

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

CRR 86 of 2025

Yubaraj Choudhury

Vs.

The State of West Bengal & Anr.

For the petitioner :Mr. Ronit Kumar Jha, Adv.
Mr. Bishwa Raj Agarwal, Adv.
Mr. Sapan Kumar Ram, Adv.

For the opposite party :Mr. Aniruddha Biswas, Adv.
Ms. Kanak Mishra, Adv.
Mr. Manoj Saha, Adv.

For the State :Mr. Nilay Chakraborty, Adv.
Mr. Subhasish Mishra, Adv.

Heard On :28.07.2025

Judgment On :02.08.2025

Bibhas Ranjan De, J. :

1. This is an application under Section 528 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (herein after referred to as BNSS) wherein the petitioner has prayed for quashing of the proceeding being C.R. Case No. 364 of 2023 presently pending before the Court of Ld. Judicial Magistrate, 2nd Court, Jalpaiguri.

Brief Backdrop:-

2. The petitioner being one of the Directors of a private limited company namely Solution Dinen Hospitality Services Private Limited had a business relation with the opposite party no. 2/company and in course of such business transaction the petitioner had issued a cheque dated 20.11.2022 in favour of the opposite party no. 2 amounting to Rs. 2,37,381/- but the said cheque was dishonored by the banker of the petitioner i.e. Union Bank of India, S.F. Road Branch, Siliguri with the comment 'Payment stopped by drawer'. Upon receipt of information about the said dishonor of cheque, opposite party no. 2 served a demand notice within the statutory period upon the petitioner through his engaged advocate under registered

post with A/D as well as through e-mail address and through the said notice the opposite party no. 2 demanded payment of the due amount within 15 days from receipt of the said notice but the petitioner did not repay the due amount within the stipulated period and as a sequel on 05.06.2023 the opposite party no. 2 instituted a complaint being C.R. Case No. 364 of 2023 under Section 138 of the Negotiable Instrument Act (hereinafter referred to as N.I. Act) before the Court of Ld. Chief Judicial Magistrate, Jalpaiguri wherein the Ld. Chief Judicial Magistrate was pleased to take cognizance and transfer the same to the Court of Ld. Judicial Magistrate, 2nd Court, Jalpaiguri for disposal. On 06.01.2025 the petitioner herein had filed a written objection against the application preferred under Section 138 of the N.I. Act in connection with C.R. Case No. 364 of 2023 with the prayer for dismissal of the same but the Ld. Trial Judge disallowed the prayer of the petitioner. Being aggrieved, the petitioner has moved this Court with a prayer for exercise of inherent jurisdiction to quash the impugned proceeding.

At the Bar:-

3. Ld. Counsel, Mr. Ronit Kr. Jha, appearing on behalf of the petitioner has mainly canvassed a dual pronged argument and at the very outset has submitted that the present proceeding had been initiated without serving the statutory demand notice to the company in compliance with the mandatory provision envisaged under Section 138 of the N.I. Act and therefore **no cause of action for institution of a criminal complaint arose** as the proviso (c) of Section 138 speaks of receipt of notice by the drawer and his subsequent failure to make payment within 15 days of such receipt would only generate the cause of action. Alternatively, Mr. Jha has vociferously contended that the present proceeding has no legs to stand on its own as it has been initiated against the petitioner, who is a director of the company **without impleading the company itself** as a party in violation of the provision laid down under section 141 of the N.I. Act.

4. In support of his submission Mr. Jha has relied on the ratio of the following cases:-

- ***Bijoy Kumar Moni vs. Paresh Manna & Anr., 2024 INSC 1024***
- ***Himanshu vs. Shivamurthy & Anr., 2019 INSC 53***

- ***Aneeta Hada vs. M/S Godfather Travels & Tours Pvt. Ltd., (2012) 5 SCC 661***
- ***Subhash Kedia vs. The State of West Bengal & Anr. , 2024:CHC-AS:1924***

5. Ld. Counsel, Mr. Aniruddha Biswas, appearing on behalf of the opposite party /company has strongly refuted all the claims adduced on behalf of Mr. Jha. On the issue of non-service of notice, Ld. Counsel has submitted that the statutory demand notice was indeed served by the opposite party through registered post with A/D to the correct address of the petitioner within the statutory period and therefore the notice is deemed to be duly served. In this regard, Mr. Biswas has relied on Section 27 of the General Clauses Act.

6. In support of his contention, Mr. Biswas has relied on following cases:-

- ***Bilakchand Gyanchand Co. vs. A. Chinnaswami, (1995) 5 Supreme Court Cases 693***
- ***Sarabjit Singh vs. State of NCT of Delhi and others, 2018 SCC OnLine Del 12257***
- ***M Tech Developers private Limited vs. State (NCT of Delhi) and others, (2019) 14 Supreme Court Cases 806***

7. Ld. Counsel, Mr. Nilay Chakraborty, appearing on behalf of the State has conceded the submission advanced on behalf of the opposite party.

Analysis:-

8. Having heard the rival contentions advanced on behalf of the parties as well as after going through the materials on record, in my humble opinion, only two issues come up for adjudication which are:-

Issue A:-

Non-service of notice in compliance with proviso (c) to Section 138 of the N. I. Act.

Issue B:-

Maintainability of the impugned proceeding due to non-arraignment of the company as a necessary party to the proceeding under Section.

9. In response to issue A, to eschew the prolixity, it is pellucid that statutory demand notice envisaged under the specific provision of the N.I. Act was sent by the opposite party through registered post with A/D to the correct address of the recipient which is sufficient to be construed as valid service in terms of Section 27 of the General Clauses Act. In addition to

that it is not the case of the petitioner that the statutory demand notice sent by the opposite party was to the wrong address. Moreover, it is settled that notice of demand to Director of a company is sufficient notice to the company itself. Therefore, issue relating to non-service of notice has no applicability to the factual nomenclature of the instant revision.

10. The next core issue pertaining to this revision application is whether a proceeding can be quashed solely because the company was not initially impleaded but was sought to be arrayed as a party belatedly.

11. This issue as a whole further involves certain aspects which can be classified as follows-

- The first question being whether Company can be impleaded as an accused in a prosecution under Section 138 of the N.I. Act subsequently?
- The second question is if complainant fails to make specific averments against company in the complaint alleging commission of an offence under Section 138 of the N.I. Act, can the same be rectified by taking recourse to general principles of criminal jurisprudence?

- Thirdly, whether it is necessary to array the company as an accused in a prosecution under Section 138 of the N.I. Act?

12. While answering the above questions, the Apex Court held that the company cannot be impleaded as an additional accused subsequent to the filing of the complaint, once limitation prescribed for taking cognizance of the offence under Section 142 has expired. Similarly, it has been held that if the complainant fails to make specific averments against the company in the complaint alleging commission of offence punishable under Section 138 of the N.I. Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. It has been held further that unless the company or firm has committed an offence punishable under Section 138 of the N.I. Act as a principal accused, persons mentioned in sub-section (1) and (2) of Section 141 of the N.I. Act would not be liable to be convicted on the basis of the principles of vicarious liability.

13. Then coming to the next avenue of contention with regard to the curable aspect of the defect in the complaint, by invoking Section 319 of the Code of Criminal Procedure, the

Hon'ble Apex court has held that when the complaint has the initial defect in its sustainability, the defect cannot be cured by amending the proceedings under Section 319 of the CrPC as the said provision will not come to the rescue for such defects. Therefore, as the view of the Hon'ble Apex court is that the company cannot be subsequently impleaded to set right the defect in the proceedings, the opposite party herein is not entitled to pry into the track of seeking for amendment of the complaint by impleading the company at a belated stage. So, as on today, the proceedings under Section 138 of the Negotiable Instruments Act against the petitioner is defective for the non-prosecution of the company. Hence, the petitioner alone cannot be prosecuted for the alleged offence and for this noncompliance with the provision, the petitioner is certainly entitled to be discharged.

14. In this regard, it would be apposite to discuss the case of ***Aneeta Hada*** (supra) cited at the behest of the petitioner wherein the Hon'ble Apex Court laid down the following ratio extracted from paragraphs 59 & 64 which reads as follows:-

“ 59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the

prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.

64. *Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudged, the Director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, Criminal Appeal No. 1483 of 2009 is allowed and the proceeding against the appellant is quashed. As far as the Company is concerned, it was not arraigned as an accused. Ergo, the proceeding as initiated in the existing incarnation is not maintainable either against the company or against the Director. As a logical sequitur, the appeals are allowed and the proceedings initiated against Avnish Bajaj as well as the Company in the present form are quashed.”*

15. Therefore, the consensus from the legal precedents as discussed in the foregoing paragraphs, is that the company being the principal accused, if is not to be made a party, the said legal flaw goes to the root of the matter and cannot be rectified subsequently.
16. In the light of the aforesaid discussion, the proceeding in connection with C.R. Case No. 364 of 2023, if allowed to linger further, would be a gross abuse of the process of Court.
17. As a sequel , the instant revision application being no. CRR 86 of 2025 stands allowed.
18. Consequently, the proceeding in connection with C.R. Case No. 364 of 2023 presently pending before the Court of Ld. Judicial Magistrate, 2nd Court, Jalpaiguri stands quashed.
19. All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
20. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]