



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

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Reserved on: 10th December, 2025

Pronounced on: 10th March, 2026

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W.P. (CRL) 2840/2017 & CRL.M.A. 16415/2017

1. MADHURI COMMODITIES PRIVATE LTD.

Through its Director,
Having its Registered Office at:
16-B, Dover Lane,
Kolkata, West Bengal - 700029

2. MR. PRAVEEN KUMAR AGARWAL

Managing Director
16-B, Dover Lane,
Kolkata, West Bengal - 700029

3. MR. RAJ KUMAR AGARWAL

Director,
16-B, Dover Lane,
Kolkata, West Bengal - 700029

.....Petitioners

Through: Mr. Awanish Kumar and Ms Garima,
Advocates.

Versus

1. M/S SONY INDIA PVT. LTD.

Through its authorized representative
Mr. Gurmeet Singh
A-31, Mohan Co-operative Industrial Estate
Mathura Road, New Delhi - 110044

.....Respondent No. 1

2. GOVT. OF NCT OF DELHI

Through SHO Parliament Street
Police Station Sansad Marg
Connaught Place, near Patel Chowk,



New Delhi, Delhi 110001

.....Respondent No. 2

Through: Ms. Shweta Bharti, Mr. J.K. Chaudhary and Ms. Vanshika Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been preferred under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "CrPC"*), seeking the quashing of the Complaint filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as 'NI Act'*), the summoning Order dated 10.04.2017, pending before the Court of the Ld. CMM, Patiala House Courts, New Delhi.
2. The present Petition arises out of a Complaint bearing CC No. 4570/2017 titled *M/s Sony India Pvt. Ltd. vs. Madhuri Commodities & Ors.* under Section 138 NI Act, concerning the alleged misuse of a security cheque and its dishonour.
3. ***Petitioner No. 1/Madhuri Commodities Private Ltd.*** is a Company engaged as a distributor/channel partner for Sony India Pvt. Ltd. in North West Bengal. ***Petitioner No. 2/Mr. Praveen Kumar Agarwal and Petitioner No. 3/Mr. Raj Kumar Agarwal*** are its Managing Director and the Director, respectively.
4. ***Respondent/M/s Sony India Pvt. Ltd.*** is the Principal Company/Complainant, represented by Mr. Gurmeet Singh.



5. The *facts as stated in the Complaint are* that on 01.12.2008, Petitioner No. 1 submitted its Know Your Customer (KYC) documentation to the Respondent to become its authorized channel partner for North West Bengal. As a precondition for the grant of distributorship, blank security cheques were furnished by the Petitioners, a fact expressly acknowledged in the Respondent's KYC checklist dated 17.12.2008. On account of outstanding Liability, the cheque of Rs. 1,22,91,473/-for encashment, was presented on 02.02.2017, which was dishonoured on 04.02.2017, for the reason "*exceeds arrangement*". The Respondent issued a Statutory Notice under Section 138 NI Act on 18.02.2017, which was received by the Petitioners on 21/22.02.2017, after which the Complaint under Section 138 NI Act was filed.

6. The Petitioners were summoned *vide* Order dated 10.04.2017, by the Ld. MM.

7. **The present Petition has been filed to Challenge the Complaint as well as the summoning Order.**

8. The Petitioners assert that it became the authorized channel partner for North West Bengal, of the respondent. As a pre-condition for the grant of distributorship, blank security cheques were furnished by the Petitioners. It is asserted that notably, at the time of issuance of the cheque in December, 2008 (last replaced in 2013 upon request), no goods had been supplied by the Respondent, and consequently, there existed no legally enforceable debt or liability within the meaning of Section 138 NI Act.

9. The business relationship between the parties functioned smoothly until 2013, when the Respondent began engaging in unilateral and commercially detrimental conduct. This included the forced "dumping" of



excess stock beyond the Petitioners' Purchase Orders, imposition of arbitrary minimum Inventory requirements (e.g., 650 units in October, 2013), repeated failures to adhere to delivery timelines, and direct dealings with downstream dealers, in breach of the exclusive distributorship protocol. These actions severely disrupted the Petitioners' cash flow and undermined their performance-linked claims, under various incentive schemes. Despite repeated written protests *via* email (e.g., dated 30.10.2013, 08.11.2013, 21.07.2015, and 16.11.2016), the Respondent failed to rectify its conduct.

10. By late 2016, significant financial discrepancies emerged between the parties. While the Respondent claimed an outstanding amount of approximately Rs. 1.22 crores, the Petitioners asserted legitimate *counterclaims*, including trade claims of Rs. 36,53,707/- stock-in-hand valued at Rs. 42,59,184/- and sundry debtors worth Rs. 1,26,27,902/-, resulting in a net receivable of over Rs. 86 lakhs in their favour. These claims were communicated through a series of emails between December 2016 and January 2017; yet the Respondent ignored them and on 02.02.2017, dishonestly presented the security cheque for encashment, after unilaterally filling the inflated amount of Rs. 1,22,91,473/-.

11. It is claimed that this cheque was never issued against any subsisting debt; rather, it was provided solely as a documentary formality for distributorship and was never intended for actual payment.

12. Following dishonour, the Respondent issued a statutory Notice under Section 138 on 18.02.2017, which was received by the Petitioners on 21/22.02.2017. Simultaneously, on 27.02.2017, the Respondent terminated the Petitioners' Agency without settling their legitimate dues.



13. In response, the **Petitioners instituted a Civil Suit bearing No. 49/2017** before the Court of the **Ld. Civil Judge, Alipur** in early March 2017, prior to the expiry of the 15-day statutory period under Section 138 and well before the filing of the Criminal Complaint. The Civil Court, recognizing the Petitioners' protectable interest in the Agency under Section 202 of the Indian Contract Act, 1872, granted an *ex-parte Injunction* on 04.03.2017 and later confirmed it on 18.09.2017, restraining the Respondent from appointing a new Distributor.

14. Despite these developments, the Respondent filed Complaint Case No. 4570/2017 under Sections 138 and 141 NI Act before the Chief Metropolitan Magistrate, Delhi, on 21.03.2017. **The Complaint suffers from multiple legal infirmities.**

15. *First*, it fails to disclose any legally enforceable debt at the time of issuance or presentation of the cheque, rendering it non-maintainable under settled law in a catena of judgments like Bishanwaruparam Krishan vs. STC of India Ltd., ILR (2009) V Delhi 205; Indus Airways Pvt. Ltd. vs. Magnum Aviation Pvt. Ltd., (2014) 12 SCC 539.

16. *Second*, the Complaint constitutes a gross abuse of the Criminal process, as it seeks to weaponize a security instrument, to coerce settlement in a purely Civil dispute involving complex accounting and contractual issues already pending adjudication in a Civil Court; for which reliance is placed on Madhavrao Jiwaji Rao Scindia vs. Sambhajirao Chandrojirao Angre, AIR 1988 SC 709 and Kamal Kishor vs. D.S. Dhawde, (2004) 2 MhLJ 465).

17. *Third*, the Complaint mechanically impleads Petitioners Nos. 2 and 3 as accused persons under Section 141 NI Act, without specifying their roles



or responsibilities in the day-to-day conduct of the Company's business, contrary to the strict requirements laid down in National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal, (2010) 3 SCC 330.

18. Fourth, Petitioner No. 3 is not even the signatory of the impugned cheque, and thus, cannot be prosecuted under Section 138, as only the drawer of the cheque may be held liable as per Aparna A. Shah vs. M/s Sheth Developers Pvt. Ltd., Criminal Appeal No. 813 of 2013.

19. Fifth, the Complaint was filed by a power of attorney holder who lacks personal knowledge of the underlying transactions and is therefore, incompetent to depose on behalf of the principal, as held in Janki Vashdeo Bhojwani vs. Indusind Bank Ltd., (2005) 2 SCC 217.

20. Lastly, the Summoning Order dated 10.04.2017 reflects no application of judicial mind, as required by M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1997) 4 SCC 579, and ignores the protective framework of Section 202 of the Contract Act, which safeguards an Agent's interest in stocks, receivables, and claims during pendency of Agency disputes.

21. In light of these facts and legal principles, the criminal proceedings are manifestly unsustainable, oppressive, and constitute a misuse of judicial process aimed solely at harassing the Petitioners and undermining their legitimate civil claims.

22. *Thus, it is prayed that the Petition be allowed and the Complaint as well as the impugned summoning Order, be set aside.*

23. Reply has been filed on behalf of the Respondent/Sony India Pvt. Ltd., wherein it is stated that the Petition is not only legally untenable, but also constitutes a gross abuse of the judicial process. The Petitioners have



deliberately suppressed material facts and documents, misrepresented the nature of their commercial relationship with the Respondent, and falsely projected themselves as “Agents” under the Indian Contract Act, 1872, in a calculated attempt to evade their admitted financial liability. In truth, the relationship between the parties was purely that of *seller and purchaser*; specifically, that of a principal selling goods to an independent Distributor, and never that of Principal and Agent.

24. The Petitioners were appointed as one, amongst several distributors in the North Bengal region, with no exclusivity or control by the Respondent over their pricing, sales strategy, or downstream dealings. Critically, the Respondent never authorized the Petitioners to act on its behalf, nor did it pay any commission; instead, the Petitioners purchased goods outright and resold them at their own risk and profit, which negates any claim of Agency.

25. The Respondent further refutes the Petitioners’ core contention that the dishonoured cheque was issued merely as “*security*” and therefore, outside the purview of Section 138 NI Act. Relying on the judgment of the Apex Court in Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Ltd., AIR 2016 SC 4363, the Respondent emphasized that a post-dated cheque given as security attracts Section 138, provided a legally enforceable debt subsisted on the date of presentation.

26. In the present case, the Petitioners had consistently acknowledged an outstanding liability of approximately Rs.1.23 crores, through multiple email communications spanning from 2015 to January 2017, including specific offers dated 16.05.2015, 24.12.2016, and 21.01.2017, to repay the amount in tranches, which conclusively establishes *the existence of a subsisting debt*.



27. The presumption under Sections 138 and 139 NI Act thus, operates squarely against the Petitioners, and any dispute regarding the quantum or offset of alleged counterclaims is a matter for trial, not for pre-trial quashing under Article 226 or Section 482 Cr.P.C.

28. The Respondent categorically denies the Petitioners' belated and unsubstantiated claims of trade credits, stock valuation, and sundry debtors aggregating to over Rs.86 lakhs, asserting that these were fabricated only after repeated defaults and solely to avoid payment. Notably, no such claims were raised when the Petitioners first acknowledged their dues in 2015, and even as late as 21.01.2017, when they offered unconditional payment without mentioning any set-off. The sudden assertion of inflated counterclaims in December 2016, appears to be an afterthought, especially in light of years of default and following the Respondent's demand for clearance of the same.

29. Moreover, the *Civil Suit bearing No. 49/2017* was instituted by the Petitioners, as a tactical counterblast to shield themselves from the consequences of cheque dishonour, and the *interim Injunction* obtained therein, was subsequently varied by the Calcutta High Court in *FMAT 1116/2017*, by observing that the trial court had failed to return any *prima facie* finding on the existence of an Agency relationship, *which undermines the Petitioners' reliance on Section 202 of the Contract Act*.

30. Furthermore, *Section 202 of the Contract Act* is wholly inapplicable, as it protects only an Agent's interest in the "*subject-matter of the Agency*," which typically relates to immovable property or specific entrusted assets and not general inventory of movable goods purchased in a commercial transaction. The stocks held by the Petitioners, were bought outright under



sale Invoices and remained their absolute property; no equitable interest in favour of the Petitioners, nor did the Respondent retain any title or control over those goods, after the sale.

31. Consequently, *the termination of the Distributorship arrangement on 20.02.2017*, after persistent payment defaults and non-performance, did not violate any statutory protection, and the Petitioners' invocation of Section 202 Contract Act is legally misconceived.

32. On the procedural and evidentiary front, the Respondent asserts that the Criminal Complaint under Section 138 and 141 NI Act, is fully compliant with legal requirements. Petitioner No. 2, as the signatory of the dishonoured cheque, is rightly arrayed as an accused, and Petitioner No. 3, being a Director actively involved in the Company's day-to-day affairs at the relevant time, falls squarely within the scope of vicarious liability under Section 141.

33. It is submitted that the Complaint explicitly links both Directors to the conduct of business, satisfying the principles laid down in National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal, (supra).

34. Furthermore, the Complaint was filed by a duly Authorized Representative of the corporate Respondent, whose capacity to depose on the basis of Company records and official knowledge, is well recognized in law; the Petitioners' reliance on Janki Vashdeo Bhojwani, (supra) is misplaced, as that judgment pertains to natural persons, not juristic entities acting through authorized officers.

35. Finally, the Respondent submits that the Summoning Order dated 10.04.2017 reflects proper application of judicial mind, as mandated by



Pepsi Foods Ltd. (supra), and that the Petitioners' attempt to bypass the trial, in which they may rebut the statutory presumptions, is impermissible.

36. The pendency of a Civil Suit does not *ipso facto*, bar Criminal proceedings for cheque dishonour, especially where the debt is admitted and the defences are essentially civil in nature.

37. *It is submitted that the Writ Petition has been filed mala fide to delay and derail legitimate legal recourse, which deserves to be dismissed with exemplary costs.*

38. ***A Rejoinder to the Reply has been filed*** wherein the Petitioner has reiterated the contentions raised in the Petition. It is additionally stated that the Respondent's Reply is full of misstatements, deliberate omissions, and presents a distorted narrative, aimed at masking its own commercial misconduct and the *mala fide* initiation in initiating criminal proceedings under Section 138 NI Act. The Respondent has failed to rebut the foundational fact that the impugned Cheque was issued purely a security instrument, given in December 2008 and was never intended as a payment mechanism against any subsisting debt.

39. The Respondent's reliance on Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd. is misplaced, as that judgment explicitly requires the existence of a "*legally enforceable debt or liability*" on the date of presentation of the cheque.

40. In the present case, no such debt existed because the Petitioners' legitimate *Counterclaims*, including stock-in-hand, trade incentives, and receivables from downstream dealers, collectively exceed the amount unilaterally inscribed by the Respondent on the blank security cheque. Far from being an "afterthought," these claims were consistently communicated



through email correspondence beginning December, 2016 and were formally quantified only after the Respondent abruptly terminated the Agency without settlement, thereby crystallizing the Petitioners' financial exposure.

41. The Petitioners further emphasize that the Calcutta High Court, in FMAT No. 1116 of 2017 dated 17.10.2017, while modifying the interim injunction granted by the Trial Court, expressly recognized the Petitioners' "interest" in the Agency; *a finding that directly contradicts the Respondent's bald assertion that no principal-agent relationship ever existed.* Although the High Court declined to affirm exclusivity or quantify the interest at the interim stage, it directed the Petitioners to return unsold stock to the Respondent, in exchange for depositing equivalent value in a Fixed Deposit Account, thereby implicitly acknowledging that the Petitioners held assets belonging to or representing the business of the Respondent. This judicial recognition negates the Respondent's attempt to characterize the relationship as a mere *Buyer-Seller* arrangement. The operational control exercised by the Respondent by way of dictating pricing, imposing minimum inventory norms, managing Incentive Schemes, and directly intervening in dealer relationships, demonstrates the aspects of an Agency, and not that of an arms-length commercial sale.

42. Furthermore, it is asserted that the Respondent's claim that the Petitioners were in persistent default, is misleading. All payment delays arose directly from the Respondent's unilateral practices, such as forced stock dumping beyond Purchase Orders, erratic supply during peak seasons (notably Durga Puja), and failure to issue timely Invoices and unjustified reduction of credit limits from Rs. 4 crores to Rs.1.5 crores in 2015. These actions disrupted the Petitioners' cash flow and undermined their ability to



collect from Dealers, who themselves were pressured by the Respondent's field staff to bypass the Petitioners, post-termination.

43. The emails cited by the Respondent as “*admissions of debt*” were sent in the context of ongoing negotiations and were always qualified by references to pending trade claims, and none constitute unconditional acknowledgment of liability. Critically, even in the email dated 21.01.2017, the Petitioners wrote that only on final reconciliation, will the payment be made, which was also ignored by the Respondent, who proceeded to fill and present the security cheque with an inflated, unsubstantiated figure.

44. The Petitioners also clarify that the *Civil Suit No. 49/2017* was filed immediately upon illegal termination of the Agency on 27.02.2017, well before the expiry of the 15-day statutory window under Section 138 and prior to the filing of the Criminal Complaint, on 21.03.2017. This sequence disproves the Respondent's allegation that the Suit was a counterblast.

45. Rather, it was a necessary step to preserve the Petitioners' statutory interest under Section 202 of the Indian Contract Act, which protects an Agent's stake in the subject matter of the Agency, until accounts are settled. Contrary to the Respondent's assertion, Section 202 is not limited to immovable property; it applies equally to goods, receivables, and promotional investments integral to the Agency's operation, the assets now in dispute.

46. *Finally*, the Petitioners reiterate that the Criminal Complaint suffers from incurable legal defects, namely: (i) Petitioner No. 3, not being the signatory of the cheque, cannot be prosecuted under Section 138; (ii) the Complaint fails to specify how both Directors were “*in charge of and responsible for*” the Company's day-to-day affairs, as mandated by NSIC vs.



Harmeet Singh Paintal, (supra).; and (iii) the Power of Attorney holder who filed the Complaint, lacks personal knowledge of the underlying transactions and is legally incompetent to depose on behalf of the corporate Complainant, in view of Janki Vashdeo Bhojwani, (supra).

47. In view of the pending Civil adjudication of the very debt in question, and the absence of any *prima facie* offence, the continuation of Criminal proceedings constitutes a manifest abuse of process and warrants quashing.

Submissions heard and record perused.

I. *Whether Security Cheque can be a Basis for Complaint under Section 138 NI Act?:*

48. *The first issue is whether the said cheque was a security cheque and thus, could not have been presented, unless there was an occasion for its presentment.*

49. Before assessing the merits of the issue, we may refer to the law in this regard.

50. Where a cheque is given as security for a contract or a loan and the liability arising from that contract or loan, *crystallizes* into a legally enforceable debt at a later date, the cheque, even if originally a “security” one, assumes the character of a cheque issued in discharge of that debt for the purpose of Section 138.

51. **PDCs (Post-Dated Cheques) issued as security** for financial liability, mature into an actual outstanding liability. The determining factor is whether a legally enforceable debt or liability *exists on the date the cheque is presented* for encashment, and not on the date it was drawn or handed over.



52. In this regard reference may be made to the judgement of the Apex Court in Indus Airways Private Limited versus Magnum Aviation Private Limited, (2014) 12 SCC 539, wherein the Court considered the question whether post-dated cheque issued by way of advance payment for a Purchase Order, could be considered for discharge of legally enforceable debt. *It was held that while the purchaser may be liable for breach of the contract, when a contract provides that the purchaser has to pay in advance.*

53. This proposition was reiterated by the Apex Court in Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458, wherein it was observed by the Court that the question whether a post-dated cheque is for “*discharge of debt or liability*” depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, Section 138 is attracted.

54. The concept of *Security Cheques* was explained by the Apex Court in the case of Sripati Singh vs. State of Jharkhand, (2022) 18 SCC 614, wherein it was observed:

“21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. “Security” in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences



contemplated under Section 138 and the other provisions of the NI Act would flow.”

55. Furthermore, the liability under a signed blank cheque was discussed in the case of *Bir Singh vs. Mukesh Kumar*, (2019) 4 SCC 197, wherein the Apex Court observed:

“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

.....

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

56. The Security Cheques are only given to be utilised if subsequently, during the business transactions, certain liabilities arise which are not fulfilled by the Petitioners.

57. *Applying the above principles to the present case, even assuming arguendo that the Cheque was originally furnished as a security instrument in 2008, the critical question is whether liability had crystallized on the date of its presentation in February 2017.*

58. The record reveals multiple email communications from the Petitioners acknowledging substantial outstanding dues and proposing



repayment schedules. Emails dated 16.05.2015, 24.12.2016 and 21.01.2017, relied upon by the Respondent, show that the Petitioners themselves referred to the pending outstanding amounts and expressed willingness to liquidate the same in tranches. Such correspondence *prima facie* indicates the existence of a subsisting and legally recoverable liability on the date the cheque was presented. Consequently, even if the cheque had originally been issued as a security instrument, it matured into a Cheque issued towards discharge of debt.

59. Thus, this contention of the Petitioner that the impugned Cheque was merely a security cheque and could not have been presented, is untenable.

60. Moreover, in Bir Singh, (supra) the Apex Court held that even a signed blank cheque, if voluntarily handed over, carries a presumption under Sections 118 and 139 of the NI Act that it was issued in discharge of debt or liability. The mere fact that particulars were filled in by the payee, does not invalidate the instrument. The burden squarely lies upon the drawer to rebut the statutory presumption through evidence, at trial.

61. *In the present matter*, the Petitioners admittedly signed and handed over the Cheque. Once execution is admitted, the statutory presumption operates in favour of the Respondent. The Petitioners' alleged counterclaims to extinguish or reduce liability, is a matter of evidence and reconciliation, which cannot be adjudicated in a petition under Article 226 or Section 482 Cr.P.C.

62. *The defence that the cheque was only a "security cheque" is, therefore, not a ground for quashing at the threshold.*

II. Whether the Complaint is Maintainable against Managing Director/Director?:



63. The second issue is *whether the Directors of the Company i.e. Petitioner No. 2/Mr. Praveen Kumar Agarwal (Managing Director) and Petitioner No. 3/Mr. Raj Kumar Agarwal (Director) are vicariously liable for the offence under Section 138 NI Act, by virtue of Section 141 thereof.*

64. Section 141 NI Act provides that where the offence under Section 138 is committed by a Company, every person who at the time of the offence, was in charge of and responsible to the Company for the conduct of its business, shall also be deemed to be guilty of that offence.

65. The Apex Court, in National Small Industries Corporation Ltd., (supra), held that the Complaint must contain specific averments disclosing how and in what manner each Director was in charge of and responsible for the conduct of the Company's business.

66. Similar observations have been made by the Apex Court in the case of K.S. Mehta vs. M/s Morgan Securities and Credits Pvt. Ltd., 2025 INSC 315 wherein the Complaint lacked specific averments that would have established a direct nexus between the Appellants and the financial transactions in question or demonstrate their involvement in the Company's financial affairs. Where the documents on record confirmed the **non-executive** status of the Appellants/Directors, underscoring their limited role in governance without any Executive decision-making authority, they cannot be considered as involved in the affairs of the Company. ***It was held that merely because the Appellants/Directors attended Board Meetings, does not automatically translate into control over financial operations.*** Hence, unless direct involvement of the Directors is established, they cannot be held vicariously liable under the Act, 1881.



67. At this stage, it is also relevant to note that under *Section 149(1) of the Companies Act, 2013*, a private Company is statutorily required to have a minimum of only two Directors on its Board of Directors.

68. Law in regard to the liability of Directors stands settled in *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla*, (2005) 8 SCC 89 wherein Apex Court had reiterated and clarified that essentially in a case under Section 141, there ought to be a specific averment in the pleadings of the Complainant that at the time the Offence was committed, the person accused was in charge of and responsible for the conduct of the business of the Company. To hold a Director liable, it needs to be shown that the Director being made liable, should be in charge of and responsible for the conduct of the business of the Company at the time of committing the offence. Further, that the persons holding the office of “*Managing Director*” or “*Joint Managing Director*”, by virtue of the very nature of their role, renders them in charge of and responsible for the conduct of the business of the Company and liable under Section 141. Similar observations were made by the Apex Court in *Sunita Palita vs. Panchami Stone Quarry*, in SLP (Crl.) No. 10396 of 2019 decided on 01.08.2022.

69. *In the present case*, the record indicates that Petitioner No. 2 and Petitioner No. 3 are the Managing Director and Director respectively of Petitioner No. 1 Company, which is a private limited Company. In such a closely held corporate structure, where the Board itself comprises of only two directors, the assertion in the Complaint that both Directors were actively involved in the day-to-day affairs and financial management of the Company, cannot be said to be inherently improbable.



70. Turning to the Complaint, it states, “*Accused No. 2 and 3 are Managing Director and Director, respectively and are actively involved and responsible for day-to-day business operations and management, including the financial affairs of the Accused No. 1.*” It is further stated that “*the said cheque was issued on behalf of the Accused No. 1 due to the working relationship entered into by the Accused No. 2 and 3.*” These averments, read together, go beyond a mere recitation of statutory language. They specifically attribute active involvement in financial and day-to-day management to both Directors, and connect the issuance of the cheque to the working relationship established by them.

71. So far as Petitioner No. 2/Mr. Praveen Kumar Agarwal is concerned, he is both the Managing Director and the signatory of the dishonoured cheque. The act of signing the cheque on behalf of the Company is itself a direct act of commission. His liability under Sections 138 and 141 NI Act is, therefore, unimpeachable at this stage.

72. So far as Petitioner No. 3/Mr. Raj Kumar Agarwal is concerned, the Petitioners have pressed the argument, that since he is not the signatory of the cheque, he cannot be prosecuted. However, a *non-signatory Director* is not *ipso facto* immune from prosecution; what is required is the presence of adequate averments in the Complaint establishing his charge and responsibility over the Company’s affairs. As noted above, the Complaint specifically avers that Petitioner No. 3 was actively involved and responsible for day-to-day business operations and financial affairs of the Company, and was part of the working relationship.



73. Accordingly, the implication of both Petitioner No. 2 and Petitioner No. 3 as accused persons in the Complaint does not, on the present record, warrant interference at this stage.

74. In the present Petition, the Court is only required to examine whether the allegations in the Complaint, taken at face value, disclose the commission of an offence under Section 138 NI Act. The defence sought to be raised by the Petitioners, involves disputed questions of fact requiring appreciation of evidence, which must necessarily be tested during trial.

Conclusion:

75. In light of the foregoing discussion, this Court finds no merit in the Petition.

76. The Petition is **dismissed** and accordingly disposed of, along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 10, 2026

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