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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 2988/2022, CRL.M.As. 12571/2022, 12573/2022**

ANJU KHANNA & ORS.

.....Petitioners

Through: Mr. Hrishikesh Baruah, Mr. Shubham
Agarwal, Advs.

versus

STATE(GOVT OF NCT OF DELHI) & ANR.Respondents

Through: Mr. Shoaib Haider, APP
Mr. Ashish Rana and Mr. Anurag Kr
Singh, Advs. for Respondent Bank

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of Complaint Case No.28540/2016 (Old Case No.1305/2015) titled as "M/s Indian Bank (Erstwhile Allahabad Bank) vs. M/s Adigear International & Ors." registered under section 138 of the Negotiable Instruments Act, 1881 pending before the learned Metropolitan Magistrate, New Delhi District, Patiala House Courts, New Delhi & all proceedings and Orders emanating therefrom including Orders Dated 01.05.2015, 04.12.2019, 27.04.2022, passed by the learned Metropolitan Magistrate & Order Dated 31.08.2021, passed by the learned Additional Session Judge in CR Rev. No. 105/2020 Titled as "Anju Khanna & Ors. vs. Allahabad Bank" qua the Petitioners herein, i.e. accused No. 3, 4 & 5 in the Complaint Case.



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2. Material on record discloses that M/s Adigear International, which is a partnership firm with the Petitioners herein as its partners, availed a credit facility of Rs.30 crores out of which there is a cash credit facility of Rs.25 crores and a letter of credit facility of Rs.5 crores from the erstwhile Allahabad Bank (now Indian Bank)/Respondent No.2 herein. It is stated that the total outstanding dues payable to the Bank by the partnership firm as on 24.12.2013 was Rs.32.84 crores, i.e. Rs.29.57 crores against cash credit facility and Rs.3.27 crores against letter of credit facility. Material on record discloses that towards regularizing the account of the partnership firm and for partial liquidation of the over drawn amount, the Petitioners herein issued the following cheques drawn on the State Bank of Bikaner and Jaipur in favour of the Allahabad Bank (now Indian Bank):

- i. No.358077 dated 25.09.2013 for Rs.43,00,000/-
- ii. No.358075 dated 28.09.2013 for Rs.43,00,000/-
- iii. No.358076 dated 30.09.2013 for Rs.44,00,000/-

3. It is stated that when the abovementioned cheques were presented for clearing, the same were returned unpaid on 04.11.2013, 06.11.2013 and 08.11.2013 respectively for the reasons "funds insufficient" for cheque bearing No. 358077 and "Stop Payment" for cheques No. 358075 & 358076. It is stated that the Respondent No.2/Complainant gave a notice under Section 132 of the NI Act to the Petitioners herein on 11.11.2013 demanding the cheque amount but even after receiving the said notice, the Petitioners have not returned the money back to the Respondent No.2. Thereafter, the Respondent No.2 filed a complaint case against the accused persons, including the Petitioners herein, under Section 138 of the NI Act.

4. Summons were issued against the accused persons, including the



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Petitioners herein. It is stated that the Petitioners herein filed an application seeking discharge which was dismissed by the learned Metropolitan Magistrate vide Order dated 04.12.2019, on the ground that the learned Metropolitan Magistrate does not have the power under the CrPC to discharge the accused persons. It is stated that the said Order was taken up in revision before the learned Additional Session Judge and the same was dismissed vide Order dated 31.08.2021.

5. It is stated that one of the accused person, namely, Mr. Pran Nath Khanna, filed a Petition being CRL.M.C. 1423/2022, before this Court seeking quashing of the complaint qua him and this Court vide Order dated 04.04.2022, disposed of the said Petition on the ground that an equal and efficacious remedy is available to the Accused person under Section 252 Cr.P.C. to seek discharge before the learned Trial Court.

6. It is stated that the Petitioners herein once again filed an application under Section 251 Cr.P.C before the learned Metropolitan Magistrate seeking discharge. However, the learned Metropolitan Magistrate vide Order dated 27.04.2022, dismissed the said application. The Petitioners herein have, thereafter, approached this Court seeking the reliefs as stated above.

7. The short submission raised before this Court is that the complaint, as framed, is not maintainable for the reason that it does not have the necessary averments against the Petitioners herein.

8. At this juncture, it is pertinent to reproduce the averments made by the Complainant against the Petitioners herein and the same reads as under:

“2. That the accused No .1 is a partnership firm with the accused No.2 to 5 as its partners have availed a credit facility of RS.30 Crores out of which there is a cash credit facility of Rs.25 Crores and a letter of



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credit facility of Rs.5 Crores. The accused No .1 maintaining account No.50067526557 with the complainant bank

7. That the accused No. 2 to 5 being the partners of the accused No .1 and the drawers of the aforesaid three dishonoured cheques are liable to pay the amounts of the aforesaid dishonoured cheques to the complainant in cash or by way of demand draft.

10. That the accused has committed offence u/s. 138 to 142 of the Negotiable Instruments Act by issuing a false, wrong, incorrect and vexatious cheques to the complainant and has rendered themselves liable to be prosecuted u/s. 138 to 142 of N.I. Act.”

9. Notice in the present Petition was issued on 06.07.2022. Replies, rejoinders and written submissions have been filed by the parties. Partnership deed has also been filed along with the reply wherein it is stated that apart from the Petitioner No.1 herein, i.e. Ms. Anju Khanna, who is a sleeping partner, all the rest of the partners, i.e. Mr. Sanjay Khanna (Petitioner No.2 herein), Mr. Sandeep Khanna (Petitioner No.3 herein), and Mr. Pran Nath Khanna, are working partners of the firm. A retirement deed dated 25.08.2013 has also been filed along with the present Petition stating that Petitioner No.1 herein and Mr. Prem Nath Khanna had retired from the Partnership firm.

10. It is the contention of the learned Counsel for the Petitioner that the essence of the Complaint is that the Petitioners herein are Partners of the Partnership firm and are, therefore, liable to be proceeded ahead under the NI Act. He states that the Petitioner are not the signatories of the cheques.



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He draws the attention of this Court to Section 141(1) of the NI Act which states that if the offence is committed by a company then 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. He states that the explanation to Section 141 states that the company means any body corporate and includes a firm or other association of individuals. Learned Counsel for the Petitioner, thereafter, draws the attention of this Court to various judgments passed by the Apex Court to contend that the Apex Court has constantly held that to attract the case under Section 141 NI Act a specific role must have been played by the partner of the firm for him to be vicariously liable for the offence committed by the firm and if there is no averment to show as to whether the particular partner was in-charge to conduct the business of the company, the partner cannot be proceeded against for the offences committed by the company. He further contends that the Apex Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, has categorically held that the averment is an essential requirement of Section 141 NI Act and has to be made in a complaint and without such an averment being made in the complaint the ingredients of Section 141 NI Act are not satisfied. Learned Counsel for the Petitioner also draws the attention of this Court to paragraph No.16 of the Judgment of the Apex Court in Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 579, which reads as under:

“16. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and



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*requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in *Sharad Kumar Sanghi v. Sangita Rane*,¹⁷ *Himanshu v. B. Shivamurthy*,¹⁸ and *Hindustan Unilever Limited v. State of Madhya Pradesh*.¹⁹ The exception carved out in *Aneeta Hada (supra)*,²⁰ which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent.”*

11. Learned Counsel for the Petitioner also places reliance on the Judgment passed by the Apex Court in Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1, wherein the Apex Court has held as under:

“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. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in



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dismissing the writ petitions by holding that in the complaints filed by Respondent 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under Section 141 of the NI Act a specific role must have been played by a Director of the company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day-to-day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by Respondent 2 to the default Company during the period from 13-4-2008 to 14-10-2008, against which the cheques were issued by the Company which stood dishonoured. Much before that on 17-12-2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the NI Act is a pure abuse of process of law and it has to be interdicted at the threshold.

29. So far as the letter of guarantee is concerned, it gives way for a civil liability which Respondent 2 complainant can always pursue the remedy before the



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appropriate court. So, the contention that the cheques in question were issued by virtue of such letter of guarantee and hence the appellant is liable under Section 138 read with Section 141 of the NI Act, cannot also be accepted in these proceedings.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Sections 138/141 of the NI Act, making a person vicariously liable has to ensure strict compliance with the statutory requirements. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of the court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.”

12. Learned Counsel for the Petitioner states that what applies to the Director of a company will also apply to partners of a firm as well. He further states that in the entire complaint there is no specific averment against the Petitioners herein showing that the Petitioners were actually in-charge and were for the conduct of the business of the Partnership Firm in question. He states that the averments made in paragraph No. 2-7 of the Complaint are not sufficient compliance of the requirements under the NI Act.

13. *Per contra*, Learned Counsel for Respondent No.2/Complainant/Bank contends that the role of a Partner of a firm and the role of a Director of a firm are distinct. He contends that every partner is allowed to take part in the business and has to conduct the business which is not the position of every



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Director of the firm. He draws the attention of this Court to the partnership deed which clearly reflects that except Petitioner No.1 herein, who is a sleeping partner, all other partners are working partners of the Partnership firm in question and, therefore, were responsible for the day-to-day working of the firm. He further states that it is now well settled that it is not necessary to incorporate the language of Section 141 NI Act verbatim in the complaint and the complaint has to be read as a whole and if the substance of the allegations made in the complaint fulfil the requirements of Section 141 NI Act, the complaint has to proceed and, therefore, no interference is called for and the complaint cannot be quashed.

14. Heard the Counsels for the parties and perused the material on record.

15. The short question which arises for consideration before this Court is as to whether the complaint, as framed, should be permitted to proceed ahead or should the complaint be quashed for want of necessary averments.

16. The relevant averments in the complaint have already been reproduced in the above paragraphs. Paragraph No.2 of the complaint specifically states that the Petitioners herein are the partners of the Partnership firm in question. Paragraph No.7 states that the Petitioners herein, being the partners of the firm and the drawers of the cheques, are liable to pay the amount of the dishonoured cheques to the complainant in cash or by way of demand draft. Paragraph No.10 of the averment states that the accused have committed offence under Sections 138 to 142 of the Negotiable Instruments Act by issuing false, wrong, incorrect and vexatious cheques to the Complainant and, therefore, have rendered themselves liable to be prosecuted under Section 138 to 142 of N.I. Act.

17. At this juncture, it is relevant to extract certain Sections of the



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Partnership Act, 1932. Section 12, which deals with the conduct of the business, reads as under:

“Section 12: THE CONDUCT OF THE BUSINESS.

Subject to contract between the partners –

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners;

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm;

(e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.”

18. Section 13, which deals with mutual right and liabilities of the Partners of a Partnership Firm, reads as under:

“Section13: MUTUAL RIGHT AND LIABILITIES.

Subject to contract between the partners –



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(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him

(i) in the ordinary and proper conduct of the business; and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.”

19. Section 18, which states that the partner is the agent of the firm, reads as under:

“Section 18. Partner to be agent of the firm.

Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the



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firm.”

20. Section 19, which deals with Implied authority of partner as agent of the firm, reads as under:

“Section 19. Implied authority of partner as agent of the firm.

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his implied authority--.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,



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(h) transfer immovable property belonging to the firm, or

(g) enter into partnership on behalf of the firm.”

21. Section 22, which deals with mode of doing act to bind a firm, reads as under:

“Section 22. Mode of doing act to bind firm.

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.”

22. Section 23, which deals with effect of admissions by a partner of a firm, reads as under:

“Section 23. Effect of admissions by a partner.

An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.”

23. Section 25, which deals with liability of a partner for the acts of the firm, reads as under:

“Section 25. Liability of a partner for acts of the firm.

Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.”

24. A perusal of the abovementioned Sections shows that the position of a Partner is distinct from Director of a company. Section 18 of the Partnership Act specifically provides that a partner is an agent of the firm for



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the purpose of business of the firm. Section 19 states that the act of a partner which is done to carry on the business of the kind carried on by the firm, binds the firm. Section 23 states that an admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business. Section 25 states that every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

25. In a company, every Director is not responsible for the conduct of the business of the company but in a partnership firm all the working partners are responsible for the conduct of day-to-day business of the firm as every partner is a representative of the other partners of the firm. In view of the above, the averment that an accused is a partner is sufficient to show that that partner is responsible for the conduct of the affairs of the firm. All the judgments relied on by the learned Counsel for the Petitioner, which pertains to directors of a firm, are, therefore, clearly distinguishable.

26. The Apex Court in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685, has analysed Sections 138 and 141 of the NI Act and after discussing various judgments on the concept of fastening of vicarious liability, has observed as under:

“42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

42.1. Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;



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42.2. *It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;*

42.3. *If the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed in regard to the law.*

42.4. *In construing a complaint a hypertechnical approach should not be adopted so as to quash the same.*

42.5. *The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141, respectively, should be kept in mind by the Court concerned.*

42.6. *These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.*

42.7. *The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.*

42.8. *The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.”*

27. This Court has perused the partnership deed entered into between Ms.



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Anju Khanna (Petitioner No.1 herein), Mr. Pran Nath Khanna, Mr. Sanjay Khanna (Petitioner No.2 herein) and Mr. Sandeep Khanna (Petitioner No.3 herein) on 25.06.2005. Relevant clauses of the said Partnership Deed reads as under:

“2. That the business of the firm shall be carried on under the name and style of M/s Adigear International or such other name or names as the parties any hereinafter from time to time determine.

7. That the profit and losses of the partnership business shall be divided amongst the partners in the following proportion:

	<i>Name of the Partner</i>	<i>Share</i>
a)	<i>Smt. Anju Khanna</i>	<i>20%</i>
b)	<i>Sh. Pran Nath Khanna</i>	<i>50%</i>
c)	<i>Sh. Sanjay Khanna</i>	<i>15%</i>
d)	<i>Sh. Sandeep Khanna</i>	<i>15%</i>

9. That all the partners except Smt. Anju Khanna shall be the working partners. It is specially agreed that Smt. Anju Khanna shall be sleeping partner and will not be involved in day-to-day working of the firm.”

28. A perusal of the partnership deed shows that other than Smt. Anju Khanna, i.e. the Petitioner No.1 herein, all other partners were responsible for the conduct of day-to-day business of the Partnership Firm in question. In S.P. Mani & Mohan Dairy (supra) the Apex Court has categorically held that it is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole and if the



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substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed and is required to be tried with. The Apex Court has also held that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same and the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind as these provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within statutory period even after issue of notice.

29. Applying the said dictum to the facts of the present case, this Court is of the opinion that the necessary averments are present in the complaint and Petitioners No.2 & 3 are active partners of the Partnership Firm in question and were responsible for the day-to-day conduct of the business of the firm. The averment that Petitioners No.2 & 3 are partners in the firm is sufficient and, therefore, the complaint cannot be quashed qua Petitioners No.2 & 3 herein.

30. Though a retirement deed dated 25.08.2013 has also been filed along with the present Petition stating that Ms. Anju Khanna (Petitioner No.1 herein) and Mr. Prem Nath Khanna had retired from the Partnership firm on 25.08.2013, i.e. before the presentation of the cheques in question but there is no material on record to show that the requirements of Section 32 of the Partnership Act have been fulfilled or not. Section 32 of the Partnership Act reads as under:

“Section 32. Retirement of a partner.

(1) A partner may retire—



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(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.”
(emphasis supplied)

31. A perusal of the abovementioned Section shows that until and unless a public notice of the retirement is given, a partner of the firm continues to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement. There is



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nothing on record to show that a public notice has been given. However, since Ms. Anju Khanna, i.e. the Petitioner No.1 herein, was only a sleeping partner of the firm, this Court is inclined to exercise its jurisdiction under Section 482 Cr.P.C to quash the Complaint qua Ms. Anju Khanna, i.e. Petitioner No.1 herein only. As far as Petitioners No.2 & 3 are concerned the complaint shall proceed ahead against them.

32. With these directions, the Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2024

Rahul