IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 2828 of 2017

Shaleen Khemani & Ors.

Versus

The State of West Bengal & Anr.

WITH

CRR 142 of 2016

Tarun Chaturvedi & Anr.

Vs.

M/s. Wide Range Sales Pvt. Ltd.

For the Petitioners	:	Mr. Ayan Bhattacharjee, Sr. Adv. Mr. Aditya Ratan Tiwary, Adv.
For the Opposite Party No. 2	:	Mr. Soumya Nag, Adv. Mr. Rajdeep Sengupta, Adv.
Heard on	:	15.09.2026
Judgment on	:	19.11.2026
Uploaded on	:	19.11.2026

Ajay Kumar Gupta, J.: -

1. CRR 2828 of 2017 has been filed by seven Petitioners, being the accused Nos. 2, 3, 6, 7, 8, 11 and 12 under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), seeking quashing of the proceeding being complaint case no. C.S. 23882 of 2015 instituted under Sections 138/141 of the Negotiable Instruments Act, 1881 (in short, 'N.I. Act') pending before the Learned Metropolitan Magistrate, 14th Court, Calcutta.

2. CRR 142 of 2016 has been filed by two Petitioners, being accused nos. 9 and 10, also seeking similar prayer for quashing the aforesaid proceeding and all orders passed therein, including the order dated 20.07.2015 whereby the learned Magistrate was pleased to issue process under Sections 138/141 of the N.I. Act against the petitioners. Both the revisional applications are being taken up together for analogous hearing and disposal by passing a common judgment since the facts and circumstances, prayer and parties are identical.

3. The brief facts of the case, relevant for the purpose of disposal of the instant applications, are that the opposite party no. 2, M/S Wide Range Sales Pvt. Ltd., represented by its authorised representative, Sri Raj Narain Singh, filed an application under section 138 read with section 141 of the N.I. Act, 1881 (as amended up to date) before the

learned Chief Metropolitan Magistrate, Calcutta, alleging, inter alia, therein that the accused persons approached and requested the opposite party no. 2/company for a loan and/or an inter-corporate deposit for the promotion of their business. Finally, on 14.06.2012, upon such request and further discussions between the parties, the opposite party no. 2 agreed and paid a sum of Rs.1,00,00,000/- (Rupees one crore) only as an inter-corporate deposit. The same was renewed from time to time.

4. The latest renewal was done on 01.04.2014 for the period of 91 days with an interest @ Rs.17% per annum and the same was due on 30.06.2014. The accused company, M/S Tantia Constructions Limited, acknowledged the same through its letter dated 23.06.2014 to the complainant's company.

5. The accused company issued an account-payee cheque bearing no. 008233 dated 01.07.2014, for Rupees one crore towards repayment of the inter-corporate deposit drawn on Allahabad Bank, Beliaghata Branch, P-214, CIT Road, Scheme No. IV, Kolkata -700010, West Bengal, along with the aforesaid letter dated 23.06.2014 towards discharge of their lawful debt/liabilities in part.

6. The said cheque was presented by the complainant company to its bankers, namely, Bank of India, Lindsey Street Branch, Kolkata for encashment within the validity period of the said cheque on

10.09.2014. However, the said cheque was dishonoured with remarks "Exceeds Arrangement" vide return memo dated 11.09.2014.

7. Thereafter, a demand notice was issued to all the accused persons, as they were the persons in charge, responsible for running the day-to-day business affairs of the accused company at the relevant point of time. However, they did not heed to pay the amount although the cheque was issued to discharge debt/liabilities; as such, the accused persons committed an offence punishable under Section 138 read with Section 141 of the N.I. Act.

8. The application was subsequently transferred to the learned Metropolitan Magistrate, 14th Court at Calcutta for its inquiry and disposal. Accordingly, the learned Magistrate, vide impugned order dated 20th July, 2015, issued summons against the petitioners.

9. In view of the above facts and circumstances, the petitioners have filed these applications seeking quashing of the proceeding as they are claiming themselves innocent and in no way connected with any offence, far less the offence alleged.

10. Learned Sr. counsel, Mr. Bhattacharya, appearing on behalf of the Petitioners, vehemently argued and submitted that the petitioners are innocent and they were not at all involved in the alleged offence. Neither did they issue any cheque in favour of the complainant company, nor were the petitioners involved in the transaction as

alleged. They were in no way connected with the day-to-day affairs of the accused company. Section 141 of the N.I. Act conceptualizes 'vicarious liability' of the company's officers, who are engaged in the day-to-day affairs of the company, when the company becomes an accused.

11. It was further submitted that the accused persons herein are not the whole-time directors and are not involved in the affairs of the accused company. The Hon'ble Supreme Court has consistently laid down that while considering the question of 'vicarious liability' of the director in a company that may mere averment being a director would not make a person liable for an offence that may have been committed by the company.

12. For launching prosecution against the directors of a company under section 138 read with section 141 of the NI Act, there has to be a specific averment in the complaint with regard to the actual role played by them in the business transaction. The allegation had to be clear and unambiguous, showing that the directors were in charge of and responsible for the business of the company and issued a cheque for discharge of their debt/ liability.

13. In the present case, the complainant did not specify the role of the accused persons. Simply indicating the designation as whole-time directors/directors/additional directors in an application would not

be sufficient to initiate proceedings against them. Every director need not be and is not in charge of the business of the company. It is mandatory to state their duties and responsibilities in the conduct of the business of a company and how and in what manner the accused persons are responsible or liable for commission of the offence punishable under section 138 read with section 141 of the NI Act, 1881.

14. Finally, it was submitted that no where in body of complaint, mentioned that how and in what manner the petitioners were responsible for the affairs of company and what capacity they were in charge of the company. The petitioner no. 1/accused no. 9 in CRR 142 of 2016 had joined the company on 25.09.2013. Similarly, the petitioner No.2/ accused no.10 in CRR 142 of 2016 had joined the company on 13.02.2014 as a non-executive Independent Director. Petitioner nos. 1 and 2, namely, Tarun Chaturvedi and Madhuchhanda Chatterjee in CRR No 142 of 2016 appointed as non-executive independent directors as evident from Form 32. The petitioner no.7/accused no.12 in CRR 2828 of 2017, namely, Md. Jamshed Alam was secretary and same is also confirmed by the complainant in his complaint, therefore, their role is totally different and not at all involved either in transaction or issuance of cheque but they were also implicated in the present. In the present case, 12

individuals were arraigned as accused persons, including the company.

15. It was further submitted that the Learned Trial Court had issued summons against all the petitioners in a casual and mechanical manner, without applying judicious mind. Accordingly, the entire proceeding is liable to be quashed as none of the ingredients required for initiation of the proceeding is fulfilled.

16. Particularly on behalf of petitioner no.7/accused no.12 in CRR 2828 of 2017, it is submitted that he was the Secretary of the company and had only statutory duty under the Companies Act, 1956. He has key responsibility in several management areas of the company as required under the law, and the Company Secretary never dealt with and had no control over the day-to-day business affairs of the company.

17. To bolster his aforesaid submissions and argument, the learned counsel has placed reliance upon the following judgments as under: -

a. ***Kamal Kishor Shrigopal Taparia Vs. India Ener-gen private Limited & Anr*** *reported on (2025) 7 SCC 393 particularly paragraphs 17 to 22 thereof;*

b. ***K.S Mehta Vs. Morgan Securities and Credits Private Limited*** *reported in (2025) 7 SCC 615 particularly paragraphs 17 to 23 thereof;*

c. ***Rahul Sood Vs. Government NCT of Delhi and Anr*** *reported 2025 SCC Online Del 2155 particularly paragraphs 24 to 33 thereof;*

d. ***Manish Goyal vs. S.P. Realtors*** *reported in 2026 SCC Online Del 3985 particularly paragraphs 9 to 14 thereof;*

e. ***K.K Ahuja vs. V.K. Vora and anr*** *reported in (2009) 10 SCC 48 particularly paragraphs no. 18,25,28 and 29;*

f. ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr*** *reported in (2005) 8 SCC 89 particularly paragraphs Nos. 4,8,12,18 and 19;*

g. ***National Small Industries Corporation Limited Vs. Harmeet Singh Paintal & Anr*** *reported in (2010) 3 SCC 330 particularly paragraphs 12 to 15;*

h. ***Anita Malhotra vs. Apparel Export Promotion Council & Anr*** *reported in (2012) 1 SCC 520, particularly paragraph no. 22;*

i. ***Shaleen Khemani & Ors Vs. The State of West Bengal & Anr.*** *reported in (2018) 1 C CrLR 515, particularly paragraph nos. 4,6,7 and 11-14 thereof;*

j. ***Hitesh Verma Vs. Health Care at Home India Private Limited & Ors.*** *reported in (2025) 7 SCC 623, particularly paragraph nos. 3 to 5 thereof;*

k. Paresk Alumines Ltd Vs. Venus Ordhads Private Limited *reported in 2025 ACD 1011 (Cal), particularly paragraphs 8 to 13.*

18. Learned Counsel appearing on behalf of the Opposite Party No. 2, on the other hand, controverted the aforesaid submissions and arguments and further submitted that the complainant has categorically specified their designation in the complaint. All the accused persons, particularly accused Nos. 2 to 12, were full-time directors/managing directors/additional directors/secretaries and were directly involved in the day-to-day affairs of the company and responsible for the company's debts and liabilities. They have controlled and managed the Company.

19. To discharge the company's existing legal debts/liabilities arising out of the aforesaid inter-corporate deposit on 14.06.2012, accused No. 1 Company has issued an A/C Payee Cheque bearing No.008233 dated 01.07.2014 for Rupees one crore towards part-repayment of the inter-corporate deposit drawn on Allahabad Bank, Beliaghata Branch, P-214, CIT Road, Scheme No. IV, Kolkata -700010 in favour of the Opposite Party No. 2. The said cheque was presented to its banker for encashment within the valid period but the same was returned with endorsement "Exceeds Arrangement" vide return memo dated 11.09.2014. Despite issuing demand notice, accused persons failed to

discharge their liability. Having no alternative, Opposite Party No. 2 was compelled to initiate proceedings against the accused persons. They are indeed liable for commission of offences punishable under Sections 138/141 of the N.I. Act. Therefore, the instant Criminal Revisional application is liable to be dismissed.

20. Learned counsel for the opposite party no. 2 has placed reliance on a judgment passed in the case of ***S.M.S. Pharmaceuticals Ltd v. Neeta Bhalla and Another (Supra)*** to bolster his contention that liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time, when the offence was committed and not on the basis of merely holding a designation or office in a Company. Conversely, a person, not holding any office or designation in a company, may also be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time.

21. It has further placed reliance of a judgment passed in the case of ***Rallis India Limited v. Poduru Vidya Bhushan and others*** reported in ***(2011) 13 Supreme Court Cases 88*** to support his contention that being Director of the Company and having taken part in the affairs of the Company, its management and policy making cannot simply shrug off his liability in commission of the contravention of law and further for fastening the criminal liability,

there is no legal requirement for the complainant to show that the accused partner of the firm was aware of each and every transaction. On the other hand, section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the court that the offence was committed without his knowledge or had exercised due diligence to prevent the commission of such offence, he will not be liable to punishment. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those who, at the time of commission of the offence, were in charge of and were responsible for the conduct of business of the firm as alleged.

22. Further reliance was placed in the case of ***Gunmala Sales Private Ltd v. Anu Mehta*** reported in ***2015 (1) SCC 103*** to support his contention that once a complaint is filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, the basic averment is made that the Director was in charge or and responsible for the conduct of business of the Company at the relevant time when the offence was committed, the Magistrate can issue process against such Director and if the specific averment made against the Petitioners stating that they were very much involved in the day to day activity of the Company and was involved in issuing the cheque,

question of quashing of proceeding on the ground that they were not responsible for day-to-day affairs of the company does not arise.

23. Similarly, the learned counsel further placed reliance on two other decisions of the Supreme Court in the case of ***S. P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan*** reported in ***2023 (10) SCC 685*** and ***HDFC Bank Ltd. v. State of Maharashtra & Anr.*** reported in ***2025 (9) SCC 653*** to support his contention that the proceeding should be allowed to continue to reveal the actual people liable for commission of offence punishable under section 138/141 of the N. I. Act, 1881. Therefore, the revisional application filed with mala fide intention to frustrate the claim of the Opposite Party No. 2 is required to be dismissed.

24. Considering the submissions made by the learned counsels appearing on behalf of the respective parties, judgments relied upon by the Parties and on perusal of the materials made available on record, only questions fall for consideration as under: -

i. Whether the full-time director can be prosecuted under sections 138/141 of the N.I. Act, 1881 in the absence of any specific averment or particular role attributed to them?

ii. Whether a director or independent directors can be prosecuted under sections 138/141 of the N.I. Act, 1881 in the absence of any specific averment or particular role attributed to them?

iii. Whether a company secretary can be prosecuted under sections 138/141 of the N.I. Act, 1881 in the absence of any specific averment or particular role attributed to them?

25. It appears before this Court that the Opposite Party No. 2 has initiated a proceeding for commission of the offence punishable under Section 138/141 of the N.I. Act against the Company and others, who were associated with the company. The complainant has specifically indicated in the cause title, as regards the designation of the accused persons at the time of commission of the offence, i.e., dealing with the transaction and issuing of the cheque in favour of the complainant company. The said cheque was presented before its bankers within the valid period, but it was returned with the remark "Exceeds Arrangement" vide return memo dated 11.09.2014. Thereafter, the opposite party no. 2 issued notice asking for payment of the cheque amount as it was issued to discharge the company's debt/liabilities. The whole case is based on documentary evidence and time-bound compliance of provisions as stipulated under Section 138/141 of the N. I. Act, 1881.

26. It is an undisputed fact that the complainant has not averred about the individual role played during the transaction or issuing of cheque by the company. It is not specifically mentioned in the complaint as to who was the signatory of the cheque and when it was issued.

27. Upon perusal of the judgments relied upon by the parties, it is revealed that the Hon'ble Supreme Court has consistently held that non-Executive and independent director(s) cannot be held liable under section 138 read with section 141 of the N. I. Act,1881 unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant point of time.

28. Petitioner no. 7 in CRR 2828 of 2017, Md. Jamshed Alam, was designated as Secretary of the Company. Similarly, petitioner nos. 1 and 2 in CRR No. 142 of 2016, namely Tarun Chaturvedi and Madhuchhanda Chatterjee, were appointed as non-executive independent directors. In support of their contention, they have placed on record Form 32 (issued pursuant to Sections 303(2), 264(2), 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956), appended to the application. Upon perusal of Form 32, it is revealed that the said two petitioners were independent directors and that petitioner no. 7, Md. Jamshed Alam, was the Company Secretary of the Company/petitioner no. 1. This is an undisputed fact.

29. According to them, they were innocent and not involved in the offence as alleged by the complainant. In addition, the complainant has not disclosed any ingredients or specific role played or particular act attributed against them in the offence punishable under Sections 138/141 of the N. I. Act. No specific averment is made either in the

complaint or affidavit with regard to his role in the transaction between the complainant and the company. These Petitioners were unaware of the transaction and issuance of the cheque on behalf of the Company. They prayed for quashing the proceedings on the grounds of their position in the company and the fact that they had no role in the company's day-to-day business affairs or financial transactions.

30. Nothing transpires from the documents to suggest that these petitioners were active director(s) or a shareholder of the company; they had no role to play in any transaction or day-to- day business affair of the company. They cannot be said to be an active Director or who can be termed responsible for running the day-to-day management of the company. The liability of the Company Secretary (non-executive) is very limited, and it does not extend to managing the day-to-day affairs of the company. They were not a signatory of the cheque which was dishonoured. In this regard, this Court finds the decisions relied upon by the learned counsel on behalf of the opposite party no. 2 in the cases of ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (Supra), Sunita Palita and Ors. v. Panchami Stone Quarry (Supra),*** and ***Susela Padmavathy Amma v. Bharti Airtel Limited (Supra)*** are squarely applicable in the

present case. The Hon'ble Supreme Court has, time and again, reiterated as under: -

> *"A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable for offence punishable under Section 138/141 of the N.I.Act. The liability under Section 138/141 of the N.I.Act arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company. It would be a travesty of justice to drag directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development), etc into Criminal Proceedings under the N.I. Act, only because of their designation"*
>
> (Emphasis supplied)

31. In the case at hand, the petitioners, namely, Md. Jamshed Alam, Tarun Chaturvedi and Madhuchhanda Chatterjee were mere Company Secretary and independent director(s), who were neither in charge nor responsible for the conduct of the business of the company at the relevant point of time. They were not the signatory of the cheque, which was dishonored. Furthermore, there is no averment or specific role attributed to them in the petition of complaint.

32. The concept of "independent director' was introduced in the Companies Act, 2013. Sections 149(6) to (13) of the Companies Act, 2013 deal with 'independent director'.

33. According to section 149(12) of the Companies Act, 2013, an independent director is not liable for any action of the company unless he has attributed to the same knowingly. In this regard, section 149(12) of the Companies Act, 2013 is quoted hereinbelow: -

> *"(12) Notwithstanding anything contained in this Act, —*
> *(i) an independent director;*
> *(ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently."*

34. Upon perusal of the aforesaid provision, it indicates that an independent director can only be held responsible under section 141(2) of the N. I. Act, which requires the specific, direct and distinct role to be attributed in commission of an offence punishable under section 138 read with section 141 of the N. I. Act, as an independent director is not supposed to be in charge of the conduct of business of the company. Merely a bald allegation, without specific role or details,

an officer falling under sub-section (2) of section 141 of N. I. Act cannot be held responsible.

35. Consequently, initiation of proceedings under Section 138 read with Section 141 of the N. I. Act, 1881 against the petitioners, namely, Md. Jamshed Alam, Tarun Chaturvedi and Madhuchhanda Chatterjee are termed as sheer abuse of process of law and, to secure the ends of justice, their case is liable to be quashed.

36. Insofar as the other petitioners in CRR No. 2828 of 2017 are concerned, this court finds they are full-time directors/Additional directors/directors as per the complainant. To controvert the same, the petitioners have filed one annual report of the accused no.1/company for the year 2014-15 without any valid authentication and/or certification of the company by way of supplementary affidavit. The Petitioners have also failed to prove the same by filing Form 32 and/or other sterling documents to substantiate their contention that some of the accused persons, namely, Sri Bajrang Lal Tulsian, Sri Shaleen Khemani and Sri Sandeep Kumar Saraogi are Independent, Non-executive Directors. Therefore, in such a situation, the complaint against the remaining petitioners cannot be quashed merely on the ground that, apart from the basic averment, no particulars are given in the complaint about their role, because ordinarily the basic averment would be sufficient to send them to trial

and it could be argued that further role could be brought out in the trial. Quashing of a complaint based on documentary evidence, especially in a cheque dishonour case, is a serious matter. In order to seek quashing of such a proceeding, the petitioners must establish that no offence is made out at all against them as full-time directors, additional directors or directors. The petitioners have been unable to satisfy this Court that no offence whatsoever is made out against them.

37. In view of the above circumstances, this Court is of the view that the petitioners, namely, Md. Jamshed Alam, Tarun Chaturvedi and Madhuchhanda Chatterjee have satisfied this court that proceeding against them, if allowed to continue, would be a sheer abuse of process of law. Accordingly, the proceedings against the accused persons, namely, Md. Jamshed Alam, Tarun Chaturvedi and Madhuchhanda Chatterjee are hereby quashed in exercise of the inherent power of this Court, under Section 482 of the Cr.P.C. to prevent the abuse of the process of the Court and secure the ends of justice. However, the case of the remaining accused persons shall continue strictly in accordance with law.

38. Consequently, **CRR No. 2828 of 2017** is **partly allowed,** and **CRR No. 142 of 2016** is, thus, **allowed.** Pending applications, if any, are also, thus, disposed of.

39. Interim order, if any, stands vacated.

40. Let a copy of this Judgment be sent to the Learned Trial Court for information and taking necessary steps in accordance with law.

41. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

42. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

(P.A.)