**IN THE HIGH COURT AT CALCUTTA**
**CRIMINAL REVISIONAL JURISDICTION**
**APPELLATE SIDE**

*PRESENT:*

**THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE**

**CRR 782 of 2026**

**Shreya Banerjee**
**Vs.**
**Mr. Ajesh Khem**

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| For the petitioners | : | Mr. Abhinav Rakshit<br>Mr. Anirudha Sinha |
| For the Respondent | : | Mr. Tanish Ganeriwala<br>Mr. Satyam Bhimsaria |
| Heard on | : | 20.07.2026 |
| Judgment on | : | 11.09.2026 |

**Dr. Ajoy Kumar Mukherjee, J.**

**1.** The instant revisional application has been preferred by the petitioner praying for quashing of proceeding in connection with C Case No. 75 of 2025 pending before learned Judicial Magistrate, 2nd Court, Alipore thereby alleging the commission of an offence punishable under section 138 of the Negotiable Instrument Act (in Short N.I. Act) and all orders passed in connection there with.

**2.** The case of the opposite party (in short OP) herein is that the petitioner representing herself to be a partner of M/S Steakalicous

Restauranteur entered into and executed a deed of lease and utility agreement both dated 9th March, 2018 for occupation of an area of 2,200 square feet and roof top open space measuring an area of at about 1500 square feet at 192 A, Sarat Bose Road. Further case of the OP is that payment was made from time to time in terms of the said lease and utility agreement towards occupation of the said property until April 2024 but on and from May 2024 to August 2024, a sum of Rs. 16,93,000/- along with GST remained due and outstanding towards occupation of the said partnership firm. Thereafter, the said partnership firm in satiation of the outstanding dues issued three cheques amounting to Rs. 16,93,000/-. The said cheques were deposited for encashment by the OP herein with his banker on 23.10.2024 but the same were returned as dishonoured due to "insufficient fund". After serving notice, the OP herein initiated aforesaid complaint case against the partnership firm i.e. M/S Steakalicous Restauranteur along with its partners namely the petitioner and the other accused persons.

**3.** Being aggrieved by the aforesaid proceeding learned counsel for the petitioner, Mr. Rakshit submits that petitioner was not the signatory of the cheque. A bare perusal of paragraph 9 of the complaint would reveal that the accused no.2 namely Mainak Chakraverti had issued the impugned cheques. Despite admitting that the petitioner neither issued nor signed the said cheques, the OP herein in abuse of the process of law impleaded the petitioner and instituted the present proceeding. He further submits that it is true that the petitioner and said Mainak Chakraverti were partners along with two other individuals and the said partnership firm entered into two agreements i.e. lease agreement and utility agreement on 9th March, 2018. But the present petitioner was merely a sleeping partner and was not involved in day to day affairs of the firm and had invested in the business only to receive a share of its profits.

**4.** He further submits that due to dispute and differences amongst the partners, the petitioner retired from the partnership firm by a deed of retirement dated 27th March, 2023. The purported cheques were issued on 1.09.2024, 09.09.2024 and 15.09.2024 i.e. long after the petitioners retirement from the said firm. The petitioner was not a part of the said firm on and from 3rd April, 2023 and therefore he cannot be held liable for any act done beyond April 2nd, 2023. He also submits that the bank account that was used for day to day operations of the said firm was a different bank account than that of the account from which the purported cheques had been issued, which makes it clear that the petitioner has no knowledge regarding issuance of the said cheques.

**5.** Learned counsel for the petitioner further argued that the proceeding under section 138 of N.I. Act can arise only where a cheque is issued towards legally enforceable debt or liability. The petitioner herein had neither acknowledged any liability nor issued or signed the cheque in question and as such the essential ingredients of the offence is absent. In the petition of complaint no specific role has been attributed to the petitioner and he has only been arraigned as an accused by dint of her position that she was once a partner. Referring the judgment of ***Siby Thomas Vs. Somani ceramics Ltd.*** reported in **(2024) 1 SCC 348,** he further argued that vicarious liability would be attracted only when the ingredients of section 141(1) are satisfied to fasten criminal liability. The complaint must contain specific averment that at the time of commission of the offence, the accused was in charge of and responsible to the firm for the conduct of its business. There is no such averment in the written complaint that the petitioner was in charge of and was responsible to the partnership firm for the conduct of the business of the company. A mere bald or mechanical assertion to that effect is insufficient. Therefore, the said proceeding is ex facie *malafide*, vexatious and constitutes gross abuse of criminal law intended only to harass the petitioner.

**6.** Per contra Mr. Ganeriwala learned counsel appearing on behalf of the OP submits that the cheques issued on behalf of the partnership firm has got dishonoured and therefore, in view of section 25 and 26 of the Indian Partnership Act 1932, every partner is liable jointly with all other partners and also severally for all acts done by the firm while he/she is a partner and a partnership firm is jointly and severally liable for all liabilities arising for any act undertaken by a partner in the usual course of business. Therefore, notwithstanding the fact that the petitioner was not a signatory to the impugned cheques that were dishonoured, the law states that the liability and consequences of such dishonoured cheques would uniformly attributable to all the partner of the said partnership firm.

**7.** Relying upon the judgment of ***Dhana Singh Prabhu Vs. Chandra Sekhar and Ors.*** reported in **(2025) 10 SCC 96** he further submits that partnership firm has no separate recognition either jurisprudentially or in law apart from its partners. Therefore, the partners of the firm are liable for the dishonour of cheque, even though the cheque may have issued in the name of the firm and offence is committed by the firm.

**8.** In reply to petitioners argument that since the petitioner has already retired from the partnership firm, no vicarious liability could be attributable to the petitioner under section 141 of the N.I. Act, he argued that the liability of a partner in a partnership firm is joint and several. The inclusion of a firm within the meaning of the expression ‘company’ is by a legal fiction and by way of a legislative device only for the purpose of creating a liability on the partners.

**9.** In this context Mr. Ganeriwala strenuously argued that the OP has contracted with the partnership firm upon the representation that the petitioner Shreya Banerjee is one of the partners of the said firm and the OP was never intimated of the retirement of the petitioner from the partnership firm. In this context referring section 32(3) of the Indian Partnership Act, he argued that the petitioner has failed to disclose any document or public notice in compliance with section 32 of the Partnership Act to show that the OP had knowledge of the purported retirement of the petitioner from the said partnership firm.

**10.** He further referred the judgment of Supreme court in ***Syndicate Bank Vs. R.S.R. Engineering Works and others*** reported in **(2003) 6 SCC 265,** and contended that under the provision of section 32 of the Act of 1932, retirement of a partner must mandatorily be in accordance with section 32 (3) of the Act of 1932, which states that notwithstanding with the retirement of a partner from a firm, he will continue to be liable as partner to third parties for any act done by any of the partners which would have been an act of the firm, if done before the retirement until public notice is given of the retirement.

**11.** He further submits that the petitioner's argument that there is no legally enforceable debt has got no leg to stand, in view of the fact that it is not in dispute that the partners on behalf of the partnership firm entered into a lease agreement and utility agreement for occupation of the said property against value for money. The said cheques were clearly issued to pay the outstanding dues towards occupational charges. Therefore, he submits that the instant application deserves to be dismissed.

**Decisions with Reasons**

**12.** It is not in dispute in the present case that the partnership firm along with it's the then partners including the present petitioner had entered into a lease agreement and utility agreement both dated $09^{th}$ March, 2018 for occupation of the said property against value for money. Now the petitioners contention is that by way of deed of retirement dated $27^{th}$ March, 2023, he has retired from the said firm on and from $3^{rd}$ April, 2023 and for which he cannot be held liable for any act done beyond $2^{nd}$ April, 2023.

**13.** On perusal of the written notes of argument filed on behalf of the opposite party no.2, it is the case of OP that the said partnership firm made payment from time to time in terms of the said lease and utility agreement towards occupation of the said property until April 2024. He also admitted in the written complaint as well as written notes of argument that the three dishonoured cheques amounting to Rs. 16,93,000/- is the outstanding amount towards the occupation of the said partnership firm from May 2024 to August, 2024 i.e. for a period after about one year from the date of petitioners execution of deed of retirement dated 27th March, 2023 w.e.f. 3rd April, 2023. Now such contention of the petitioner has been strenuously opposed by the OP contending that unless public notice is given about the retirement in terms of section 32(3) of the Act of 1932, the petitioner for all means and purposes remained to be a partner of the said partnership firm qua the OP and the petitioner herein has failed to demonstrate that he had given any such public notice about his retirement or that the OP was aware about his retirement at least till commission of the offence.

**14.** Before going further let me reproduce section 32 of the Partnership Act 1932

> ***32. Retirement of a partner.—***
>
> *(1)A partner may retire,(a)with the consent of all the other partners,(b)in accordance with an express agreement by the partners, or(c)where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.*
> *(2)A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.*
> *(3)Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement: Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.*
> *(4)Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.*

**15.** From the aforesaid provision it is clear that section 32(2) of the Act of 1932 deals with the discharge of retiring partner's existing liability through a specific agreement with third party and the reconstituted firm, while section 32 (3) deals with continuing liability of a retired partner for post retirement acts until a public notice of retirement is given. Therefore, according to section 32(2), a retiring partner may be discharged from any liability towards any third party or for any act of the firm done prior to his retirement based upon any agreement on his part with that third party and other partners of the reconstituted firm. Also such agreement may be implied by a deal between such a third party and the reconstituted firm succeeding his acknowledgement of the partners retirement. However in a case of section 32(3) until any public notification is made in the promulgation of such retirement the retired partner along with the other partners of the firm continue to be liable towards the third parties for any act done by them which would have been considered an act of having done as if had been done prior to the retirement. According to section 32(4) of the act public notification can be made by the retired partner or any partner of the reconstituted firm.

**16.** From the above backdrop if I consider the present case, it appears that OP/complainant himself has admitted that in terms of the lease and utility agreement towards occupation of the said property, has been duly paid and acknowledged upto April 2024. Therefore the complainant was aware about the payment made by the reconstituted firm and it is implied that the liability of the payment for the arrear occupational charge of Rs. 16,93,000/- was upon the reconstituted firm after retirement of the present petitioner, which was impliedly known to the complainant OP.

**17.** A plain reading of the complaint shows that no direct averment has been made against the petitioner herein fulfilling the requirement of section 141 of the N.I. Act which would show that the petitioner is also liable for the outstanding amount of Rs. 16,93,000/- which is admittedly due and outstanding occupational charges from May 2024 to August, 2024.

**18.** It is well settled that the persons who is sought to be made vicariously liable for a criminal offence under section 141 should be at the time when offence was committed, was in charge of and responsible to the company for the conduct of the business of the company. Section 141 is penal Provision creating vicarious liability which must be strictly construed.

**19.** In the written complaint in para 8 it has only been averred by the complainant that *"the accused no.1 is a firm and the other accused persons are partners of the said firm".* There is no other averment implicating the present petitioner with the alleged offence. Therefore, it is not sufficient to make a bald cursory statement in a complaint that the petitioner is a partner of the firm but the complaint should spell out as to how and in what manner the petitioner/retired partner was in charge of or was responsible to the partnership firm for the arrear occupational charges for the period from May 2024 to August 2024, in connection with legally enforceable debt relating to the impugned cheques.

**20.** From the argument made on behalf of the Learned Counsel for the OP, it is clear that though the petitioner herein had retired from the partnership firm about one year before the impugned cheques were issued but he has been implicated because while he was partner, he executed deed of agreement and utility agreement on 9$^{th}$ March, 2018 on behalf of the partnership firm and therefore every partner is liable jointly with all other partners and notwithstanding his retirement from the firm he and the partners continue to be liable as partners to third parties until public notice is given of the retirement in compliance with section 32(3) of the Act of 1932.

**21.** I am not agreeable with such argument made by Learned Counsel for the OP. Section 138 of N.I. Act starts with the sentence

> *"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…………."*

**22.** The term "person" has not been defined in the said Act. However, section 3(42) of the General Clauses Act states that "person" shall include any company or association or body of individual, whether incorporated or not.

**23.** On careful reading of the petition of complaint, it appears that it was never the case of the OP in the complaint filed before the Magistrate that the petitioner herein/accused has been prosecuted as an association of individuals. Therefore if the term "person" is considered applying *ejusdem generis rule*, with regard to the purpose of the principle of vicarious liability incorporated in section 141 of the N.I. Act, in the context of admitted fact that the legally enforceable debt, in connection with the impugned cheques derives from the outstanding occupational charges for the period from May 2024 to August, 2024 and the petitioner was retired from the firm with effect from April 3, 2023, the prosecution against the present petitioner does not lie.

**24.** It is well settled that for fastening the criminal liability there is no presumption that the present partner and all the erstwhile partners are aware about any subsequent outstanding amount of occupational charges.

Vicarious liability on the part of the petitioner therefore, ought to have been pleaded and it cannot be inferred illogically. In the absence of averment in the complaint there cannot be any deemed liability of a partner who retired from the firm one year back on execution of deed of retirement and said deed of retirement was never under challenge by anybody.

**25.** Therefore, I find that further continuation of impugned proceeding qua the petitioner would be mere abuse of the process of the court

**26.** In view of above CRR 782 of 2026 is allowed. The impugned proceeding being C. Case no. 75 of 2025 pending before Ld. Judicial Magistrate 2$^{nd}$ Court Alipore is hereby quashed qua the petitioner **Shreya Banerjee.**

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

**(DR. AJOY KUMAR MUKHERJEE, J.)**