



2026:DHC:1809



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

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Judgment reserved on: 06.01.2026
Judgment pronounced on: 27.02.2026
Judgment uploaded on: 27.02.2026

+ **CRL.M.C. 1143/2019 & CRL.M.A. 4453/2019****RAM KUMAR PATHAK**

....Petitioner

Through: Mr. A Mishra, Mr. Ravi Pal, Mr.
Sahil and Mr. Nidish Gupta,
Advs.

versus

SHASHI DEVI & ORS.

.....Respondent

Through: Mr. Mayank Mehandru, Ms.
Charu Tandon, Mr. Raghav
Tandon, Mr. Nikhil Kharaliya,
Ms. Diksha Jaspal and Mr.
Ashutosh Singh, Advs. for R-1.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The present petition has been filed seeking setting aside of the order dated 28.01.2019, passed by the learned ASJ-03, Karkardooma Courts, North-East District, Delhi [hereafter '*Sessions Court*'] in Crl. Revision No. 63/2018 as well as the summoning order dated 26.05.2018 passed by the learned MM, North-East District, Delhi [hereafter



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‘Magistrate’] in the complaint filed by the respondent no. 1-complainant i.e. CC No. 749/2018, for offence under Section 138 of the Negotiable Instruments Act, 1881 [hereafter ‘NI Act’].

FACTUAL BACKGROUND

2. Brief facts of the case, as emerging from the complaint filed under Section 138 of the NI Act, are that the complainant, respondent no. 1 herein, Shashi Devi, had filed the complaint against accused no. 1 (respondent no. 2 herein) M/s Forcia Commodity Solutions OPC Pvt. Ltd., a One Person Company, accused no. 2 (respondent no. 3 herein) Ratna Sharma, stated to be the Director and person in control of accused no. 1, and accused no. 3 (petitioner herein) Ram Kumar Pathak, who is alleged to be involved in the day-to-day business affairs of accused no. 1 and acting under the instructions of accused no. 2. It is the case of the complainant that accused nos. 2 and 3 had approached her with representations regarding their experience and expertise in financial management and induced her to make investments through accused no. 1, assuring safety and assured returns. Relying upon such representations, the complainant allegedly had invested an amount of ₹6,00,000/- with the accused in the year 2015, partly in cash and partly through cheques. It is further alleged that while an amount of ₹2,50,000/- was paid back towards partial return, the remaining amount was not returned despite repeated requests and follow-ups. According to the complainant, after persistent demands, a cheque bearing no. 535007



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dated 30.12.2017 for a sum of ₹4,00,000/-, drawn on IndusInd Bank on the account of accused no. 1 and signed by accused no. 2, was issued to her towards discharge of liability. The said cheque, upon presentation, was dishonoured on two occasions, i.e., on 02.01.2018 and again on 01.03.2018, with the remarks “Refer to Drawer”. Thereafter, the complainant had issued a statutory legal notice dated 28.03.2018 calling upon the accused persons to make payment of the cheque amount within the prescribed period. Despite service of the said notice, the accused persons allegedly failed to make the payment, leading to the filing of the complaint under Section 138 of the NI Act before the learned Magistrate.

3. The learned Magistrate, *vide* order dated 26.05.2018, had issued summons against the accused persons, including the petitioner. The said order was assailed by the petitioner before the learned Sessions Court by way of Crl. Revision No. 63/2018, which came to be dismissed *vide* the impugned order dated 28.01.2019. The proceedings before the learned Magistrate arising out of the aforesaid complaint case were stayed by this Court *vide* order dated 10.12.2019 passed in the present case.

SUBMISSIONS BEFORE THE COURT

4. The learned counsel appearing for the petitioner/accused no. 3 submits that the cheque in question was drawn on the account of respondent no. 2—company and was admittedly signed by respondent no. 3 (accused no. 2), who is the sole Director and authorised signatory of



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the company. It is contended that the petitioner is neither the drawer nor the signatory of the cheque. It is further argued that as per the records of the Ministry of Corporate Affairs, which are public documents, the petitioner was neither a Director, office bearer, nor an employee of the respondent no. 2-company. Even the complaint itself, particularly paragraph 2 thereof, acknowledges that respondent no. 3 is the sole Director of the company. It is thus submitted that no material has been placed on record to *prima facie* show that the petitioner was in charge of or responsible for the conduct of the business of the company. The learned counsel submits that there are no specific averments in the complaint demonstrating the petitioner's role in the day-to-day affairs of the company. Mere bald allegations, without supporting material, are insufficient to attract vicarious liability under Section 141 of the NI Act. It is contended that liability under Section 138 is primarily of the drawer of the cheque, and Section 141 can be invoked only against persons who are Directors or officers of the company and were in charge of its business at the relevant time. On these grounds, it is urged that the summoning of the petitioner is erroneous and liable to be set aside.

5. *Conversely*, the learned counsel appearing for respondent no. 1 submits that the petitioner is vicariously liable in view of his active role and involvement in the affairs of the accused company. It is contended that the complaint specifically narrates the petitioner's role in approaching the complainant, inducing her to invest money, handing



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over the cheque, and issuing instructions regarding its presentation. It is argued that the complaint contains sufficient averments to show that the petitioner was in charge of and responsible for the conduct of the business of the accused company. The petitioner's involvement in the issuance of the cheque and subsequent assurances given to the complainant, including directions for re-presentation of the cheque, are clearly averred in the complaint. The learned counsel argues that it well-settled by the Hon'ble Supreme Court that liability under Section 141 of the NI Act does not depend merely on designation, and even a person not formally holding an office in the company may be prosecuted if the complaint discloses that such person was in charge of and responsible for the conduct of the company's affairs at the relevant time. It is thus submitted that the learned Sessions Court has rightly held that the petitioner's contentions raise triable issues and do not warrant interference at the stage of issuance of summons. Accordingly, it is prayed that the present petition be dismissed.

6. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondent no. 1, and has pursued the material on record.

ANALYSIS & FINDINGS

7. The issue that arises for consideration before this Court is whether the summoning of the petitioner for the offence under Sections 138 and



141 of the NI Act calls for interference in the facts and circumstances of the present case.

8. At the outset, it would be apposite to notice the statutory scheme of Sections 138 and 141 of the NI Act, which deal with the offence of dishonour of cheque and vicarious liability in cases where the drawer is a company. Section 138 and 141 of NI Act are set out below:

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

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

Provided that nothing contained in this section shall apply unless—

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

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

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the



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holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability

141. Offences by companies.—

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”



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9. Section 141 of the NI Act envisages vicarious liability and is divided into two distinct parts, i.e. sub-section (1) and sub-section (2), each operating in different factual scenarios. The distinction between the two provisions has been explained by the Hon'ble Supreme Court in ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*: (2023) 10 SCC 685**, wherein it has been held that while sub-section (1) fastens liability on persons who are in charge of and responsible for the conduct of the business of the company, irrespective of their designation, sub-section (2) applies where the offence is committed with the consent, connivance or neglect of a director, manager, secretary or other officer of the company, with the burden of specifically pleading in the complaint and proving such elements resting upon the complainant. The relevant observations are as under:

“26. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.

27. Under the separate provision of sub-section (2), if it is proved that the offence was committed with the consent or connivance of or was attributable to the neglect on the part of any director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence. Obviously, the burden of alleging and proving consent, connivance or neglect on the part of any director, etc. would rest upon the complainant. The non obstante clause with



which the sub-section (2) opens indicate that the deeming provision is distinct and different from the deeming provision in sub-section (1) in which the office or designation of the person in charge of and responsible to the company for the conduct of its business is immaterial.

28. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect.

29. While all the persons covered by sub-section (1) and sub-section (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.”

10. The learned counsel appearing for the complainant has contended that even if the petitioner does not hold any designation in the accused company, he can still be made vicariously liable under Section 141 of the NI Act on account of him being responsible to the accused company for conduct of its business and his alleged involvement in its day-to-day affairs.



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11. To appreciate this contention in the facts of the present case, it is necessary to examine the nature of averments required in a complaint so as to justify the summoning of a person by invoking Section 141 of the NI Act. The law in this regard stands well settled.

12. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*: (2005) 8 SCC 89, a three-Judge Bench of the Hon'ble Supreme Court has held that it is mandatory for a complaint under Section 141 of the NI Act to specifically aver that, at the time of commission of the offence, the person sought to be made liable was in charge of and responsible for the conduct of the business of the company. Such an averment is an essential requirement and, in its absence, the requirements of Section 141 cannot be said to be satisfied. The observations of the Hon'ble Supreme Court are extracted hereunder:

“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



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time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

13. Similarly, in *Ashok Shewkramani v. State of Andhra Pradesh*: (2023) 8 SCC 473, the Hon’ble Supreme Court emphasised that Section 141 constitutes an exception to the general rule against vicarious liability in criminal law and, therefore, must be strictly construed. It was held that bald assertions such as a person being involved in “day-to-day affairs” or “managing the company” are, by themselves, insufficient to satisfy the statutory requirement of being “in charge of and responsible for the conduct of the business of the company” at the relevant time. It was held as under:

“21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well



as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

22. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act.

23. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of sub-section 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act.”

14. From the aforesaid decisions, it can be safely concluded that for implicating a person under Section 141(1) of the NI Act, the complaint must contain specific averments demonstrating that such person was, at



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the time of commission of the offence, both in charge of and responsible for the conduct of the business of the company. The emphasis is not merely on participation or involvement, but on control and responsibility in relation to the business of the company.

15. At the same time, as held by the Hon'ble Supreme Court in *HDFC Bank Limited v. State of Maharashtra: (2025) 9 SCC 653*, while a verbatim reproduction of the statutory language of Section 141(1) of NI Act is not mandatory, the substance of the allegations must clearly indicate that the accused sought to be prosecuted was responsible for, or in control of the day-to-day business affairs of the company.

16. At this stage, it would be apposite to examine the averments made in the complaint to ascertain whether the statutory requirements of Section 141 of the NI Act are satisfied qua the petitioner. Paragraph 2 of the complaint contains the foundational averments regarding the role of the accused persons, wherein it has been stated as under:

“2. That the Accused No. 1 is a Single Person Company being incorporated, owned, managed and controlled by the Accused No. 2. That the Accused No. 2 is also holding position of Director of Accused No. 1 and also believed to be absolute stake holder of Accused No. 1. Accused No. 2 is personally involved in business activities of Accused No. 1. **That the Accused No. 3 is involved in day to day business activities of Accused No. 1 and is acting under the instructions of Accused No. 2. That the Accused No. 2 & 3 are personally involved and liable for all the business activities, affairs, management, control and operation of the Accused No. 1.** That the Accused No. 2 & 3 as a matter of fact are carrying out their personal activities under the veil of Accused No. 1. The printout of the status of Accused No. 1 being One Person



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Company and Accused No. 2 as Director of Accused No. 1 has been verified from the website of Ministry of Corporate Affairs and its true printout as obtained is attached herewith.”

(emphasis supplied)

17. A perusal of the aforesaid paragraph shows that while accused no. 2 has been described as the sole Director of accused no. 1-company, the only allegation against the petitioner (accused no. 3) is that he was “*involved in the day-to-day business activities*” of the company and was “*acting under the instructions of accused no. 2*”. Apart from these assertions, the complaint contains certain common allegations against accused nos. 2 and 3 regarding the transaction in question, including approaching the complainant, inducing her to invest money and handing over of the cheque.

18. However, even on a plain reading of the complaint as a whole, the necessary averments to attract vicarious liability under Section 141(1) of the NI Act are conspicuously absent. There is no specific assertion that the petitioner was, at the relevant time, in charge of and responsible for the conduct of the business of the accused company. On the contrary, the complaint itself indicates that the petitioner was “*acting under the instructions of*” accused no. 2, who is admittedly the sole Director of the company. This Court is of the opinion that such averments, even in substance, do not meet the statutory threshold contemplated under Section 141 of the NI Act.



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19. It is also an admitted position that accused no. 1 is a One Person Company and accused no. 2 is its sole Director. The petitioner is not a Director of the said company. There is no averment, nor any material placed on record by the complainant, to indicate that the petitioner held any office or position whatsoever in the accused company, even as an employee. *Therefore, precisely, the petitioner herein has no role or status in the accused company.*

20. Even if the allegations in the complaint are assumed to be true for the sake of argument, the petitioner's alleged role in accompanying accused no. 2, inducing the complainant, or handing over the cheque – whether as a friend, associate or agent – would not, by itself, be sufficient to attract liability under Section 141(1) of the NI Act. The said provision applies only to persons who are in charge of and responsible for the conduct of the business of the company, and the complaint must contain specific averments to that effect, either expressly or at least in substance. Such averments are clearly lacking in the present case *qua* the petitioner herein.

21. In view of the above discussion, the continuation of proceedings against the petitioner cannot be sustained. Accordingly, the complaint, insofar as it relates to the petitioner, is liable to be quashed.

22. The present petition is therefore allowed, and the impugned summoning order and the complaint, insofar as they relate to the petitioner, are hereby quashed and set aside.



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23. This judgment however shall have no bearing on the merits of the case in respect of the other accused persons.

24. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

**FEBRUARY 27, 2026/
T.D.**