



NEUTRAL CITATION NO. 2025:MPHC-IND:19689

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR
ON THE 28th OF JULY, 2025

MISC. CRIMINAL CASE No. 41874 OF 2023

SUBHOJIT

Versus

SKM STEELS LTD. & OTHERS

WITH

MISC. CRIMINAL CASE No. 41879 OF 2023

SUBHOJIT

Versus

SKM STEELS LTD.& OTHERS

Appearance:

Shri Sandeep Kochatta advocate for the petitioner.

Shri Vijay Kumar Assudani advocate for the respondent No.1.

ORDER

M.Cr.C. No. 41874 of 2023 is filed for quashing criminal complaint and subsequent criminal proceedings at SCNIA No. 27258/2015 pending before Judicial Magistrate First Class Indore. M.Cr.C. No. 41879 of 2023 is filed for quashing criminal complaint and subsequent criminal proceedings at SCNIA No. 1165/2016 pending before Judicial Magistrate First Class Indore. Both the matters involve identical issue, therefore, they are being considered together.

2 The exposition of facts, in brief, giving rise to present petitions is as



under:-

a. SKM Steels Limited, a public limited company, through its business manager Bhuwanesh Mehta filed a written complaint for offence punishable under Section 138 read with Sections 141 and 142 of Negotiable Instruments Act against (I) Omaxe Infrastructure and Construction Ltd., (ii) Subhoji Dutta (petitioner), (iii) Abhishek Roy, (iv) Pinaki Roy, (v) Shish Pal Singh and (vi) Col.P.S. Mangat.

b. It is alleged in the complaint that the accused company placed purchase orders for Thermo Mechanically Treated (TMT) steel to the complainant company in December, 2013. The complainant company supplied TMT steel on credit pursuant to purchase order. The accused No.1 company handed over post-dated cheques to the complainant. The cheques in question were presented for payment with Bank of India, but the cheques were returned with objection 'payment stopped by drawer'. After correspondence between the complainant and the accused, new cheques No. 232328 dated 25.06.2015 and 232329 dated 25.07.2015 (in MCRC No. 41879/2023) and 232327 dated 25.05.2015 and 232330 dated 25.4.2015 (in MCRC No. 41874/2023) were issued. When the complainant presented the cheques with the bank, the cheques were dishonoured for the reason of insufficient funds. The accused No. 4 Pinaki Roy was the Managing Director of accused No. 1, Omaxe Infrastructure and Construction Ltd. and signatory of cheques in question. Accused no. 2, 3 and 5 were directors of the complainant company, who were incharge and responsible for day to day financial affairs of the company and had personally assured Mr. Amitabh Mandloi of the complainant company that said chequess would be



honoured on presentation. Despite service of statutory notices dated 15.10.2015 (in MCRC No. 41879/2023) and 25.11.2014 (in MCRC No. 41874/2023), the accused failed to make payment of due amount, therefore, the complaint for offence punishable under Sections 138 read with 141 and 142 of the Act was filed before the learned Judicial Magistrate First Class, Indore.

c. The learned JMFC *vide* impugned orders dated 14.09.2015 in SCNIA No. 27258/15) (MCRC No. 41874/2023) and dated 18.01.2016 in SCNIA No. 1165/2016) (MCRC No. 41879/2023), took cognizance against all the accused for offence punishable u/S 138 of the Act and directed issuance of process against them. The identical orders passed in both the matters read as under:-

"पंजीयन पर तर्क श्रवण किये गये।

परिवादी की ओर से प्रस्तुत परिवाद पत्र एवं उसके साथ संलग्न दस्तावेजों का अवलोकन किया गया।

आरोपी क्रमांक 1 कंपनी है एवं आरोपी क्रमांक 2 लगायत 5 उक्त कंपनी के डायरेक्टर एवं आरोपी क्रमांक 6 कंपनी का प्रोजेक्ट, मैनेजर है जिसके द्वारा परिवादी कंपनी को पत्र दिनांक 28.01.14 प्रोजेक्ट डायरेक्टर की हैसियत से लिखा गया है तथा यह आश्वासन दिया गया है कि आरोपी कंपनी राशि का भुगतान करेगी और यदि किसी प्रकार का विलंब कारित होता है तो 18 प्रतिशत की दर से ब्याज देय होगा। अतः अभिलेख में इस संबंध में पर्याप्त साक्ष्य मौजूद है कि आरोपीगण ने प्रदाय किये गये चेक का अनादरण किया है तथा अभियोगी ने अधिनियम में उल्लेखित अवधि के अंदर संपूर्ण कार्यवाही की है। प्रथम दृष्टया उक्त आधार पर आरोपीगण के विरुद्ध धारा 138 परक्राम्य लिखित अधिनियम के अधीन कार्यवाही हेतु पर्याप्त आधार विद्यमान प्रतीत होते हैं अतः आरोपीगण के विरुद्ध धारा 138 परक्राम्य लिखित अधिनियम के अपराध के तहत संज्ञान लिया जाता है।"

3 Feeling aggrieved by the aforesaid orders dated 14.09.2015 and 18.01.2016, these petitions MCRC No. 41874/2023 and MCRC No. 41879/2023 under Section 482 of Code of Criminal Procedure are filed.

4 Learned counsel for the petitioner, referring to the judgments passed in cases ***SMS Pharmaceuticals Vs. Neeta Bhalla*** reported in ***AIR 2005 SC***



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3512; Sabitha Ramamurthy Vs. RBS Channabasavardhya reported in **(2006) 10 SCC 581**; **Saroj Kumar Poddar Vs. State (NCT of Delhi)** reported in **(2007) 3 SCC 693**; **National Small Industries Corporation Ltd Vs. Harmeet Singh Paintal** reported in **(2010) 3 SCC 330**; **Anita Malhotra Vs. Apparel Export Promotioin Council** reported in **(2012) 1 SCC 520**; **Gunmala Sales Pvt Ltd. Vs. Anul Mehta and others** reported in **(2015) 1 SCC 103**; **Pooja Ravinder Devidasani Vs. State of Maharashtra** reported in **AIR 2015 SC 675**; **Sunita Palita Vs. Panchami Stone Quarry** reported in **AIR Online 2022 SC 1198**; **M.A. Alagappan Vs. PVT Ltd** reported in **2024 SCC Online Delhi 698**; **Bharat Dhirajilal Mehta Vs. OXYZO Financial Services Pvt Ltd.** reported in **2024 SCC Online Del 3589**; **Sandip Vinodkumar Patel and others Vs. STCI Finance Ltd** reported in **2024 SCC Online Del 5586**; **Seema Asthana Vs. Jaideep Arora** reported in **2024 SCC Online Del 6844**, **K.S. Mehta Vs. Morgan Securities and Credits Pvt Ltd.** reported in **2025 SCC Online SC 492** and **Kamalkishor Shrigopal Taparua Vs. India Ener-Gen Private Limited** reported in **2025 SCC Online SC 321** contended that the complainant has failed to make specific allegations in the complaint that the petitioner was in-charge of and was responsible to the accused company for conduct of its business. Further, no averments have been made in the complaint that the alleged offence was committed with consent or connivance or any neglect on the part of applicant. The general and omnibus allegations with regard to the assurance to honour the cheque, allegedly given by the petitioner, would not make the petitioner responsible to the accused company for conduct of business. Therefore, the petitioner cannot be prosecuted with the help of Section 141 of the Act, 1881.

5 *Per contra* learned counsel for the respondents, referred the judgment



of the Supreme court in case of *S.V. Muzumdar and others Vs. Gujarat State Fertilizer Co. Ltd.* reported in **(2005) 4 SCC 173** to contend that burden to prove that offence was not committed with consent or connivance or neglect of the petitioner is on the petitioner/accused. The question has to be adjudicated at the trial. Whether a person was incharge or responsible to the company for conduct of its business will be adjudicated on the basis of material appearing in evidence. Therefore, the proceedings cannot be quashed at the initial stage.

6 Learned counsel for the respondent relying on the judgment of Supreme Court in the cases of *N.K. Wahi Vs. Shekhar Singh and another* reported in **(2007) 9 SCC 481** contended that the provisions contained in Section 141 of the Act makes all the functionaries and the company liable for the offence punishable u/S 138 of the Act. Section 141(2) of the Act provides for vicarious liability of other officers also. The petitioner had given assurance for honor of cheques issued towards supply of TMT Steel bars, therefore, the petitioner is liable u/S 141(2) of the Act for the alleged offence.

7 Heard learned counsel for the parties. Perused the record.

8 In case of *State of Haryana v. BhajanLal* reported in **1992 Supp (1) SCC 335**, the Supreme Court laid down the principles for the exercise of the jurisdiction by the High Court under Section 482 Cr.P.C to quash the proceedings, as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive



list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) CrPC.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9 The Supreme Court in the case of *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330, laid down the steps to be followed for exercise of jurisdiction under Section 482 of Cr.P.C, for quashing of proceedings as under:-

"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be



rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? 30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in



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the conviction of the accused. In light of aforementioned propositions of law, the fact scenario revealed by the material on record is examined.

10 In the case of *Lalankumar Singh v. State of Maharashtra* reported in **2022 SCC OnLine SC 1383**, it was held that:

28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*, which reads thus:

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. *A fortiori*, the order would be bad in law if the reason given turns out to be ex facie incorrect.

11 Section 141 of the Act, 1881 postulates constructive liability of the Directors of the Company and other persons responsible for the conduct of its business. It provides as under:

141. Offences by companies —

(1) 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:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

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

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

12 Thus, every person, who was in charge of and was responsible to the company for the conduct of the business of the company, shall be liable to be proceeded against. So far as, sub-section (2) of Section 141 of the Act, 1881 is concerned, specific averments are required that the offence was committed with the consent of or in connivance with, is attributable to the Director, Manager, Secretary or other officer of the company.

13 Section 149 of the Companies Act, 2013 provides for Board of Director. It further provides for the duties and responsibilities of ***an independent Director*** as under:-

(6) An independent director in relation to a company, means a director other than managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;



(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed,] with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);]

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; 3 [Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.]

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the



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company; or

(f) who possesses such other qualifications as may be prescribed.

(7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Explanation.—For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

[Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.]

(10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—

(i) ***an independent director;***

(ii) a non-executive director not being promoter or key managerial personnel,

shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.



independent Director and his roles and functions.

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;



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- (11) report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within their authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

15 The roles, functions and the duties of an independent director show that an independent Director does not indulge in day to day functioning of a company. Therefore, an independent Director is made liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, **attributable through Board processes and** with his consent or connivance or where he had not acted diligently.

16 Learned counsel for the petitioner referring to copy of Form DIR-12 pursuant to Section 7(i)(c), 168, 170(2) of Companies Act, 2013 and Rule 17 of Companies (Incorporation) Rules, 2014 and Sections 8, 15 and 18 of Company (Appointment and Qualification of Directors) Rules, 2014 (Annexure A-5) submitted that the petitioner Subhojit Dutta has resigned from M/s Reom Infrastructure and Construction Ltd w.e.f. 10.12.2015 as Additional Director. Learned counsel further referred to copy of Form No. 32 pursuant to Section 303(2), 264(2), 266(1)(a) and 266 (1)(b)(iii) of Companies Act, 1956 (Annexure P-4) and submitted that Shubhojit Dutta was inducted in Omaxe Infrastructure and Construction Ltd. as Additional Director (**independent**) w.e.f. 28.03.2013. The above information is verifiable from the official website of the Ministry of Corporate Affairs. Thus, at the most, it can be inferred that petitioner Subhojit Dutta was associated with Omaxe Infrastructure and Construction Ltd. as an independent Additional Director.



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17 The respondent did not submit any documents to dispute the above information. In the case of *Anita Malhotra v. Apparel Export Promotion Council and Another*, reported in *(2012) 1 SCC 520*, the Apex court has held as under:-

21. Inasmuch as the certified copy of the annual return dated 30-9-1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Evidence Act, 1872, we hold that the appellant had validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.

22. This Court has repeatedly held that in 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 conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. (Vide *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* (2010) 3 SCC 330). In the case on hand, particularly, in Para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed.

23. In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as the certified copy of the annual return dated 30-9-1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings. Consequently, Criminal Complaint No. 993/1 of 2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A-3) is concerned, is quashed and the appeal is allowed.

18 In the case of *Sabitha Ramamurthy and another v. R.B.S. Channabasavaradhya*, reported in *(2006) 10 SCC 581*, it has been held that:-

7. A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that 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. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. Not only the averments made in para 7 of the complaint petitions do not meet the said statutory requirements, the sworn statement of the witness made by the son of the respondent herein, does not contain any statement that the appellants were in charge of the business of the Company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance with the statutory requirements. In terms of Section 200 of the Code of Criminal Procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise mala fide, the court may direct registration of case against the complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view.

8. This Court in *Monaben Ketanbhai Shah v. State of Gujarat* [(2004) 7 SCC 15 : 2004 SCC (Cri) 1857] held as under: (SCC pp. 18-19, para 6)

“6. From the above, it is evident that in the complaint there are no averments against the appellants except stating in the title that they are partners of the firm. Learned counsel for the respondent complainants contended that a copy of the partnership deed was also filed which would show that the appellants were active in the business. No such document was filed with the complaint or made part thereof. The filing of the partnership deed later is of no consequence for determining the point in issue. Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint.”



19 In the matter of *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and another* reported in (2010) 3 SCC 330, the Supreme Court observed as under:-

12. It is very clear from the above provision that what is required is that the persons who are sought to be made *vicariously liable* for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. 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. It follows from the fact 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 for a criminal offence under the provisions. The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.

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.

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.

15. In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of the Act, there must be specific averments against the Directors, showing as to how and in what manner the Directors were responsible for the conduct of the business of the company.

39. From the above discussion, the following principles emerge:

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

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



conduct of the business of the company.

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

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

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

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

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

20 In case of *Pooja Ravinder Devidasani Vs State of Maharashtra and another* reported in *AIR 2015 SC 675*, it has been held :-

27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the complaints filed by Respondent 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under Section 141 of the NI Act a specific role must have been played by a Director of the company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day-to-day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by Respondent 2 to the default Company during the period from 13-4-2008 to 14-10-2008, against which the cheques were issued by the Company which stood dishonoured. Much before that on 17-12-2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under



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Section 138 read with Section 141 of the NI Act is a pure abuse of process of law and it has to be interdicted at the threshold.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Sections 138/141 of the NI Act, making a person vicariously liable has to ensure strict compliance with the statutory requirements. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of the court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.

21 The Supreme court in the matter of *S.M.S. Pharmaceuticals Ltd Vs. Neeta Bhalla*, reported in *AIR 2005 SC 3512 (Three Judges Bench)* has held as under:-

12. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the section are “every person”. These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words “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, etc.” 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 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. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of “every person” the section would have said “every director, manager or secretary in a company is liable”..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore,



only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.

13. A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any director, manager, secretary or other officer of a company in the commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for directors, managers, secretaries and other officers of a company to cover them in cases of their proved involvement.

14. The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. 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.

19. 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.

20. 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 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 sub-section (2) of Section 141.

22 In the case of *K.K. Ahuja v. V.K. Vora & Another* reported in **2009 (10) SCC 48**, it was held that mere fact that at some point of time an officer of a company had played some role in the financial affairs of the company, that will not be sufficient to attract the constructive liability under Section 141 of the NI Act. The Supreme Court summarised the legal position as follows:

27. (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(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.

(iv) Other officers of a company cannot be made liable under sub-section (1) of



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Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

23 It was further observed that if a mere reproduction of the wording of Section 141(1) of the Act in the complaint was sufficient to make a person liable to face prosecution, virtually, every officer/employee of a company without exception could be impleaded as accused by merely making an averment that at the time, when the offence was committed, they were in charge of and were responsible to the company for the conduct of business of the company.

24 In the case of *Harshendra Kumar D. Vs. Rebilata Koley* reported in (2011) 3 SCC 351, it was held that:

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents, which are beyond suspicion or doubt, placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company.

27. As noticed above, the appellant resigned from the post of Director on 2-3-2004.



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The dishonoured cheques were issued by the Company on 30-4-2004 i.e. much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.

25 The Supreme court in case of *Sunita Palita Vs. Panchami Stone Quarry* reported in **2022 (10) SCC 152** relying on the judgments of *National Small Industries Corporation Limited* and *Puja Ravinder Devidasani* (*supra*) held as under:-

45. Even though the High Court deprecated the adoption of a hyper technical approach in construing pleadings, to quash criminal proceedings, the High Court adopted a hyper technical approach in rejecting the application under Section 482 of the Cr.P.C., on a cursory reading of the formalistic pleadings in the complaint, endorsing the contents of Section 141 of the NI Act, without any particulars. What the High Court overlooked was, the contention of these Appellants that they were non-Executive Independent Directors of the Accused Company, based on unimpeachable materials on record. The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the Accused Company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act.

46. As held by this Court in [National Small Industries Corporation Ltd. v. Harmeet Singh Paintal](#) quoted with approval in the subsequent decision of this Court in [Pooja Ravinder Devidasani v. State of Maharashtra and Anr.](#) (*supra*) the impleadment of all Directors of an Accused Company 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, does not fulfil the requirements of Section 141 of the NI Act.

47. In any event there could be no justification for not dispensing with the personal appearance of the Appellants, when the Company had entered appearance through an authorized officer. As held by this Court in [Pepsi Foods Ltd. v. Special Judicial Magistrate and Ors.](#) summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind.

48. In our considered view, the High Court erred in law in not exercising its jurisdiction under Section 482 of the Cr.P.C in the facts and circumstances of this case to grant relief to the Appellants.



26 In *Kamalkishor Shrigopal Taparia Vs. India Ener-Gen Private Limited and another* reported in **2025 SC Online SC 321**, it was contended that appellant was a non-executive director and had no involvement in the financial affairs of the company. The complaint did not provide any specific averments detailing his role in the dishonoured cheques. The Supreme court considering the law laid down in cases of *National Small Industries Corporation Limited*, *N.K. Wahi*, *S.M.S. Pharmaceuticals Ltd* and *Puja Ravinder Devidasani* (supra) held as under:-

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

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

20. In view of the above observations, the Appellant cannot be held vicariously liable under section 141 of the NI Act. The complaints do not meet the mandatory legal requirements to implicate him.

(Also See: *K.S. Mehta Vs. Morgan Securities and Creditors Pvt Ltd.* reported in **2025 SCC Online SC 492**)

27 The material on record shows that the petitioner was associated with Omaxe Infrastructure and Construction Ltd. as an independent additional Director. He was not involved in day-to-day functioning of the company or directly concerned with the financial affairs of the accused company. There is no averment to the effect that with the cheques were issued with knowledge of the petitioner *attributable through Board processes and* with his consent or connivance. He was not signatory of the cheques in question, therefore, composite liability of the petitioner under section 141 of the Negotiable Instrument Act, 1881 cannot be inferred in absence of specific averments in



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the complaint as to the role and responsibility of the petitioner about the conduct of the business of the accused company. In such a scenario, bald allegation of the assurance to honour the cheque, aimed at implicating the petitioner, would not make the petitioner liable for the alleged offence.

28 In view of above discussion, this court is of considered opinion that learned Judicial Magistrate First class, Indore has committed manifest error in taking cognizance against the petitioner Subhojit for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. The summoning orders and the subsequent proceedings in SCNIA no. 27258/2015 and SCNIA no. 1165/2016 are an abuse of the process of court. Consequently, the MCRC no. 41874 / 2023 and MCRC no. 41879 / 2023 are allowed. It is directed that the criminal complaint and consequent proceedings in SCNIA no. 27258/2015 and SCNIA no. 1165/2016 stand quashed, so far as they relate to the petitioner Subhojit.

Let a copy of this order be sent to the trial Court for information and compliance.

(SANJEEV S KALGAONKAR)

JUDGE

BDJ