IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 3433 OF 2022

PRAKASH SHARMA
-VS-
M/S. VISION CELL (PVT.) LTD.

For the Petitioner	:	Mr. Pawan Kumar Gupta, Ld. Adv. Mr. Sovan Bera, Ld. Adv. Ms. Puja Beriwal, Ld. Adv. Ms. S. Nesar, Ld. Adv. Mr. S. Sett, Ld. Adv.
For the Opposite Party	:	Ms. Manju Ararwal, Ld. Sr. Adv. Ms. Anju Manot, Ld. Adv. Ms. Anita Pandey, Ld. Adv.
Reserved on	:	18.06.2026
Pronounced on	:	29.07.2026

UDAY KUMAR, J.: –

1. This revisional application highlights a classic attempt to stretch the special provisions of a summary penal statute beyond its breaking point, threatening to drag a domestic stranger into the harsh net of a criminal prosecution. The petitioner has approached this Court under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973, seeking the wholesale quashing of the proceedings in Complaint Case

No. CN/533 of 2020 pending before the Learned 14th Metropolitan Magistrate at Calcutta. The immediate trigger for this petition is an interlocutory order dated 17.12.2021, by which the learned Magistrate rejected the petitioner's plea to drop his name from the array of the accused, holding himself procedurally restricted within a summary summons framework from recalling his own process.

2. The factual landscape, as it appears from the complaint, reveals that the complainant, a private limited company dealing in mobile handsets, instituted a prosecution under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. The complainant asserted that an entity styled as M/s S.R. Telematics (Accused No. 1) had run up an outstanding commercial liability of Rs. 2,34,931/- for mobile phone supplies. The complaint states that Accused No. 2 (Ram Ratan Sharma) and Accused No. 3 (Prakash Sharma, the petitioner here) were active "partners" of the firm, looking after its daily operations. To liquidate part of this debt, two cheques totalling Rs. 53,879/- (being Cheque No. 006914 for Rs. 27,287/- and Cheque No. 006915 for Rs. 26,592/-), dated 20.02.2020, were drawn on the Hatibagan Branch of Allahabad Bank under the account of the firm. When presented on 21.04.2020, both instruments bounced and were returned with the banking remark "ACCOUNT CLOSED" vide Cheque Return Memo dated 24.04.2020. The statutory demand notice dated 22.05.2020 went unanswered, leading to the filing of the complaint.

3. The controversy shifts dramatically when one glances at two unassailable public documents brought on record by the petitioner.

First, the official Trade License issued by the Kolkata Municipal Corporation for 2018–2019 proves that M/s S.R. Telematics was never a partnership firm, but was structured exclusively as a sole proprietorship concern belonging to the petitioner's mother, Mrs. Shakuntala Sharma. Second, a death certificate issued by the registration authority establishes that Accused No. 2, the petitioner's father and the alleged drawer of the cheques, had passed away intestate on 23.11.2017; nearly three years prior to the apparent dates written on the face of the instruments in 2020. The Learned Magistrate, operating within the strict confines of a summary trial, rejected the petitioner's plea to be dropped from the array of parties, holding that once cognizance is taken, there is no procedural room for "discharge" or recall of process under the rule governing summary summons trials.

4. Mr. Pawan Kumar Gupta, learned advocate appearing for the petitioner, has strenuously argued that the continuation of this prosecution against the petitioner is a manifest abuse of judicial process. He submits that the complainant has engineered a fictional partnership firm with the oblique motive of transforming a stale commercial debt into a tool of financial extortion against a legal stranger who maintains no structural, proprietary, or operational link with the business entity in question.

5. Developing his arguments on the corporate character of the entity, Mr. Gupta submits that the complainant has simulated an active partnership firm to exploit the enabling fiction of vicarious liability under Section 141 of the NI Act. However, the official municipal records conclusively establish that M/s S.R. Telematics is a sole proprietorship concern belonging exclusively to the mother. The petitioner is neither the proprietor nor a partner, nor did he sign the cheques, nor own or operate the concerned bank account at any point in time.

6. He relies heavily on the recent coordinate bench ruling of this Court in *N. Mamatha Nagesh v. State of West Bengal and another, 2026 SCC OnLine Cal 5123*, specifically Paragraph 61(iv), to contend that a domestic, familial relationship within a household cannot serve as a legal substitute for a registered partnership deed or a defined corporate structure. In the absence of a registered partnership deed, a spouse or family member cannot be hauled into the net of criminal prosecution under Section 141 based on bald, generic averments of participation in a business.

7. He further cites *Raghu Lakshminarayanan v. Fine Tubes, (2007) 5 SCC 103* to emphasize that Section 141 of the N.I. Act is strictly restricted to companies, partnership firms, or defined associations of individuals, and cannot be extended to a sole proprietorship concern, which lacks a separate legal personality from its owner. He also places reliance on *Alka Khandu Avhad v. Amar Syamprasad Mishra, (2021) 4 SCC 675* to argue that criminal liability under Section 138 is strictly author-centric, binding only the signatory of the cheque, and a person who is not a drawer of the cheque and has not signed it cannot be prosecuted unless the vicarious principles of Section 141 are attracted. He also cites *TV Today Network Ltd. and others v. Ramesh Bhiduri, 2025 SCC OnLine Del 8215* to emphasize that the elements of criminal liability under a summary statute must be strictly construed and cannot be expanded by judicial implication to encompass non-signatories, and *State of Haryana v. Bhajan Lal, (1992) Supp (1) SCC 335* to contend that where the allegations made in the complaint, taken at their absolute face value, do not prima facie constitute any offense or make out a case against the accused, the High Court is duty-bound under Section 482 Cr.P.C. to quash the proceeding *in limine*.

8. Finally, Mr. Gupta points out a fatal structural defect in the arraignment itself, noting that the true living sole proprietor, Mrs. Shakuntala Sharma, was never even arrayed as an accused. He concludes by pointing out that under Section 201 of the Indian Contract Act, 1872, the banking mandate stood automatically revoked the moment the father expired in 2017, and a deceased person cannot maintain an account. Therefore, he prays for the unconditional quashing of the proceeding.

9. On the other hand, Ms. Manju Agarwal, learned senior advocate for the Opposite Party/complainant, raises a strong threshold objection. She argues that the learned Magistrate acted correctly under the law by refusing to review or recall the process once issued, placing reliance on the landmark rulings in *Adalat Prasad v. Rooplal Jindal and Others, (2004) 7 SCC 338, Subramanium Sethuraman v. State of Maharashtra and Another, (2004) 13 SCC 324*, and the Constitution Bench directions in *In Re: Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881, (2021) 16 SCC 116.* She contends that the Code does not contemplate a formal stage for discharge or review of a summoning order in a summary summons trial, that the trial court has no inherent power to recall process, and that the accused must be left to agitate his defences during the course of a regular trial.

10. She further argues, citing *Rathish Babu Unnikrishnan v. State (NCT of Delhi), (2022) 20 SCC 661,* that the petitioner's pleas involve deeply disputed questions of fact that must be tested in a full trial. She submits that a revisional court should not prematurely intercept a prosecution or conduct a mini-trial on affidavit evidence when strict statutory presumptions under Sections 20 and 139 of the NI Act operate in favour of the holder.

11. Lastly, she alleges that the petitioner actively participated in the family business as an "association of individuals" within the broad definition tracked under the Explanation to Section 141 NI Act, and that the petitioner actively deceived the complainant by deliberately tendering pre-signed cheques of his deceased father to liquidate active business liabilities, while keeping the complainant in the dark regarding the death. She submits that the petitioner made a continuous legal representation that the banking mandate was alive, and he must now step into the witness box to rebut the statutory presumptions rather than seeking an early, unauthorized exit from the prosecution. Therefore, she prays for the dismissal of the revision.

12. I have given my anxious consideration to the structural anatomy of the underlying complaint; the arguments advanced by both sides and evaluated the records. The legal conflict here requires this Court to determine whether the statutory net of Section 141 NI Act can be cast over a family member of a sole proprietorship, and whether a non-signatory can be prosecuted for cheques linked to a banking mandate that was legally extinguished by death.

13. It is basic to criminal jurisprudence that the statutory fiction of vicarious liability codified under Section 141 of the Negotiable Instruments Act, 1881 is an exception to the general rule of strict personal liability in penal law. The expression 'Company' explicitly defined under the Explanation to the said section covers a body corporate, a partnership firm, or an association of individuals. A sole proprietorship concern is conspicuously and intentionally absent from this statutory taxonomy. A proprietorship concern has no legal identity independent of its proprietor; it is merely a trade name under which a natural person chooses to execute commercial dealings. As settled by the Supreme Court in *Raghu Lakshminarayanan (supra),* the provisions of Section 141 cannot be distorted or weaponized to hook a family member or an alleged manager of a proprietary concern into a criminal trial.

14. Furthermore, as this Court observed in *N. Mamatha Nagesh (supra),* domestic proximity or a filial connection within a shared household cannot be accepted as a valid legal surrogate for a registered partnership deed or a corporate matrix. The complainant's bold assertion that the petitioner acted as a "partner" of a sole proprietorship concern belonging to his mother is a legal absurdity. Criminal liability under a summary penal statute cannot be widened by crude implications or speculative logic. The failure of the complainant to recognize that a proprietorship concern cannot be sued as an independent juristic entity separate from its master constitutes a fundamental defect that invalidates the invocation of Section 141 against anyone else under the banner of that entity.

15. Moving to the second point, Section 138 creates a strict, author-centric offense. It mandates that the dishonoured instrument must be drawn by a person on an account *"maintained by him."* The biological fact established by the death certificate shows that the alleged drawer, Ram Ratan Sharma, had suffered biological and legal demise on 23.11.2017. Under Section 201 of the Indian Contract Act, 1872, the banking mandate and agency stood automatically revoked the moment the account holder expired. A dead person cannot be deemed to maintain an active account, as the underlying relationship of customer and banker stands dissolved by operation of law. The Supreme Court in *Alka Khandu Avhad (supra)* held unmistakably:

> *"Section 138 of the NI Act hooks criminal liability strictly on the drawer of the cheque. A person who is not a drawer of the cheque and has not signed it cannot be prosecuted under Section 138, unless the vicarious principles of Section 141 apply."*

The same strict statutory boundary was reinforced by this Court in *TV Today Network Ltd. (supra).*

16. The complainant's narrative that the petitioner handed over his late father's pre-signed cheques does not save the prosecution under the NI Act. Even if true, the petitioner is not the drawer of the cheques, nor is the account maintained by him. If a fraud or deception was committed by passing off a defunct instrument, the remedy lies under the general penal provisions for cheating or forgery, not by distorting the strict statutory ingredients of a summary cheque-bouncing law.

17. The precedents relied on by the complainant (Adalat Prasad, Subramanium Sethuraman, and the Suo Motu Writ Petition)(supra) correctly restrict a subordinate Magistrate from recalling process, but they do not restrict the plenary constitutional and statutory powers of the High Court under Section 482 of the Code. Similarly, the ruling in *Rathish Babu (supra)* against premature intervention applies to genuine factual disputes involving actual directors or signatories. They are completely distinguishable from a case like this, where public records reveal an absolute statutory vacuum. When a complaint is ex-facie barren of the essential ingredients of the offense, the High Court is duty-bound to step in. As laid down in the landmark decision in *Bhajan Lal, (supra):*

> *"Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused... the power under Section 482 can be exercised to prevent the abuse of the process of any Court."*

18. The threadbare analysis of the facts and the law leads to the inescapable conclusion that the prosecution against the petitioner lacks any legal or structural foundation. Allowing this trial to proceed against him would be an insult to judicial propriety and a transparent endorsement of harassment.

19. On a systematic evaluation of the statutory terrain and the submissions advanced, this Court summarizes its definitive conclusions into the following short points:

i. Section 141 of the NI Act does not apply to a sole proprietorship. A proprietorship lacks an independent corporate personality separate from its owner, and family members cannot be held vicariously liable for it.

ii. A close domestic or familial relationship within a household cannot serve as a proxy for a registered partnership deed to anchor criminal liability under Section 141.

iii. Criminal liability under Section 138 is strictly author-centric, confining itself to the actual drawer who maintains the account. A non-signatory cannot be arrayed as an accused.

iv. Under Section 201 of the Indian Contract Act, 1872, an account mandate stands automatically revoked upon the death of the holder. A deceased customer cannot maintain an active account, rendering later cheques drawn on it legally nonexistent under the Act.

v. The negotiation of a deceased individual's pre-signed cheque, if deceptive, must be tried under general penal laws for cheating or forgery; the strict parameters of the NI Act cannot be twisted out of form.

vi. Procedural restrictions barring a Magistrate from recalling process do not curtail the inherent powers of the High Court under Section 482 of the Code to quash an *ex-facie* groundless prosecution.

20. The impugned prosecution against the petitioner suffers from a terminal structural vacuum as the penal fiction of vicarious liability under Section 141 of the NI Act cannot be stretched by judicial implication to penetrate a sole proprietorship concern. As settled in *Raghu Lakshminarayanan (supra)* and aligned with Paragraph 61(iv) of *N. Mamatha Nagesh (supra),* a close domestic or filial relationship within a household is not a legal substitute for a registered partnership deed.

21. Furthermore, Section 138 creates a strictly author-centric offense. The biological fact of the father's death in 2017 automatically revoked the banking mandate by operation of law under Section 201 of the Indian Contract Act, 1872. Since the petitioner is a non-signatory to the instruments and does not maintain the account, the primary statutory ingredients of Section 138 are completely non-existent as against him. Following the rule in *Alka Khandu Avhad (supra),* a non-signatory cannot be prosecuted under the Act.

22. In the light of the comprehensive discussion tracking the law and facts above, this Court arrives at the definitive conclusion that the structural, factual, and legal foundations of the complaint are completely non-existent as against the petitioner. The criminal machinery has been transparently weaponized as an engine of harassment to recover a civilly stale debt against an absolute legal stranger.

23. Accordingly, the instant revisional application being CRR 3433 of 2022, is allowed.

24. The impugned order dated 17.12.2021 passed by the Learned 14th Metropolitan Magistrate at Calcutta in Complaint Case No. CN/533 of 2020 is set aside.

25. The underlying criminal proceedings in connection with Complaint Case No. CN/533 of 2020 pending before the Learned 14th Metropolitan Magistrate at Calcutta, so far as they relate to the petitioner, Prakash Sharma (Accused No. 3), stand quashed.

26. The petitioner is discharged from his... bail bonds and all restrictive interim orders passed against him stand vacated.

27. The Trial Court Record (*T.C.R.*) shall be sent down to the learned courts below forthwith along with a copy of this judgment for immediate compliance.

28. All connected applications stand disposed of.

29. Interim orders stand vacated.

30. There shall be no order as to costs.

31. Case diary, if any, be returned forthwith.

32. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)