

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

**PRESENT:**

**THE HON'BLE JUSTICE UDAY KUMAR**

**CRR 3672 OF 2023**

**CRAN 2 OF 2024**

**GAUTAM DEY  
-VS-  
GOLAM SAHARIA**

*For the Petitioner* : *Mr. Somnath Adhikary*

*For the Opposite Party* : *Mr. Pratip Kumar Chatterjee, Sr. Adv.  
Ms. Maitrayee Chatterjee*

*Hearing concluded on* : *06.03.2026*

*Judgment on* : *28.04.2026*

**UDAY KUMAR, J.: –**

***1. INTRODUCTION***

1.1. This revisional application, preferred under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973, is directed against the proceedings of C.R. Case No. 365 of 2022 (TR Case No. 410 of 2022) pending before the Learned Judicial Magistrate, 1st Class, 2nd Court, Berhampore, Murshidabad.

The petitioner primarily assails the order dated August 4, 2023, whereby the Learned Magistrate rejected a prayer for discharge, effectively compelling the petitioner, a non-signatory to the cheque, to stand trial for a criminal offense involving a negotiable instrument allegedly committed by a deceased drawer.

- 1.2. The impugned proceedings are challenged primarily on the grounds that the Learned Magistrate failed to appreciate the fundamental distinction between the civil liability of an estate and the personal nature of criminal liability. The petitioner contended that the continuation of this prosecution constitutes a manifest abuse of the process of law, as the statutory requirements of Section 138 of the Negotiable Instruments Act, 1881, remain wholly unfulfilled in relation to him.

## **2. BACKGROUND FACTS**

- 2.1. The genesis of the present dispute is found in a purported business transaction between the Opposite Party (Complainant) and one Tapan Kumar Dey (since deceased), the elder brother of the petitioner. It is alleged that the deceased, in his capacity as a Ration Dealer, secured a loan of ₹27,00,000/- from the Opposite Party for business exigencies.
- 2.2. In purported discharge of the said liability, Tapan Kumar Dey issued an account payee cheque (No. 519344) dated February

1, 2022, drawn on the State Bank of India, Gram Salika Branch. However, the legal trajectory of this instrument was irrevocably altered when the drawer expired on February 3, 2022, as evidenced by the death certificate produced before the Trial Court (Annexure P-1).

2.3. Notwithstanding the drawer's demise, which by operation of law revoked the bank's mandate to pay, the Opposite Party presented the cheque for encashment on April 6, 2022. Upon its dishonour with the endorsement "Funds Insufficient," the Complainant attempted to transmute a civil debt into a heritable criminal liability by serving a statutory demand notice dated April 13, 2022, upon the petitioner, Gautam Dey, on the premise of him being a "Legal Representative" and "Business Associate."

2.4. Following the petitioner's refusal to satisfy the demand on the grounds of total lack of personal culpability, the Opposite Party instituted the impugned complaint under Section 138 of the Negotiable Instruments Act. The petitioner subsequently moved for discharge, asserting that since the cheque was neither signed by him nor drawn on an account maintained by him, the prosecution was void ab initio and an egregious abuse of the process of law.

2.5. By the impugned order dated August 4, 2023, the Learned Magistrate rejected the petitioner's plea. The Learned Court

observed that in a summons-triable case, there is no specific procedural provision for "discharge" and further held that the applicability of Section 29 of the N.I. Act regarding the liability of a legal representative was a "matter of trial."

- 2.6. Aggrieved by this refusal to drop a fundamentally flawed prosecution, the petitioner has moved this Court for quashing on the grounds that he is a non-signatory, the criminal liability is non inheritable, and the requisite "concatenation of acts" necessary to complete an offense under Section 138 cannot, in law or facts, be attributed to him.

### **3. QUESTIONS FOR DETERMINATION**

- 3.1. Having set out the background facts that precipitated this revisional application, it is now imperative to crystallize the legal controversy. The primary grievance of the petitioner is that he has been compelled to stand trial for a criminal offense that is, by its very nature, fundamentally incapable of being committed by him.
- 3.2. To effectively adjudicate upon the legality of the impugned proceedings and the subsequent refusal of the Learned Trial Court to exercise its jurisdiction, the following Questions for Determination are formulated:

- I. Whether criminal liability under Section 138 of the Negotiable Instruments Act, 1881, is strictly intuitu

personae (personal to the drawer) or if it can be inherited by a legal representative upon the drawer's demise?

II. Whether a person who is neither the signatory to the cheque nor the maintainer of the bank account can be prosecuted for its dishonour, even if they are a "business associate" or "co-borrower"?

III. Whether the statutory "concatenation of acts" required to complete an offense under Section 138, specifically the issuance of a valid demand notice and the subsequent failure to pay, can be legally fulfilled when the drawer dies prior to the presentation of the cheque and the issuance of the demand notice?

IV. Whether the Learned Magistrate's refusal to entertain a plea for discharge in a summons-triable case, on purely procedural grounds, constitutes a failure to exercise jurisdiction to prevent an abuse of the process of law?

#### **4. SUBMISSIONS ON BEHALF OF THE PETITIONER**

4.1. In the backdrop of the questions formulated hereinabove, Mr. Somnath Adhikary, the Learned Counsel appearing for the Petitioner, submitted that the impugned proceeding is not

only factually misplaced but legally unsustainable from its very inception. He placed considerable emphasis on the jurisdictional bar and the statutory limitations inherent in the Negotiable Instruments Act, 1881.

4.2. Mr. Adhikary contended that the impugned proceeding is *coram non judice* as against the petitioner. He argues that the foundational requirements of Section 138 are conspicuously absent, as the petitioner is neither the "drawer" of the instrument nor the "maintainer" of the bank account from which the cheque originated. It is vehemently argued that criminal liability under this Section is strictly personal (*intuitu personae*). Since the cheque was drawn on an account maintained exclusively by the deceased, Tapan Kumar Dey, and bore his signature alone, fastening criminal culpability upon a non-signatory brother based solely on familial ties is a perversion of the penal statute.

4.3. Mr. Adhikary further contended that the "concatenation of acts" necessary to constitute an offense under Section 138 was never completed. He highlighted that the drawer expired on February 3, 2022, long before the cheque was presented for encashment on April 6, 2022. Consequently, the statutory demand notice served upon the surviving brother cannot be deemed a valid substitute for a notice to the drawer; a deceased person cannot "fail to pay" within the meaning of

the Act, and thus, the cause of action for a criminal prosecution never legally accrued.

4.4. Addressing the Complainant's reliance on Section 29 of the Act, Mr. Adhikary submits that this provision is confined strictly to the civil domain, facilitating the recovery of debt from the estate of the deceased. He argued that civil liability for a debt and criminal liability for a dishonoured cheque are distinct legal species; the former may follow the assets, but the latter is extinguished with the life of the offender. To prosecute the petitioner under the guise of being a "Legal Representative" is, therefore, an impermissible expansion of the penal statute.

4.5. In support of these contentions, reliance is placed on the definitive rulings in *Alka Khandu Avhad vs. Amar Shyamprasad Mishra & Anr.* (2021) 4 SCC 675 and *Ganga Prasad Ratnakar vs. Fanindra Kumar Chandra* (2023) SCC OnLine SC 2031. The petitioner submits that these decisions constitute the law of the land under Article 141 of the Constitution and render the impugned trial bad in law. Finally, it is urged that the Opposite Party is utilizing the criminal machinery as an instrument of coercion for debt recovery, constituting a classic case of abuse of the process of law.

4.6. Finally, Mr. Adhikary submitted that the Opposite Party is attempting to utilize the criminal machinery as an instrument

of coercion for debt recovery, bypassing the appropriate civil remedies. Such a course of action constitutes a classic case of abuse of the process of law. The petitioner, therefore, most humbly prays that this Hon'ble Court may be pleased to make the Rule absolute and quash the entire proceedings in C.R. Case No. 365 of 2022, thereby protecting the petitioner from the harassment of a meritless and legally incompetent criminal trial.

#### ***5. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY***

- 5.1. Per contra, Mr. Pratip Kumar Chatterjee, Learned Senior Advocate, appearing for the Opposite Party (Complainant) vehemently opposed the prayer for quashing. He contended that the matter involves disputed questions of fact that can only be adjudicated through a full-scale trial, and that the petitioner cannot invoke the inherent powers of this Court to stifle a legitimate prosecution at the threshold.
- 5.2. The principal contention of the Opposite Party is that the petitioner was not merely a relative, but an active "Business Associate" and "Co-borrower." Mr. Chatterjee draws attention to an "Angikar Patra" dated November 30, 2021, asserting the petitioner's direct involvement in the ration dealership. He argued that since the petitioner inherited and now operates the business for which the loan was utilized, he has stepped

into the shoes of the drawer and must answer for the dishonour.

- 5.3. M. Chatterjee, Learned Senior Advocate for the Opposite Party placed significant reliance on Section 29 of the N.I. Act, contending that the statute expressly recognizes the liability of a "Legal Representative." He argued that as the sole heir of the unmarried deceased, the notice served upon the petitioner was legally valid and that he is bound to discharge the liabilities, including the penal consequences, attached to the inherited estate.
- 5.4. Significant reliance is placed on Section 29 of the N.I. Act, with the argument that the statute expressly recognizes the liability of a "Legal Representative." It is contended that as the sole heir of the unmarried deceased, the notice served upon the petitioner was legally valid and that he is bound to discharge the liabilities, including the penal consequences, attached to the inherited estate.
- 5.5. Supporting the reasoning of the Trial Court, Mr. Chatterjee submits that the Code of Criminal Procedure does not contemplate a "discharge" stage in a summons case. He contends that once process is issued under Section 204, the Court becomes *functus officio* regarding the dismissal of the complaint on merits prior to trial. Furthermore, the

petitioner's initial silence following the demand notice is characterized as an acquiescence of liability.

- 5.6. Finally, the Opposite Party submitted that the extent of the petitioner's involvement in the business remains a "triable issue." It is urged that in a matter involving a substantial sum of ₹27,00,000/-, it would constitute a miscarriage of justice if the Complainant is denied the opportunity to prove the petitioner's liability through evidence. Reliance is placed on the principle that the inherent powers under Section 482 of the Cr.P.C. should be exercised sparingly and only in the "rarest of rare" cases. Consequently, the dismissal of the revisional application is prayed for.

## **6. JUDICIAL DETERMINATION OF QUESTION NO. I**

- 6.1. In the light of the rival contentions and the statutory framework of the Negotiable Instruments Act, 1881, I now address the First Question for Determination; *Whether criminal liability under Section 138 is strictly personal to the drawer or if it can be inherited by a legal representative upon the drawer's demise?*
- 6.2. To resolve this controversy, the Court must first advert to the literal and strict construction of the penal provision. Section 138 of the N.I. Act is a species of "statutory offense" created by a legal fiction. It stipulates that where any cheque is drawn

by "a person" on an account maintained by "him," *with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability*, and such cheque is returned by the bank unpaid for insufficiency of funds, *such person shall be deemed to have committed an offence...*".

6.3. In the realm of criminal jurisprudence, the use of these singular, personal pronouns is not merely a matter of grammar but a clear expression of legislative intent. The penal consequence is inextricably tethered to the physical identity of the individual who performs the act of signing and who maintains the account. Unlike civil law, where obligations may be transferred, criminal liability is governed by the principle of *intuitu personae*, it is personal to the offender and dies with the offender.

6.4. The Opposite Party has strenuously argued that under Section 29 of the N.I. Act, a legal representative is liable for the obligations of the deceased. While this is a valid proposition in civil law, it is a legal fallacy when transposed into criminal proceedings. The principle of *action personalis moritur cum persona* (a personal action dies with the person) operates with full force here. While a debt is a heritable liability that follows the estate of the deceased, a "crime" is not an asset or a legacy that can be bequeathed to or fastened upon a

surviving heir. The petitioner, Gautam Dey, may inherit the ration business, but he does not inherit the criminal culpability for a cheque he did not sign.

6.5. The rhythmic connection between the facts and the law in this case is stark and admits no ambiguity. The cheque in question was issued by Tapan Kumar Dey on February 1, 2022. Crucially, the drawer expired on February 3, 2022. By operation of law, the moment the drawer ceased to exist, the bank's mandate to pay out of that account was revoked. When the Opposite Party presented the cheque on April 6, 2022, nearly two months after the drawer's death, they were presenting an instrument that was already a legal nullity for the purpose of criminal prosecution. The Complainant's attempt to transmute the resulting dishonour into a criminal liability for the surviving brother, Gautam Dey, ignores the elementary principle that a "crime" is not an asset or a legacy that can be bequeathed to a surviving heir.

6.6. This proposition is no longer *res integra*. The Hon'ble Supreme Court in *Alka Khandu Avhad vs. Amar Shyamprasad Mishra & Anr. (2021) 4 SCC 675*, addressed this very intersection of joint liability and individual culpability. In Paragraph 10, the Apex Court held:

*"Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account*

*maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability... such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act."*

- 6.7. In the aforementioned case, a husband issued a cheque for a joint liability, and the wife was made a co-accused as a "joint debtor." The Opposite Party attempts to distinguish this by claiming the petitioner is a "business associate" who inherited the business and not merely a family member. However, this Court finds that the *ratio decidendi* of *Alka Khandu Avhad* is that joint liability for a debt does not create "jointness" of the crime. Since the petitioner is a non-signatory, the ratio applies squarely in his favour.
- 6.8. Even if the petitioner were a co-borrower, the statutory requirement remains: only the person who draws the cheque on an account maintained by him can be prosecuted. The petitioner is a non-signatory to the instrument and a stranger to the account; therefore, the protective umbrella of this precedent covers him entirely.

6.9. This stance was recently fortified in *Ganga Prasad Ratnakar vs. Fanindra Kumar Chandra (2023) SCC OnLine SC 2031*. At Paragraph 8, the Court reaffirmed:

*"The liability of the drawer of the cheque is a personal liability... The legal heirs of the deceased drawer cannot be prosecuted for the offence committed by the deceased drawer."*

6.10. The Opposite Party's contention that this case is distinguishable because the drawer there died *after* the litigation commenced is a distinction without a legal difference. In fact, if the law prohibits the continuation of a trial against an heir for an offense committed during the drawer's lifetime, it must, *a fortiori*, prohibit the commencement of a trial for an instrument that resulted in dishonour only after the drawer had already passed away. The timing of the death does not create liability; it merely underscores the absence of a legal entity capable of committing a default. If the law prohibits *continuing* a trial against an heir for an offense committed by a deceased, it certainly cannot permit the commencement of a trial for a cheque presented after the drawer's death. The common thread is the cessation of criminal liability upon death, and the timing of the demise does not alter this fundamental legal proposition.

6.11. While the Opposite Party places heavy reliance on Section 29 of the N.I. Act (liability of a legal representative), they fail to appreciate that Section 29 operates strictly within the civil domain for the recovery of dues from the estate. Civil liability follows the assets, but criminal liability is extinguished with the life of the offender. Fastening the penal consequences of Section 138 upon the petitioner would require an impermissible stretching of a penal statute and a violation of the fundamental right to a fair procedure under Article 21 of the Constitution.

6.12. The "concatenation of acts" required to complete an offense under Section 138, issuance, presentation, dishonor, and failure to pay after notice, must be attributable to the same persona. Since the drawer was already deceased at the time of presentation and notice, he was no longer a legal entity capable of committing a default. Fastening this default upon the petitioner, Gautam Dey, would require an impermissible stretching of a penal statute.

6.13. Upon a meticulous comparison of the facts and the cited authorities, I hold that criminal liability under Section 138 is strictly personal and dies with the drawer. It cannot be shifted to, or inherited by, a legal representative, regardless of their purported status as a business associate or heir. The Learned Magistrate's view that this is a "matter of trial" is a failure to

exercise jurisdiction to terminate a proceeding that is legally incompetent from its inception. The first question is, therefore, answered in the negative.

## **7. JUDICIAL DETERMINATION OF QUESTION NO. II**

- 7.1. Having resolved that criminal liability under the Negotiable Instruments Act is strictly personal and non-heritable, I now turn to the second question for determination: Whether a person who is neither the 'signatory' to the cheque nor the 'account holder' can be prosecuted under Section 138, even if they are described as a "business associate" or "co-borrower"?
- 7.2. The language of Section 138 of the N.I. Act creates a specific and impenetrable perimeter of liability. The statute targets the person who draws a cheque on an account "maintained by him." This Court observes that the maintenance of the account and the issuance of the instrument are the twin pillars, the *sine qua non*, for the attraction of Section 138. In the instant case, it is an admitted position that the bank account at the State Bank of India, Gram Salika Branch, was maintained solely by the deceased, Tapan Kumar Dey. The petitioner, Gautam Dey, remains a stranger to the banking contract between the deceased and the financial institution.

7.3. The Opposite Party has placed heavy reliance on an "Angikar Patra" to argue that the petitioner exercised "real control" over the ration business and acted as a co-borrower. However, a fundamental distinction must be drawn between natural persons and juristic entities. Under Section 141 of the N.I. Act, "vicarious liability" is a statutory exception that allows for the prosecution of directors or partners who are in charge of a company's or firm's affairs, even if they are not the signatories. In the present matter, the business was a sole proprietorship of the deceased. There exists no partnership deed or corporate structure that brings the petitioner within the ambit of the "deemed liability" clause of Section 141.

7.4. The Hon'ble Supreme Court in *Alka Khandu Avhad vs. Amar Shyamprasad Mishra* (2021) 4 SCC 675 has unequivocally settled this controversy. The Apex Court held:

*"Section 141 of the NI Act... is not applicable in the case of a joint liability of two individuals... A person might have been jointly liable to pay the debt, but if such a person... was not a signatory to the cheque, [he] cannot be prosecuted."*

This ratio establishes that in transactions involving individuals, the "signatory rule" is absolute. The Complainant's attempt to transplant the "person-in-charge" theory from Section 141 into a case

involving a private individual is legally impermissible.

7.5. The Opposite Party seeks to distinguish the present case by claiming the petitioner is a "beneficiary" of the loan. This Court finds that even if evidence were adduced to prove that the petitioner was a co-borrower, such facts would only be relevant in a Civil Suit for Recovery. In a criminal prosecution under Section 138, the Court is not concerned with who "utilized the funds," but rather with who "issued the instrument." The petitioner's status as a "business associate" does not grant him the legal capacity to authorize payment from his brother's account. Consequently, he cannot be held criminally liable for the bank's refusal to honour an instrument he did not sign, drawn on an account he did not maintain.

7.6. The nexus between the accused and the bank account is the fundamental requirement for a valid prosecution. In the absence of a joint account or a partnership firm, a "business associate" cannot be substituted as an accused. The Opposite Party's contention that the petitioner's business role is a "matter of trial" is rejected; no amount of evidence regarding his involvement in the ration dealership can override the statutory requirement of him being the "drawer" of the cheque.

7.7. I hold that a non-signatory, who is not the maintainer of the account, cannot be prosecuted under Section 138 of the N.I. Act, regardless of his alleged involvement in the underlying business transaction. The "link" in facts is established: the petitioner is being prosecuted for a debt he may share, but through an instrument he did not draw. Such a prosecution is bad in law. The second question is, therefore, answered in the negative.

## **8. JUDICIAL DETERMINATION OF QUESTION NO. III**

8.1. Proceeding in the established line of reasoning, I now address the Third Question for Determination; *Whether the statutory "concatenation of acts" required to complete an offense under Section 138 - specifically the issuance of a valid demand notice and the subsequent failure to pay - can be legally fulfilled when the drawer dies prior to the presentation of the cheque?*

8.2. It is a settled principle of law that the dishonour of a cheque, by itself, does not constitute an offense under Section 138 of the Negotiable Instruments Act. The offense is a "process-driven" crime that requires the cumulative fulfilment of a series of statutory acts. These are:

- i. The drawing of the cheque for a legally enforceable debt;
- ii. Presentation of the cheque within its validity;

- iii. The return of the cheque unpaid by the bank;
- iv. The issuance of a written demand notice to the drawer within 30 days of dishonour; and
- v. The failure of the drawer to make the payment within 15 days of receipt of such notice.

8.3. The facts on record establish that the drawer, Tapan Kumar Dey, expired on February 3, 2022. The cheque was subsequently presented on April 6, 2022, and the notice was issued on April 13, 2022. At the time of presentation and subsequent notice, the "drawer" had ceased to be a legal person. The statute explicitly mandates that the notice must be served upon "the drawer of the cheque."

8.4. In the present case, the Opposite Party served the notice upon the petitioner, Gautam Dey, treating him as a substitute. This Court finds that the law does not recognize a "substituted service" on a legal heir for the purpose of initiating a criminal prosecution. A dead person cannot receive a notice, nor can they commit the "default" of non-payment within 15 days, which is the final act that triggers the cause of action for a criminal complaint.

8.5. In *Alka Khandu Avhad vs. Amar Shyamprasad Mishra (2021) 4 SCC 675*, the Supreme Court examined the necessity of the "identity of the drawer." The Court held that:

*"The offence under Section 138 of the NI Act can be said to have been committed by the person who has drawn the cheque... the notice is required to be given to the drawer of the cheque."*

- 8.6. The Learned Counsel for the Opposite Party argued that by not replying to the notice, the petitioner "accepted" his liability. I find this argument to be legally fallacious. There is no legal obligation on a third party, the petitioner, to reply to a notice issued for a criminal liability that he never personally incurred. Silence in the face of a legally incompetent notice does not confer jurisdiction upon a criminal court, nor does it breathe life into a non-existent cause of action.
- 8.7. Furthermore, as per the law of agency and banking norms, the death of a drawer operates as a revocation of the bank's authority to pay. When the cheque was presented on April 6, 2022, the "mandate" of the deceased had already expired. A prosecution cannot be sustained on an instrument that was presented after the death of the person who issued it, as the essential element of *mens rea* (criminal intent) at the time of the "default" (the 15-day period) cannot be attributed to a deceased person.
- 8.8. The "concatenation of acts" remained incomplete and was broken the moment the drawer expired. In such event, the service of notice on the petitioner amount to a futile exercise. The petitioner, not being the drawer, was under no statutory

obligation to satisfy the notice, and his "failure to pay" cannot be termed a criminal offense. I hold that a valid cause of action under Section 138 cannot arise when the drawer dies before the presentation of the cheque or the issuance of the notice. The service of a statutory notice on a legal heir does not satisfy the requirements of the Act for the purpose of criminal prosecution. The third question is, therefore, answered in the negative.

#### **9. JUDICIAL DETERMINATION OF QUESTION NO. IV**

- 9.1. Having concluded that the statutory prerequisites for an offense under Section 138 of the Negotiable Instruments Act remain unfulfilled, I now turn to the fourth question: Whether the Learned Magistrate's refusal to entertain a plea for discharge in a summons-triable case, on purely procedural grounds, constitutes a failure to exercise jurisdiction to prevent an abuse of the process of law?
- 9.2. In the impugned order dated August 4, 2023, the Learned Magistrate observed that since the case is a "Summons Trial" regulated by Chapter XX of the Cr.P.C. (now Chapter XXI of the BNSS), there is no explicit provision for "Discharge" once process has been issued. The Trial Court further suggested that the question of liability is entirely a "matter of trial." I find this approach to be overly technical, legally flawed, and

an abdication of the judicial duty to vet the "substance of accusation."

9.3. It is a settled principle that a Magistrate is not a "post office" or a "mute spectator." When an accused appears in response to a summons, the Court has a fundamental duty under Section 251 Cr.P.C. to satisfy itself whether the accusation constitutes a legally recognizable offense. If the complaint, on its face, reveals that the accused is a non-signatory and the drawer is deceased, the Court is not mandated to drag the accused through the protracted ordeal of a full trial. To do so is to ignore the primary purpose of Section 251, which is to ensure that no person is tried for a non-existent offense.

9.4. The Opposite Party has placed heavy reliance on the "No-Recall" rule established in *Adalat Prasad vs. Roopal Jindal* (2004) 7 SCC 338 and *Subramanyam Sethuraman vs. State of Maharashtra* (2004) 13 SCC 324, arguing that the Magistrate cannot "review" his own summoning order due to the bar under Section 362 of the Cr.P.C. These positions were reaffirmed by the Constitution Bench in *In Re: Expeditious Trial of Cases u/s 138 NI Act (2021)*, which explicitly clarified that Trial Courts do not possess inherent powers to review or recall the issuance of process.

9.5. The Petitioner relied on *Bhushan Kumar vs. State (NCT of Delhi)* (2012) 5 SCC 424 to argue that a Magistrate has the

inherent power to discontinue proceedings at the stage of Section 251. However, this Court must acknowledge that the expansive interpretation of *Bhushan Kumar* has been significantly narrowed. As held in the recent ruling of *Tulip Multispeciality Hospital (P) Ltd. v. Akhil Saxena (2026 SCC Online Del)*, the observations in *Bhushan Kumar* regarding the power to "discharge" in a summons case are considered *passing references* and cannot override the larger bench mandate of *Adalat Prasad*. Consequently, the ratio of *Bhushan Kumar*, to the extent that it suggests a formal "discharge" stage in Chapter XX, is no longer the prevailing law.

- 9.6. While I accept that a Magistrate cannot "recall" process, this Court observes that dropping proceedings where the complaint is *bad ab initio*, such as a non-signatory heir being prosecuted for a deceased drawer's debt, is not a "review" of a judgment but a refusal to continue an illegal prosecution. The law interpreted by the Apex Court in *Alka Khandu Avhad* and *Ganga Prasad Ratnakar* clearly prohibits the prosecution of a non-signatory heir. To force such an heir to stand trial is a violation of the fundamental right to a fair procedure under Article 21 of the Constitution.
- 9.7. Procedural law is a "handmaid of justice," not its mistress. A Magistrate cannot hide behind the absence of a specific "discharge" section to facilitate a trial that is destined to end

in acquittal due to a jurisdictional bar. When the "substance of accusation" under Section 251 is a legal impossibility (i.e., attempting to inherit criminal liability), the Court is not a "post office" mandated to continue a groundless trial.

9.8. I hold that the Learned Magistrate's refusal to terminate the proceedings on purely procedural grounds, despite the patent legal incompetence of the complaint, was a failure to exercise jurisdiction. When a complaint is legally incompetent on its face, the Court must not hesitate to terminate the proceedings at the threshold to prevent an abuse of the process of law.

9.9. The refusal to discharge the petitioner on purely procedural grounds was a failure to exercise jurisdiction. When a complaint is legally incompetent, the Court must not hesitate to terminate the proceedings at the threshold. The fourth question is, therefore, answered in the Affirmative.

## ***10. CONCLUSION WITH REASONS AND LEGAL FINDINGS***

10.1. Upon a holistic consideration of the progressive discussions made hereinabove, this Court arrives at the following inescapable legal conclusions:

- a) The fundamental premise of the Negotiable Instruments Act, 1881, is to ensure the credibility of banking transactions, yet it does not contemplate

the subversion of the basic tenets of criminal jurisprudence. Criminal liability is not a heritable estate. The "legal fiction" created under Section 138 is restricted to the "drawer" of the instrument. In the present case, the death of the drawer, Tapan Kumar Dey, on February 3, 2022, effectively terminated the possibility of any personal criminal default under the Act. The attempt to substitute the petitioner, Gautam Dey, as an accused is a legal misadventure that ignores the principle of *nullum crimen sine lege* (no crime without law).

- b) The "concatenation of acts" necessary to invite a conviction under Section 138 remained fundamentally broken. The statutory demand notice issued on April 13, 2022, was directed at a non-signatory for a default that the deceased drawer could not physically or legally commit post-mortality. As established by the ratio in *Alka Khandu Avhad (2021)*, the absence of the petitioner's signature on the cheque is a jurisdictional bar that no amount of trial or evidence regarding "business associations" can rectify.
- c) This Court finds that the Learned Magistrate's refusal to discharge the petitioner was an act of

"procedural inertia." When a complaint is ex-facie legally unsustainable due to the death of the drawer and the non-signatory status of the accused, the trial becomes a hollow ritual. To allow such a trial to proceed is to permit the criminal machinery to be used as a lever for civil recovery, which constitutes a classic "Abuse of the Process of Law."

### ***11. CONSEQUENTIAL ORDER AND DIRECTIONS***

11.1. In view of the detailed findings recorded above, and for the purpose of ensuring that the ends of justice are met, it is hereby ordered as follows:

- i. The entire proceedings in connection with C.R. Case No. 365 of 2022 (TR Case No. 410 of 2022) now pending before the Learned Judicial Magistrate, 1st Class, 2nd Court, Berhampore, Murshidabad, including the order taking cognizance and all subsequent orders passed therein, are hereby quashed and Set Aside insofar as the petitioner, Gautam Dey, is concerned.
- ii. The order dated August 4, 2023, passed by the Learned Magistrate, whereby the petitioner's prayer for discharge was rejected, is hereby annihilated.

- iii. The petitioner is hereby discharged from his bail bonds and is set at liberty. His personal bond and any surety bonds executed in this matter are hereby cancelled and deemed discharged.
- iv. The Learned Judicial Magistrate, 2nd Court, Berhampore, is directed to record the abatement of the proceedings against the deceased Tapan Kumar Dey (if not already done) and to consign the records of the case to the file room in view of the quashing of proceedings against the only remaining accused.
- v. It is expressly clarified that this order shall not preclude the Complainant/Opposite Party No. 1 from pursuing a Civil Suit for Recovery or any other appropriate civil remedy against the estate of the deceased Tapan Kumar Dey in accordance with the Law of Succession, if so advised. The observations made herein are strictly limited to the criminal liability under the N.I. Act.

11.2. The Registrar (L&OM) is directed to communicate this order to the Learned Trial Court immediately through the Learned District and Sessions Judge, Murshidabad, for necessary compliance.

- 11.3. The Revisional Application being C.R.R. No. 3672 of 2023 stands allowed and disposed of accordingly.
- 11.4. There shall be no order as to the cost.
- 11.5. CRAN 2 of 2024 is also disposed of accordingly.
- 11.6. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
- 11.7. Case diary, if any, be returned forthwith.
- 11.8. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

***(Uday Kumar, J.)***