IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.8719 of 2023
and Crl.M.P.Nos.5571 & 5572 of 2023

Anand Prakash
Partner of M/s. Sky Track,
No.8, Mani's Nagar,
Rathinapuri Post,
Sanganoor,
Coimbatore – 641 027.

..Petitioner(s)

Vs

P.Shanmugam
S/o.Padmanaba Iyer,
No.8/146, 1st Street,
Ragavendra Colony,
G.N.Mills Post,
Coimbatore – 641 029.

..Respondent(s)

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the private complaint pending in C.C.No.329 of 2021 on the file of Fast Track Court No.II at Magisterial Level, Coimbatore and quash the same as illegal insofar the petitioner is concern.

For Petitioner(s):	Mr.R.Gandhi, Senior Counsel for M/s.Gandhi Associates
For Respondent(s):	Mr.R.Vasanth For Mr.R.Balachanderan

ORDER

This petition has been filed to quash the proceedings in C.C.No.329 of 2021 on the file of the learned Magistrate, Fast Track Court No.II at Magisterial Level, Coimbatore, thereby taken cognizance for the offence punishable under Sections 138 of the Negotiable Instruments Act (hereinafter referred to as "the NI Act") as against the petitioner.

2. The petitioner is a third accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the NI Act, alleging that the first accused is a partnership firm; the second accused is a manager and the third accused is a partner of the first accused company. The accused persons purchased a land owned by the respondent herein to an extent of 2 acres 49.5 cents comprised in different SF numbers on 06.07.2020, by the registered sale deed vide document No.3170 of 2020. The total sale consideration was fixed as Rs.75,00,000/-. However the sale deed was executed for the guide line value of Rs.8,27,735/- and the second accused assured that he would pay the balance sale consideration. That apart, the respondent herein supplied CCTV camera's and its connected accessories to the first accused company for the installation purposes for which, the accused persons were in due to the tune of Rs.8,90,109/-. Towards discharge of partial

liability, the accused had issued a cheque for the sum of Rs.33,60,000/-. It was presented for collection and the same was returned dishonoured for the reason "funds insufficient". After causing statutory notice, the respondent initiated proceeding under Section 138 of the NI Act and it has been taken cognizence by the trial Court in C.C.No.329 of 2021. To quash the said proceedings, the petitioner filed the present petition.

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner is arrayed as A3. Though the cheque was issued in the name of the first accused, the amount was due only from the second accused, who had purchased the property on his personal capacity from the respondent by the sale deed dated 06.07.2020. Even as per the second limb of the complaint, the CCTV cameras purchased by A1 & A2. He also points out that according to the respondent, the sale deed was executed in favour of the second accused for the total sale consideration of Rs.75,00,000/- and it is full and final sale consideration as fixed by the respondent. No prudent person would execute the sale deed without receiving the entire sale consideration. Even assuming that the sale consideration was fixed as Rs.75,00,000/- and the sale deed was registered for the guide line value of Rs.8,27,735/-, the remaining amount is unaccounted money and it would not be a legally enforceable debt. There is no

legally enforceable debt and it cannot be clubbed together for issuance of cheque. That apart, though the petitioner was added as third accused, no specific overt act and no specific avernments made were as against the petitioner to attract the offences punishable under Sections 138 & 142 of the NI Act. Nothing was whispered about the involvement of the petitioner in the day to day affairs of the first accused company. In support of his contention, he relied upon the judgment reported in ***2025 LiveLaw (SC) 286*** in the case of ***K.S.Mehta Vs. M/s. Morgan Securities and Credits Pvt. Ltd.***, and the judgment reported in ***2023 LiveLaw (SC) 869*** in the case of ***Siby Thomas Vs. M/s.Somany Ceramics Ltd***.

4. Per contra, the learned counsel appearing for the respondent submits that the petitioner is an active partner of the first accused partnership firm. The cheque was issued by the first accused firm. Though the second accused was only the signatory of the cheque, the petitioner, who is being the third accused, has also actively participated in the day to day affairs of the first accused firm. In fact, CCTV cameras and other accessories were supplied by the respondent in favour of all the accused. The second and third accused assured that they would settle the amount to the tune of Rs.8,90,109/-. Therefore, the cheque was issued by all the accused and the third accused is

also liable to be punished for the offence under Section 138 of the NI Act. Hence, he prayed for dismissal of the quash petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. The points for consideration are as follows :-

(i) Whether the cheque was issued for legally enforceable debt?

(ii) Whether the offence under Section 142 of the NI Act is attracted as against the petitioner, when there is no specific avernments made as against him?

(iii) Whether the petitioner attracts the offence under Section 138 of the NI Act, when the second accused purchased the property on his personal capacity for which, there was a due for which the cheque was issued in the name of the first accused firm?

7. On perusal of the records, it is revealed that there are totally three accused in which, the petitioner is arrayed as third accused. The first accused is the partnership firm and the second and third accused are its partners. The respondent herein owned the property to an extent of 2 acres 49.5 cents in

different SF Nos, situated at Chellipalayam Village, Sathyamangalam and the same was purchased by the second accused in his personal capacity for a total sale consideration of Rs.8,27,735/-. After receipt of the entire sale consideration, the respondent herein executed sale deed in favour of the second accused and the same was registered vide document No.3170 of 2020 on 06.07.2020. But the respondent avert that the total sale consideration was fixed at Rs.75,00,000/- for which, the second accused paid only a sum of Rs.8,27,735/- and he assured to pay the balance sale consideration. He further averred that out of the cordial relationship with the second accused, the respondent was not very strict regarding the payment of the remaining amount of Rs.66,72,265/-, at the time of registration.

8. The respondent also stated in the complaint that A1 & A2 had purchased CCTV cameras and its accessories under invoice No.393 for a sum of Rs.5,36,427/- and under invoice No.394 for a sum of Rs.3,53,682/- and therefore, the accused were in due to the tune of Rs.8,90,109/-. Both the avernments made in the complaint are not believable one, since no prudent person would execute the sale deed without receiving the entire sale consideration and supply the goods without any consideration. It is not the case of the respondent that the accused used to purchase the goods on credit basis

regularly and the respondent supplied the CCTV cameras and its accessories on one time measures.

9. Further the property was purchased by the second accused in his personal capacity and as such, the entire sale consideration has to be paid by the second accused to the respondent. But the second accused issued the first accused cheque. Whether the petitioner being the partner of the first accused firm had knowledge about the sale is the question. Even assuming that the petitioner had knowledge about the sale, the subject property was purchased by the second accused in his personal capacity and it has nothing to do with the petitioner. Therefore, the legal liability over the remaining sale consideration that is to be paid by the second accused cannot be foisted against the petitioner/third accused.

10. Further on perusal of the entire complaint, there is no whisper about any specific avernments as against the third accused that he had actively participated in the day to day affairs of the first accused while the second accused purchased the subject property. In this regard, it is relevant to rely upon the judgment reported in ***2025 LiveLaw (SC) 286*** in the case of ***K.S.Mehta Vs. M/s. Morgan Securities and Credits Pvt. Ltd.***, as follows :-

"16. This Court has consistently held that non-executive and independent director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.

16.1. This Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal & Anr., (2010) 3 SCC 330 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 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.

22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the *role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.*

39. From the above discussion, the following principles emerge: (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 the 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 the 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. (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 the 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."*

16.2. In N. K. Wahi v. Shekhar Singh & Ors., (2007) 9 SCC 481 this Court in Para 8 observed:

"To launch a prosecution, against the 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. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

16.3. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2005) 8 SCC 89, this Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.

16.4. In Pooja Ravinder Devidasani v. State of Maharashtra & Anr., (2014) 16 SCC 1, this Court while taking into consideration that a non-executive director plays a governance role, they are not involved in the daily operations or financial management of the company, held that to attract liability under Section 141 of the NI Act, the accused must have been actively in charge of the company's business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day- to-day conduct of business can be held accountable.

16.5 In Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr., (2023) 8 SCC 473, this Court held:

"8. After having considered the submissions, we are of the view that there is non-compliance on the part of the second Respondent with the requirements of Sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the Appellants who have been alleged to be the Directors of the Accused No. 1 company. We are not dealing with the cases of a Managing Director or a whole- time Director. The Appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the Appellants."

16.6. In Hitesh Verma v. M/s Health Care At Home India Pvt. Ltd. & Ors., Crl. Appeal No. 462 of 2025, this Court held:

"4. As the appellant is not a signatory to the cheque, he

is not liable under Section 138 of the 1881 Act. "As it is only the signatory to the cheque who is liable under Section 138, unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable…."

5. There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-Section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of the commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-Section (1) of Section 141 of the 1881 Act."

17. Upon perusal of the record and submissions of the parties, it is evident that the Appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the 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.

18. The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such attendance does not automatically translate into control over financial operations."

11. On perusal of the entire complaint, it is revealed that the third accused has been implicated as an accused merely because he was designated as a partner and it does not create any vicarious liability under Section 141 of the NI Act. There must be specific allegation of active participation in the partnership firm as well as in the purchase of the subject property at the relevant time. Merely the fact that the petitioner is a partner of the first accused partnership firm cannot foist any liability on the petitioner. Therefore, the petitioner cannot be held vicarious liable under Section 141 of the NI Act.

12. Furthermore, merely because somebody is managing the affairs of the partnership firms doesn't mean that the person is in charge of the conduct of the business of the partnership firm or that the person is responsible for the conduct of the business of the partnership firm. A bare perusal of Section 141(1) of the NI Act would reveal that, only that person who, at the time when the offence was committed, was in charge of and was responsible to the partnership firm for the conduct of the business, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. Therefore, the submission made by the learned counsel appearing for the respondent cannot be countenance and the entire proceedings initiated under Section 138 & 142 of NI Act cannot be sustained as against the petitioner alone.

13. In view of the above discussions, the impugned proceedings in C.C.No.329 of 2021 on the file of the learned Magistrate, Fast Track Court No.II at Magisterial Level, Coimbatore, is hereby quashed as against the petitioner/third accused alone. The trial Court is directed to proceed with the trial as against the first and second accused in accordance with law and complete the same within a period of three months from the date of receipt of copy of this Order.

14. Accordingly, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

10.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

rts

To

1. The Magistrate,
Fast Track Court No.II
Magisterial Level,
Coimbatore,

G.K.ILANTHIRAIYAN. J,

rts

Crl.O.P.No.8719 of 2023
and Crl.M.P.Nos.5571 & 5572 of 2023

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