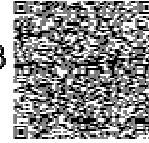


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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-34395-2022 (O&M)

Reserved on : 08.08.2025

Pronounced on : 17.09.2025

Ramanand Pulavarti

...Petitioner

Versus

Indiabulls Housing Finance Ltd.

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gaurav Chopra, Senior Advocate with
Mr. Reshabh Bajaj, Advocate
for the petitioner.

Mr. Naren Pratap Singh, Advocate and
Mr. Kunal Dawar, Advocate
for the respondent.

MANISHA BATRA, J.

1. Prayer in this petition, filed under Section 482 of the Code of Criminal Procedure (*for short 'the Code'*), is for quashing of Complaint bearing NACT No. 28378 of 2018, titled as ***Indiabulls Housing Finance Limited vs. Samruddhi Realty Ltd.***, as well as for quashing of order dated 22.04.2019 (Annexure P-11), whereby the petitioner along with co-accused has been ordered to be summoned to face trial for commission of offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*) and all the proceedings having emanated therefrom.

2. The aforementioned complaint has been filed by the respondent-complainant against Samruddhi Realty Ltd. (hereinafter to be mentioned as '**accused company**') and its directors on the allegations that it had advanced

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loan to the tune of Rs. 3,30,00,000/- to the accused company. A loan agreement was executed. The accused company and its directors had agreed to repay the loan as per the schedule. To discharge their liability to repay the loan, a cheque for a sum of Rs.16,31,595/- was issued by them in favour of the complainant. The said cheque was, however, dishonoured. Even on legal notices being issued against the accused company and its directors, the amount of cheque was not paid, thereby compelling the complainant to file the aforementioned complaint.

3. On receipt of the complaint and after recording preliminary evidence, the learned trial Court passed the order dated 22.04.2019, thereby summoning the accused company and its directors to face trial for commission of offences punishable under Sections 138 and 141 of the N. I. Act. The petitioner was also summoned in the capacity of one of the directors. Feeling aggrieved with the impugned order dated 22.04.2019, the present petition has been filed.

4. It is argued by learned senior counsel for the petitioner that the impugned order is not sustainable qua him since he was Chief Executive Officer of a limited liability partnership company namely Essel Finance Advisors and Managers (*for short 'Essel Finance'*), which had entered into agreement with the accused company in the year 2016, thereby agreeing to invest a sum of Rs.75 crores with the accused company. A debenture subscription agreement was executed and one Debenture Trust Deed was signed on 30.09.2016, as per which, Essel Finance was given right to appoint one or more of its directors (except Nominee Director) on the Board of the accused company. Subsequently, the Article of Association of the accused

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company was amended to incorporate the right of Essel Finance to appoint Nominee Director. The petitioner was appointed as a Nominee Director in a non-executive role on behalf of Essel Finance w.e.f. 04.01.2018 and the requisite Form DIR-12 was filled as per the mandate of Companies Act, 2013.

5. Learned senior counsel has further submitted that he had resigned from the post of Nominee Director on 11.06.2019. While being Nominee Director with the accused company, he was neither the incharge of, nor responsible for day to day conduct of business of the accused company and he came into being as a Nominee Director only on account of the fact that his employer had invested in the accused company and the only role assigned to him was to ensure that the investment made by Essel Finance was not misused.

6. It is further argued by learned counsel for the petitioner that as per clauses of the Debenture Trust Deed, the Nominee Director of Essel Finance was not to be the incharge in control of day to day management of the accused company. Rather, a positive obligation was cast upon the accused company to ensure that nominee director of Essel Finance did not fall within the scope of 'Officer who is in default' under law. It is submitted that there was neither any specific allegation in the complaint that the petitioner was incharge of day to day conduct of the accused company and was responsible for the same nor any evidence has come on record to this effect. Rather, in three of similar complaints filed by the respondent/complainant against the accused company and its directors, the petitioner has not even been ordered to be summoned as an accused in the capacity of director and those orders have not even been challenged by the respondent-complainant. By further submitting that no liability under Section 141 of the N. I. Act had arisen qua the petitioner, it is

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stressed that he could not be summoned as an accused and, therefore, it is submitted that the impugned summoning order is liable to be quashed qua the petitioner. To buttress his arguments, learned senior counsel has placed reliance upon the authorities cited as ***Hitesh Verma vs. M/s Health Care at Home India Pvt. Ltd. and others, 2025 (1) Apex Court Judgments (SC) 799, K. S. Mehta vs. M/s Morgan Securities and Credits Pvt. Ltd., 2025 INSC 315 and Kamal Kishor Shrigopal Taparia vs. India Ener-Gen Private Limited and another, 2025 SCC Online SC 321.***

7. Respondent/complainant has filed reply and has vehemently contested the petition. It is submitted that there are sufficient allegations in the complaint to indicate the role of the petitioner. The argument that the petitioner was a Non-Executive Director or that there are no allegations to specify the requirement of Section 141 of the N. I. Act, is required to be appreciated only during trial and not at this stage. The petitioner has failed to bring any material on record to lead to the conclusion that he was not incharge and responsible for day to day conduct of business of the accused company at the time of commission of offences. The documents relied upon by him cannot be considered at this stage. It was not incumbent upon the respondent/complainant to elaborate in the complaint the role played by each director in the transaction forming subject matter of the complaint. The cheque in question was issued by the accused company in discharge of its legally enforceable liability and the petitioner, being a nominee director, had equal liability and is presumed to be responsible for day to day conduct of the business of the accused company. It is further argued that the accused company is a juristic person and carries out its activities through its directors

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and other responsible persons. The pleas taken by the petitioner can be considered during trial. The impugned order does not suffer from any infirmity. The petition has been filed to abuse the process of law. No revision petition has been filed and the petition under Section 482 of the Code is not maintainable. Accordingly, it is urged that the petition is liable to be dismissed.

8. This Court has heard the rival submissions, besides going through the material placed on record.

9. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 482 of the Code of Criminal Procedure. The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under the above mentioned Section in a case reported as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736*** which are as follows:-

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) where the complaint suffers from fundamental legal

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defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

10. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of the Code had also been considered by Hon'ble Supreme Court in *Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424* and in *M/s Pepsi Food Ltd's case (supra)* wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

11. Similarly, in a recent judgment dated 22.02.2024 titled as *Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261*, the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of the Code.

12. Section 138 of the NI Act refers to penalty in case of dishonour of a cheque for insufficient funds in the bank account. Since, the complaint has been filed against the accused company and its directors, alleging commission of offence under Section 138 of the NI Act therefore, it is appropriate to refer to Section 141 of the NI Act, which deals with the offence by a Company. The same reads as follows:-

Section 141- OFFENCES BY COMPANY:-

(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

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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."

13. On a bare reading of the aforementioned provision, it is clear that so far as the companies are concerned, if any offence is committed by it, then every person who is director or employee of the company is not liable. Only such person would be held liable who if at the time when offence was

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committed, was in charge and responsible for the company for the conduct of business of the company as well as of the company. However, by way of an exception to the normal rule that in cases involving criminal liability against vicarious liability, no-one is to be held liable for an act of another, a specific provision is made in the statute by way of this Section that criminal liability can be extended to others. Section 141 of the NI Act is an instance of specific provision, which in case an offence under Section 138 of the NI Act is committed by a Company, extends criminal liability for dishonour of cheque to the officers of the Company. For that purpose certain conditions, which are mentioned in Section 141 of the NI Act, have to be satisfied and those conditions have to be strictly complied with. In that case apart from the Company, all persons, who at the time of commission of offence were in-charge and were responsible to the Company for conduct of business of the Company, are liable for the offence. This section postulates constructive liability of the directors of the company or the business of the company.

14. It is well settled that what is required for a person, who is sought to be vicariously liable for the offence under Section 141 of the NI Act, is that when the offence was committed, he was in charge and responsible for conduct and business of the company and this should be reflected in the averments made in the complaint. Reliance in this context can be made to ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla, 2005(3) Apex Criminal 229***, wherein a three Judges' Bench of Supreme Court was dealing with the reference made by a two Judges Bench, for determination of the question, as to whether, for the purpose of Section 141 of NI Act, it was sufficient if the substance of the allegation read as a whole fulfilled the requirement of the said Section and it

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was not necessary to specifically state in the complaint that the person accused was in charge of or responsible for the conduct of a company or not. The second question for determination was whether a director of a company was deemed to be in charge of and responsible for the company for conduct of the business of the company and therefore, deemed to be guilty of the offence unless, he proved to the contrary and further that whether in the absence of specific averments that the signatory of the cheque and the Managing Director or Joint Managing Director was responsible to the company for conduct of its business, he could be proceeded against? The Hon'ble Apex Court observed that it was necessary to specifically aver in a complaint under Section 141 that at the time when the offence was committed, the person accused was in charge of, and responsible for the conduct of the business of the company and this averment was an essential requirement of Section 141 and had to be made in a complaint. Without this averment having been made in the complaint, the requirement of Section 141 could not be said to be satisfied. Similar observations were made by this Court in *Neeru Gupta vs. Ajay Dhawan*, **CRM-M-16269-2018, decided on 18.03.2020** and by Hon'ble Supreme Court in *Hitesh Verma's* case (supra)

15. Reliance can also be placed upon *Saroj Kumar Poddar Vs. State (NCT of Delhi)*, **2007(1) R.A.J. 205**, wherein it was observed by Hon'ble Supreme Court that the complaint must not only contain averments justifying the requirement of Section 141 of NI Act but must also show as to how and in what manner, the accused named therein was responsible for the conduct of the business of the company or otherwise responsible to it with regard to its functioning.

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16. In *N.K. Wahi Vs. Shekhar Singh, 2007(2) RCR (Criminal) 266*, it was observed by Hon'ble Supreme Court that Section 141 of NI Act raised a legal fiction by reason of which a person, although not personally liable for commission of an offence, would be vicariously liable and it was held that such vicarious liability could be inferred against a company only if the requisite statement was made in the complaint but before a person could be made vicariously liable, strict compliance with the statutory requirements would be insisted. In that case, the basic averments in terms of Section 141 of NI Act were absent and hence, the complaint was ordered to be quashed by observing that to launch a prosecution against alleged directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation, as to how the directors are in charge and responsible for the conduct of the business of the company. The description should be clear.

17. In *Paresh P. Rajda Vs. State of Maharashtra and another (2008) 7 SCC 442*, it was observed by Hon'ble Supreme Court that the entire matter would boil down to an examination of the nature of the allegations made in the complaint to determine the question as to whether, a particular director is liable to face trial due to his vicarious liability or not?

18. In *K.K. Ahuja Vs. V.K. Arora, 2009(3) RCR (Criminal) 571*, the Hon'ble Supreme Court while considering the same question, summarized the position under Section 141 of the NI Act as under:-

27. The position under [Section 141](#) of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment

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in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of [Section 141](#).

(iii) In the case of a Director, secretary or manager [as defined in [Section 2\(24\)](#) of the Companies Act] or a person referred to in clauses (e) and (f) of [Section 5](#) of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under [Section 141\(1\)](#) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under [Section 141\(2\)](#) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of [Section 141](#). Other officers of a company can be made liable only under sub-section (2) of [Section 141](#), by averring in the complaint their position

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and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

19. Reference can also be made to *National Small Industry Corporation Limited vs. Harmeet Singh Paintal, 2010(2) RCR (Criminal) 122*, wherein the Hon’ble Supreme Court while dealing with the same question laid down the following principles:-

“(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) [Section 141](#) does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the [Companies Act, 1956](#) 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 offence committed by the company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

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(vi) If the accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) 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.”

20. In *A.K. Singhania vs. Gujarat State Fertilizer Company Ltd., 2013 (4) RCR (Criminal) 777*, while dealing with the same issue, Hon’ble Supreme Court observed that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the N. I. Act, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time.

21. In *Mannalal Chamaria vs. State of West Bengal, 2014 (2) RCR (Criminal) 25*, the Hon’ble Supreme Court reiterated the above observations and observed that in the averments made before it, there was no specific or even a general allegation made against the appellants. Therefore, the complaint filed against the appellants under [Section 138](#) of the NI Act was dismissed.

22. In *Gunmala Sales Pvt. Ltd. Vs. Anu Mehta 2015 (1) SCC 103*, the Hon’ble Apex Court was dealing with a question with regard to the directors of a company, who were not signatories to the cheques but were summoned as accused. It was observed that so far as the directors who are not

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signatories to the cheques or not managing directors or joint managing directors are concerned, it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time, when the offence was committed, such directors were in charge of and were responsible for the conduct of the business of the company. This was a basic requirement and there was no deemed liability of the directors. It was further observed that when a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, if the basic averments are found to be sufficient, the complaint must proceed against the directors, but if there is bald averment, the High Court can quash the process, if the director makes out a case that making him stand a trial would be an abuse of process of the Court.

23. Reference can also be made to the judgment dated 15.03.2024 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1577-1578 of 2024 arising out of Special Leave Petition (criminal) No. 12390-12391 of 2022 titled as ***Susela Padmavathy Amma vs. M/s Bharti Airtel Limited***, wherein it was observed that simply because a person is a director of a company, it does not necessarily mean that he fulfills the requirement so as to make him liable, unless at the material time he was in charge of the company and was responsible for conduct of its business.

24. In ***Pooja Ravinder Devidasani vs. State of Maharashtra, (2014) 16 SCC 189***, the cheques in question were issued by a company and had been dishonoured. The cheques were admittedly not signed by the appellant, who was a Non-Executive Director of the company. It was observed that a Non-Executive Director is no doubt, a custodian of the governance of the company but is not involved in day to day affairs of running its business and only

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monitors the executive activity. To fasten vicarious liability under Section 141 of the N. I. Act on a person, it is to be seen as to whether at the material point of time that person was at the helm of affairs of the company, actively looked after the day to day activities of the company and was particularly responsible for the conduct of its business. Simply because a person was a director of a company does not make him liable under the N. I. Act. Every person connected with the company will not fall into ambit of provision of Section 141 of the N. I. Act, which is penal and coerces vicarious liability. It was observed that the complainant should especially spell out as to how and in what manner such person was incharge or responsible for the accused company's conduct of business.

25. In *T. C. Khetan and others vs. M/s Pragati Associate and others*, **CRM-M-29169-2012, decided on 01.04.2015**, this Court had observed that it is mandatory in terms of Sections 138 and 141 of the N. I. Act to specifically aver in the complaint that director was incharge and responsible for conduct of the business of the company at the relevant time when the offence was committed and he was responsible for day to day functioning of the company. Simply by being director of a company, one is supposed to discharge functions of the company, is a question of fact depending upon the nomenclature of the company and other circumstances prevailing therein. There cannot be any universal application of rule that a director of a company is incharge of its day to day affairs.

26. While relying upon *Hitesh Verma's* case (supra), Hon'ble Supreme Court in *K. S. Mehta's* case (supra) had observed that the appellants had neither issued nor signed the dishonoured cheques nor had any role in their

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execution. There was no material on record to show that they were responsible for issuance of cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision- making or operational management. It was observed that since the complaint lacked the specific averments that established a direct nexus between the appellans and the financial transactions in question or demonstrated their involvement in the company's financial affairs and the records unequivocally confirmed their non-executive status, underscoring their limited role in governance without any executive decision-making authority, therefore, they could not be vicariously held liable under Section 141 of the N. I. Act.

27. In ***Kamal Kishor Shrigopal Taparia***'s case (supra), prayer made by the appellant seeking quashing of criminal proceedings initiated under Section 138 read with Section 141 of the N. I. Act, had been declined by the High Court of Judicature at Bombay. The appellant, who was an independent Non-Executive Director of the company that had been arrayed as an accused, filed appeal before the Hon'ble Supreme Court. He was appointed as Additional Independent Non-Executive Director. He had no role in the financial operations or key management of the company nor he was the signatory of the cheque. It was observed by Hon'ble Supreme Court that mere designation as a Director does not conclusively establish liability under Section 138 of the N. I. Act. The liability was contingent upon the specific allegations demonstrating the director's active involvement in the company's affairs at the relevant time. While relying upon ***S. M. S. Pharmaceuticals's***

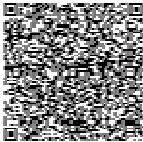
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case (supra), it was observed that mere designation as a director was not sufficient; specific role and responsibility must be established in the complaint.

28. On applying the ratio of law as laid down in the above discussed authorities to the peculiar facts of the present case and on a perusal of the material placed on record, it is evident that the petitioner was neither a signatory to the dishonoured cheque nor he was actively involved in the financial decision making in accused No. 1/company. He was admittedly a Non-Executive and Nominee Director w.e.f. 04.01.2018 duly notified in DIR-12 to the Registrar of Companies. The complaint does not contain any specific allegation as to how he was responsible for the dishonoured cheque. On overall reading of this complaint, it is clear that there is absence of any particular role of the petitioner. There is nothing on record to show that he had any financial responsibility or involvement in the day to day operation of the company. Rather, his role was evidently limited to that of a Non-Executive Director, who was not responsible for conduct of the business of accused No.1/company. His active involvement has not been *prima facie* established. Admittedly, as per Clause 20.1.20 of the Debentures Trust Deed executed between the parties, the Nominee Director of Essel Finance company was not to be incharge of or in control of day to day management of the company and it was to be ensured by the complainant that Nominee Director of Essel Finance was not included within the scope of 'Officer who is in default' under law and this condition itself is sufficient to indicate that the petitioner was not to be in control of day to day management of the accused company and was never to be included within the scope of '**Officer who is in default**'. As such, he cannot be vicariously held liable under Section 141 of the N. I. Act. Rather,

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in the considered opinion of this Court, the complaint does not meet the mandatory legal requirement to implicate the petitioner.

29. No doubt, while exercising powers under Section 482 of the Code (*which is pari materia with Section 528 of BNSS, 2023*), the High Court should proceed with great circumspection to prevent the abuse of process of Court as this Court should not conduct mini trial or roving inquiry. However, there is no fixed formulae to be followed by this Court. On examining the facts of the case in the light of the above discussion, it is noticed that since in the complaint there is simple allegation to the effect that the petitioner along with other directors was in charge of and responsible for the conduct of business of the company at the relevant time but nothing has been stated as to the part played by him and how he was responsible regarding finances of the company, issuance of the cheque and control over the funds of the company. Therefore, there can be no hesitation in saying that the summoning order and the complaint are liable to be quashed qua the petitioner as proceeding further against him would be sheer abuse of process of law.

30. On considering the peculiar facts and circumstances of the case as well as ratio of law as laid down in the above discussed authorities, I am of the considered opinion that it is a fit case wherein inherent power of this Court provided under Section 482 of the Code can be exercised to quash the complaint. Accordingly, the present petition is allowed. The impugned complaint as well as the impugned summoning order are hereby quashed/set aside qua the petitioner.

31. It is, however, clarified that trial against other accused shall proceed in accordance with law.

17.09.2025

Waseem Ziauri

Whether speaking/reasoned
Whether reportable

(MANISHA BATRA)
JUDGE

Yes/No
Yes/No