

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 179 of 2025

Sri Mahesh Gurbaxani

Vs

The State of West Bengal & Anr.

For the Petitioner : Ms. Suman Sehanabis (Mondal),
Mr. Sandip Dutta,
Mr. Alok Sah.

For the P. F Authority : Mr. Bhaskar Roy Mahasaya.

Judgment reserved on : 10.06.2026

Judgment delivered on : 12.06.2026

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceeding arising out of Birpara Police Station Case No. 185 of 2015 dated 07.09.2015, Under Sections 406/409 Indian Penal Code, Read with Sections 14 of Employees' Provident Funds and Miscellaneous Provisions Act, pending before the Learned Additional Chief Judicial Magistrate, Alipurduar vide GR. Case No. 2597 of 2015.
2. The brief facts of the prosecution case is that one Dil Bahadur Sherpa, Enforcement Officer, Employees Provident Fund Organization lodged a complaint before the Birpara Police Station, inter alia, stating that during inspection on 07.09.2015 the complainant found that Dimdima Tea Garden, Birpara had deducted sum of **Rs. 20,37,276/-** from the salary/wages of the **employees share** of provident fund contribution for the **period of 02/2015 to 07/2015** but had not deposited that amount with the statutory fund.
3. On basis of such complaint dated 07.09.2015, Birpara Police Station Case No. 185 of 2015 dated 07.09.2015, Under Sections 406/409 Indian Penal Code, read with Sections 14 of Employees' Provident Funds and Miscellaneous Provisions Act was started.
4. It is the case of the petitioner that the said Company was in the business as Tea Manufacturer and the **petitioner who was associated as Non-**

executive Director (Independent Director of the company) had stepped down from the said directorship of the company on **01.01.2015**.

5. It is further stated that said Company was unable to make timely payment of provident fund contribution towards the employees share amounting to Rs 20,37,276/- for the period from February 2015 to July, 2015 by circumstances beyond its control. However, the said company, subsequently, on the first available opportunity paid the said dues.
6. It is also stated the financial condition of the said company depends largely on the market conditions. If the market conditions are adverse, the said company is unable to make payment of wages and other statutory dues. The company suffered primarily from high cost of labour and other imputes as also low price realisation of its product. However, payment of wages has been made first as a priority and rations along with other statutory dues including provident fund payment is always made thereafter.
7. It is stated that the said company has not defaulted in payment of wages. The said company has however, been unable to make timely payment of provident fund contribution towards the employees' share amounting to Rs. 20,37,276/- for the period from February, 2015 to July, 2015. The said company has been prevented by circumstances beyond its control from depositing the said provident fund amount. However, the said company has subsequently paid the said dues.

8. The petitioner states that the said Company has deposited all the dues for which the said compliant was lodged and the same has been accepted by the Provident Fund Authority and the Provident Fund Commissioner has certified that payment in respect of TRRN No. (1) 4751804001340, (2) 4751804001341, (3) 4751907003213, (4) 144751806002421, (5) 4751907003206, (6) 14751907003205, (7) 4751804001342, (8) 4751806002416 has already been remitted. The original of the certificates received from the P F Authority authenticating the said payment was submitted in the lower court at the time of obtaining the anticipatory bail. Thus a total sum of Rs. 20,37,276/-has been paid towards the said employees share for which the said FIR was lodged.
9. **Learned counsel for the respondent no. 2** submits that **admittedly the dues in the present case has been paid, but it has been made after a delay of 3 years.** A written instruction dated 17.07.2025 has been placed before this Court, wherein it is stated that the employees share of contribution for the said period has been received in full by the office (P.F. authorities).
10. The Supreme Court in ***Shiv Kumar Jatia vs. State of NCT of Delhi, Criminal Appeal nos. 1263, 1264 and 1265-1267 of 2019***, held:-

*“27. The liability of the Directors /the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of **Sunil Bharti Mittal**. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person,*

this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless **the Statute specifically provides for**. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

29. By applying the ratio laid down by this Court in the case of **Sunil Bharti Mittal** it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in the case of **Maksud Saiyed vs. State of Gujarat & Ors.** this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. **It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute.** It is further held that Statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

30. In the judgment of this Court in the case of **Sharad Kumar Sanghi vs. Sangita Rane** while examining the allegations made against the Managing Director of a

Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 of Cr.P.C. In the case on hand principally the allegations are made against the first accused-company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is accused no.2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. **Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day to day affairs of the company.** In absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned.”

11. Admittedly, the period of default in the present case is after the petitioner’s resignation.

12. Section 2(e) of the Employees’ Provident Funds & Misc. Provisions Act (herein after referred to as ‘EPF Act’), is reproduced here:-

“2. Definitions. - In this Act, unless the context otherwise requires, -

(a).....

(b).....

(c).....

(d).....

(e) “Employer” means-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.”

13. The petitioner herein was an independent director of the company and had also admittedly resigned prior to the period of default.

14. Sec14-B of the EPF Act (a social beneficial legislation) has not been invoked by the authorities in the present case, till date.

15. The Supreme Court in **Horticulture Experiment Station Vs The Regional Provident Fund, Civil Appeal No(s). 2136 of 2012 on 23rd February, 2022** citing several precedents held:-

*“17. Taking note of three-Judge Bench judgment of this Court in Union of India and Others v. Dharmendra Textile Processors and others (supra), which is indeed binding on us, **we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952** and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”*

16. The complainant without taking recourse to the provision under **Section 14-B and 7Q of EPF Act** opted to prosecute under **Sections 406/409 of the Indian Penal Code.**

17. **Section 14-B of the Employees’ Provident Funds & Misc. Provisions Act, lays down:-**

“14B. Power to recover damages.—Where an employer makes default in the payment of any

contribution to the Fund [the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, **by notification in the Official Gazette, in this behalf] may recover [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]**

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:]

[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]”

18. Section 7Q of the EPF Act lays down:-

“7Q. Interest payable by the employer.- The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

Provided that higher rate of interest specified in the scheme shall not exceed the lending rate of interest charged by any scheduled bank.”

19. The Supreme Court in *Horticulture Experiment Station vs. The Regional Provident Fund (Supra)* further held:-

“Any default or delay in payment of EPF contribution by the employer under the act is a

sine qua non for imposition of levy of damages under Section 14-B of the Act”.

20. The Supreme Court in ***Dayle De’ Souza Vs Government of India Through Deputy Chief Labour Commissioner (C) and Anr., in SLP (Crl.) No. 3913 of 2020, on October 29, 2021***, held:-

“27. In terms of the ratio above, a company being a juristic person cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well.”

21. **Section 14-A of the Employees’ Provident Funds & Misc. Provisions Act, lays down:-**

[14A Offences by companies .—

*(1) If the person committing an offence under this Act [the Scheme or [the [Pension] Scheme or the Insurance Scheme]] is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, **as well as the company**, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under the Act [the Scheme or [the [Pension] Scheme or the Insurance Scheme]] has been committed by a company and it is proved that the

offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

22. Paragraph 7 of *S. K. Agarwalla & Ors. Vs ESI Corporation & Anr.*

(1985 (1) CHN 113) is reproduced once again for its relevance.

“7. Under S. 85 (a) of the Act any person who fails to pay any contribution which under the Act, he is liable to pay, may be prosecuted and it may be prosecuted and it may be argued that since the liability to pay the contribution under S 40 of the Act is upon the ‘Principal employer’ anybody who comes within the definition of the ‘principal employer’ under the Act including a director who may answer to the description of ‘occupier’ may be prosecuted. Under S 406 of the Indian Penal Code however the deeming provision of explanation 2 to S 405 would apply only to an ‘employer’ and not to a ‘Principal employer’. In absence of any definition of ‘employer’ under the Indian Penal Code the ordinary meaning to the term ‘employer’ has to be given and that necessarily means the person who employs. Under S. 11 of the Indian Penal Code the word ‘person’ includes any Company or association or body of persons whether incorporated or not and it necessarily follows that the Indo Japan Steel Ltd. which is an incorporated company will be the employer in respect of its employees.”

23. Accordingly under Section 14A of the Employees’ Provident Funds & Misc. Provisions Act, every person, who at the time the offence was committed, was in charge of, and was responsible to the company for the

conduct of the business of the company, **as well as the company**, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

24. Thus it is the company /accused herein, who is an ‘employer’ in respect of its employees and not the petitioner who was an independent director.

25. In *Kamalkishor Shrigopal Taparia vs India Ener-gen Private Limited & Anr., in Criminal Appeal No(s). of 2025 (arising out of SLP (Crl.) Nos. 4051-4054 of 2020, decided on February 13th, 2025, the Supreme Court held:-*

“15. This Court has consistently held that a mere designation as a director does not conclusively establish liability under section 138 read with section 141 of the NI Act. Liability is contingent upon specific allegations demonstrating the director’s active involvement in the company’s affairs at the relevant time.

*15.1. This Court in **National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another**, (2010) 3 SCC 330 observed:*

“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

x-x-x

22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the

vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.

x-x-x

39. From the above discussion, the following principles emerge: (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

*15.2. In **N.K. Wahi v. Shekhar Singh**, (2007) 9 SCC 481 this Court in (Para:8) observed:*

“8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint

as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

15.3. In **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another**, (2005) 8 SCC 89, this Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.

15.4. In **Pooja Ravinder Devidasani v. State of Maharashtra**, (2014) 16 SCC 1 this Court while taking into consideration that a non-executive director plays a governance role, and are not involved in the daily operations or financial management of the company, held that to attract liability under section 141 of the NI Act, the accused must have been actively in-charge of the company’s business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.

18. Petitioner’s role in the accused company was limited to that of an independent non-executive director, with no financial responsibilities or involvement in the day-to-day operations of the company. Furthermore, he was not responsible for the conduct of its business.

19. The legal precedents cited above, including Pooja Ravinder (supra), clearly hold that non-executive directors cannot be held liable under section 138 NI Act unless specific evidence proves their active involvement.”

26. In K.S. Mehta vs M/s Morgan Securities and Credits Pvt. Ltd., 2025

INSC 315, in Criminal Appeal No. ... of 2025 (arising out of SLP

(Criminal) No. 4774 of 2024), the Supreme Court held:-

“**16.** This Court has consistently held that non-executive and independent director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.

16.1. This Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal & Anr.*, (2010) 3 SCC 330 observed: “13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. 22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company. 39. From the above discussion, the following principles emerge: (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction. (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company. (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred. (v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with. (vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint. (vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”
 16.2. In *N. K. Wahi v. Shekhar Singh & Ors.*, (2007) 9 SCC 481 this Court in Para 8 observed:

“To launch a prosecution, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”
 16.3. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.*, (2005) 8 SCC 89, this Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.
 16.4. In *Pooja Ravinder Devidasani v. State of Maharashtra & Anr.*, (2014) 16 SCC 1, this Court while taking into consideration that a non-executive director plays a governance role, they are not involved in the daily operations or financial management of the company, held that to attract liability under Section 141 of the NI Act, the accused must have been actively in charge of the company’s business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day- to-day conduct of business can be held accountable.

16.5 In *Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr.*, (2023) 8 SCC 473, this Court held:
 “8. After having considered the submissions, we are of the

view that there is non-compliance on the part of the second Respondent with the requirements of Sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the Appellants who have been alleged to be the Directors of the Accused No. 1 company. We are not dealing with the cases of a Managing Director or a whole-time Director. The Appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the Appellants.” 16.6. In *Hitesh Verma v. M/s Health Care At Home India Pvt. Ltd. & Ors.*, Crl. Appeal No. 462 of 2025, this Court held:

“4. As the appellant is not a signatory to the cheque, he is not liable under Section 138 of the 1881 Act. “As it is only the signatory to the cheque who is liable under Section 138, unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable...”

5. There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-Section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of the commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-Section (1) of Section 141 of the 1881 Act.”

18. *The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company’s financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such*

attendance does not automatically translate into control over financial operations.”

27. Though the above judgments relate to cases under the negotiable instruments, **the principles laid down therein, relating to the liability/responsibility of an independent director is also applicable to the present case.**
28. Admittedly in the present case, it is on record, that the petitioner's tenure expired on 01.01.2025. The default occurred on and from February, 2015 that is after the petitioner had resigned.
29. The outstanding contribution as shown in the FIR has also been deposited and duly received the respondent /opposite party /P.F. authority.
30. But the said payment has been made in 2018, that is 3 years after the default. As such opposite party no. 2 is entitled to/at liberty to proceed in accordance with law for recovery of the damages (penalty) for such default along with interest.
31. In the present case, admittedly the petitioner had already resigned from his position as an independent director, one month prior to the period of default. As such the offence alleged in the present case has not been prima facie made out against the petitioner herein. On perusal of the materials on record, it appears that there are no documents/materials and/or evidence to prima facie substantiate the offences alleged against the petitioner herein.
32. **The revisional application being CRR 179 of 2025 is thus allowed.**

- 33.** Accordingly, the proceeding in arising out of Birpara Police Station Case No. 185 of 2015 dated 07.09.2015, Under Sections 406/409 Indian Penal Code, Read with Sections 14 of Employees' Provident Funds and Miscellaneous Provisions Act pending before the Learned Additional Chief Judicial Magistrate, Alipurduar vide GR. Case No. 2597 of 2015, **is hereby quashed in respect of the petitioner herein namely Mahesh Gurbaxani.**
- 34.** All connected applications, if any, stands disposed of.
- 35.** Interim order, if any, stands vacated.
- 36.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 37.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)