

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

PRESENT:

THE HON'BLE JUSTICE UDAY KUMAR

CRR 2128 OF 2025

I.A. NO. CRAN 2 OF 2026

MASUD TARIF

-VS-

STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Mayukh Mukherjee,
Mr. Anurag Modi,
Mr. Ankita Sikdar

For the Opposite Party No. 2 : Mr. Dipanjan Dutt
Mr. Soumodip Ghosh

Hearing concluded on : 26.02.2026

Judgment on : 20.03.2026

UDAY KUMAR, J.: –

1. This is an application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 482 of the Code of Criminal Procedure, 1973), seeking the quashing of proceedings in Complaint Case No. CN/608/2018, presently pending before the Learned 14th Judicial Magistrate, Calcutta.

- 2.** The Petitioner, arrayed as Accused No. 4, challenges the legality of his prosecution under Sections 138 and 141 of the Negotiable Instruments Act, 1881, primarily on the ground that the complaint is "fatally barren" of the jurisdictional facts requisite to sustain vicarious liability.
- 3.** The genesis of this litigation lies in a commercial transaction dating back to August 2013. The Complainant/Opposite Party No. 2, M/s. Garvit Consultancy Services Pvt. Ltd., purportedly extended a "temporary monetary accommodation" of Rs. 40,00,000/- carried an interest rate of 12% per annum, to the Accused No. 1 Company, M/s. Amrit Feeds Ltd. Following a default in 2017, the Complainant initiated insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code (IBC) before the National Company Law Tribunal (NCLT), Kolkata.
- 4.** During the pendency of the NCLT proceedings, a Settlement Agreement was executed on February 20, 2018. By virtue of this novation, the debt was consolidated at Rs. 37,00,000/-, and a series of Post-Dated Cheques (PDCs) were issued in discharge of the restructured liability. One such instrument, Cheque No. 245009, dated 01.07.2018 for Rs. 6,00,000/-, was returned unpaid with the remark "Funds Insufficient." Consequent to the service of the mandatory statutory demand notice and the

failure of the Accused to liquidate the sum, the Complainant initiated the subject criminal proceedings.

- 5.** While the Petitioner, Masud Tarif, is admittedly a Director of the Accused Company, it is equally a matter of record that he was neither a signatory to the dishonoured instrument nor a participant in the negotiations culminating in the Settlement Agreement of 2018. The Petitioner's primary defense rests upon the assertion that he is a non-executive director, tasked exclusively with statutory compliance under the Companies Act, and possessed no nexus with the financial management or the debt-repayment mechanisms of the entity.
- 6.** Subsequent to the issuance of process, the Petitioner moved an application for discharge before the Learned Magistrate, asserting that the complaint lacked the "foundational averments" necessary to fasten vicarious liability upon a non-executive director under the strictures of Section 141 of the NI Act. In an Order dated 30.09.2019, the Learned Magistrate noted the Complainant's verbal admission that the complaint was indeed "silent" regarding the Petitioner's specific role in the transaction.
- 7.** However, the Learned Court below held that it was procedurally incapacitated from "recalling" its own summoning order, placing reliance on the restrictive mandates of the Hon'ble Supreme Court in *Adalat Prasad v. Rooplal Jindal and Subramaniam*

Sethuraman v. State of Maharashtra. This refusal to intervene, notwithstanding the acknowledged factual void in the pleadings, has compelled the Petitioner to approach this Court, seeking the exercise of its inherent power to prevent what is characterized as a classic case of corporate over-implication

- 8.** Mr. Mayukh Mukherjee, learned Counsel appearing for the Petitioner, has mounted a formidable, two-pronged attack on the continuation of the proceedings. He contended that the prosecution of Accused No. 4 is a "classic example of over-implication," predicated on a complaint that is fundamentally barren of the jurisdictional facts required to trigger the vicarious liability provisions of the Negotiable Instruments Act.
- 9.** Mr. Mukherjee drawn the pointed attention of this Court to Paragraph 4 of the petition of complaint. He emphasized that while the Complainant specifically identifies Accused Nos. 2 and 3 as the individuals who "requested," "negotiated," and "discussed" the financial accommodation, the Petitioner is conspicuously omitted from the entire transactional narrative. It is forcefully submitted that the Petitioner is a stranger to the liability; he was neither a signatory to the dishonoured instrument nor a party to the Settlement Agreement dated 20th February 2018. Counsel argues that when a debt is restructured via a specific novation—as in the present case—criminal liability cannot be broadcast over the entire Board of Directors but must

be strictly confined to those who participated in the execution of the new contract.

10. To fortify the argument that criminal liability cannot be a "game of chance," the Petitioner relied on the landmark Three-Judge Bench decision in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89*. Mr. Mukherjee highlights Paragraphs 19(a) and (b), which establish that it is an "essential requirement" to specifically aver that the accused was in charge of, and responsible for, the conduct of business at the material time. He emphasized the Court's clarification that there is no "deemed liability" of a director; merely holding a designation is a legal neutrality that cannot be converted into criminal culpability without a factual link.

11. Further reliance is placed on the dictum in *Susela Padmavathy Amma v. M/s Bharti Airtel Limited (2024) INSC 206*. Mr. Mukherjee underscored Paragraph 10, where the Hon'ble Supreme Court clarified that the position of a Managing Director or a Signatory is distinct from that of a Director. It was held that for a director to escape liability, they must prove lack of knowledge only if they hold positions of active management; where the complaint itself fails to aver such a role, the prosecution fails at the threshold. The Petitioner asserts that as a director tasked solely with "statutory compliance," he

possessed no nexus with the company's financial repayment mechanisms.

12. Addressing the Complainant's plea of laches, Mr. Mukherjee invoked the mandate of *Anukul Singh v. State of Uttar Pradesh (2025) INSC 1153*. Referring to Paragraph 11.5, he asserted that it is the "*solemn duty of the High Court to intervene where the continuation of criminal proceedings would amount to an abuse of process of law.*" It is submitted that the "total silence" in the complaint regarding the Petitioner's role constitutes a jurisdictional void. Such a void is not a "curable irregularity" but a fundamental defect that no amount of trial can rectify. Mr. Mukherjee concludes that forcing a non-signatory director to endure the rigors of a criminal trial, despite the Complainant's own admission of the complaint's silence, would amount to "weaponizing" the criminal machinery for civil recovery.

13. Opposing the prayer for quashing, Mr. Dipanjan Dutt, learned counsel appearing for the Complainant/Opposite Party No. 2, contends that the present petition is a belated afterthought, strategically timed to derail the trial. He emphasizes that the Petitioner has approached this Court nearly seven years after the inception of the case and four years after having submitted to the jurisdiction of the Learned Trial Court to obtain bail. It is forcefully argued that the Petitioner is effectively seeking to convert this revisional jurisdiction into a "mini-trial" by inviting

this Court to appreciate evidence and factual nuances that are yet to be tested through the crucible of cross-examination.

14. It is the Complainant's primary stance that the averments contained in Paragraph 3 of the Complaint, which describe the Directors as being responsible for "carrying on the business" of the company, are sufficient to satisfy the statutory requirements at the summoning stage. To fortify this position, Mr. Dutt relies on the recent dictum of the Hon'ble Supreme Court in *HDFC Bank Ltd. v. State of Maharashtra (2025) 9 SCC 653*. Drawing attention to Paragraph 27 of the said judgment, he argues that the law specifically warns against a "mechanical parroting" of the statute. The Apex Court observed:

"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."

13. To address the issue of the Petitioner's "deep slumber," Mr. Dutt cites the principle laid down in *Vandana Agarwal v. State of West Bengal (2015) SCC OnLine Cal 3372*. He submits that an accused who has actively participated in the trial for years and suddenly "wakes up" to challenge the summoning order should not be granted the benefit of discretionary relief under the Court's inherent powers. It is contended that the Petitioner's long-standing acquiescence in the trial process serves as a constructive waiver of any technical objections regarding the

specificity of averments, as the focus must now shift to the merits of the evidence.

14. Finally, reliance is placed upon the settled principle in *Amar Chand Agarwalla v. Shanti Bose (1973) 4 SCC 10*. Referring to Paragraph 17, Mr. Dutt argues that once a trial has reached an advanced stage, the High Court is not justified in embarking upon an independent appreciation of evidence to quash the proceedings. It is the Complainant's submission that the question of whether the Petitioner was "in charge of and responsible for" the affairs of the company is a triable issue of fact. Such a determination, it is argued, must be adjudicated by the Learned Magistrate upon a full consideration of the evidence led during the trial, rather than being stifled at this revisional stage.

15. The resolution of this controversy requires an answer to three pivotal questions:

- i. Whether the "silence" in the complaint regarding the specific role of a non-signatory director renders the summoning order legally unsustainable?
- ii. Whether a fundamental jurisdictional defect in a complaint overrides procedural delay or laches?
- iii. Whether the continuation of a trial following a "Novation of Debt" (to which the Petitioner was not a party) constitutes an abuse of the process of law?

16. Upon a comprehensive review of the rival contentions and a meticulous scrutiny of the records, the quintessential question emerges: can a non-signatory director be compelled to endure the rigors of a criminal trial when the complaint remains admittedly silent as to his specific role in the transaction? The resolution of this issue necessitates an examination of the "Transactional Link" and the jurisdictional requirements of vicarious liability under the Negotiable Instruments Act.

17. In addressing the Complainant's contention that a specific "form" of words is not required, this court acknowledges the law, as recently ruled in *HDFC Bank Ltd. v. State of Maharashtra* (2025) 9 SCC 653. At Paragraph 27, the Apex Court observed:

"Merely reading para 19(a) [of SMS Pharmaceuticals] to contend that what is required is parroting of the words of the section for a complaint to be sustained is completely unjustified. What is required is that the overall reading of the complaint must show that the person was in charge of and responsible for the conduct of the business."

18. While the law discourages the "mechanical parroting" of statutory language, it absolutely mandates the presence of a factual nexus. In Paragraph 4 of the instant complaint—the operative portion describing the grant of the loan—the Complainant specifically attributes the request, negotiations, and discussions to Accused Nos. 2 and 3 alone. The Petitioner is

conspicuously omitted. This is not a mere failure of elective language; it is a fundamental failure of jurisdictional fact.

19. To arrive at a legally sound conclusion, this Court must examine the "Initial Transaction" versus the "Novation of Debt." The records reveal that the liability in question stems from a Settlement Agreement dated 20.02.2018. This agreement functioned as a "novation," effectively replacing the original 2013 contract with a restructured obligation. It is an undisputed fact that the negotiations for this settlement and the subsequent issuance of Post-Dated Cheques were handled exclusively by Accused Nos. 2 and 3. The Petitioner was a stranger to this agreement. In the eyes of the law, where a debt is restructured, the circle of vicarious liability narrows strictly to those who were "in charge of" that specific settlement process.

20. Turning to the averments, this Court finds a significant factual vacuum. While Paragraph 3 of the complaint makes a blanket statement that all directors were "carrying on business," it fails to provide the specific disclosure of facts required to link the individual director to the default. As observed in Paragraph 27 of *HDFC Bank Ltd. (Supra)*, the law does not require exact words, but it does require a disclosure of facts *"Merely reading para 19(a) to contend that what is required is parroting of the words of the section... is completely unjustified."* The "total silence" regarding the Petitioner's overt acts breaks the chain of liability.

21. The determination of vicarious liability in the context of corporate entities is governed by Section 141 of the Negotiable Instruments Act, 1881, which stipulates:

"If the person committing an offence under section 138 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..."

22. The interpretation of this provision was definitively settled by the Three-Judge Bench of the Hon'ble Supreme Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89*. The Court, at Paragraph 19(a), mandated the following requirement for a valid complaint:

"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, the requirements of Section 141 cannot be said to be satisfied."

23. Regarding the distinction between different categories of directors, this Court finds the observations in *Susela Padmavathy Amma v. M/s Bharti Airtel Limited (2024) INSC 206* at Paragraph 10 to be particularly germane:

"The position of a Managing Director or a Joint Managing Director in a company is distinct... However, in the case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for the conduct of its business... To fasten vicarious liability, at the material time that person shall have been at the helm of affairs."

24. A pivotal factor is the proceeding before the Learned Magistrate on 30.09.2019. The Learned Magistrate correctly noted the Complainant's admission regarding the silence of the complaint but felt "procedurally hamstrung" by the rulings in *Adalat Prasad* and *Subramaniam Sethuraman*, which prohibit a Magistrate from recalling a summoning order. However, while the Magistrate's hands were tied, this Court's inherent jurisdiction is not. If a complaint, on its face, discloses no offence against a specific individual, the continuation of that proceeding becomes an exercise in futility and a manifest violation of the right to personal liberty under Article 21 of the Constitution of India.
25. The Complainant's plea regarding the Petitioner's "deep slumber" (from 2018 to 2025) has been examined in light of the dictum in *Vandana Agarwal (Supra)*. While delay is a relevant factor in discretionary relief, it cannot sanitize a proceeding that is fundamentally void of jurisdictional competence.
26. However, this Court distinguishes the present case by noting that "silence" is not a failure to parrot, but a failure to provide

any factual link whatsoever. On the issue of maintainability despite delay, the recent guidance in *Anukul Singh v. State of Uttar Pradesh (2025) INSC 1153* at Paragraph 11.5 is conclusive:

"It is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law. The inherent power is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist."

27. The High Court's duty to prevent such abuse is not bound by a stopwatch. If a non-signatory director, who had no role in the settlement or the cheque issuance, is forced to stand trial merely because of a delayed filing, it would amount to "weaponizing" criminal law for civil recovery. On a holistic appreciation of the facts, it appears the Petitioner was impleaded solely by virtue of his designation. The Complainant's own admission, the Petitioner's non-signatory status, and his absence from the NCLT settlement led to the irresistible conclusion that no *prima facie* case is established against Accused No. 4. Consequently, the procedural delay, while regrettable, cannot outweigh the substantive injustice of an untenable prosecution.

28. Therefore, on the basis of the above discussions, this court concludes that:

- a. There is no "deemed liability" for a Director merely by virtue of their designation. The presence of specific factual averments linking a director to the day-to-day management of a company is not a mere procedural formality but a jurisdictional prerequisite under Section 141 of the Negotiable Instruments Act. "Silence" in a complaint regarding an individual director's specific role constitutes a substantive failure to establish a *prima facie* case.
- b. Where an underlying debt is restructured through a Settlement Agreement, the "material time" for assessing liability shifts to the execution and implementation of said settlement. In settlement-based transactions, vicarious liability must be examined strictly against those who negotiated and executed the restructured debt. A director who is a documented stranger to such an agreement cannot be held vicariously liable for the dishonor of cheques issued pursuant thereto.
- c. In the exercise of inherent powers under Section 528 of the BNSS, the High Court must prioritize the prevention of an illegal prosecution over procedural technicalities such as "laches." Procedural delay is intended as a shield to prevent the abuse of the legal system, not a

sword to perpetuate an illegal prosecution where the complaint is "facially deficient." An inherent illegality in a summoning order cannot be cured by the mere passage of time.

- d. The issuance of process is a serious judicial act with grave consequences for personal liberty. A summoning order that fails to distinguish between "Managing Directors/Signatories" and "Non-Executive Directors"—particularly in the absolute absence of specific averments regarding the latter's role—reflects a failure of judicial application of mind. To allow such a trial to proceed would be to "weaponize" criminal machinery for civil recovery, amounting to a manifest abuse of the process of law.

29. From the synthesized reading of the statutes and precedents, the following principles emerge:

- I. Specific factual averments linking a director to day-to-day management are a jurisdictional prerequisite.
- II. In cases of restructured debt (novation), liability is confined to those who negotiated and executed the settlement.

III. Procedural delay (laches) cannot validate a summoning order that is *void ab initio* for lack of factual pleadings.

30. In light of the findings recorded hereinabove and the conclusion that the continuation of the proceedings against the Petitioner would be a manifest abuse of the process of law, this Court issues the following consequential orders and directions to ensure the effective implementation of this judgment and the orderly progression of the trial against the remaining accused:

- a. The proceedings in Complaint Case No. CN/608/2018 (TR Case No. 2575/2018) pending before the Court of the Learned 14th Judicial Magistrate, Calcutta, including the order taking cognizance dated 29.08.2018 and the summoning order, are hereby quashed and set aside specifically and exclusively in respect of the Petitioner, Masud Tarif (Accused No. 4).
- b. The Petitioner is hereby discharged from his bail bonds.
- c. The sureties, if any, furnished by the Petitioner before the learned Trial Court stand discharged.
- d. Any documents or securities deposited by the Petitioner as a condition for bail shall be returned

to him by the learned Trial Court upon proper identification and application, subject to the rules of the Court.

- e. It is expressly clarified that this judgment shall not be construed as an interference with the trial against the Accused Company (Accused No. 1) or the other Directors (Accused Nos. 2 and 3).
- f. The learned Trial Court is directed to proceed with the trial against the remaining accused Company (Accused No. 1) and Accused Nos. 2 and 3 with utmost expedition, keeping in view the mandate of Section 143(3) of the Negotiable Instruments Act, which requires the trial to be concluded within six months from the date of filing of the complaint.
- g. The records indicate that the matter was fixed for hearing on an application under Section 143A of the NI Act (Interim Compensation).
- h. The learned Trial Court is directed to dispose of the Section 143A application against the remaining accused on its own merits, uninfluenced by the quashing of proceedings against the present Petitioner by this judgment.

- i. The observations made in this judgment regarding the lack of specific averments are strictly confined to the role of Accused No. 4 (the Petitioner). The learned Trial Court shall not be influenced by any observation made herein while adjudicating the guilt or innocence of Accused Nos. 2 and 3, who are alleged to be the active negotiators and signatories of the settlement agreement.
- j. The Department is directed to send a copy of this judgment and the case records (if called for) to the learned 14th Judicial Magistrate, Calcutta, within a period of seven (7) working days from today.
- k. The learned Trial Court shall record the factum of the quashing of proceedings against Accused No. 4 in the order sheet on the very next date of hearing fixed in the matter.
- l. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

31. With the aforesaid directions, C.R.R. No. 2128 of 2025 is allowed. The Petitioner stands exonerated from the present criminal proceedings.

32. I.A No. CRAN 2 of 2026 is also disposed of accordingly.
33. There shall be no order as to the cost.
34. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
35. Case diary, if any, be returned forthwith.
36. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)