VERDICTUM.IN

R

Reserved on : 07.04.2026
Pronounced on : 01.07.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1978 OF 2026
C/W
CRIMINAL PETITION No.2041 OF 2026
CRIMINAL PETITION No.2091 OF 2026
CRIMINAL PETITION No.2797 OF 2026
CRIMINAL PETITION No.2854 OF 2026

IN CRIMINAL PETITION No.1978 OF 2026

BETWEEN:

KAVITHA CHOPRA
AGED ABOUT 47 YEARS
W/O DHIRENDRA,
DIRECTOR OF OSIA HYPER RETAIL LIMITED,
4D SQUARE BASEMENT ONE,
VISAT TO GANDHINAGAR HIGHWAY,
MOTERA, AHAMEDABAD
GUJARAT – 380 005.

... PETITIONER

(BY SMT.KEERTHI REDDY, ADVOCATE FOR
SRI MADESH V.M., ADVOCATE)

VERDICTUM.IN

AND:

M/S. 63IDEAS INFOLABS PVT. LTD., (NINJACART)
R/O. AT, INDIGUBE HELIOS BUSINESS PARK,
TOWER-E, 2ND FLOOR, CHANDANA,
KADUBEESANAHALLI, PANATHUR,
BENGALURU – 560 103
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE
MR. KARTHIKEYA YADAV
MOB: 9986447908
EMAIL: adarsh@ninjacart.com

... RESPONDENT

(BY SRI BHARATH KUMAR V., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S., 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.13525/2025 (ARISING OUT OF PCR NO.5581/2025) AND ALL CONSEQUENTIAL PROCEEDINGS ARISING THEREFROM, INSOFAR AS THEY RELATE TO THE PETITIONER (ACCUSED NO.3) KAVITHA CHOPRA PENDING BEFORE THE HON'BLE XXV A.C.J.M COURT, AT BENGALURU.

IN CRIMINAL PETITION No.2041 OF 2026

BETWEEN:

KAVITHA CHOPRA
AGED ABOUT 47 YEARS,
DIRECTOR OF OSIA HYPER RETAIL LIMITED,
4D SQUARE BASEMENT ONE,
VISAT TO GANDHINAGAR HIGHWAY,
MOTERA, AHAMEDABAD,
GUJARAT – 380 005.

... PETITIONER

(BY SMT.KEERTHI REDDY, ADVOCATE FOR
SRI MADESH V.M., ADVOCATE)

VERDICTUM.IN

AND:

M/S. 63IDEAS INFOLABS PVT. LTD., (NINJACART)
R/O AT INDIGUBE HELIOS BUSINESS PARK,
TOWER-E, 2ND FLOOR, CHANDANA,
KADUBEESANAHALLI, PANATHUR,
BENGALURU – 560 103.
REPRESENTED BY ITS
ASSISTANT MANAGER
MR.ADARSH R.,
MOB: 9986447908
EMAIL- adarsh@ninjacart.com

... RESPONDENT

(BY SRI BHARATH KUMAR V., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S., 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.13260/2025 (ARISING OUT OF PCR NO.5583/2025) AND ALL CONSEQUENTIAL PROCEEDINGS ARISING THEREFROM, INSOFAR AS THEY RELATE TO THE PETITIONER (ACCUSED NO.3) KAVITHA CHOPRA PENDING BEFORE THE HON'BLE XXV A.C.J.M COURT AT BENGALURU.

IN CRIMINAL PETITION No.2091 OF 2026

BETWEEN:

KAVITHA CHOPRA
AGED ABOUT 47 YEARS
DIRECTOR OF OSIA HYPER RETAIL LIMITED
4D SQUARE BASEMENT ONE
VISAT TO GANDHINAGAR HIGHWAY
MOTERA, AHAMEDABAD
GUJARAT – 380 005.

... PETITIONER

(BY SMT.KEERTHI REDDY, ADVOCATE FOR
SRI MADESH V.M., ADVOCATE)

VERDICTUM.IN

AND:

M/S. 63IDEAS INFOLABS PVT. LTD., (NINJACART)
R/O. AT INDIGUBE HELIOS BUSINESS PARK
TOWER-E, 2ND FLOOR CHANDANA
KADUBEESANAHALLI, PANATHUR
BENGALURU – 560 103
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR.KARTHIKEYA YADAV
MOB: 9986447908
EMAIL adarsh@ninjacart.com

... RESPONDENT

(BY SRI BHARATH KUMAR V., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S., 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.13527/2025 (ARISING OUT OF PCR.NO.5576/2025) AND ALL CONSEQUENTIAL PROCEEDINGS ARISING THEREFROM, INSOFAR AS THEY RELATE TO THE PETITIONER (ACCUSED NO.3), KAVITHA CHOPRA, PENDING BEFORE THE HON'BLE XXV A.C.J.M COURT, AT BENGALURU.

IN CRIMINAL PETITION No.2797 OF 2026

BETWEEN:

DHIRENDRA CHOPRA
AGED ABOUT 45 YEARS
DIRECTOR OF OSIA HYPER RETAIL LIMITED,
4D SQUARE BASEMENT ONE,
VISAT TO GANDHINAGAR HIGHWAY,
MOTERA, AHAMEDABAD
GUJARAT – 380 005.

... PETITIONER

(BY SMT.KEERTHI REDDY, ADVOCATE FOR

VERDICTUM.IN

SRI MADESH V.M., ADVOCATE)

AND:

M/S. 63IDEAS INFOLABS PVT. LTD., (NINJACART)
R/O. AT, INDIGUBE HELIOS BUSINESS PARK,
TOWER-E, 2ND FLOOR, CHANDANA,
KADUBEESANAHALLI, PANATHUR,
BENGALURU – 560 103
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR. KARTHIKEYA YADAV
MOB: 9986447908
EMAIL: adarsh@ninjacart.com

... RESPONDENT

(BY SRI BHARATH KUMAR V., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S., 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C. NO. 23539/2025(ARISING OUT OF PCR NO.9712/2025) AND ALL CONSEQUENTIAL PROCEEDINGS ARISING THEREFROM, INSOFAR AS THEY RELATE TO THE PETITIONER (ACCUSED NO. 2), DHIRENDRA CHOPRA PENDING BEFORE THE HON'BLE XXV A.C.J.M COURT, AT BENGALURU.

IN CRIMINAL PETITION No.2854 OF 2026

BETWEEN:

DHIRENDRA CHOPRA
AGED ABOUT 45 YEARS
DIRECTOR OF OSIA HYPER RETAIL LIMITED,
4D SQUARE BASEMENT ONE,
VISAT TO GANDHINAGAR HIGHWAY,
MOTERA, AHAMEDABAD
GUJARAT – 380 005.

... PETITIONER

(BY SMT.KEERTHI REDDY, ADVOCATE FOR

VERDICTUM.IN

SRI MADESH V.M., ADVOCATE)

AND:

M/S. 63IDEAS INFOLABS PVT. LTD., (NINJACART)
R/O. AT, INDIGUBE HELIOS BUSINESS PARK,
TOWER-E, 2ND FLOOR, CHANDANA,
KADUBEESANAHALLI, PANATHUR,
BENGALURU – 560 103
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR. KARTHIKEYA YADAV
MOB:9986447908
EMAIL: adarsh@ninjacart.com

... RESPONDENT

(BY SRI BHARATH KUMAR V., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S., 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.23540/2025 (ARISING OUT OF PCR NO.9707/2025) AND ALL CONSEQUENTIAL PROCEEDINGS ARISING THEREFROM, INSOFAR AS THEY RELATE TO THE PETITIONER (ACCUSED NO.3) DHIRENDRA CHOPRA PENDING BEFORE THE HON'BLE XXV A.C.J.M COURT, AT BENGALURU.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

VERDICTUM.IN

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Criminal Petitions Nos.1978, 2041 and 2091 of 2026 are preferred by Kavitha Chopra, accused No.3 and Criminal Petition Nos. 2797 and 2854 of 2026 are preferred by Dhirendra Chopra, wherein he is drawn as accused Nos. 2 and 3, respectively. The complainant in all these cases is common – one M/s 63Ideas Infolabs Private Limited (Ninjacart). In the light of the facts being similar in all these cases and the petitioners being husband and wife and the complainant being the same, I deem it appropriate to notice the facts narrated in Criminal Petition No.1978 of 2026.

2. Facts, in brief, adumbrated, are as follows: -

The respondent/complainant is a company incorporated under the provisions of the Companies Act, 2013 and is engaged in the business of wholesale trade of agricultural products and fresh produce. One OSIA Hyper Retail Limited, accused No.1/Company, whose directors are said to be Sri. Dhirendra Chopra and

VERDICTUM.IN

Smt. Kavitha Chopra, enters into a sale and purchase agreement with the respondent/complainant. Pursuant to the agreement, accused No.1/Company placed a purchase order for supply of 37 metric tons of loose tuvar dal gili. Thus, goods amounting to ₹50,02,400/-, on the purchase order, were supplied by the respondent/complainant. In furtherance of the said transaction, accused No.1/Company issues a cheque amounting to ₹50,00,000/- in discharge of the liability. The cheque so issued by accused No.1/Company was dishonoured for want of sufficient funds. A statutory demand notice was issued by the respondent/complainant. The accused did not respond to the said notice; this led the respondent/complainant to invoke Section 223 of the BNSS by registering a private complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short). The concerned Court records sworn statement of the respondent/complainant. Five different complaint cases are registered with regard to five different instruments and transactions. Recording of sworn statement, registration of complaint cases and issuance of summons is what has driven the petitioners to this Court in the subject petitions.

VERDICTUM.IN

3. Heard Smt. Keerthi Reddy, learned counsel appearing for the petitioners and Sri V. Bharath Kumar, learned counsel appearing for the respondent.

<u>SUBMISSIONS</u>:

<u>PETITONER</u>:

4. The learned counsel Smt. Keerthi Reddy appearing for the petitioners would vehemently contend that the entire transaction is between accused No.1/Company and the respondent/complainant. Accused No.2/Dhirendra Chopra is the authorized signatory of accused No.1/Company and the cheques are signed by him. Smt. Kavitha Chopra is only one of the Directors and she is not involved in the day to-day affairs of the Company. She is not a signatory to the cheques. The complaint does not contain any averment regarding who has issued cheques and who has signed the cheques. There is no material to show Smt. Kavitha Chopra had knowledge of the alleged transaction between the Company and the complainant. The alleged transaction sprang from an agreement which is signed by one Archana Nagrani who is not even a Director in the Company anymore. The complaint is required to

VERDICTUM.IN

allege that the person who is sought to be held liable vicariously was in-charge of and responsible for the affairs of the Company at the time when the alleged offence was committed. The twin requirements under Section 141 of the Act is not satisfied in the case at hand. Merely naming a person as a Director in the array of accused is not sufficient to fasten liability under Section 138 r/w 141 of the Act. Identical submissions are made with regard to Dhirendra Chopra as well, in contending that he is not the signatory to few of the cheques and there is no averment in the complaint with regard to the role and responsibility of Dhirendra Chopra. The learned counsel would again take this Court through the averments in the complaint to demonstrate that there is no indication as to who has issued the cheques. There is no allegation made against Dhirendra Chopra as well. In the absence of necessary averments, proceedings cannot continue against the husband/Dhirendra Chopra also.

RESPONDENT:

5. Contrariwise, the learned counsel Sri V. Bharath Kumar appearing for the complainant, in all these cases, would contend

VERDICTUM.IN

that agreement is entered into between the complainant and accused No.1/Company through its authorized signatories who are the husband – Dhirendra Chopra and wife – Kavitha Chopra and key managerial personnel of the Company. He would take this Court through the GST certificate, the Board resolution and all other contemporaneous documents to demonstrate that both Dhirendra Chopra and Kavitha Chopra are authorized representatives of accused No.1/Company. He would further contend that the grounds that are urged by the petitioners or the submissions will all have to be tested in evidence and the jurisdiction under Section 528 of BNSS should not be exercised in such cases. He would seek dismissal of the petitions.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

7. The afore-narrated transaction between the parties is a matter of record. What triggers the complainant to invoke the

VERDICTUM.IN

jurisdiction of the learned Magistrate under Section 223 of the BNSS is the transactions between the respondent/complainant and accused No.1/Company, in furtherance of which cheques are issued and dishonoured. Therefore, it would suffice if the consideration would begin from noticing the complaint in one of these petitions. The complaint in Criminal Petition No.1978 of 2026 reads as follows:

"**Complaint Filed Under Section 223 of The Bharatiya Nagarik Suraksha Sanhita 2023 r/w Section 138 of Negotiable Instruments Act**

The complainant above named submits as follows:-

1. The address of the parties to the complaint is referred as above for the purposes of service of process from this Hon'ble court. It may also be served upon the complainant's counsel **Sri.C.H.Doddegowda** Advocate, Lawkarft Legal Network, 1st Floor, MM Building, 38, Rajaram Mohanroy Road, Next to House of Johnson Tiles, Sampangirama Nagar, Bengaluru -560027, Mob:9632717959, Email:chdgowda.sira@gmail.com.

2. The complainant submits since the complainant is a company incorporated under the Companies Act 2013 and engaged in the business of wholesale trade and agricultural products and fresh produce supply like vegetables, fruits, milk etc., throughout India having its registered office at the above mentioned address and the company is represented by its assistant manager. The copy of the certificate of incorporation and board resolution issued by company is herewith produced as **Document No.1 & 2**.

3. The complainant submits that the accused no.1 is the company and accused no.2 and 3 are its directors entered an agreement by name sale & purchase agreement with

VERDICTUM.IN

the complainant dated 19.04.2024 for the purpose of smooth business transaction between complainant and accused. The scan copy of the said agreement sent through email is herewith produced as Document No.3.

4. The complainant submits that based on the agreement the accused has placed order before the complainant for supply of 37 Metric Tons of Loose Tuvar Daal Gili, accordingly the complainant has supplied the above said purchase order issued by the accused under the invoice bearing no.AF-BOS-00706 & AF-BOS-00707 dated 01.01.2025…….

worth sum of Rs.50,02,400/- (fifty lakhs two thousand four hundred only) and the same is payable on or before the due date as mentioned under the invoices, it is further submitted that the late payment will be charged interest as mentioned under the invoice. The office copies of 2 invoices are herewith produced as **Document No.4**.

5. The complainant submits that the accused has assured to pay the invoice amount within the due date, later he has failed to make payment at this juncture the complainant has requested the accused many times to clear the outstanding due owned by the accused but the accused has failed to make payment, after repeated requests and demands made by the complainant to clear the outstanding dues accused has instructed to present the post dated cheque issued by him bearing Cheque no.293084 dated 04.03.2025 for a Rs.50,00,000/-. (fifty lakhs only) drawn on Punjab National Bank, Shahibagh, Ahmedabad, Gujarat in favor complainant including the interest and late fee for payment towards the discharge of the part payment debt or liability owned by him. The said cheque is herewith produced as **Document No.5**.

6. The complainant submits that based on the instructions of the accused the complainant has presented the said cheque for realization through his banker Standard Charted bank Ltd., Koramangala Branch, Bengaluru for a sum of Rs.50,00,000/- (fifty lakhs only) for realization, but to the utter shock and dismay the said cheque returned un-realized with an endorsement that "Funds Insufficient". The same was communicated to complainant by his bankers by a memo dated

VERDICTUM.IN

05.03.2025. The endorsement is produced herewith and marked as **Document No.6**.

7. The complainant submits that pursuance to such dishonor of the cheque issued by the accused, the complainant has issued demand notice to the accused as contemplated under the provisions of section 138 (B) of NI Act by way of Registered post dated 27.03.2025. The notice issued to accused persons is duly served on the accused on 01.04.2025, even after the service of the demand no accused not preferred to make payment nor issued reply for the same. The office copy of the demand notice, Postal receipts and online postal tracking in EK897423409IN, EK897423390IN and EK897423372IN is herewith produced as **Document No.7, 8 & 9.**

8. The complainant submits that, the accused having been issuing the cheque referred above to discharge the debt that was payable by him has not taken proper steps for its realization and even he has not taken any steps after the receipt of the demand notice hence the accused has violated the provisions of law thereby rendering himself liable to be prosecuted for the offences under Section 138 of NI Act.

9. The complainant submits that since the accused has issued cheque referred above during the course of business transaction, after acknowledgement of the receipt of the good, the accused not came forward to make any payment this act of the accused is clearly shows his ulterior motive to cheat us and suffer the us huge financial loss.

10. It is submitted that the accused has however failed to keep up his undertaking thereby rendering himself liable to be prosecuted under the provisions of the NI Act. Hence this complaint.

11. The complainant further states that:

a) The cheque was issued on 04.03.2025

b) Intimation of dishonor is dated 05.03.2025

c) Legal notice was issued on 27.03.2025

VERDICTUM.IN

d) Legal notice served on 01.04.2025

e) 45 days from the date of service of demand notice

16.05.2025

f) Date of filing of the complainant 19.04.2025

12. The complainant submits that, the offence having been committed within the jurisdiction of this court, hence this Hon'ble court has jurisdiction to try this case.

13. The complainant submits that the cause of action having arisen on 16.04.2025 when the statutory period of 15 days is being expired. The complainant has filed this complaint within the period of limitation.

PRAYER

WHEREFORE, the complainant respectfully prays that this Hon'ble court be pleased to:

a. To take this complaint on record and issue process to the accused and deal with him in accordance with law.

b. And award the compensation of the amount twice the amount of the cheque referred above, which would meet the interest of justice and equity."

(sic)

All other complaints are verbatim similar in allegation. Sworn statement of the complainant is recorded by way of an affidavit. One such affidavit reads as follows:

"**IN THE COURT OF XXVTH ADDL. CHIEF JUDICIAL MAGISTRATE AT BENGALURU**

C.C.No. 13525 / 2025

BETWEEN:

VERDICTUM.IN

M/s.63Ideas Infolabs pvt.Ltd (Ninjacart)
Rep. by its Director
Mr.Karthikeya Yadav

... Complainant.

AND:

OSIA Hyper Retail Limited
& others

... Accused.

SWORN STATEMENT BY WAY OF AFFIDAVIT

I, Mr.Karthikeya Yadav, S/o.R.S.Yadav, Aged about 37 years, Director Anchor Finance of M/s.63Ideas Infolabs pvt.Ltd (Ninjacart) office at Indiqube Helios Business Park, Tower-E, 2nd Floor, Chandana, Kadubeesanahalli, Panathur, Bengaluru - 560103, do hereby solemnly affirms and states oath as fallows.

1. I state that I am the complainant herein as such I am well conversant with the facts of the case, hence I am swearing to the contents of this affidavit.

2. I state that complainant is a company incorporated under the Companies Act 2013 and engaged in the business of wholesale trade and agricultural products and fresh produce supply like vegetables, fruits, milk etc., throughout India having its registered office at the above mentioned address and the company is represented by me its Director. The copy of the certificate of incorporation and board resolution issued by company is herewith produced as **Exhibit P.1 & 2**.

3. I state that accused no.1 is the company and accused no.2 and 3 are its directors entered an agreement by name sale & purchase agreement with us dated 19.04.2024 for the purpose of smooth business transaction between complainant and accused. The scan copy of the said agreement sent through email is herewith produced as Exhibit P.3.

4. I state that based on the agreement the accused has placed order before us for supply of 37 Metric Tons of Loose

VERDICTUM.IN

Tuvar Daal Gili accordingly we have supplied the above said purchase order issued by the accused under the invoice bearing no.AF-BOS-00706 & AF-BOS-00707 dated 01.01.2025 to 26.12.2024 worth sum of Rs.50,02,400/-(fifty lakhs two thousand four hundred only) and the same is payable on or before the due date as mentioned under the invoices, it is further submitted that the late payment will be charged interest as mentioned under the invoice. The office copies of 2 invoices are herewith produced as **Exhibit P.4**.

5. I state that accused has assured to pay the invoice amount within the due date, later he has failed to make payment at this juncture we have requested the accused many times to clear the outstanding due owned by the accused but the accused has failed to make payment, after repeated requests and demands made by us to clear the outstanding dues accused has instructed to present the post dated cheque issued by him bearing Cheque no.293084 dated 04.03.2025 for a Rs.50,00,000/- (fifty lakhs only) drawn on Punjab National Bank, Shahibagh, Ahmedabad, Gujarat in favor complainant including the interest and late fee for payment towards the discharge of the part payment debt or liability owned by him. The said cheque is herewith produced as **Exhibit P.5**.

6. I state that based on the instructions of the accused we have presented the said cheque for realization through his banker Standard Charted bank Ltd., Koramangala Branch, Bengaluru for a sum of Rs.50,00,000/- (fifty lakhs only) for realization, but to the utter shock and dismay the said cheque returned un-realized with an endorsement that "Funds Insufficient". The same was communicated to us by a memo dated 05.03.2025. The endorsement is produced herewith and marked as **Exhibit P.6**.

7. I state that pursuance to such dishonor of the cheque issued by the accused we have issued demand notice to the accused as contemplated under the provisions of section 138 (B) of NI Act by way of Registered post dated 27.03.2025. The notice issued to accused persons is duly served on the accused on 01.04.2025, even after the service of the demand notice accused not preferred to make payment nor issued reply for the same. The office copy of the demand notice, Postal receipts and

VERDICTUM.IN

online postal tracking in EK897423409IN, EK897423390IN and EK897423372IN is herewith produced as **Exhibit P.7, 8 & 9**.

8. I state that the accused having been issued the cheque referred above to discharge of the debt that was payable by him has not taken proper steps for its realization, and even he has not taken any steps after the service of the demand notice hence the accused has violated the provisions of law thereby rendering himself liable to be prosecuted for the offences under Section 138 of NI Act.

9. I state that since the accused has issued signed cheque referred above during the course of business transaction, after acknowledgement of the receipt of the good, the accused not came forward to make any payment, this act of the accused is clearly shows his ulterior motive to cheat us and suffer the us huge financial loss.

Therefore it is respectfully prays that this Hon'ble court be pleased to take cognizance of the office, hold trial and punish the accused maximum punishment prescribed under the law and also award the compensation in terms of twice the amount of the Cheque imposing interest thereon, which would meet the interest of justice.

What is stated above is true and correct to the best of my knowledge, information and belief.

Identified by me

Sd/- Sd/-
Advocate Deponent
Bengaluru
Date: 19.01.2026

Sd/-
SWORN BEFORE ME"

(sic)

(Emphasis added at each instance)

VERDICTUM.IN

A perusal at the complaint or the sworn statement so recorded admittedly does not indicate the role of any of the Directors in accused No.1/Company. The sale purchase agreement no doubt is signed by both the husband and the wife and other Directors. The cheques are issued in the name of accused No.1/Company and the signatures on the cheques are that of the wife in a few cases and that of the husband in a few cases and in one case of joint account, both of them have signed the cheque. Smt. Kavitha Chopra and Sri. Dhirendra Chopra are included as guarantors in the supply purchase agreement that was entered between the Company and the complainant.

8. The averment in the complaint is that both the husband and wife are Directors of accused No.1/Company and had entered into the said agreement with the complainant. There is no specific averment in the complaint with regard to the role of both the petitioners in the day-to-day affairs of the Company, much less the role of the wife in the affairs of the Company. Information that is received from the Registrar, Ministry of Corporate Affairs website, which is appended to the petition is indicative of the fact that

VERDICTUM.IN

Sri Dhirendra Chopra is the Managing Director and Smt. Kavitha Chopra is the Director. The cheque that forms the subject matter of Criminal Petition No.2797 of 2026 was issued from the joint account of Smt. Kavitha Chopra and Sri Dhirendra Chopra. The Company is not an accused in this petition. With all this conundrum the issue that false for consideration would be, whether the wife Smt Kavitha Chopra who is shown as Director can be drawn into the web of proceedings.

9. Jurisprudence is replete with the law laid down by the Apex Court interpreting Sections 138 and 141 of the Act.

9.1. The Apex Court in the case of **SUSELA PADMAVATHY AMMA v. BHARTI AIRTEL LIMITED**[1], has held as follows:

"…. …. ….

> **16.** In *State of Haryana* v. *Brij Lal Mittal* [*State of Haryana* v. *Brij Lal Mittal*, (1998) 5 SCC 343 : 1998 SCC (Cri) 1315 : (1998) 93 Comp Cas 329] , this Court observed thus: (SCC pp. 347-48, para 8)
>
> > "*8*. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being prosecuted as Directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:

---

[1] **(2024) 12 SCC 131**

VERDICTUM.IN

> '**34. *Offences by companies*.**—(1) Where an offence under this Act has been committed by 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 provided in this Act 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.'

It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a Director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a Director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were Directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business."

17. It could thus be seen that this Court had held that simply because a person is a Director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in charge of and was also responsible to the company for the conduct of its business.

VERDICTUM.IN

18. In *S.M.S. Pharmaceuticals Ltd.* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , this Court was considering the question as to whether it was sufficient to make the person liable for being a Director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word "Director" as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus: (SCC pp. 97-98, para 8)

> "*8*. … **There is nothing which suggests that simply by being a Director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a Director in a company but he may not know anything about the day-to-day functioning of the company.** As a Director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two Directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. **What emerges from this is that the role of a Director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a Director of a company is in charge of its everyday affairs. We have discussed about the position of a Director in a company in order to illustrate the point that there is no magic as such in a particular word, be it Director, Manager or Secretary. It all depends upon the respective roles assigned to the officers in a company**."

19. It was held that merely because a person is a Director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a Director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the Director of the company was in charge of day-to-day

VERDICTUM.IN

affairs of the company or responsible for the affairs of the company. This Court, however, clarified that the position of a Managing Director or a Joint Managing Director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

20. In *Pooja Ravinder Devidasani* v. *State of Maharashtra* [*Pooja Ravinder Devidasani* v. *State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : (2015) 190 Comp Cas 106] this Court observed thus: (SCC pp. 9-10, paras 17-21)

> "*17*. … **Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In *National Small Industries Corpn.* [*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] this Court observed: (SCC p. 336, paras 13-14)**
>
> > **'*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**

VERDICTUM.IN

> **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.**
>
> *14*. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.'

18. In *Girdhari Lal Gupta* v. *D.H. Mehta* [*Girdhari Lal Gupta* v. *D.H. Mehta*, (1971) 3 SCC 189 : 1971 SCC (Cri) 279] , this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

***19*. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see *State of Karnataka* v. *Pratap Chand* [*State of Karnataka* v. *Pratap Chand*, (1981) 2 SCC 335 : 1981 SCC (Cri) 453 : (1981) 51 Comp Cas 198]).**

***20*. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, *there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company*.**

21. In *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1

VERDICTUM.IN

SCC (Cri) 621 : (2006) 133 Comp Cas 680] , it was held by this Court that: (SCC pp. 584-85, para 7)

> '*7.* … it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. ***Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned 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 the offence committed by the company.***'

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

(emphasis in original)

21. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a Director of the company was responsible for the conduct of the business of the company, would not ipso facto make the Director vicariously liable.

22. A similar view has previously been taken by this Court in *K.K. Ahuja* v. *V.K. Vora* [*K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181 : (2009) 152 Comp Cas 520] .

23. In *State (NCT of Delhi)* v. *Rajiv Khurana* [*State (NCT of Delhi)* v. *Rajiv Khurana*, (2010) 11 SCC 469 : (2011) 1 SCC (Cri) 195 : (2010) 158 Comp Cas 151] , this Court reiterated the position thus: (SCC p. 474, para 17)

VERDICTUM.IN

> "*17*. **The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable**."

24. In *Ashoke Mal Bafna* [*Ashoke Mal Bafna* v. *Upper India Steel Mfg. &Engg. Co. Ltd.*, (2018) 14 SCC 202 : (2019) 1 SCC (Cri) 568 : (2018) 4 SCC (Civ) 515] , this Court observed thus: (SCC p. 206, paras 9-10)

> "*9*. **To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business *at the time of commission of an offence* will be liable for criminal action. (See *Pooja Ravinder Devidasani* v. *State of Maharashtra* [*Pooja Ravinder Devidasani* v. *State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : (2015) 190 Comp Cas 106] .)**
>
> ***10*. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the**

VERDICTUM.IN

> **Director was responsible for the conduct of the business of the Company.**"

25. A similar view has been taken by this Court in *Lalankumar Singh* v. *State of Maharashtra* [*Lalankumar Singh* v. *State of Maharashtra*, 2022 SCC OnLine SC 1383] to which one of us (B.R. Gavai, J.) was a party.

26. In the light of this settled legal position, let us examine the averments made in the complaints.

27. It will be relevant to refer to Para 16 of the complaint bearing No. CC 3151 of 2017 filed by the respondent before the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai dated 30-11-2016, which reads thus:

> "16. The complainant states that the accused has an intention of cheating the complainant. The 2nd and 3rd accused herein has no intention to pay the dues that they owe to the complainant. Instead, making the complainant believe that the same would be paid and through which trying to push the liability to future. It is also pertinent to note that the 2nd and 3rd of the accused herein are the Directors, promoters of the 1st accused being the Company. The 2nd of the accused herein is the authorised signatory, who is in charge of and responsible for the day-to-day affairs of the Company, the 1st accused."

28. It can thus be seen that the only allegation against the present appellant is that the present appellant and Accused 2 had no intention to pay the dues that they owe to the complainant. **It is stated that the 2nd accused and the 3rd accused (appellant herein) are the Directors, promoters of the 1st accused being the Company. It is further averred that the 2nd accused is the authorised signatory, who is in charge of and responsible for the day-to-day affairs of the Company i.e. the 1st accused.**

29. It can thus be clearly seen that there is no averment to the effect that the present appellant is in charge of and responsible for the day-to-day affairs of the Company. It is also not the case of the respondent that

VERDICTUM.IN

> **the appellant is either the Managing Director or the Joint Managing Director of the Company.**
>
> **30. It can thus clearly be seen that the averments made are not sufficient to invoke the provisions of Section 141 of the NI Act qua the appellant**.
>
> **31.** In the result, we find that the present appeals deserve to be allowed. It is ordered accordingly. The judgment and order passed by the High Court dated 26-4-2022 [*Susela Padmavathy Amma* v. *Bharti Airtel Ltd.*, 2022 SCC OnLine Mad 9023] is quashed and set aside. The proceedings in CCs Nos. 3151 and 3150 of 2017 on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai (now transferred to the learned Metropolitan Magistrate, Fast Track Court III, Saidapet, Chennai) in connection with the offence punishable under Section 138 read with Section 142 of the NI Act are quashed and set aside qua the present appellant."

The Apex Court holds that merely being a Director of the company would not render him or her liable for the offence under Section 138 of the Act. Vicarious liability cannot be fastened on the Director of a company by merely reproducing the words in Section 141 of the Act, without clearly averring as to how the Director was responsible for the affairs of the company.

VERDICTUM.IN

9.2. The Apex Court in the case of **K.S. MEHTA v. MORGAN SECURITIES AND CREDITS PRIVATE LIMITED**[2] has held as follows:

"…. …. ….

Analysis and findings

15. 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. This Court in *National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] observed: (SCC pp. 336, 338-39 & 345-46, paras 13, 22 & 39)

> "***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 in charge of and responsible for

[2] (2025) 7 SCC 615

VERDICTUM.IN

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 the 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.**

VERDICTUM.IN

(*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."

(emphasis in original)

17. In *N.K. Wahi* v. *Shekhar Singh* [*N.K. Wahi* v. *Shekhar Singh*, (2007) 9 SCC 481: (2007) 3 SCC (Cri) 203: (2007) 137 Comp Cas 939] this Court in para 8 observed: (SCC p. 483)

"*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 the 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."

18. In *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127

VERDICTUM.IN

Comp Cas 563] , this Court laid down that mere designation as a Director is not sufficient; specific role and responsibility must be established in the complaint.

19. In *Pooja Ravinder Devidasani* v. *State of Maharashtra* [*Pooja Ravinder Devidasani* v. *State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : (2015) 190 Comp Cas 106] , 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.

20. In *Ashok Shewakramani* v. *State of A.P.* [*Ashok Shewakramani* v. *State of A.P.*, (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : (2024) 243 Comp Cas 310] , this Court held: (SCC p. 478, para 20)

> "*20*. 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 Accused 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."

21. In *Hitesh Verma* v. *Health Care at Home (India) (P) Ltd.* [*Hitesh Verma* v. *Health Care at Home (India) (P) Ltd.*, (2025) 7 SCC 623] , this Court held: (SCC paras 3-4)

> "*3*. 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 is liable under Section 138, unless the case is brought within the

VERDICTUM.IN

> four corners of Section 141 of the 1881 Act, no other person can be held liable. …
>
> ***4.* 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.”**

22. Upon perusal of the record and submissions of the parties, it is evident that the appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision-making or operational management.

23. 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 the appellant(s) attended Board meetings does not suffice to impose financial liability on the appellant(s), as such

VERDICTUM.IN

> **attendance does not automatically translate into control over financial operations**."

The Apex Court holds that complaint lacking in specific averment to establish a direct nexus between the appellant therein to the financial transaction in question, financial liability cannot be fastened automatically or the mere fact that the appellant attended Board meeting does not suffice to impose financial liability upon the appellant therein.

9.3. The Apex Court in **HDFC BANK LIMITED v. STATE OF MAHARASHTRA**[3] has held as follows:

"…. …. ….

> **23. The following principles are deducible from the said judgment in *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89: 2005 SCC (Cri) 1975 (2005) 127 Comp Cas 563]:**
>
> **23.1. "Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable." (See para 4)**

---

[3] **(2025) 9 SCC 653**

VERDICTUM.IN

23.2. "There is nothing which suggests that simply by being a Director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a Director in a company but he may not know anything about the day-to-day functioning of the company. As a Director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two Directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. *These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a Director in a company is a question of fact depending upon the peculiar facts in each case. There is no universal rule that a Director of a company is in charge of its everyday affairs.*" (See para 8)

23.3. "Mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of the company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that satisfies those requirements. *Not every person connected with a company is made liable under Section 141. Liability is cast on persons who may have something to do with the transaction complained of. A person who is in charge of and responsible for conduct of business of a company would naturally know why the cheque in question was issued and why it got dishonoured.*" (See Para 8)

23.4. "What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. *Every person connected with the company shall not fall within the ambit of the*

VERDICTUM.IN

***provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action*. It follows from this that if a Director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time will not be liable under the provision." (See para 10)**

23.5. "Therefore, in order to bring a case within Section 141 of the Act, the complaint must disclose the necessary facts which make a person liable." (See para 12)

24. After setting out the above principles, this Court in *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , cited a whole host of judgments of various High Courts and this Court, including the judgment of this Court which was then the latest in line, namely, *Monaben Ketanbhai Shah* v. *State of Gujarat* [*Monaben Ketanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15: 2004 SCC (Cri) 1857 : (2005) 126 Comp Cas 342] . This Court in *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89: 2005 SCC (Cri) 1975: (2005) 127 Comp Cas 563] cited *Monaben Ketanbhai Shah* [*Monaben Ketanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15 : 2004 SCC (Cri) 1857 : (2005) 126 Comp Cas 342] which had held that it was not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint was required to be read as a whole. *Monaben Ketanbhai Shah* [*MonabenKetanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15: 2004 SCC (Cri) 1857: (2005) 126 Comp Cas 342] had held that if the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed and is required to be tried with. It was further held in *Monaben Ketanbhai Shah* [*Monaben Ketanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15: 2004 SCC (Cri) 1857: (2005) 126 Comp Cas 342] that in construing a complaint, a hypertechnical approach should not be adopted and the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions had to be borne in mind.

VERDICTUM.IN

25. After setting out the holding in *Monaben Ketanbhai Shah* [*Monaben Ketanbhai Shah* v. *State of Gujarat*, (2004) 7 SCC 15 : 2004 SCC (Cri) 1857 : (2005) 126 Comp Cas 342] , this Court in *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975: (2005) 127 Comp Cas 563] in para 18 held as follows: [*S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , SCC pp. 102-103]

> "*18*. To sum up, there is almost unanimous judicial opinion that **necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.** ***A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out*****. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein.** ***If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a Director in a company is not sufficient to satisfy the requirement of Section 141.*** *Even a non-Director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial*."

(emphasis supplied)

26. Thereafter, in para 19, the conclusion was recorded in the following terms: [*S.M.S. Pharmaceuticals (1)* case [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*,

VERDICTUM.IN

(2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , SCC p. 103]

"*19*. In view of the above discussion, our answers to the questions posed in the reference are as under:

(*a*) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(*b*) The answer to the question posed in sub-para (*b*) has to be in the negative. *Merely being a Director of a company is not sufficient to make the person liable under Section 141 of the Act. A Director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that 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*.

(*c*) The answer to Question (*c*) has to be in the affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

VERDICTUM.IN

(emphasis supplied)

27. Hence, it is very clear that the conclusion in para 19(*a*) in *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] has to be read with the other holdings in judgment especially the ratio extracted hereinabove culminating in para 18. Merely reading para 19(*a*) to contend that what is required is parroting of the words of the section for a complaint to be sustained is completely unjustified. Para 19(*a*) does not mention that the words of Section 141 have to be mechanically parroted. In fact, the cases that we discuss hereinbelow have expressly rejected the said contention.

28. After the reference in *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] was answered by the three-Judge Bench and before the case of the said parties could be taken up for disposal by the two-Judge Bench, came the judgment in *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621 : (2006) 133 Comp Cas 680] . **This Court, after noticing *S.M.S. Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , held that it was not necessary for the complainant to specifically reproduce the wordings of the section but what was required was a clear statement of fact so as to enable the Court to arrive at a prima facie opinion that the accused are vicariously liable. Such vicarious liability can be inferred 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 the offence committed by the company. It was also held that before a person can be made vicariously liable, strict compliance with the statutory requirements should be insisted.** On facts, the Court found that the averments did not meet the requirements in the said case.

29. Thereafter, came the judgment in *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2007) 4 SCC 70 : (2007) 2 SCC (Cri) 192

VERDICTUM.IN

: (2007) 136 Comp Cas 268] [hereinafter referred to as "*S.M.S. Pharmaceuticals (2)*"]. Referring to paras 18 and 19 of the order in the three-Judge Bench reference in *S.M.S.Pharmaceuticals (1)* [*S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] and following the judgment in *Sabitha Ramamurthy* [*Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621 : (2006) 133 Comp Cas 680] , the averments in the complaint were tested and it was found that the complaint petition when read in its entirety, the averments therein fell short of the requirements to implicate the respondent-accused in that case.

30. To the same effect is the judgment of this Court in *A.K. Singhania* v. *Gujarat State Fertilizer Co. Ltd.* [*A.K. Singhania* v. *Gujarat State Fertilizer Co. Ltd.*, (2013) 16 SCC 630 : (2014) 5 SCC (Civ) 578 : (2014) 6 SCC (Cri) 356 : (2014) 182 Comp Cas 572] , wherein this Court categorically ruled as under: (SCC p. 638, para 14)

> "*14*. From a plain reading of the aforesaid provision it is evident that every person who at the time the offence was committed was in charge of and responsible to the company shall be deemed to be guilty of the offence under Section 138 of the Act. In the face of it, will it be necessary to specifically state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company? ***In our opinion, in the case of offence by the company, to bring its Directors within the mischief of Section 138 of the Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is a necessary ingredient which would be sufficient to proceed against such Directors. However, we may add that as no particular form is prescribed, it may not be necessary to reproduce the words of the section. If reading of the complaint shows and the substance of accusation discloses necessary averments, that would be sufficient to proceed against such of the Directors and no particular form is necessary*.** However, it may not be necessary to allege and prove that, in fact, such

VERDICTUM.IN

> of the Directors have any specific role in respect of the transaction leading to issuance of cheque. Section 141 of the Act makes the Directors in charge of and responsible to the company "for the conduct of the business of the company" within the mischief of Section 138 of the Act and not particular business for which the cheque was issued. We cannot read more than what has been mandated in Section 141 of the Act."
>
> (emphasis supplied)

31. In *Ashok Shewakramani* v. *State of A.P.* [*Ashok Shewakramani* v. *State of A.P.*, (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : (2024) 243 Comp Cas 310], a judgment relied upon by Respondent 2, the averments did not satisfy the ingredients of Section 141 and this Court observed that all that was averred in that case (the first set of appeal therein) was that the accused were liable for the transactions of the company and they were fully aware of the issuance of the cheque and dishonour of the cheque. This Court held that even taking a broad and liberal view of the pleadings in the complaint, there was no compliance with the requirements of Section 141(1). In the second set of appeals therein the accused Directors were not even described as Directors of the first accused company therein. On that simple ground, proceedings were quashed. In the third set of appeals therein, insofar as the Directors were concerned, who were Accused 4 to 7, an omnibus averment was made in the following terms: (SCC p. 478, para 17)

> "*17*. … '(1) It is submitted that the complainant is the proprietor of Sri Chakra Cotton Traders, doing business in cotton, resident of bearing Door No. 3/917-1, Sri Chackra Nilayam, YMR Colony, Proddatur Town-516 360, Kadapa District, A.P.
>
> Accused 1 is the private limited company concerned and registered under the Companies Act. Accused 2 is Chairman of Accused 1. Accused 3 is the Managing Director of Accused 2 and Accused 4 to 7 are the Directors of Accused 1 Company and Accused 2 to 7 are managing the Company and busy with day-to-day affairs of the Company and all are managing the Company and also in charge of the Company and all are

VERDICTUM.IN

> jointly and severally liable for the acts of Accused 1 Company.' "

Considering these averments, the Court while quashing the proceedings held that merely because somebody is managing the affairs of company, per se they do not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company.

32. It was further held in *Ashok Shewakramani case* [*Ashok Shewakramani* v. *State of A.P.*, (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : (2024) 243 Comp Cas 310] that the averment that the accused were busy with the day-to-day affairs was also insufficient to attract the ingredients of Section 141(1). Proceeding further, the Court held that merely averring that the accused were in charge of the company was neither here nor there as such averment was insufficient to conclude that the accused were responsible to the company for the conduct of the business. This is vastly different from the averments in the present case wherein it is clearly averred that Respondent 2 was responsible for the day-to-day affairs, management and working of Accused 1 Company.

33. *Ashok Shewakramani* [*Ashok Shewakramani* v. *State of A.P.*, (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : (2024) 243 Comp Cas 310] turned on the special facts of that case. This is more so since the averments in the complaint therein extracted hereinabove lumping the role of the Directors with others and making omnibus averments, was found to be insufficient to attract the vicarious liability under Section 141(1) of the NI Act.

34. In *Ashutosh Ashok Parasrampuriya* v. *Gharrkul Industries (P) Ltd.* [*Ashutosh Ashok Parasrampuriya* v. *Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : (2025) 1 SCC (Civ) 255 : (2021) 229 Comp Cas 1] , after noticing that the averments in the complaint were to the effect that the Directors of the accused company were responsible for its business and

VERDICTUM.IN

all the appellant-accused therein were involved in the business of the company and are responsible for all the affairs of the company, this Court held that reading the complaint as a whole, the ingredients of Section 141 were satisfied.

35. What is important to note is that the repetition of the exact words of the section in the same order, like a mantra or a magic incantation is not the mandate of the law. What is mandated is that the complaint should spell out that the accused sought to be arrayed falls within the parameters of Section 141(1) of the NI Act. Only then could vicarious liability be inferred against the said accused, so as to proceed to trial. Substance will prevail over form.

36. Strong reliance is placed on *Siby Thomas* [*Siby Thomas* v. *Somany Ceramics Ltd.*, (2024) 1 SCC 348 : (2024) 1 SCC (Civ) 243 : (2024) 1 SCC (Cri) 268] by the learned counsel for Respondent 2 to contend that in the absence of the words "was in charge of", the present case against Respondent 2 cannot be proceeded. We are unable to countenance the said submission. This Court, in *Siby Thomas* [*Siby Thomas* v. *Somany Ceramics Ltd.*, (2024) 1 SCC 348 : (2024) 1 SCC (Civ) 243 : (2024) 1 SCC (Cri) 268] , on facts, found that on an overall reading of the complaint it did not disclose any clear and specific role to the appellant-accused therein. It was further held that what was averred was only that the accused being partners are responsible for the day-to-day conduct of business of the company. This is vastly different from the averments in the present case as discussed hereinabove. In this case, it is clearly averred that Respondent 2 along with Accused 3 and 4 being Directors were responsible for its day-to-day affairs, management and working of Accused 1 Company. Hence, the judgment in *Siby Thomas* [*Siby Thomas* v. *Somany Ceramics Ltd.*, (2024) 1 SCC 348 : (2024) 1 SCC (Civ) 243 : (2024) 1 SCC (Cri) 268] can be of no help to Respondent 2 as the case turned on its own facts.

37. The other aspect of the matter canvassed by the learned counsel for Respondent 2 is that not only are the basic averments as enshrined in Section 141 to be mandatorily incorporated but also the specific role be attributed to the

VERDICTUM.IN

persons who are mere Directors or employees of the company. We are unable to agree with the submission of the learned counsel.

38. Recently, this Court in *S.P. Mani & Mohan Dairy* v. *Snehalatha Elangovan* [*S.P. Mani & Mohan Dairy* v. *Snehalatha Elangovan*, (2023) 10 SCC 685 : (2024) 1 SCC (Civ) 569 : (2024) 1 SCC (Cri) 203 : (2022) 235 Comp Cas 212] , after reiterating the principle that it was not necessary to reproduce the language of Section 141 verbatim in the complaint further reiterated the holding in *K.K. Ahuja* v. *V.K. Vora* [*K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181 : (2009) 152 Comp Cas 520] . In *K.K. Ahuja* [*K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181 : (2009) 152 Comp Cas 520] , it was held that **insofar as the Director was concerned, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company was enough and no further averment was necessary though some particulars will be desirable.**

39. Thereafter, this Court in *S.P. Mani* [*S.P. Mani & Mohan Dairy* v. *SnehalathaElangovan*, (2023) 10 SCC 685 : (2024) 1 SCC (Civ) 569 : (2024) 1 SCC (Cri) 203 : (2022) 235 Comp Cas 212] , in para 58.2 of the judgment concluded as under: (SCC pp. 716-17)

> "***58.2*. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section**

VERDICTUM.IN

> **141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted.** The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm."

40. As was rightly held therein**, the administrative role of each Director would be within the special knowledge of the company or the Director of the firm and it is for them to establish that they were not in charge of the affairs of the company. In view of this, the contention of the learned counsel for Respondent 2 that the specific role attributed to the Directors should be set out in the complaint does not merit acceptance. Reliance has been placed on *National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] by the learned counsel for Respondent 2 in support of the proposition canvassed. We are unable to countenance the said submission. If the learned counsel by the said submission seeks to contend that the complainant in a Section 138 complaint is obliged to plead administrative matters which are especially within the knowledge of the company and the Directors, then he is completely wrong in the understanding of the ingredients of Section 141. As held in *K.K. Ahuja* [*K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181 : (2009) 152 Comp Cas 520] and reiterated in *S.P. Mani* [*S.P. Mani & Mohan Dairy* v. *SnehalathaElangovan*, (2023) 10 SCC 685 : (2024) 1 SCC (Civ) 569 : (2024) 1 SCC (Cri) 203 : (2022) 235 Comp Cas 212] , the complainant is supposed to know only generally as to who are in charge of the affairs of the company**.

41. ***Harmeet Singh Paintal*** **[*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3**

VERDICTUM.IN

SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] when it holds in para 22 that: (SCC p. 339)

> ***22*. … "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 of the affairs of the company."**

should be understood to only mean vis-à-vis the transaction concerning the issue of the cheque, in question, which are within the knowledge of the complainant.

42.*K.K. Ahuja* [*K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181 : (2009) 152 Comp Cas 520] where it holds that: (SCC pp. 61-62, para 27)

> **"*27*. … (*iii*) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (*e*) and (*f*) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section."**

sets out the correct legal position.

43. A harmonious reading of the judgments in *K.K. Ahuja* [*K.K. Ahuja* v. *V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181 : (2009) 152 Comp Cas

VERDICTUM.IN

> 520] , *Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] and *S.P. Mani* [*S.P. Mani & Mohan Dairy* v. *Snehalatha Elangovan*, (2023) 10 SCC 685 : (2024) 1 SCC (Civ) 569 : (2024) 1 SCC (Cri) 203 : (2022) 235 Comp Cas 212] brings out the position that **there is no obligation on the complainant to plead in the complaint as to matters within the special knowledge of the company or the Directors or firm about the specific role attributed to them in the company**."

The Apex Court considers the entire spectrum of law and holds that repetition of words in Section 141 of the Act in the same order is not the mandate of law; what the law mandates is that the complaint should spell out that the accused sought to be arrayed falls within the parameters of sub-section (1) of Section 141 of the Act. Only then vicarious liability can be inferred against the accused so as to proceed to trial. Substance prevails over form. The administrative role of each of the Directors should be within the special knowledge of the Company or the Director of the firm. It is for them – accused to establish that they were not in-charge of the affairs of the Company.

VERDICTUM.IN

9.4. Later, the Apex Court in the case of **BHARAT MITTAL v. STATE OF RAJASTHAN**[4]**,** holds as follows:

"…. …. ….

I. <u>THE PRINCIPLES OF VICARIOUS LIABILITY - WHO CAN BE MADE RESPONSIBLE FOR THE OFFENCE OF SECTION 138 COMMITTED BY A COMPANY.</u>

11. Section 141 of the NI Act fastens vicarious liability under Section 138 read with Section 141 upon 'every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business', as well as upon the company itself. A plain reading of Section 141 indicates that liability may be attributed to three distinct categories of persons:

i. the Company

ii. every person who, at the time of commission of the offence, was in charge of and responsible to the company for the conduct of its business

iii. any director, manager, secretary, or officer of the company with whose consent, connivance, or due neglect the company committed the offence.[13]

12. In *K.K. Ahuja* v. *V.K. Vora*[14]., the issue that arose for consideration was whether a director or officer could be held vicariously liable under Section 141 merely on account of his designation. **This Court answered the question in the negative, holding that vicarious liability under Section 141 attaches only to those persons who, at the time of commission of the offence, were in charge of and responsible for the conduct of the business of the company. The Court further held that while a Managing Director or Joint Managing Director may, by virtue of**

---

[4] **2025 SCC OnLine SC 2856**

VERDICTUM.IN

their position, be presumed to be in charge of the business, any other director or officer would require specific and necessary averments demonstrating their role, responsibilities, and involvement in the conduct of the company's affairs.Mere designation as a director or officer is not sufficient. In *Central Bureau of Investigation* v. *Asian Global Ltd.*[15], this Court reiterated that criminal liability cannot be imposed mechanically or on the basis of assumptions. **There must be material to indicate participation of the accused in the day-to-day management or decision-making of the company. Vicarious liability in criminal jurisprudence arises only where the statute expressly provides for such liability and where the statutory conditions are duly fulfilled. Similarly, in *National Small Industries Corporation Ltd.* v. *Harmeet Singh Paintal*[16], this Court held that, for fastening liability under Section 141, the complaint must contain clear and specific averments to the effect that the accused was in charge of and responsible for the conduct of the business of the company at the relevant time. A mere reproduction of the statutory language or bald assertions without particulars would not suffice.**

13. In the judgment relating to vicarious liability in *SMS Pharmaceuticals Ltd.* v. *Neeta Bhalla*[17], this Court while answering a reference relating to vicarious liability of directors held as follows:

> 1. This matter arises from a reference made by a two Judge Bench of this Court for determination of the following questions by a larger Bench:
>
> "(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.
>
> (b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company

VERDICTUM.IN

and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

……

19. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. **Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that 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.**

(c) The answer to question (c) has to be in affirmative. **The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they**

VERDICTUM.IN

> **hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Subsection (2) of Section 141.**
>
> **14.** It is necessary to reiterate this position of law for the reason that **where a company commits an offence under Section 138 read with Section 141 of the Negotiable Instruments Act, the persons who were in charge of and responsible for the conduct of its affairs at the relevant time may also be held vicariously liable along with the company.**"

The said judgment follows the judgment in **SMS PHARMACEUTICALS LIMITED v. NEETA BHALLA** reported in **(2005) 8 SCC 89,** which had clearly held that it is necessary to specifically aver in the complaint with regard to the role to play in the transaction.

9.5. In the light of the afore-quoted judgments of the Apex Court, what becomes imperative is the averment in the complaint. The averment in the complaint and the sworn statement is blurring insofar as the wife Smt. Kavitha Chopra is concerned. The husband - Dhirendra Chopra is shown as the Managing Director of accused No.1/Company as per the company information obtained from the

VERDICTUM.IN

website of the Ministry of Corporate Affairs appended to the petition. It is the Managing Director who would obviously be the person in-charge of the affairs of the Company. Therefore, in the absence of specific averment against the wife Smt. Kavitha Chopra, permitting further proceedings to continue against her would become an abuse of the process of law.

10. In Criminal Petition No.2797 of 2026, the cheque is issued from the joint account belonging to both the petitioners. It becomes apposite to refer to the judgment of the Apex Court in the case of **APARNA A. SHAH v. SHETH DEVELOPERS (PRIVATE) LIMITED**[5]**,** wherein it is held as follows:

"…. …. ….

> **28.** We also hold that **under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder.** The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case "except in case of Section 141 of the NI Act" be extended to those on whose behalf the cheque is issued.

---

[5] **(2013) 8 SCC 71**

VERDICTUM.IN

This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

(Emphasis supplied at each instance)

The Apex Court holds that a joint account holder can be prosecuted when he is a signatory to the cheque. Therefore, it is for the husband/Dhirendra Chopra who is shown to be the Managing Director of the Company to answer the allegations that is brought before the Court. In the considered view of the Court, the wife/ Smt. Kavitha Chopra cannot be permitted to be prosecuted.

11. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petitions Nos. 1978, 2041 and 2091 of 2026 filed by the wife/Smt. Kavitha Chopra challenging her

VERDICTUM.IN

prosecution stand **allowed**. Proceedings in C.C.Nos.13525 of 2025, 13260 of 2025 and 13527 of 2025 pending on the file of XXV Additional Chief Judicial Magistrate, Bengaluru against the wife, in all these cases, stand quashed.

(ii) Criminal Petition Nos. 2797 and 2854 of 2026 filed by the husband/Sri. Dhirendra Chopra, an accused in these cases, stand **dismissed**.

Pending applications if any also stand disposed, as a consequence.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ