

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

C.R.R. No. 1667 of 2012

Mrs. Rekha Malhotra & Ors.

Versus

The State of West Bengal & Anr.

Mr. Anirban Dutta

Mr. Ayan Mondal

Mr. Shiba Das

...For the petitioners.

Hearing Concluded On : 21.11.2025

Judgment on : 22.12.2025

Krishna Rao, J.:

1. This is an application under Section 482 of the Criminal Procedure Code, 1973 filed by the petitioners (Accused persons) for quashing of the entire proceeding being Complaint Case No. C-824 of 2011 pending before the Learned 4th Metropolitan Magistrate at Calcutta under

Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (As amended till date) and all orders passed thereunder.

- 2.** The matter was taken up for hearing on 21st November, 2025 but none appears on behalf of the opposite parties and no accommodation is prayed for, accordingly, the matter is taken up for hearing in the absence of the opposite party. The application is pending since the year 2012.
- 3.** The complainant, namely, Mrs. Shweta Singhania has filed the complaint being Complaint Case No. C-824 of 2011 before the Learned Additional Chief Metropolitan Magistrate at Calcutta in the month of November, 2011 against the petitioners for the alleged offence under Section 138 of the Negotiable Instruments Act read with Section 141 of the said Act. Thereafter the case was transferred before the Learned 4th Metropolitan Magistrate at Calcutta for disposal. On the basis of the aforesaid purported complaint, the Learned Magistrate has taken cognizance for the offence under Section 138 of the Negotiable Instruments Act, 1881 on 14th November, 2011 against the petitioners and issued summons.
- 4.** The petitioners, namely, (i) Mrs. Rekha Malhotra, (ii) Pradeep Kumar Malhotra, (iii) Mohit Korpai and (iv) Mrs. Urvashi Korpai, have been arraigned as accused nos. 2 to 5 in a petition of the complainant filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 and the accused no. 1 is a Company.

- 5.** As per the case of the complainant, the petitioner nos. 1 to 4 are the Directors and Officers of the Company, namely, Sumoson Exports Private Limited. At the time of commission of the alleged offence, the petitioners were responsible for the day-to-day conduct of the company's business and in charge of its management and daily affairs and the company was under their control. As per request of the petitioners and in usual course of business, the complainant allowed/extended a bill discount facility from time to time starting from 18th July, 2007 and the petitioners availed the same to clear the dues payable to the complainant and in repayment and/or discharge of their existing debts/liabilities. To discharge their existing debts/liabilities arising from the bill discount facility and towards such part payment, the petitioners issued an account payee cheque bearing No. 221058 dated 15th March, 2011 for a sum of Rs. 5,00,000/- drawn on State Bank of India. On 14th September, 2011, the cheque was deposited with the complainant's banker at Karur Vysya Bank, Burrabazar Branch, Kolkata, for encashment but the cheque was dishonoured with the endorsement "Other Reason".
- 6.** The complainant has issued a demand notice under Section 138(b) of the Negotiable Instruments Act, dated 26th September, 2011 through speed post with A/D, which was dispatched on 29th September, 2011 to the petitioners, calling upon them to pay a sum of Rs. 5,00,000/- within a period of 15 days from the date of receipt of the notice. The petitioner nos. 2 and 4 duly received the notice on 30th September,

2011, acknowledgement card returned to the complainant. The Company and the petitioner nos. 1 and 3 refused to accept the notice and returned with postal remarks “Final Intimation” and “Refused”. Subsequently, on 12th October, 2011, the petitioners sent a reply to the notice dated 26th September, 2011, through their learned Advocate raising frivolous and vague grounds in order to avoid payment of their liabilities to the complainant. On 28th October, 2011, the complainant sent a reply to the petitioner’s letter dated 12th October, 2011.

7. Despite having received the demand notice, the petitioners neglected/failed to pay the amount. Thereafter, the complainant has filed the complaint being Complaint Case No. C-824 of 2011 before the Learned Chief Metropolitan Magistrate at Calcutta against the petitioner nos. 1 to 4 and the Company alleging that the petitioners have committed offences punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (As amended till date). The complainant has filed affidavit of solemn affirmation along with original documents. The Learned Magistrate taken cognizance and issued summons upon the petitioners.
8. Mr. Anirban Dutta, Learned Advocate representing the petitioners submits that as per the case made out by the opposite party no. 2, the petitioners have issued cheque No. 221058 dated 15th March, 2011 for Rs. 5,00,000/- of the State Bank of India, Shyama Prasad Mukherjee Road, Kolkata but one Jagat Mohan Kapur had filed an application under Section 433/434 and 439 of the Companies Act for winding up

the Company, namely, M/s. Sumoson Exports Pvt. Ltd., the alleged accused no.1 in the complaint petition and the Coordinate Bench of this Court by an order dated 30th August, 2011, has been pleased to passed an order for winding up the Company and appointed Official Liquidator in order to facilitate the recovery proceedings.

9. As regard to the petitioner nos. 1 and 4, namely, Mrs. Rekha Malhotra and Mrs. Urvashi Korpai, both have resigned from the Company since 2nd March, 2010 and the petitioners have disclosed Form-32 showing that their resignation has been accepted. He submits that either in the demand notice or in the complaint, there is any specific averment against the petitioners as to what role, the petitioners have played as directors of the Company.
10. Mr. Dutta submits that the alleged cheque was alleged to have been dishonored with the reason "Other Reasons" but other reasons does not constitute the offence under Section 138 of the Negotiable Instruments Act, 1881.
11. In **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla**, the following was held:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be

made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. *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.”

12. In the case of **Ashutosh Ashok Parasrampuriya vs. Gharrkul Industries (P) Ltd.**, the Hon'ble Supreme Court held the following:-

“26. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in S.M.S. Pharmaceuticals Ltd. (supra) observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 CrPC which recognise the Magistrate's discretion to take action in accordance with law. Thus, it is imperative that if this basic averment is missing, the Magistrate is legally justified in not issuing process.”

13. The Hon'ble Supreme Court in **National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal**, held the following:-

“38. But if the accused is not one of the persons who falls under the category of “persons who are responsible to the company for the conduct of the business of the company” then merely by stating that “he was in charge of the business of the company” or by stating that “he was in charge of the day-to-day management of the company” or by stating that “he was in charge of, and was responsible to the company for the conduct of the business of the company”, he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.”

14. In **Susela Padmavathy Amma vs. Bharti Airtel Ltd.**, the following was held by the Hon'ble Supreme Court:-

“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 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. this Court observed :

“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 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.”

18. In Girdhari Lal Gupta v. D.H. Mehta, 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.

21. In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621], it was held by this Court that :

“7. ... it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company.”

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.”

23. *It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable.*

24. *A similar view has previously been taken by this Court in the case of K.K. Ahuja v. V.K. Vora.*

25. *In the case of State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana, this Court reiterated the position thus:*

“17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the

company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

26. In the case of Ashoke Mal Bafna (*supra*), this Court observed thus:

“9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action.

10. 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 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.”

31. *It can thus be clearly seen that there is no averment to the effect that the present appellant is in-charge of and responsible for the day-to-day affairs of the Company. It is also not the case of the respondent that the appellant is either the Managing Director or the Joint Managing Director of the Company.*

32. *It can thus clearly be seen that the averments made are not sufficient to invoke the provisions of Section 141 of the N.I. Act qua the appellant.”*

- 15.** The Hon'ble Court Supreme Court in the above referred judgments has categorically held that the directors to be in-charge of and responsible for the conduct of the business of the Company at the relevant point of time when the alleged offences have been committed under Section 138 and Section 141 of the Negotiable Instruments Act, 1881, the complainant is under the bounden duty to describe the mode and manner in which the Directors exercised or discharged the respective duties and responsible for day-to-day conduct of the business of the company.
- 16.** In the case in hand, by an order dated 30th August, 2011, the Company Court has already passed an order of winding up the company and appointed Official Liquidator in order to facilitate the recovery proceedings against the company. In the complaint, there is no personal allegations have been made against the petitioners. It is settled law that once an Official Liquidator is appointed, no suit or legal proceeding against the company can be initiated.
- 17.** The petitioners have also disclosed Form-32 wherein it reveals that the petitioner Nos. 1 and 4 have already resigned from the Company on 2nd March, 2010 which was also accepted. The complainant did not categorically made any averments in the complaint as to the specific role played by the petitioners as Directors of the Company being in-charge of and responsible for day-to-day affairs of the Company.

- 18.** This Court finds that the Learned Magistrate failed to consider that the complainant did not made any averments in the complaint as to the specific role played by the petitioners in functioning as a Directors of the Company being in-charge of and responsible for the day today conduct of the business of the company. On the other hand by an order dated 30th August, 2011, the Company Court has passed an order of winding up the Company and appointed Official Liquidator. The petitioner nos. 1 and 4 have already resigned as directors of the company on 2nd March, 2010.
- 19.** In such view of the matter, this Court is of the view that if the opposite party is allowed to be continued with the proceeding pending before the Learned Court of 4th Metropolitan Magistrate at Calcutta being Case No. 824-C of 2011 under Section 138 read with Section 141 of the Negotiable Instruments Act (As amended till date) against the petitioners, the same would amount abuse of process of law.
- 20.** Accordingly, proceeding of Complaint Case No. 824-C of 2011 pending before the Learned 4th Metropolitan Magistrate, Calcutta (Mrs. Shweta Singhania -Vs- M/s Sumoson Exports Pvt. Ltd. and Ors.) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, is set aside and quashed.
- 21. CRR No. 1667 of 2012 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

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

(Krishna Rao, J.)