

(2025) 07 KL CK 1217

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 6570 Of 2022

Susan Thomas

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 25-07-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 342
Code of Criminal Procedure, 1973 — Section 305, 305(2), 305(3), 305(4), 357(3), 482
Indian Penal Code, 1860 — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Companies Act, 2013 — Section 248, 248(7), 250, 252, 445
Emigration Act, 1983 — Section 24, 25
Prevention of Money Laundering Act, 2002 — Section 3, 4, 70, 71
Companies Act, 2013 — Section 560(5)
Negotiable Instruments Act, 1881 — Section 138, 141

Citation : (2025) 07 KL CK 1217

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : S.Rajeev, V.Vinay, M.S.Aneer, Prerith Philip Joseph, Sarath K.P., Jaishankar V.Nair, Rajesh.A, Rekha.S

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. The 3rd accused in S.C. No.542/2020 on the files of the Special Court (CBI), Ernakulam, has filed this Criminal Miscellaneous Case, under Section 482 of the Code of Criminal Procedure, 1973, seeking to set aside the common order dated 22.7.2022 in CrI.M.P. Nos. 6 and 405 of 2021 in the above case and to remove the 3rd accused as the representative of the 1st accused company.

2. Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the Directorate of Enforcement (ED). Perused the documents and decisions placed by the learned counsel for the petitioner.

3. In this matter, the prosecution case is that, the 1st accused, M/s. Al Zarafa

Travels and Manpower Consultations is a private limited company and the 1st and 2nd accused are Managing Director and Director of the company respectively. The 1st accused company was involved in recruitment of manpower. Initially, the 2nd accused was controlling the affairs of the company. Later, he made his wife, the 2nd accused, as the Director of the Company and made one Renny Eapen, who was an employee of the Company, as a second Director and withdrew his Directorship from the Company. During the period from December, 2014 to March, 2015, accused Nos.2 and 3, who were carrying out the affairs of the company, cheated nursing aspirants, dishonestly and illegally, as the outcome of criminal conspiracy hatched between them, collected huge sum of money from nursing aspirants and about Rs.100 Crores was transferred via illegal hawala channels to Dubai. It is alleged further that, the 2nd accused was the kingpin of the scam and the 3rd accused, who was the then Director of the Company knowingly assisted the 2nd accused in generating proceeds of crime, its concealment and transfer of money. On this premise, the prosecution alleges commission of offences punishable under Section 420 read with 120B of the Indian Penal Code, under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act [hereinafter referred as the 'P.C. Act' for short] and under Sections 24 read with 25 of the Emigration Act, 1983 and under Sections 3 read with 4 of the Prevention of Money-Laundering Act, 2002 [hereinafter referred as the 'PMLA Act' for short].

4. It is submitted by the learned counsel for the petitioner that, the petitioner has been originally arrayed as the 3rd accused in this crime as the Director of M/s. Al Zarafa Travels and Manpower Consultants Pvt. Ltd. and the 1st accused in this crime is the company by name 'M/s. Al Zarafa Travels and Manpower Consultants Pvt. Ltd'. The grievance of the petitioner is that, even though she got arrayed as the 3rd accused being the Director of Company in this case, her name is shown as the person representing the Company as its Director. According to the learned counsel for the petitioner, as per Annexure-G notification issued as on 15.07.2021 by the Registrar of Companies, Kerala, the 1st accused company is categorized as a dissolved company. Therefore, at present and after 15.07.2021, the 1st accused company is not in existence.

5. It is pointed out by the learned counsel for the petitioner that, as per Section 248 of the Companies Act, 2013, where the Registrar has reasonable cause to believe that, the company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 445, the company can be dissolved.

6. It is pointed out by the learned counsel for the petitioner further that, Section 305 of Cr.P.C, specifically deals with the procedure when corporation or registered society is an accused and as per Section 305(2) of Cr.P.C, where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and

such appointment need not be under the seal of the corporation. As per Section 305(3) of Cr.P.C., where a representative of a corporation appears, any requirement of the Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined. As per Sub section (4) of Section 305, where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

7. The learned counsel for the petitioner also referred Section 70 of the PMLA Act. As per Section 70 of the PMLA Act, it has been provided as under:

70. Offences by Companies.-- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

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

[Explanation 1].--For the purposes of this section,--

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

(ii) "director", in relation to a firm, means a partner in the firm.

[Explanation 2. - For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.]

8. Thus, the sum and substance of the argument at the instance of the learned counsel for the petitioner is that, the prosecution agency cannot compel a

Director or an authorized representative of a company to be an accused to represent the company and it is the option of the company to appoint a representative. It is also pointed out by the learned counsel for the petitioner that, once the company is dissolved, the company could not appoint a representative and in such cases, the prosecution of the company by appointing a Director or any other responsible persons to represent the company, at the volition of the prosecution or the court is not envisaged under the provisions of law. Therefore, it is submitted that, even though the petitioner is ready to face trial in her individual capacity as the 3rd accused, she should not be compelled to represent the 1st accused company also, since the company was dissolved, she could not defend the company. Therefore, the impugned order is liable to be set aside and the 3rd accused is liable to be removed from the status of the representative of the 1st accused company.

9. The learned counsel for the petitioner placed decision reported in *Krishnaswamy Sridhar v. State* by CBI reported in [CDJ 2021 Kar HC 1543], wherein the impact of Section 305 of Cr.P.C. was considered and in the said case, the High Court of Karnataka, held that, in view of Section 305 (4) of Cr.P.C, where the representative of a company does not appear before the court and on such non-appearance, the procedure stipulated under sub section (3) of Section 305 would not apply and the procedure would apply is under Section 305(4) of Cr.P.C.

10. Countering this argument, it is submitted by the learned Standing Counsel for Enforcement Directorate that, in view of Section 248(7) of the Companies Act, the liability, if any, of every director, manager or other officer, who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved. Therefore, the prosecution against every member of a dissolved company under sub-section (5) shall continue and can be enforced. It is pointed out by the learned Standing Counsel further that, no decision covering the exact point in issue noticed by him so far.

11. In view of the rival submissions, the question arises for consideration is, how a company or a corporation or a society registered under the Societies Registration Act, 1860, which was dissolved or came into an end by operation of law, to be prosecuted?

12. Section 305 of Cr.P.C. deals with procedure when corporation or registered society is an accused and the procedure provided under Section 305(2) of Cr.P.C. is that, the company may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. Sub section (3) deals with the events after appearance of the representative for the company and sub section (4) provides that, where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

13. Reading Section 305 of Cr.P.C, it is clear that the above procedures would apply to a company in existence, so that the company could appoint a representative for the purpose of the inquiry or trial. But the company, corporation and society, which is not in existence, since it was dissolved or came to an end by operation of law, how the company, corporation or society to be prosecuted is not dealt under the Cr.P.C. or under Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred as 'BNSS' for short]. Even though, in BNSS Section 342 analogous to Section 305 of Cr.P.C. has been incorporated without any substantial change. Thus, this question required to be answered.

14. Going by the mandate under Section 248 of the Companies Act, 2013, which is analogous to Section 560(5) of the Companies Act, 1956, where the company ceases to exist as a legal entity after being struck off, its liabilities and the liability of its officers for actions taken during its existence remain. Therefore, the liability of directors, managers, and other officers who were exercising management powers, as well as members, continues and can be enforced as if the company had not been dissolved, in the manner known to law. If a company commits an offence, not only the company be prosecuted, but also the individuals who were responsible for the affairs of the company and for the offences within the company can be prosecuted. But, jail sentence could not be imposed against the company. The doctrine of attribution in corporate criminal liability holds that a company can be held liable for the actions of its employees, particularly those in positions of authority.

15. But, when the company is dissolved after commission of crime, in order to prosecute the company, the procedure followed is to restore its status after setting aside the dissolution or the state of non existence. Therefore, when a company is dissolved or came to an end by operation of law, then also the offence committed by the company can be prosecuted, because striking off or dissolution does not erase liability of the company and in such cases the company has to be restored to the register.

16. Section 252 of the Companies Act, 2013, allows aggrieved parties or regulators like ROC, SEBI, IT Department, to apply to the National Company Law Tribunal (NCLT) for restoration, within three years from the date of dissolution or striking off.

17. In this connection, it is relevant to refer a recent decision of the Apex Court reported in [MANU/SC/0889/2025 : 2025 SCC OnLine SC 1419 : 2025 INSC 831] Dhanasingh Prabhu v. Chandrasekar and another, wherein the Apex Court considered a criminal appeal, challenging the final judgment and order of the Madras High Court dated 26.02.2024, whereby the High Court allowed the Criminal Original Petition No.1533/2024 preferred by the accused therein and quashed complaint alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred as 'NI Act' for short]. In the said case, after discussing the rigor under Section 141 of the NI Act and referring Three Bench decision of the Apex Court reported in [(2012) 5

SCC 661] *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, wherein the core question considered was, whether in view of Section 141 of the NI Act, a company could have been made liable for prosecution without being impleaded as an accused, and whether a director of a company could have been prosecuted for the offences punishable under the provisions of the Act without the company being arraigned as an accused, in paragraph No.6.1 of *Dhanasingh Prabhu's* case (*supra*), it was observed that, the commission of an offence by a company is an express condition precedent to attract the vicarious liability of others such as directors or employees of a company. Thus, the words "as well as the company" appearing in the Section make it absolutely clear that when the company could be prosecuted then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.

18. Further, in paragraph Nos.6.2 and 6.3, the Apex Court observed as under:

6.2 In the said case, the three Judge Bench followed the ratio of the judgment in *State of Madras vs. C.V. Parekh*, (1970) 3 SCC 491 and opined that the judgment in *Sheoratan Agarwal vs. State of M.P.*, (1984) 4 SCC 352 did not lay down the correct law and was therefore overruled. It was further observed that the decision of this Court in *Anil Hada vs. Indian Acrylic Ltd.*, (2000) 1 SCC 1 was also not the correct law insofar as it stated that the director or any other officer of a company can be prosecuted without impleadment of the company. It was further observed that the judgment of this Court in *U.P. Pollution Control Board vs. Modi Distillery*, (1987) 3 SCC 684 was also restricted to its own facts. In our view, the aforesaid decisions are not applicable to the present case inasmuch as the said decisions concerned the vicarious liability of the directors of a company when the company itself was not prosecuted against or made liable. We say so for the reason that the distinction between a company and a partnership firm has to be borne in mind while approaching these cases. Hence, the judgment of this Court in *Aneeta Hada* is of no assistance to the respondent herein.

6.3 In *Dilip Hariramani vs. Bank of Baroda*, 2022 SCC OnLine SC 579 ("*Dilip Hariramani*"), the issues raised were (i) whether the appellant therein, being a non-signatory to the dishonoured cheque, could have been convicted under Section 138 read with Section 141 of the Act on the basis that there was vicarious criminal liability of a partner; and (ii) whether the partner could be convicted and held to be vicariously liable when the partnership firm was not made an accused and therefore not tried for a primary or substantive offence. The facts of the case are necessary to be discussed inasmuch as in this case the respondent-Bank of Baroda had granted term loan on cash credit facility to a partnership firm- *M/s Global Packaging* and the repayment of the loan by the firm was through its authorized signatory who had issued three cheques which were dishonoured on presentation due to insufficient funds. A demand notice was issued to the authorized signatory under Section 138 of the Act by the bank which later filed the complaint against the authorized signatory as well as the

appellant therein but the firm was not made an accused. The authorized signatory of the cheques of the appellant therein was shown as a partner of the firm. It was contended that there was no assertion or statement in the complaint made to establish the vicarious liability of the appellant therein. Both the accused were convicted by the trial court and sentenced to imprisonment for six months and asked to pay compensation under Section 357 (3) of the CrPC and in default to suffer additional imprisonment for one month. The appeal preferred before the District and Sessions Court was allowed in part by reducing the sentence till the rising of the court and enhancing the compensation amount to Rs. One Crore Twenty Lakhs with the stipulation that both the accused would suffer additional imprisonment of three months in case of failure to pay. The accused challenged the judgment before the Chhattisgarh High Court which dismissed the appeal and hence the appeal was preferred before this Court. This Court noted the following facts in the said case:

- i. The Demand Notice issued on 04.11.2015 by the bank through its Bank Manager was served solely to the authorized signatory of the firm.
- ii. The complaint dated 07.12.2015 under Section 138 of the Act was made against the authorized signatory as well as the appellant therein.
- iii. The partnership firm was not made an accused or ever summoned to be tried for the offence.

19. The observations made by the Apex Court in paragraph Nos.6.8 to 6.10, are extracted hereunder:

6.8 While holding that Section 141 is a deeming provision, it was also observed that a partnership is a compendious expression to denote the partners who comprise the firm which means that a firm without a reference to its partners has no juristic identity in law. By a deeming fiction, in Explanation (a) to Section 141, the expression "company" has been defined to include a firm. Since the High Court had lost sight of the fact that a partnership firm has to be read within the meaning of Section 141 which uses the expression "company", the appeal filed by the complainant therein was allowed.

6.9 On considering the aforesaid judgments, we observe that even if we have to come to the conclusion that the juristic entity i.e., the partnership firm is the primary accused in the instant case it would be necessary for us to also state that such a juristic entity, namely, a partnership firm is not distinct from the partners who comprise the partnership. In other words, if the complainant had proceeded only against the partnership firm and not the partners it possibly could have been held that the partnership firm in the absence of its partners is not a complete juristic entity which can be recognised in law and therefore cannot be proceeded against. On the other hand, in the instant case the complainant has proceeded against the two partners. The complainant is aware of the fact that the cheque has been issued in the name of the partnership firm "Mouriya Coirs" and has been signed by one of the partners. The complainant

has proceeded against the partners only without arraigning the partnership firm as an accused. It is necessary to reiterate that a partnership firm in the absence of its partners cannot at all be considered to be a juristic entity in law. On the other hand, the partners who form a partnership firm are personally liable in law along with the partnership firm. It is a case of joint and several liability and not vicarious liability as such. Therefore, if the complainant herein has proceeded only against the partners and not against the partnership firm, we think it is not something which would go to the root of the matter so as to dismiss the complaint on that ground. Rather, opportunity could have been given to the complainant to implead the partnership firm also as an accused in the complaint even though no notice was sent specifically in the name of the partnership.

6.10 Alternatively, notice to the partners/accused could have been construed as notice to the partnership firm also. We say so for the reason that unlike a company which is a separate juristic entity from its directors thereof, a partnership firm comprises of its partners who are the persons directly liable on behalf of the partnership firm and by themselves. Therefore, a partnership firm, in the absence of the partners being arraigned as accused would not serve the purpose of the case and would be contrary to law. On the other hand, even in the absence of making a partnership firm an accused in the complaint, the partners being made the accused would be sufficient to make them liable inasmuch as the partnership firm without the partners is of no consequence and is not recognised in law. This is because in the case of a partnership firm, the said juristic entity is always understood as a compendious term namely, the partnership firm along with its partners. Therefore, if the appellant-complainant had proceeded only against the partnership firm and not its partners then possibly the respondents would have been right in contending that the complaint was not maintainable but here the case is reversed. The complainant herein has not arraigned the firm but has arraigned the partners of the firm as accused and has also issued notice to them; therefore, we find that the defect, if any, is not significant or incurable in these circumstances. Permission is therefore to be granted to the complainant to arraign the partnership firm also as an accused in the complaint. Moreover, the cheque was issued in the name of the firm and signed by one of the partners, for and on behalf of the other also, therefore, the liability is deemed to be on both the partners of the firm.

20. In fact, in consequence of dissolution of a company under Section 248 of the Companies Act, it shall on and from the date mentioned in the notice under sub section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for payment or discharge of the liabilities of obligations of the company, as stipulated under Section 250 of the Companies Act.

21. Coming to cases under the PMLA Act, Section 70 also would apply insofar as offences committed by the company and as per Section 70 of the PMLA Act,

where a person committing a contravention of any of the provisions of the PMLA Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

22. Section 71 of the PMLA Act provides that, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

23. Section 70 of PMLA Act does not distinguish a company as existing company or non existing company. At the same time, the procedure law is silent how a company or corporation or society is prosecuted. Thus, obviously, there should be a legislation to prosecute companies, which committed various offences under various enactments, even after its dissolution or struck off and it is the legislative domain to do so. Therefore, it is high time to recommend the Central Legislature to address this question and make necessary provisions in the procedure law, so as to prosecute a dissolved or struck off company for the offences committed by the company during its existence.

24. In the instant case, in view of Section 70 of the PMLA Act and the overriding effect given under Section 71, a company can be prosecuted by following the procedure under Section 305 of Cr.P.C, if the same is in existence. Section 250 of the Companies Act, even though provides that, when a company is dissolved under Section 248 of the Companies Act, the same cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date, an exception is carved out for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. If so, it has to be inferred that, even after dissolving a company, the liability of the company still survives. If so, such a company could not be held as ceased to operate as such and the same deemed to be in existence insofar as for the payment or discharge of the liabilities or obligations of the company. Be it so, a dissolved company can be proceeded by initiating civil litigation for discharge of the liabilities or obligations of the company. If so, is it fair to hold that a company can be proceeded for discharge of the liabilities and obligations of the company even after its dissolution, but could not be prosecuted for the offences committed by the company before its dissolution or struck off? In such view of the matter, in the absence of a specific provision to deal with the matter, the Parliament has to consider amendment of Criminal Procedure Code and if necessary the special statutes to address this situation. Till then, a company, which committed an offence before its dissolution or struck off, could not spared without being prosecuted. For the said purpose, the prosecution can get the company restored to existence and follow the procedure under Section 305 of Cr.P.C. or under Section 342 of the BNSS. If no such restoration is possible, the prosecution can show somebody who was in

charge of the company in the Final Report to represent the dissolved company and continue the prosecution proceedings.

25. Holding so, it has to be held that the action of the prosecution in arraying the 3rd accused as the representative of the 1st accused company, who was the director of the company, is only to be justified, in the interest of justice. In such view of the matter, the prayer in this petition to set aside the order, whereby the Special Court was not inclined to remove the petitioner as the person, who is representing the 1st accused company, is liable to fail.

27. In the result, this petition stands dismissed and the impugned order stands confirmed.

Registry is directed to forward a copy of this order to the Law Secretary of the Union of India, forthwith, for further steps in tune with paragraph Nos.23 and 24 of this order.

Registry is further directed to forward a copy of this order to the Special Court, within seven days, for information and further steps.