioner that the said complaint and the summoning order are liable to be quashed as the petitioner is not involved in the day-to-day affairs of the company and was unaware of the cheques issued to the complainant, hence, the offences under Section 138 and 141 of the NI Act are not made out.

20. Therefore, this Court will examine whether the instant case satisfies the ingredients of Section 138 and 141 of the NI Act, wherein, the former deals with the dishonour of cheque and the latter deals with the company’s



liability in dishonour of cheque. For the purpose of convenience, the said provisions are reproduced hereinunder:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

*(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.***Explanation.—***For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]”*



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“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.”



21. Upon perusal of Section 138 of the NI Act, it is observed that the said provision deals with the offence of dishonor of the cheque and lays down certain criteria to be satisfied in order to make out a case under this provision. While dealing with the applicability and objective of this provision, the Hon'ble Supreme Court in the case of ***Kusum Ignots & Alloys Ltd v Pennar Peterson Securities Ltd, 2000 (SCC) Cri 546*** categorically listed out the ingredients of Section 138 of the NI Act and the relevant paragraphs of the same are as follows –

“10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

- (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
- (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*
- (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*
- (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.*



11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase “debt or other liability” means a legally enforceable debt or other liability.”

22. As per the aforesaid extracts, it is observed that after a cheque is returned for insufficient funds in the account, a notice demanding the repayment of the due amount should be issued by the payee to the drawer within a time period of thirty (30) days from the date on which the cheque was returned. Moreover, the provision also provides the drawer with a statutory period of fifteen (15) days to repay the due amount from the date of receipt of the demand notice. However, if the drawer fails to pay the due amount within the said statutory period, then an offence under Section 138 of the NI Act is deemed to have been committed.

23. In the instant case, the complainant presented the said cheque for the second time on 19th October, 2019, which was dishonored vide memo dated 21st October, 2019 for insufficiency of funds. As required by Section 138 of the NI Act, the complainant issued a demand notice dated 2nd November, 2019, which was issued well within the statutory period of 30 days. However, despite intimating the accused persons, including the petitioner, regarding the dishonor of the cheque and payment of the due amount, the accused persons including the petitioner failed to pay the said amount, thereby, making out an offence under Section 138 of the NI Act. Accordingly, the aforesaid complaint was filed.



24. Now coming to Section 141 of the NI Act, it is observed that when a company commits an offence under Section 138 of the NI Act, any person who is “in charge of” or “responsible for the conduct of the affairs of the company” shall be held guilty of the offence. However, if it is proved that the said offence is committed without the knowledge, the said person cannot be made liable. Therefore, the burden of proving the same lies on such person claiming such defence. It is further stated that if the offence is committed with the connivance of the director, manager or any officer of the company, such person shall be held liable under Section 141 of the Act.

25. Section 141 of the NI Act merely states the liability of certain people for the offences committed by the company, which needs to satisfy the test of who is “in charge of” or “responsible for the conduct of company’s affairs”. However, the extent of their liability is discussed elaborately in a catena of judgments.

26. The principle of making the officers of the company vicariously liable for the offences committed by the company and their extent of liability is discussed by the Hon’ble Supreme Court in the case of ***Susela Padmavathy Amma v. Bharti Airtel Limited*, 2024 SCC OnLine SC 311**. The relevant paragraphs of the same are as follows:

“20. In the case of S.M.S. Pharmaceuticals Ltd. (supra), this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word “director” as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:



“8. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company.”

21. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the



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company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

22. In the case of Pooja Ravinder Devidasani v. State of Maharashtra⁷ this Court observed thus:

“17. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed : (SCC p. 336, paras 13-14)

“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.



14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely 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 is not a sufficient or adequate fulfilment of the requirements under Section 141.”

(emphasis in original)

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162], this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.”

27. The aforementioned extracts clearly states that mere holding of the position of directorship does not make that person vicariously liable for the offences committed by the company. In fact, it is to be examined whether



such Director was involved in the day-to-day affairs of the company and was in charge of the conduct of the affairs of the company at the time of commission of the offence. If the answer is in affirmative, then the Director will be held liable for the offences committed by the company under Section 141 of the NI Act.

28. Furthermore, the conduct of the Director of a company and his involvement is required to be stated explicitly by the complainant in the contents of the complaint. In ***National Small Industries Corporation Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330*** it was observed as follows:

“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.”

29. Therefore, a basic averment is necessary to be made in the complaint regarding the accused's role in being in charge and responsible for the conduct of the company's affairs at the relevant time of commission of the offence.

30. At this juncture, it is pertinent to examine the averments made in the complaint, wherein, it was specifically averred at paragraph no. 9 of the



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complaint that the petitioner along with respondent no. 5 are directors of the company and were responsible for the day-to-day discharge of functions of the respondent no. 4-company. It is further specifically averred that the petitioner along with respondent no. 5 approached the complainant for selling the subject property and apprised the complainant of the procedure for registration of the subject property.

31. Therefore, the contention of the petitioner that it has no knowledge regarding the issuance of cheque in favour of the complainant cannot be taken into account. Moreover, upon perusal of the complaint, it is observed *prima facie* that the petitioner had the knowledge of issuance of the cheque in question to the complainant and has been involved in the instant case since the beginning of the transaction between the parties.

32. Furthermore, it is also pertinent to peruse the contents of the Article of Association (AoA) and Memorandum of Association (MoA), which is annexed to the instant petition as Document no. 32 and 34. At Paragraph no. 37 of the AoA, it is specifically stated that the petitioner i.e., Ms. Jyoti Siwach was one of the First Directors of the Company. Further, it is observed that she is one of the Promoters as well as the Subscriber of the respondent no. 4-company. Upon perusal of Company Master Data, which is annexed as Document no. 33, it is observed that the petitioner's Unique Director Identification Number (DIN) is mentioned as 07513150.

33. It is further pertinent to mention that it was contended by the petitioner that she is not an authorised signatory of the said cheque and hence, cannot be made liable under Section 138 and 141 of the NI Act.



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34. In the instant case, even though the petitioner is not an authorised signatory of the cheque, she is an officer of the company, holding a directorial position at the respondent no.4-company. Therefore, not being an authorised signatory does not absolve her from the liability of the commission of offence as long as the requisites under Section 138 and 141 of the NI Act are met.

35. Considering the foregoing discussion on facts and law, this Court has observed a *prima facie* case against the petitioner for her involvement in the day-to-day activities of the conduct of the company affairs at the time of commission of the offence under Section 141 of the NI Act and her knowledge in issuance of the said cheque to the complainant.

36. At this stage, it is also pertinent to peruse the summoning order passed by the learned MM, wherein, it was observed that the petitioner failed to pay the amount of Rs. 25,00,000/-, which is a legally enforceable debt, despite demanding the said amount vide demand notice dated 2nd November, 2019. Accordingly, the learned MM issued summons against the petitioner.

37. After taking into account the aforesaid discussions, this Court is of the view that the learned MM has rightly issued summons against the petitioner after being satisfied that a *prima facie* case is made out under Section 138 of the NI Act. Moreover, sufficient reasons were given in the summoning order, wherein, the learned MM observed that payment was not made by the petitioner despite the issuance of the demand notice dated 2nd November, 2019.



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38. Therefore, taking into consideration the foregoing discussion, this Court is of a considered view that the learned MM has not committed any error or illegality in passing the summoning order and therefore, this Court does not find any reason to exercise its inherent powers under Section 482 of the Code (Section 528 of the BNSS) by quashing the complaint bearing no. 7369/2022 and summoning order dated 6th January, 2020.

39. Accordingly, the instant petition, being devoid of any merit, stands dismissed along with pending applications, if any.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 12, 2024
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