IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 1045 of 2022

Dipanjan Bhattacharjee
Vs.
M/S Shantilal Jain & Sons HUF

For the Petitioner	:	Mr. Sabyasachi Banerjee Mr. Nigam Ashish Chakraborty Ms. Ankita Paul
For the opposite party	:	Mr. Falguni Bandyopadhyay Ms. Sreetama Neogi Ms. Riya Ballav Mr. Achin Jana
Heard on	:	05.12.2024
Judgment on	:	03.04.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein has assailed the order of taking cognizance dated 01.07.2021 by filing the present Application and also prayed for quashment of entire proceeding in connection with Complaint Case no. CN 673 of 2021, under section 138/141 of the Negotiable Instrument Act, 1881 (in short N.I. Act), presently pending before learned 14th Metropolitan Magistrate Calcutta.

2. The allegations levelled against the present petitioner is that sometimes in July, 2018, the accused no.1, namely Prakriti Eminent Heights, which is a Limited Liability Partnership (In short LLP), through accused no.2, (who is not the petitioner herein) approached the HUF complainant Smt. for a short term accommodation loan amounting to Rs. 26 lakhs to meet the urgent business requirement and accordingly said loan was given by the complainant through RTGS on 2nd August, 2018 to the accused persons. It was agreed to be compensated by way of paying interest at the rate of 14% per annum payable quarterly.

3. Complainants further case is that the accused persons paid interest for two quarters and thereafter the accused persons towards full and final relinquishment, issued a cheque being no. 982918 dated 01.01.2021 amounting to Rs. 26 lakhs drawn on Axix Bank Ltd., to the complainant concerned but the said cheque on presentation was dishonoured on the ground of “fund insufficient”. It has also been stated that the said cheque bears the signature of accused no.2 namely one Manish Kakrania, being the partner and the then authorised signatory. Thereafter, a notice under section 138(b) of the N.I. Act was issued by the complainant company to the accused persons on 22.04.2021, demanding the alleged enforceable debt and after waiting the stipulated period of the 15 days, when the cheque amount was not paid, the complainant initiated the abovementioned complaint case under section 138 of the N.I. Act.

4. Being aggrieved by the said impugned proceeding Mr. Banerjee learned senior Counsel on behalf of the petitioner argued that the petitioner used to be one of the partners of the said LLP but was never the authorized

signatory of the accused LLP at that relevant point of time. It is the accused no. 2 who was the authorized signatory. Petitioner's specific case is that accused no.2 (who is not the petitioner herein), who put signature on the cheque is solely responsible for the fiscal and the financial decisions of the accused LLP, which would be evident from the limited liability partnership deed.

5. Mr. Banerjee further contended that nowhere in the complaint any specific role of the present petitioner, being accused no. 3 of the said complaint case, has been ascribed. He strenuously argued that alleged short term accommodation loan taken from the complainant company, as alleged in the complaint, was also on the basis of the sole decision of the said accused no.2, being the person responsible for the day to day affairs of the company. In fact it is only when the demand notice under section 138(b) of the N.I. Act was served upon the petitioner, he came to know about the alleged issue. Complainant has also not indicated anything in complaint about the involvement of the present petitioner, in availing the said loan from the complainant concerned and as such the present petitioner cannot be vicariously liable for the alleged offence.

6. Relying upon the judgment of ***SMS Pharmaceuticals Vs. Neeta Bhalla and another*** reported in **(2007) 4 SCC 70,** Mr. Banerjee argued that merely a person being the director or partner of the company does not make himself liable for the offence and in order to implicate him, specific role and allegation should be ascribed and should be specifically stated in the petition of complaint for arraigning the person responsible for the alleged offence, which is not the case in the instant proceeding in respect of

the present petitioner. In this context he also relied upon the judgement of the Apex Court in ***K.K. Ahuja Vs. V. K. Vora*** reported in **(2009) 10 SCC 48** and ***Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.*** reported in **(2012) 5 SCC 661.**

7. Mr. Banerjee learned Counsel for the petitioner further argued that the complaint also lacks necessary averment under section 141 of the N.I. Act and on bare perusal of the complaint it is clear that no where it has been stated that the petitioner was responsible for the day to day business, which is a must to get a relief on the ground of vicarious liability.

8. Accordingly it has been submitted on behalf of the petitioner that the opposite party/complainant has implicated the present petitioner in the said proceeding with an ulterior motive to harass, humiliate and pressurize the petitioner knowing the fact that the petitioner was unaware about the loan transaction and the cheque in question was issued at the behest of Manish Kakrania/accused no.2. Accordingly the petitioner has prayed for quashing the entire proceeding qua the petitioner herein Dipanjan Bhattacharya.

9. Mr. Achin Jana learned Counsel appearing on behalf of the opposite party opposed the prayer made on behalf of the petitioner and contended that in the present case, present petitioner is one of the designated partners of the LLP since its inception. Therefore, by virtue of his post as designated partner of the LLP, he is vicariously liable under section 141 of the N.I. Act for the commission of the offence, since a designated partner in an LLP is deemed to be in charge of and responsible to the LLP for the conduct of it's business. Moreover, the petitioner has played active role in

the management and administration of the LLP including the time when the loan was taken and the offence was committed by the LLP.

10. Mr. Jana in order to contradict the argument of Mr. Banerjee submitted that the petitioner had played active role in the management and administration of LLP and therefore, there was no requirement of making any averment in the complainant as to the specific role of the accused played in the LLP. He further contended that, in the complaint it has been specifically stated that accused no. 2 to 5 which includes the present petitioner are the partners/key persons responsible for the management of accused no.1 and they are jointly and severally liable for the offence committed under section 138 of the N.I. Act. Infact in a case under section 141 of N.I. Act against an LLP, in order to implicate its designated partner, 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 LLP.

11. Referring the guiding principle laid down in ***S.P. Moni and Mohan Dairy Vs. Snehalatha Elangovan*** reported in **(2023) 10 SCC 685**, Mr. Jana argued that in order to fasten vicarious liability on a person, it is not necessary to reproduce the language of section 141 verbatim in the complaint, since the complaint is required to be read as whole. If the substance of the allegations made in the complaint fulfil the requirements of section 141, the complaint has to proceed in accordance with law and it cannot be quashed construing the complaint taking a hyper technical approach.

12. He also relied upon the legal presumption under section 139 of the N.I Act and contended that the issuance of cheque on behalf of LLP and signature on cheque are not disputed by the accused persons and the balance of convenience at this stage is in favour of the complainant/prosecution as the accused will have due opportunity to adduce defence evidence during the trial to rebut the presumption.

13. In this context Mr. Jana argued that a 'limited liability partnership' means a business where the minimum two members are required and a LLP is a business structure that combines the benefit of a company with the flexibility of a partnership. It is the designated partners who are sitting at the helm of the management of the LLP and who under the Companies Act, the "key managerial person" under section 2(51) of the Companies Act 2013. It includes a manging director of a company and in an LLP it is the designated partners who by virtue of their post, act as the official representative of the LLP. He emphasised the role of designated partner by saying that they are more fundamental than that of ordinarily partner, because an LLP can exists without ordinarily partner but it cannot exist without at least two designated partners and under section 7(3) of the Limited Liability Partnership Act, 2008 (in short LLP Act) the designated partners are required to give a written consent prior to being appointed to such post and therefore they stand on a higher pedestal than that of the ordinary partners. He accordingly argued that in the instant case the LLP agreement clearly reveals that the petitioner herein being one of the designated partners was actively taking part as an integral part of the management and administration of the LLP. In this context he referred

clause 44 to 47 of the LLP agreement under the heading “Management and Administration of the LLP’s Business”. He pointed out clauses 46 of the agreement to specify that it is the designated partner who shall be responsible for all acts arising out of the LLP agreement.

14. Mr. Jana pointed out section 27(1) (a) of the LLP Act which stipulates that the LLP would be bound by all the acts of his partners that are authorised in the LLP agreement. He contended that it is not the case of the petitioner that the impugned cheque was not issued on behalf of the LLP in discharge of its legally enforceable debt or that the petitioner has not received the notice under section 138/141 of NI act and therefore all the rudimentary ingredients of the offence have been duly fulfilled by the complainant. In this context he also pointed out clause 17 and 18 of the LLP agreement to show that the designated partners of the LLP are responsible for doing all acts matters and things as are required to be done by the LLP in respect of compliance with the provision of the LLP Act, 2008. On conjoint reading of the clauses 17,18,46, of the agreement, it is evident that all the designated members shall take active part in the management and administration of the LLP, the management of the day to day affairs of the LLP and they are either jointly or as stipulated in the LLP agreement, shall be held responsible for management and conducting day to day affairs of the LLP. Even the designated partners cannot escape from their penal liability under section 138 of the N.I. Act by citing its dissolution because what is dissolved is only the company not the personal penal liability of the accused covered under section 141 of the N.I. Act. In the instant case the offence has been committed by the LLP and not by

accused no.2 alone and therefore, the designated partners are also responsible for the conduct of its business.

15. While contradicting the petitioners argument that the designated partner are liable only for compliance as enumerated under section 8 of the LLP Act 2008 and no more, Mr. Jana argued that the tenor of the prologue of the section does not exclude the designated partners from other responsibilities but merely specifies certain statutory responsibilities and penal liabilities that must be exclusively met out by the designated partners. In this context he further argued that the petitioners contention confining the responsibilities of the designated partners only to section 8 of the Act is not tenable since the responsibilities and penal liabilities of a designated partner can also be found enumerated in other provisions of the Act, like section 25, 60, 62 etc. of the LLP Act. He also submitted that it is true that section 10 of the LLP Act has been recently amended with effect from 01.04.2022, whereby contravention of section 8 has been omitted but in the instant case, the offence committed in the year 2021 and as such the argument of the petitioner with regard to the omission of the reference of section 8 in the heading of section 10 is of no use.

16. In this context he further contended that section 26 of the LLP Act, 2008 stipulates that every partner is an agent of the LLP and accordingly any authorized act done by that partner in due course of the business of the LLP will invariable bind the LLP with vicarious liability.

17. Mr. Jana also taken help from the Insolvency and Bankruptcy Code, 2016 which has been enacted after LLP Act of 2008 was introduced and section 32 A of the said Code of 2016 lays down provision to protect

investors from the impact of offences committed by a corporate debtor before the corporate insolvency resolution process begins. Said section 32A states that every person who was a ‘designated partner’ or an ‘officer who is in default’ or was in any manner in charge of/responsible to the corporate debtor for the conduct of his business or associated with the corporate debtor in any manner and who was directly and indirectly involved in accordance with the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor, notwithstanding the corporate debtor’s liability had seized under the provision of 32 A of the IB Code.

18. Considering all the above mentioned facts and circumstances of the case, Mr. Jana contended that order of taking cognizance of the offence implicating present petitioner does not call for any interference and this is not a fit case where the proceeding can be quashed qua the petitioner herein invoking court’s jurisdiction under section 482 of Code of criminal procedure.

19. I have considered submissions made by both the parties.

20. Needless to say that section 138 of N.I. Act provides punishments to the drawer of the cheque, if the cheque has been issued in discharge of any legally enforceable debt and if it has been dishonoured. Under section 7 of the N.I. Act, the maker of the cheque is the drawer. However, when a drawer is a body corporate then section 141 of the N.I Act comes into play, which conceptualizes the provisions of vicarious liability, a concept which is otherwise not recognised in the criminal jurisprudence to implicate

natural persons. The Apex Court in a series of judgments have stated, what is the prerequisite for invoking the provisions under section 141 of the N.I. Act. In fact under the wordings of section 141, while lodging a complaint it is necessary in such cases to aver in the complaint that at the time of commission of the offence, the accused persons was in charge of and responsible for the conduct of the business of the accused company. Such averment is an essential requirement of section 141 of the N.I. Act and has to be necessarily made in a complaint. It is no more *res integra* in view of the salutary judgments that merely being a director of company is not sufficient to make the persons liable under section 141 of the N.I. Act and that a director of a company cannot be deemed to be in charge of and responsible to the company for the conduct of it's business. The reference in this context that the requirement of the section 141 of the N.I. Act is mandatory and that there is no deemed liability of a director can be traced in SMS Pharmaceuticals ltd. (Supra) ***Ashok Shewakramani and others Vs, State of Andhra Pradesh*** reported in **(2023) 8 SCC 473**, ***Siby Thomas Vs. Somany Ceramics Limited*** reported in **(2024) 1 SCC 348**, ***Susela Padmavathy Amma Vs. Bharti Airtel Limited*** reported in **2024 SSC OnLine SC 311.**

21. Judging on the aforesaid calibrated scale as set up by the Apex court in the abovementioned judgments, in the impugned complaint, it is true that the complaint does not state that the petitioner herein, i.e. accused no.3 was responsible to the day to day business affairs of the LLP, but in paragraph 3, it is stated that petitioner herein along with other accused

persons are the key persons responsible for the management of accused no. 1.

22. However, there is no quarrel with the proposition of law as laid down in ***SP Mani's Case (supra)*** that it is not necessary to reproduce the language of section 141 verbatim in the complaint, since the complaint is required to be read as a whole. In fact if the substance of the allegations made in the complaint fulfils the requirements of section 141, there is no bar to proceed with the complaint and while construing a complaint a hyper technical approach that the term '*was also responsible*' omitted in paragraph 17 of the complaint, should not be adopted so as to stifle a criminal proceeding.

23. In the above backdrop let me consider first averment made in the complaint. As I have stated, in para 3 of the complaint it has been stated that the accused no. 2 to 5 are the partners/key persons of accused no. 1 LLP and are responsible for the management of accused no.1 concerned and in para 17, it has only been averred that the accused person no. 2 to 5 are the partners of accused no.1 and all of them are key persons who are in charge of and looked after the business affairs of the accused no.1 and all of them are jointly and severally liable for the offences punishable under section 138 of N.I. Act.

24. In this context the observation made in ***SP Mani Case (Supra)*** is that the complainant is only supposed to know generally as to who were in charge of the affairs of the company or firm as the case may be and other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. Accordingly the

complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company /firm and 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.

25. In the background of the aforesaid observation made by the Apex court in ***SP Mani Case (supra)*** I could have concluded by saying that the complainant has made the averment which he supposed to know generally by saying that the accused no. 2 to 5 are the partners/key persons responsible for the management of the accused no.1/LLP and it is the accused persons who have the special knowledge about the company or the firm about the role that they had played in the LLP to show that at the relevant point of time who was and who was not in charge of the affairs of the company. But in the present context the factual background is completely different. When the demand notice was sent to the accused persons, the present petitioner had given a reply to the said demand notice on June, 10 2021, wherein petitioner has specifically stated certain facts denying the liability of the present petitioner. For better understanding the situation, the reply given by the petitioner herein may be reproduced below:-

Mr. Shiw Kumar Sharda
Advocate
161/1, M.G. Road
3rd Floor, Room No. 64
Kolkata 700007
Mobile No. - Illegible

Dear Sir,

Re: Purported Notice dated April 22, 2021
Your Client: Shantilal Jain & Sons HUF

Our Client: (1) Prakriti Eminent Heights LLP and (2) Mr. Dipanjan Bhattacharjee.

Our clients above named have received the subject notice on 27.04.2021 and have handed over the same to us with instructions to reply thereto in the manner following:-

At the outset, we state that your client has not posted you with the true and correct facts and circumstances of the case. As such, the subject notice is infirm, untenable, vexatious, frivolous and harrasive to our clients. The said purported notice lacks necessary ingredients contemplated under law to constitute the same.

Sometime in or about 02.06.2015, a Limited Liability Partnership (LLP) by the name of Prakriti Eminent Heights was formed between : 1) Mr. Manish Kakrania, 2) Mr. Rajesh Baid, 3) Mr. Ritesh Kedia, 4) Mrs. Minakshi Garg, and 5) Mr. Dipanjan Bhattacharjee

In terms of the Deed of Partnership, Mr. Manish Kakrania was one of the Designated Partners of the LLP. He was also appointed as one of the Authorised Signatories to the Bank Account of the LLP. The said Manish Kakrania was solely responsible for taking all fiscal and financial decisions off the LLP. A copy of the Deed of Partnership dated 02.06.2015 wherefrom the aforesaid will be evident, is attached herewith and marked "A".

As such, Manish Kakrania was responsible for maintaining the books of accounts of the LLP, preparing balance sheets, supervising audits and was liable to ensure the appropriateness of all fiscal aspects of the LLP. Our clients Prakriti Eminent Heights LLP and Mr. Dipanjan Bhattacharjee left the same to the wisdom and integrity of Manish Kakrania, in accordance with the letter and spirit of the Deed of Partnership.

Sometime in august, 2020, it came to the knowledge of our clients that Manish Kakrania was accused of financial irregularities by several parties, which had culminated in several criminal proceedings against him. Our clients further came to learn that the October 2020, Manish Kakrania was arrested by Jaipur Police, in connection with criminal proceedings instituted against him by third parties unassociated with our clients or their business. Immediately upon coming to learn of such fact, our clients took necessary steps to safeguard the integrity, goodwill and reputation of the LLP. By a resolution dated 02.02.2021 our clients removed Manish Kakrania as the Authorised Signatory of the Bank accounts of the LLP and also removed him from the position of Designated Partner. The relevant resolutions are attached herewith and marked "B".

Thereafter, our clients were shocked and surprised to receive the letter under reference since our clients were not aware of the alleged transaction mentioned therein. Our clients undertook to scrutinize the books of accounts of the LLP, at which stage it appeared that Manish Kakrania had obtained the sum of Rs. 26,00,000/- from your client on or about 02.08.2018. It further transpired that shortly after obtaining the said sum, the said Manish Kakrania transferred the same to two LLPs – Onex Projects LLP and Retain Tradelink LLP – both entities controlled by Manish Kakrania and his family members, having no iota of commonality with Prakriti Eminent Heights LLP. Our clients reposed complete trust, faith and confidence upon the said Manish Kakrania. It is now revealed that the said Manish Karania

had mis-utilized his position and entered into a financial transaction for his personal gain and enrichment and not for the benefit of the firm. Such transaction was also beyond the knowledge off the other partners.

It is thus apparent that the alleged amount of Rs. 26,00,000/- was obtained by Manish Kakrania, for his personal gains and motives, from your client, behind the back of our clients. Our clients, at no point of time, sanctioned the taking of such alleged loan, neither was the same taken on account of the LLP, nor to finance any business of the LLP. Our clients had absolutely no knowledge of the alleged loan transaction, and as such the question of issuing any cheque in repayment thereof does not and cannot arise. In fact, the instrument in question was also issued by Manish Kakrania, and has not been signed by our client Mr. Dipanjan Bhattacharjee. Our clients are also not aware of issuance of any cheque by the said Manish Kakrania as alleged in the letter under reference.

Further and in any event, the notice under reply is absolutely devoid of any particulars as to the involvement of our clients in the said alleged transaction. The subject notice fails to demonstrate any vicarious liability whatsoever on the part of our client Mr. Bhattacharjee, not being in charge of, or responsible for, the financial transactions of the LLP, cannot be burdened with any liability for the private actions of Manish Kakrania.

Without prejudice to the aforesaid and relying fully thereon, our clients proceed to deal with the allegations contained in the subject notice. Save what are matters of record and what appear therefrom, each and every allegation contained therein is denied and disputed.

It is denied that our clients had taken any short term accommodation loan from your client, whether for urgent business purpose or otherwise. It is denied that our clients assured to compensate your client by way of interest, whether at 14% pa or otherwise. It is denied that the said accommodation loan was extended from time to time at the request of our clients as alleged or at all. At the cost of repetition, it is stated that inasmuch as our clients did not obtain any financial accommodation from your client, the question of repayment thereof, or of interest thereon, does not and cannot arise.

It is denied that our clients issued any cheque to your client towards discharge of any liability as alleged or otherwise. It is denied that such cheque was issued by our clients having knowledge that there is not adequate bank balance to cover the amount mentioned in the said cheque, as alleged or at all. It is stated that such instrument was issued by Manish Kakrania without the knowledge, consent or participation of our clients and as such the said alleged instrument does not bind our clients in any manner whatsoever.

It is denied that our clients have committed offence under section 138 or Section 141 of the Negotiable Instruments Act, 1881. It is denied that our clients are liable to pay the sum of Rs. 26,00,000/- or any part of portion thereof, to your client. The said purported notice is misconceived, malafide and bad in law.

In view of the aforesaid, we do hereby request you to advise your client to withdraw the notice under reference, forthwith upon receipt of the instant reply. Should your client persist in instituting vexatious proceedings against our clients, our clients shall be constrained to defend the same at the cost and consequence of your client." (emphasis added)

26. In the aforesaid background it cannot be said that mere mentioning in the complaint that the petitioner is the key person responsible for the management of the accused no.1 and thereby is jointly and severally liable for the offence under section 138/141 of the N.I. Act in the complaint, is sufficient compliance of section 141 of N.I Act.

27. When clause 41C and 73 of the LLP agreement stipulates that a partner of the LLP agreement can borrow a loan in the name of the LLP only upon written consent of the LLP/other partners, it was required to be averred as to whether the consent of the petitioner herein was taken or not in the context of his specific denial in the reply. Clause 41(g)(k) of the agreement specially mandates that the entire loan borrowed in the name of LLP must be approved by Mr. Kakrania and Mr. Baid, then how the petitioner can be fastened with the allegations levelled in the complaint. Clause 36 of the LLP agreement stipulates that the bank account of the LLP shall be operated by Mr. Kakrania and Mr. Baid either jointly or severally with the power to draw endorse and negotiate bills and cheques hundis etc., then how the petitioner herein can be held responsible for the offence, should have been clarified in the complaint in the context of his denial in the reply. Clause 17 of the LLP agreement casts certain responsibility to the designated partners but it does not say about the financial liability, clause 45 of the LLP agreement though states that the designated partners shall be responsible for doing all acts arising out of agreement but what is the extent of liability has not been made clear. Section 41(c) and 73 makes it clear that partner will not be responsible for wrongful act and in reply to demand notice, it has been specially stated that the alleged act is the

wrongful act of accused no. 2, then why the present petitioner has been made responsible in the complaint, specially when it has been specifically alleged in the reply that accused no. 2 was made accused of financial irregularities, which culminated several criminal proceedings and said accused no.2 is solely responsible for taking all fiscal and financial decisions of the LLP and that accused no.2 had misutilized his positon and entered into financial transaction for his personal gain and enrichment and not for the benefit of the firm and that such transaction was beyond the knowledge of the other partners. The complaint should have clarified and contradicted all these issues and should have specified what role actually played by petitioner in committing the offence, in order to implicate the petitioner herein with the alleged offence.

28. From the facts and circumstances of the case it is clear that aforesaid reply was given by the petitioner herein through Email on 10th June, 2021 and from the order sheet it is clear that complaint was lodged much thereafter on 1st July 2021. From the complaint in question, I find that except a bald statement that the petitioner and other accused persons are the key persons and petitioner along with other accused persons are jointly and severally liable for the offences under section 138/141 of N.I Act, no attempt has been made in the complaint to indicate even *prima facie* that petitioner is vicariously liable to the alleged transaction, discarding the reply as underlined above.

29. In a series of Judgements there is unanimous of judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A clear case should be spelled out in

the complaint against the person sought to be made liable. In this context paragraph 20 of the ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla and another*** reported in **(2007) 4 SCC 70** may be quoted.

> *"**20.** The liability of a Director must be determined on the date on which the offence is committed. Only because Respondent 1 herein was a party to a purported resolution dated 15-2-1995 by itself does not lead to an inference that she was actively associated with the management of the affairs of the Company. This Court in this case has categorically held that there may be a large number of Directors but some of them may not associate themselves in the management of the day-to-day affairs of the Company and, thus, are not responsible for the conduct of the business of the Company. The averments must state that the person who is vicariously liable for commission of the offence of the Company both was in charge of and was responsible for the conduct of the business of the Company. Requirements laid down therein must be read conjointly and not disjunctively. When a legal fiction is raised, the ingredients therefor must be satisfied."*

30. On bare perusal of the complaint, I must say that the statutory requirement contained in section 141 of N.I Act had not been complied with in respect of present petitioner, specially in the context of reply given by the petitioner herein denying his liability. It may be true that it is not necessary for the complaint to specifically reproduce the wordings of the section but what is required is a clear statement of fact in the context of petitioner's denial of his liability, so as to enable the court to arrive at a *prima facie* opinion that the petitioner/accused no.3 is vicariously liable.

31. The result of the aforesaid discussion is that the averment in the complaint filed by the opposite party herein are not sufficient to satisfy the mandatory requirements under section 141 of N.I Act. Since the averments in the complaint are not sufficient to attract the rigour of section 141 to create vicarious liability upon the petitioner herein, he is entitled to succeed in this Application. The petitioner has therefore made out a case

for quashing the criminal complaint in relation to him in exercise of the jurisdiction under section 482 of the Cr.P.C

32. In such view of the matter **CRR 1045** of **2022** is allowed.

33. The impugned proceeding being complaint case no. CN 673 of 2021 presently pending before learned 14th Metropolitan magistrate at Calcutta is quashed qua the petitioner Dipanjan Bhattacharjee.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)