IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 2270 OF 2025

N. MAMATHA NAGESH
-VS-
STATE OF WEST BENGAL AND ANR.

For the Petitioner : Mr. Dipta Dipak Banerjee

Hearing concluded on : 21.04.2026

Judgment on : 08.05.2026

UDAY KUMAR, J.: –

I. INTRODUCTION

1. The Petitioner, N. Mamatha Nagesh, has moved this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 of the Code of Criminal Procedure, 1973), seeking the quashing of proceedings in Case No. CS/35126/2022 currently pending before the Learned 7th Judicial Magistrate at Calcutta. The Petitioner challenges the issuance of process and the continuation of a prosecution initiated by Opposite Party No. 2 (Inditrade Fincorp Limited) for an alleged offence under Section 138 of the Negotiable Instruments Act, 1881.

2. The central grievance of the Petitioner is that she has been impleaded in a commercial dispute despite being a legal stranger to the instrument and the bank account in question. She asserts that the prosecution is not a *bona fide* pursuit of justice but a strategic attempt to exert psychological pressure on her husband, the primary accused, by dragging a non-signatory spouse into a criminal trial.

3. It is imperative to record the procedural history regarding the representation of the Opposite parties. Despite exhaustive efforts to ensure the presence of the Opposite Party No. 2 (the Complainant), the said party has remained unrepresented. The Opposite Party No. 1 (State), being a formal party, also did not enter an appearance. Consequently, in light of the order of this Court dated February 23, 2026, and the Complainant's persistent default, this Court has proceeded to decide the matter on its merits, predicated strictly on the "sterling quality" materials available on record and the submissions made by the Petitioner.

II. FACTUAL MATRIX

4. The genesis of the dispute lies in a commercial loan facility extended by the Complainant, a Non-Banking Financial Company (NBFC), to a business concern styled as "Dhathri Fuels." The transaction was a standard business arrangement intended for operational requirements, governed by a credit agreement executed between the lender and the business concern.

5. In purported discharge of the liability arising therefrom, a cheque bearing No. 000448, dated January 18, 2022, was issued in favour of the Complainant. Upon presentation, the instrument was returned unpaid with the remark "insufficient funds." Up to this point, the transaction followed a standard commercial trajectory leading to a default.

6. A crucial link in the factual chain emerges from the legal constitution of "Dhathri Fuels." As per the GST Registration Certificate and bank mandates (Annexure P-3), the entity is a sole proprietorship owned exclusively by Mr. G.V. Nagesh (Accused No. 2). The Petitioner (Accused No. 3) is the wife of the proprietor. Critically, she is neither a partner in the firm, nor an authorized signatory to the bank account, nor is her signature present on the instrument.

7. Following the dishonour, a statutory demand notice was issued, as required under Proviso (b) to Section 138. However, a glaring factual fracture occurred, the notice and the subsequent complaint demanded a sum of ₹7,607/-, whereas the actual cheque pertains to a staggering sum of ₹36,07,687/-. Despite this massive discrepancy, the Complainant filed the complaint, employing a strategic ambiguity by describing the concern as a "proprietorship/partnership" to rope in the Petitioner.

8. Notwithstanding that the Petitioner is a permanent resident of Karnataka (outside the territorial jurisdiction of the Trial Court) and a non-signatory, the Learned Magistrate took cognizance and

issued process. The Petitioner's application challenging the maintainability was rejected on March 21, 2025, on the ground that her involvement was a "matter of trial." This prompted the present revision, asserting that the continuation of such proceedings constitutes a manifest abuse of the process of law.

III. POINTS FOR DETERMINATION

9. To resolve this revision, this Court frames the following interconnected points for determination:

i. Whether the Complainant's persistent default in representation, coupled with the postal endorsement "Addressee Left," warrants the conclusion that the prosecution is vexatious and justifies an *ex-parte* adjudication on merits?

ii. Whether a prosecution under Section 138 of the N.I. Act can be legally sustained against the Petitioner, who is admittedly neither the drawer of the cheque, nor the signatory, nor the maintainer of the bank account?

iii. Whether the principle of vicarious liability under Section 141 of the N.I. Act can be extended to a sole proprietorship concern to implead a spouse in the absence of a corporate or partnership structure?

iv. Whether a statutory demand notice containing a gross discrepancy (demanding ₹7,607/- for a ₹36 Lakh cheque) satisfies the mandatory requirement of Proviso (b) to

Section 138, or whether it renders the notice *non-est* in the eyes of law?

v. Whether the Learned Magistrate failed to exercise the mandatory "gatekeeping" duty under Section 202 of the Cr.P.C. (Section 225 B.N.S.S.) by issuing process against a resident of Karnataka without conducting the requisite inquiry?

vi. Whether the use of the ambiguous description "proprietorship/partnership" constitutes a suppression of material facts, rendering the prosecution an abuse of the process of law?

IV. SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Mr. Dipta Dipak Banerjee, Learned Counsel appearing for the Petitioner has forcefully contended that the initiation of criminal proceedings against the Petitioner was not only a misadventure in law but a blatant abuse of the process of the Court. The primary thrust of the submissions was that the Petitioner, being the wife of the proprietor, had been conveniently impleaded as a "person in charge" to exert extra-legal pressure for the recovery of a commercial debt, for which she held no personal or vicarious liability.

11. Mr. Banerjee drew the attention of this Court to the persistent non-appearance of the Complainant/Opposite Party No. 2. He submitted that despite exhausting all efforts to ensure service,

and notwithstanding the final opportunity granted by this Court's order dated February 23, 2026, the Complainant has stayed away from these proceedings. This conduct, it is argued, reflects a lack of *bona fide* intent and an inability to defend the glaring legal infirmities inherent in the prosecution. Consequently, he prayed that the matter be decided on its merits.

12. On the merit, it was submitted by Mr. Banerjee that the statutory mandate of Section 138 of the Negotiable Instruments Act is strictly restricted to the "drawer" of the cheque. Relying on the ratio in *Jugesh Sehgal v. Shamsher Singh Gogi [(2009) 14 SCC 683]*, Mr. Banerjee emphasized that since the account was maintained by a third party (the sole proprietorship of the husband), the foundational ingredient of the offence is missing.

13. Addressing vicarious liability, Learned Counsel argued that Section 141 of the NI Act is inapplicable as "Dhathri Fuels" is a sole proprietorship, which lacks a separate legal identity. Citing *Bijoy Kumar Moni v. Paresh Manna & Anr. [2024 SCC OnLine SC 3833]*, he submitted that criminal liability cannot be foisted upon a spouse merely on "bald averments" of dominion or control.

14. Further, Mr. Banerjee highlighted a gross jurisdictional and procedural error. It was submitted that the Petitioner was a permanent resident of Karnataka, residing well beyond the territorial limits of the Learned Trial Court. In such circumstances, the mandate of Section 202 of the Cr.P.C. (now Section 225 of the B.N.S.S.) required a mandatory inquiry or

investigation before the issuance of process. He argued that the Learned Magistrate had issued summons in a mechanical manner, failing to observe the "gatekeeping" duty established in *Rekha Sharad Ushir v. Saptashrungi Mahila Nagari Sahkari Patsansta Ltd. [2025 SCC Online SC 641]*.

15. A significant factual anomaly was further brought to the attention of this Court regarding the irreconcilable discrepancy between the statutory demand notice and the cheque. It was submitted by Mr. Banerjee that a demand notice claiming ₹7,607/- in relation to a cheque of over ₹36 lakhs (₹36,07,687/-) was a *non-est* notice in the eyes of law, as it failed to meet the mandatory requirement of Proviso (b) to Section 138, which necessitates a demand for "the said amount of money."

16. Finally, citing the principle of "Clean Hands," it was argued by Mr. Banerjee that the Complainant had deliberately suppressed the true nature of the business entity and used vague descriptions like "proprietorship/partnership" to mislead the Court. In light of the Complainant's refusal to appear and the manifest legal defects in the case, the Petitioner prayed for the exercise of this Court's inherent power to quash the impugned proceedings in Case No. CS/35126/2022, as the continuation of the trial against her would be an exercise in futility and an instrument of harassment.

V. DISCUSSION, ANALYSIS AND FINDINGS ON POINTS FOR DETERMINATION

(i) DISCUSSION AND FINDINGS ON POINT NO. I: Procedural Propriety and Deemed Service

17. The first point for determination addresses the procedural authority of this Court to adjudicate this revisional application on its merits despite the absence of the Complainant (Opposite Party No. 2). This Court must ensure that the judicial process is not paralyzed by the tactical or negligent absence of a party who has set the criminal law in motion. Adjudicating this point requires a delicate balancing of the principles of natural justice against the mandate to prevent the abuse of the process of law.

18. The factual progression regarding service is of significant note and must be recorded with precision. The records indicate that the Petitioner has exhausted all reasonable modes of service of notice along with the copy of revisional application upon the Complainant. The Postal Consignment Tracking Report confirms that notice was dispatched to the Complainant's registered address, but was returned with the official endorsement "Addressee Left."

19. Under the established legal framework, this endorsement constitutes valid and sufficient service. Pursuant to Section 27 of the General Clauses Act, 1897, and Section 114 of the Indian Evidence Act, 1872, there is a strong presumption of service

when a document is properly addressed and dispatched by registered post.

20. The judicial consensus, as articulated in *Madan & Co. v. Wazir Jaivir Chand (1989) 1 SCC 264* and the 3-Judge Bench decision in *C.C. Alavi Haji v. Palapetty Muhammed (2007) 6 SCC 555*, is that if an addressee vacates the premises without providing a forwarding address, they cannot frustrate legal proceedings by their own omission. Endorsements such as "unclaimed" or "left" are held to be deemed service.

21. Regarding the adjudication of the matter on merit in the absence of the Complainant, the Hon'ble Supreme Court in *K.S. Panduranga v. State of Karnataka [(2013) 3 SCC 721]* has laid down the following principle:

> *"The Court can decide an appeal or revision on merits even if the counsel for the accused or the complainant is absent, provided the Court applies its mind to the facts and the law. A criminal matter should not be dismissed merely for default of the parties; it must be decided on the strength of the legal merits appearing on the face of the record."*

22. When a Complainant initiates a criminal process but refuses to defend its legality before the High Court, it reinforces the Petitioner's contention that the prosecution was initiated for extra-legal purposes rather than a genuine pursuit of justice. As observed in *Associated Cement Co. Ltd. v. Keshvanand [(1998) 1 SCC 687]*, if the complainant remains absent, the court should

not hesitate to pass orders in favour of the accused if the situation so demands.

23. In the present case, the "sterling quality" documents including the GST Certificate and the physical cheque, allow this Court to determine the sustainability of the prosecution without the Complainant's oral defence. The Complainant's persistent failure to appear, despite deemed service, strengthens the inference that the prosecution was initiated for purposes other than a genuine pursuit of justice.

24. I, therefore, find that this Court is legally justified in deciding this application on its merits. The service is held to be valid, and the Complainant's absence is viewed as a waiver of their right to be heard.

(ii) DISCUSSION AND FINDINGS ON POINT NO. II: The "Drawer" Mandate and the Jurisdictional Bar

25. Having established that this Court is duty-bound to adjudicate this matter despite the Complainant's absence, I now turn to the foundational substantive challenge of whether a prosecution under Section 138 of the N.I. Act can be sustained against a person who is admittedly neither the drawer nor the signatory of the instrument nor the maintainer of the bank account.

26. The resolution of this point requires a synthesis of the "sterling quality" evidence on record with the rigid statutory architecture of the Act. The factual progression reveals a stark disconnect

between the Petitioner and the dishonoured instrument. The GST Registration Certificate and Bank Account Mandates (Annexure P-3) conclusively identify the business concern, "Dhathri Fuels," as a sole proprietorship belonging exclusively to Accused No. 2. The bank account from which Cheque No. 000448 was issued is maintained solely in the name of the proprietorship, and the physical signature appearing on the instrument is that of the proprietor, not the Petitioner. It conclusively proves that the Petitioner is a total stranger to the account.

27. This factual reality must be tested against the rigours of Section 138, which is a technical penal provision. Its opening words establish a mandatory restrictive boundary:

> *"Where any cheque drawn by a person on an account maintained by him with a banker..."*

The legislative choice of the words "by a person" and "maintained by him" establishes an unbreakable identity-link between the account holder, the drawer, and the signatory. In the absence of this trinity of attributes, the foundational jurisdiction to prosecute an individual under this section simply does not exist.

28. I am guided by the celebrated ratio in *Jugesh Sehgal v. Shamsher Singh Gogi [(2009) 14 SCC 683]*, where the Apex Court held that:

> *"One of the essential ingredients of Section 138 is that the cheque should have been issued from the account maintained by the accused. If the cheque is drawn on an*

account which is not maintained by the accused, the fundamental ingredient of the Section is missing."

29. Applying this ratio to the present matrix, it is evident that the Petitioner is a total stranger to the bank account. While the Complainant alleged "dominion and control," the law does not recognize such nebulous concepts as a substitute for a signature under Section 138. In a special statute where liability is strictly *in personam*, criminal provisions cannot be stretched to foist liability on a non-signatory. As clarified in *P.J. Agro Tech Ltd. & Ors. v. Water Base Ltd. [(2010) 12 SCC 146]*, criminal provisions must be strictly construed; they cannot be used to foist liability on a party who falls outside the statutory definition of an offender.

30. To relegate a non-signatory wife, residing in a different state, to the rigours of a criminal trial to prove she did not sign a cheque, when the instrument itself bears a different signature and belongs to a different account holder, is a manifest failure of justice. This is not a "matter of trial" but a matter of law.

31. I, therefore, find that the Petitioner cannot be prosecuted as a "Drawer" under Section 138. To compel a non-signatory to undergo the rigours of a trial to prove a negative is a manifest failure of justice.

(iii) DISCUSSION AND FINDINGS ON POINT NO. III - The Inapplicability of Vicarious Liability to Sole Proprietorships

32. Closely linked to the findings in Point II is the question of whether the Petitioner can be held "vicariously" liable.The Complainant's strategy rests on the assumption that as the wife of the proprietor, the Petitioner is a "person in charge" under Section 141 of the N.I. Act. This assumption is a legal fallacy. Having concluded that the Petitioner is not a "drawer" within the meaning of Section 138, I now address the Complainant's attempt to bridge this legal gap by invoking the doctrine of vicarious liability. The Complainant's case rests on the assertion that as the wife of the proprietor, the Petitioner is a "person in charge" and thus liable under Section 141 of the N.I. Act. This argument is founded upon a fundamental legal fallacy.

33. Under established jurisprudence, a sole proprietorship is not a separate legal entity; it is merely a trade name under which an individual carries out business. In the eyes of the law, the proprietor and the proprietorship are one and the same. This distinction is pivotal because Section 141, which creates a legal fiction of vicarious liability for "Companies," is a penal provision that must be strictly construed and cannot be extended by implication.

Section 141 states:

> *"If the person committing an offence under section 138 is a company, every person who... was in charge of, and was responsible to the company for the conduct of the business... shall be deemed to be guilty..."*

The explanation to the section defines "Company" as anybody corporate and includes a firm or other association of individuals.

34. The Hon'ble Supreme Court has recently reinforced this principle in *Bijoy Kumar Moni (supra)* holding that *"A sole proprietorship concern is not a 'Company' within the meaning of Section 141 of the NI Act. The proprietor and the proprietorship are one and the same legal entity. Consequently, Section 141... cannot be invoked to rope in any person other than the proprietor himself."*Since the entity lacks a corporate or partnership persona, the concept of roping in "vicarious" parties is legally impermissible. Criminal liability in a proprietorship begins and ends with the proprietor alone.

35. Furthermore, the Complainant has failed to establish any specific legal nexus beyond the marital relationship. A spouse cannot be arraigned as a co-accused simply by virtue of marriage or through "bald averments" of being a joint beneficiary of a loan. As observed in *M.M. Lal v. State of NCT of Delhi & Anr. 2012 SCC OnLine Del 4851,* the absence of a formal partnership deed or a corporate structure renders the invocation of Section 141 a nullity in law.

36. In the present matrix, describing the entity as a "proprietorship/partnership" appears to be a strategic attempt to circumvent these restrictive boundaries. However, the "sterling quality" documents on record, specifically the GST Certificate, confirm the entity's status as a sole proprietorship. Consequently,

the Petitioner, being neither the proprietor nor the signatory, cannot be held liable for the dishonour of a cheque issued by a different legal person.

37. I, therefore, find that the principle of vicarious liability is entirely foreign to the facts of this case. The continuation of proceedings against the Petitioner on the strength of a non-existent partnership is a manifest abuse of the process of law.

(iv) DISCUSSION AND FINDINGS ON THE POINT NO. IV: The Fundamental Invalidity of the Defective Demand Notice

38. Building upon the conclusion that the Petitioner is a legal stranger to the instrument and the entity, I now turn to a jurisdictional defect that strikes at the very root of the prosecution, the validity of the statutory demand notice under Proviso (b) to Section 138.

39. The factual record reveals an irreconcilable contradiction. While the dishonoured cheque (No. 000448) represents a sum of ₹36,07,687/-, the statutory demand notice and the subsequent Petition of Complaint demanded a mere ₹7,607/-. This is not a marginal rounding error or a minor clerical slip; it is a staggering discrepancy where the demand represents less than 1% of the instrument's value.

40. The mandate of Proviso (b) to Section 138 requires a demand for payment of the *"said amount of money."* This has been judicially interpreted to mean the exact amount covered by the cheque. The

purpose of the notice is to provide the drawer a "last clear chance" to rectify the default and avoid criminal prosecution.

41. A notice that claims a fraction of the debt effectively misleads the drawer. If the drawer pays the demanded ₹7,607/-, they have technically complied with the notice, yet the underlying liability remains unaddressed. On this point the Hon'ble Supreme Court remove the doubts by holding such notice defective which refer demand of a claim less than the cheque amount, in *Suman Sethi v. Ajay K. Churiwal & Anr. [(2000) 2 SCC 380].*

42. In the present matrix, the notice fails the "clarity test." A drawer who receives a notice for 7,607/- for a liability exceeding 3.6 million is effectively misled. If the drawer pays the demanded 7,607/-, they have technically complied with the notice, yet the underlying debt remains largely unpaid. Conversely, if they do not pay, they face a criminal prosecution for a default of over 3.6 million that was never properly "demanded" in writing as required by the statute.

43. Relying on the ratio in *K.R. Indira v. Dr. G. Adinarayana [(2003) 8 SCC 300]*, "a notice which does not make a demand for the amount covered by the cheque is not a notice in the eye of law *and cannot be the basis for a complaint under Section 138.*" Without a valid notice, the "cause of action" never matures, and the Learned Magistrate lacks the foundational jurisdiction to take cognizance.

44. I, therefore, hold that the statutory notice in this case is *void ab initio*. This gross discrepancy vitiates the entire prosecution, rendering it legally unsustainable from its very inception.

(v) DISCUSSION AND FINDINGS ON POINT NO. V: The Failure of Judicial Gatekeeping and the Mandatory Inquiry

45. The fifth point for determination addresses a significant procedural lapse that strikes at the jurisdictional validity of the summoning order. This Court must determine whether the Learned Magistrate failed to exercise the mandatory "gatekeeping" duty required when an accused resides outside the Court's territorial jurisdiction, a safeguard specifically designed to prevent the criminal machinery from being weaponized as a tool of harassment against distant residents.

46. The factual progression of this case highlights a significant geographical and procedural chasm. The Petitioner is a permanent resident of Karnataka, whereas the process was issued by a Court in Kolkata, West Bengal. Under such circumstances, the Magistrate was not merely exercising a discretion but was bound by the mandatory command of Section 202 of the Cr.P.C. (now Section 225 of the B.N.S.S.).

47. This mandate, as amended in 2006, makes it obligatory for a Magistrate to either inquire into the case personally or direct an investigation where the accused resides beyond the area of his jurisdiction. The statute explicitly commands:

> *"...in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, [the Magistrate] shall postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation..."*

48. The use of the word "shall" signify a mandatory procedural safeguard. As reaffirmed in *Rekha Sharad Ushir (supra)* and the landmark decision in *Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors. [(2014) 14 SCC 638]*, the purpose of this inquiry is to protect innocent persons from being vexed by unscrupulous complainants through the "ordeal of trial."

49. In the matrix of the present case, the Learned Magistrate issued the summons in a mechanical manner. Had the mandatory inquiry been conducted, the Court would have immediately discovered the fatal infirmities discussed in the preceding points:

i. The Petitioner was a non-signatory to the instrument;

ii. The accused entity was a sole proprietorship, precluding vicarious liability;

iii. The demand notice was mathematically and legally fractured.

50. The inquiry under Section 202 is intended to act as a judicial "sieve" that filters out legally untenable allegations. In cases involving distant residents, a Magistrate cannot simply rely on "bald averments" of a party being a "person in charge." There must be a specific legal nexus. Here, the Petitioner's status as a spouse residing in Karnataka, coupled with the total absence of

her signature on the cheque, should have triggered heightened judicial scrutiny rather than routine issuance of process.

51. By bypassing this inquiry, the Learned Trial Court effectively allowed the Complainant to use the distance and the rigours of travel as a weapon of coercion. Forcing a resident of Karnataka to appear in a Kolkata court to answer a charge that has no "legal legs" constitutes a grave miscarriage of justice. This failure is not a mere "curable irregularity" but a jurisdictional error that vitiates the summoning order itself.

52. I find that the Learned Magistrate failed to exercise the "gatekeeping" duty established by law. The mechanical issuance of process against a distant resident, especially where the statutory foundation is so visibly fractured, necessitates the quashing of the proceedings against the Petitioner

(vi) DISCUSSIONS AND FINDINGS ON POINT NO. VI: Suppression of Material Facts and the Abuse of Process

53. The final point for determination addresses the conduct of the Complainant and whether the cumulative effect of the misrepresentation, specifically regarding the entity's legal status and the presentation of a mismatched financial claim, constitutes a manifest abuse of the process of law and the suppression of material facts. This Court must determine if the judicial machinery has been utilized as a tool for extra-legal coercion rather than a *bona fide* pursuit of justice.

54. A review of the record reveals a persistent pattern of "calculated ambiguity" on the part of the Complainant. In the Petition of Complaint, the accused entity was described through the dual lens of a "proprietorship/partnership," and the Petitioner was consequently roped in as a "person in charge." However, the GST Registration Certificate and the loan agreements, documents produced by the Complainant itself categorically identify the entity as a sole proprietorship.

55. By using a slash to bridge two distinct and mutually exclusive legal concepts, the Complainant effectively misled the Learned Trial Court into applying the principles of vicarious liability under Section 141 of the NI Act. As established in Point No. III, this section has no application to a sole proprietorship. This was not a mere clerical oversight; it was a strategic misdescription intended to circumvent the restrictive boundaries of the NI Act and drag the Petitioner into a criminal dock where no liability existed.

56. This ambiguity is further exacerbated by the "mismatched claim" discussed in Point No. IV. The presentation of a statutory demand for ₹7,607/- against a cheque of ₹36,07,687/- is a failure to disclose the true nature of the default to the Court at the time of taking cognizance. When a Complainant initiates criminal law, they owe a duty of absolute candour. The suppression of the entity's true legal status, coupled with a mathematically fractured demand notice, strikes at the very heart of the prosecution's integrity.

57. Learned Counsel for the Petitioner has rightly relied upon the principle that *"he who seeks equity must come with clean hands."* In the context of criminal law, the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]* held that the High Court may exercise its inherent powers to quash proceedings:

> *"...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."*

58. In the present matrix, the Complainant's conduct points to a strategy of institutionalized harassment. By impleading the wife of the proprietor, a resident of a distant State, through a distorted legal lens, the Complainant has attempted to use the criminal process to recover a commercial debt from a party who bears no statutory or personal liability.

59. As held in *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749]*, summoning an accused in a criminal case is a serious matter. A Complainant cannot be permitted to maintain a prosecution by suppressing the true legal status of the parties. To allow this trial to continue against the Petitioner would be to sanction a manifest injustice and allow the "ordeal of trial" to serve as the punishment itself.

60. I find that the Complainant's reliance on ambiguous descriptions and a defective claim constitutes a suppression of material facts.

Such conduct vitiates the foundational integrity of the complaint. Consequently, the initiation and continuation of the proceedings against the Petitioner in Case No. CS/35126/2022 constitute a blatant abuse of the process of law. The judicial machinery cannot be allowed to be used as a pawn for strategic litigation. Therefore, in the interest of justice and to prevent the further harassment of the Petitioner, the proceedings as against her must be quashed.

VI. SUMMARY OF LEGAL FINDINGS

61. Upon an exhaustive discussion and meticulous analysis of the legal and factual matrix, this Court arrives at the following significant legal findings:

i. Liability under Section 138 of the Negotiable Instruments Act is strictly *in personam*. The statute creates a mandatory identity-link between the drawer, the signatory, and the account holder. Criminal liability cannot be foisted upon a person who is neither the signatory of the instrument nor the maintainer of the bank account.

ii. A sole proprietorship has no legal identity or "soul" separate from its proprietor. Unlike companies or partnership firms, it is not a "body corporate" or an "association of individuals." Therefore, the proprietor and

the proprietorship are, in the eyes of the law, one and the same entity.

iii. The principle of vicarious liability under Section 141 of the Act is an exception to general criminal law and must be strictly construed. Since a sole proprietorship is not a "Company" within the meaning of Section 141, the concept of roping in "persons in charge" cannot be extended to such a concern.

iv. A marital relationship is not a legal substitute for a partnership deed or a corporate structure. In the absence of a registered partnership or company, a spouse cannot be made an accused based on "bald averments" of dominion or control over a business belonging to the other spouse.

v. A statutory demand notice is a mandatory condition precedent for a cause of action. The phrase "said amount of money" in Proviso (b) to Section 138 refers to the exact cheque amount. A notice claiming a gross and staggering discrepancy (₹7,607/- vs. ₹36,07,687/-) is a *non-est* notice that fails to provide the drawer a valid opportunity to rectify the default.

vi. The "gatekeeping" duty of a Magistrate under Section 202 of the Cr.P.C. (now Section 225 B.N.S.S.) is mandatory where the accused resides outside the Court's jurisdiction. The failure to conduct this inquiry to verify

the legal nexus of an out-of-station resident constitutes a jurisdictional error that vitiates the summoning order.

VII. CONCLUSION AND CONSEQUENTIAL DIRECTIONS

62. In view of the categorical legal findings arrived at hereinabove, this Court concludes that the continuation of the criminal prosecution against the Petitioner is legally unsustainable. The undisputed facts demonstrate that the Petitioner is neither the account holder nor the signatory of the dishonoured cheque. Furthermore, the legal status of the accused entity as a sole proprietorship precludes the application of vicarious liability.

63. Consequently, this Court is of the firm opinion that the continuation of the impugned proceedings against the Petitioner (Accused No. 3) would be an exercise in futility and an affront to justice.

64. Accordingly, the Criminal Revisional Application being C.R.R. No. 2270 of 2025 stands Allowed.

65. The proceedings in Case No. CS/35126/2022 pending before the Learned 7th Judicial Magistrate at Calcutta, are hereby quashed and set aside insofar as they relate to the present Petitioner, N. Mamatha Nagesh (Accused No. 3).

66. The Petitioner is hereby discharged from the said case. All bail bonds, surety bonds, or undertakings executed by the Petitioner shall stand cancelled, and the sureties are released. All warrants,

summons, or look-out circulars issued against the Petitioner in this specific case stand cancelled.

67. The Learned Trial Court shall proceed with the trial against the remaining accused persons (Accused No. 1 and Accused No. 2) with utmost expedition, without being influenced by any observations made in this judgment, which are limited to the liability of the Petitioner herein.

68. The Learned Trial Court is directed to return any personal documents belonging to the Petitioner upon proper identification.

69. Let a copy of this judgment be sent to the Learned Trial Court immediately for compliance.

70. All connected applications stand disposed of.

71. Interim orders stand vacated.

72. There shall be no order as to costs.

73. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.

74. Case diary, if any, be returned forthwith.

75. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)