

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3146 of 2023

**Suman Chattopadhyay
Vs.
Enforcement Directorate**

For the petitioner : Mr. Somopriya Chowdhury
Mr. Koushik Dey
Ms. Iram Hassan
Mr. S. Sarawgi
Mr. M. Majumder

For the Enforcement Directorate : Mrs. Debjani Roy
Mr. Steven S. Biswas

Heard on : 13.08.2025

Judgment on : 01.12.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein preferred the instant application being aggrieved by the order dated 3rd November 2022 passed by learned CBI Court, Bichar Bhavan in ML case no. 1 of 2013, initiated under section 3 read with section 17 and section 4 of Prevention of Money Laundering Act, 2002 (hereinafter called as PMLA). By the impugned order learned Court below rejected the petitioners prayer for passing necessary direction upon accused no. 1 to 4 for their proper representation on the ground that it could be considered at

later stage but not at the stage of service of copy of documents under section 207 Cr.P.C.

2. The petitioner contended that the petitioner has been arraigned as accused no. 22 in the said complaint case filed by opposite party. Though the petitioner has been implicated in his personal capacity in the said complaint as above but he was also indirectly impleaded to represent two other accused persons being accused no.23 and 24 namely M/s Disha Production & Media Pvt Ltd. and M/S Akdin Media Pvt. Ltd. and described the said two entities in the following manners.

(a) M/S, Disha Production and Media Private Limited, having its registered office at 74, Beliaghata Main Road, Kolkata-700010 represented by its director, Shri Suman Chattopadhyay (accused No.23).

(b) M/S. Akdin Media private Limited, having its registered office at 74, Beliaghata Main Road, Kolkata-700010 represented by its director, Shri Suman Chattopadhyay(accused No.24)."

3. Now the petitioner's contention is that the company namely accused no. 23 and 24 has separate and independent juristic entity and completely distinct from its Directors and Share Holders. A company cannot be implicated in criminal complaint depicting representation by a specific individual as a Director. If the complainant wants to implicate M/S Akdin Media Private Limited or the other company namely M/S Disha Production & Media Pvt. Ltd., they are to be implicated in their own name without depicting representation by any individual including the petitioner. Moreover, though the petitioner continued to be a Director of M/S Akdin Media Pvt. Ltd. on the date when summon was issued by the court, but the petitioner had no association with the accused no. 23, namely M/s Disha Production & Media Pvt. Ltd.

4. His further contention is M/S Akdin Media Pvt Ltd. is presently represented under section 305 of the Cr.P.C. by an authorized officer which has been accepted by the court below but so far as accused no. 23 is concerned, the petitioner is being unnecessarily harassed at the behest of the opposite party as the opposite party is insisting that the petitioner must represent the said accused no. 23, inspite of the fact that he has got no connection with the said company. Further contention is that the petitioner has resigned from his positon of directorship of the said company prior to 14th March, 2013. On the date of issuance of summon, the petitioner was not connected with M/S Disha production & Media Pvt. Ltd. and therefore, he could not have been saddled with any responsibility to represent the said Company i.e. accused no.23 in any manner during the course of proceeding and the petitioner cannot be asked to represent the said company during trial.

5. Mr. Choudhury learned Counsel appearing on behalf of the petitioner further submitted that the summon issued in the name of M/S Disha Production & Media Pvt. Ltd. was actually never sent to the registered address to the said company but to the address of the petitioner, inspite of the fact that he had resigned from the said company w.e.f. 14th March, 2013 and the entire share holding of the said company stood transferred in 2013 in favour of one Partha Chakraborty and soma Chakraborty.

6. In the above backdrops, the petitioner filed the abovementioned application before the learned Special Court, where he prayed for expunging his name as a representative of accused no. 23 from the cause title of the petition of complaint as well as summon which were issued by the Court.

7. Mr. Choudhury further argued that the purport of section 305 of the Code is that only a representative appointed by a company can represent a company during the course of trial or inquiry but since the petitioner does not have any association with the said company, there is no question of the said company authorising the petitioner to represent in terms of section 305(2) of the Code.

8. He further contended that the observation of the trial Court that the prayer made by the petitioner would be considered at the time of framing charge is not tenable in the eye of law as the trial cannot be proceeded without appearance of the authorised representative of the accused no. 23. The court below failed to apply his judicial mind to the settled position of law regarding representation of a body corporate and he completely ignored the gross suppression of material fact on the part of the opposite party/Enforcement Directorate (ED) in as much as the opposite party was fully aware of the date of filing of the supplementary complaint in 2021 that the petitioner has no connection with the aforesaid accused no. 23/company as the Form no. 32 in this connection is available in the public domain.

9. In this context Mr. Chowdhury also referred section 70 of the PMLA which deals with question of responsibility in respect of offence committed by a company and he contended that said section does not relate to the question of service of summon of a company and the power of a persons to represent that company. Therefore, the reference to section 70 of the said Act is absolutely unwarranted and illegal. The court below has failed to exercise the jurisdiction vested upon him. The impugned order is liable to be

set aside and the trial court may be directed to issue fresh summon at the registered address of the accused no. 23 and to permit the said Company to be represented by a person of its choice authorized by Board resolution.

10. Learned counsel appearing on behalf of ED submits that investigation conducted by the opposite party under the said PMLA revealed the nature and purpose of the business activity of the Sarada Group of Companies represented through Sudipto Sen and his other associates. The proceeds of crime were acquired by Mr. Sen and his associates out of commission of scheduled offence and were subsequently laundered through his companies in association with other companies and individual in guise of seemingly legitimate business transaction, thereby attempting to erode the basic fabric of the national economy.

11. She further contended that petitioner herein is one of such person who through his companies had part and layered the proceeds of crime of Sarada Group of companies and the petitioner was the main person for handling the affairs of the aforesaid two companies. The other director is the wife of the petitioner has stated that she had no role to play in the business of the companies. As per agreement dated 3rd August, 2010 the petitioner and his wife had the complete ownership of M/S Disha Production & Media Pvt. Ltd.

12. Further contention of ED is that the petitioner during 2010-2011 entered into agreement with SPPPL for sale of 75% shares of Disha for Rs. 4.54 crore but even after receipt of the said amount the petitioner did not transfer the shares rather projected the money as unsecured interest free loans in the said two companies. He further contended that the petitioner

also received Rs. 49 lakhs as his remuneration which was not in return of any genuine service by the petitioner. Actual service provided by the petitioner was through his aforesaid two companies for layering proceeds of crime from Sarada Group of companies and the said amount of Rs. 40 lakhs was his illegal gratification for providing such money laundering services. Infact, the rotating funds between Disha and Akdin revealed his acts in the overall scheme to layer the proceeds of crime in order to make it difficult for investigating agencies to track/identify the origin of funds. The petitioner has also revealed unsecured loan in Disha from another Chit fund company M/S I Core and the petitioners sold the company namely Disha to another chit fund company, Chakra Group which clearly shows his intention that he had floated the above companies only for money laundering activities in relation to various chit fund companies. Therefore, the petitioner was directly involved in concealment of proceeds of crime through multiple layering of transaction and using the unreturned proceeds of crime and projecting them an untainted property. Infact petitioner was in complete control of the aforesaid two companies.

13. She further contended that the complaint being ML Case no. 1 of 2013 was filed subsequently detailing the involvement of the petitioner. Supplementary prosecution of complaint was filed on 27.08.2021 in ML case no. 1 of 2013 arraigning the petitioner as accused no. 22 and M/S Disha Production & Media Pvt. Ltd. as accused no. 23, represented by the Director namely the petitioner herein.

14. Relying upon section 70 and 71 read with section 65 of PMLA Mrs. Roy on behalf of ED further submits that the PMLA is a special law designed

to combat money laundering and provide for the confiscation of related properties and it has an overriding effect over general laws. The PMLA allows for independent prosecution and property attachment proceeding. She further contended that section 65 and 71 of the PMLA are curved out from section 4 and 5 of the Cr.P.C. in spirit, when section 65 provides that the provisions of Cr.P.C. will apply to PMLA proceedings as long as they are not inconsistent with the provisions of PMLA.

15. She further contended that section 70(1) of the PMLA clearly indicates that when a company committed an offence, every person who at the time of commission of offence 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 offence and liable to be proceeded. Accordingly petitioner was solely responsible and was in charge for layering and parking of the proceeds of the crime through his company Disha and thus, the company Disha was made to be represented by the petitioner. The petitioners resignation from the company Disha was w.e.f. 14.03.2013 and the offence was committed prior to 14.03.2013 by execution of sham agreement and receipt of funds from Sarada group of companies in 2010-2011. The petitioner has been individually made accused in the case in terms of section 17(2) of PMLA which starts with non-obstente clause and thus have independent operation and the petitioner being a director at the time of the commission of the offence has been made accused individually. In this context the petitioner relied upon the judgment of **ED Vs. A Muthuswammy others** reported in **2004 SCC Online, Mad 1093.**

16. Therefore, it is clear that section 305 has no applicability for the special statute wherein specific provision for 'offence by companies' are stipulated separately and for the offence by the company the persons in charge of at the time of commission of the offence ought to represent the company. Moreover the relevant period of time for consideration of the involvement of the person in charge of the company is at the time of commission of the offence and therefore subsequent resignation of the person from such company is irrelevant. The persons who made to defend the company can be separately made as an accused in the prosecution of complaint. In this context she also relied upon **Suresh Chandra Rai Vs. State of Jharkhand, 2010 SCC Online Jhar 1028, I Jai Raj Vs. C. Arabinda, 1998 SCC Online Mad 680.**

Therefore she prayed for dismissal of the instant Application.

17. Before going to further details let me first reproduce the relevant sections namely 65 and 70 of the PMLA which reads as under:-

65. Code of Criminal Procedure, 1973 to apply.

- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

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.] [Inserted by Act No. 2 OF 2013]

18. From the aforesaid provision of section 70 of PMLA it is clear that three categories of persons can be discerned from the said provisions who are brought within the purview of penal liability through the legal fiction envisaged in the section.

(i) The company, the principle offender, which committed the offence

(ii) Everyone who was in charge of and was responsible for the business of the company

(iii) Any other person who is a director or a manager or secretary or officer of the company with whose connivance or due to whose neglect the company has committed the offence.

However, this statue also provide that if a person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence he shall not be liable to punishment under the said section.

19. Sub section (2) further provides that where any offence under this act has been committed on the company and it is proved that the offence has been committed on consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the

company, such persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

20. The term '*as well as the company*' as appearing in section 70 signifies that since a company is an artificial persons it is incapable of committing any crime personally. However, if certain crimes are committed by its officials then in such circumstances a company is the being who has committed this crimes. Now from the cause title of the complaint as well as submission made on behalf of the ED, it is clear that complainant has insisted that the petitioner shall represent the accused no. 23 company and the court below also has shown reluctance to adjudicate the question as to whether, complainant can insist petitioner accused to represent accused no.2/company and on the contrary court below insisted the petitioner for compliance of section 207 of the Code of criminal procedure (Cr.P.C) upon the said company through the petitioner herein, keeping the said dispute open for future adjudication.

21. The trial Court's observation that at the stage of section 207 Cr.P.C. the issue about representation of the company is not required to be considered, is not lawful as the case cannot be proceeded at any stage without due representation of the accused no.23 and if the petitioner herein is reluctant to represent accused no. 23 then even at the stage of section 207 Cr.P.C. the company/accused no. 23 has cause to prejudice.

22. Petitioners specific case is that he is not associated with accused no. 23/company since 2013 and his further contention is that he does not want to represent company nor the Board of Company has taken any resolution selecting him to represent company. It is the complainant/ED who has

decided that accused no. 23 company would be represented by the petitioner herein. Therefore, it has become incumbent upon this court to consider the legality and validity of such insistence by complainant, specially when the petitioner is unwilling to represent the company.

23. The Apex Court in ***RC Cooper Vs. Union of India*** reported in **1970**

(1) SCC 248 held that a company is distinct and different from its share holders and directors and it's permitted to sue or be sued in its own name. paragraph 11 of the said judgment may be reproduced below:-

"11. A company registered under the Companies Act is a legal person, separate, and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the distributed profit. Again a director of a Company is merely its agent for the purpose of management. The holder of a deposit account in a Company is its creditor: he is not the owner of any specific fund lying with the Company. A shareholder, a depositor or a director may not therefore be entitled to move a petition for infringement of the rights of the Company, unless by the action impugned by him, his rights are also infringed."

24. Thereafter in ***Standard Chartered Bank Vs. Directorate of Enforcement*** reported in **(2005) 4 SCC 540** it has been clarified by the Apex Court that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatorily imprisonment and fine and thereby the views expressed by the majority in ***Velliappa Textiles Ltd. Case***, reported in **(2003) 11 SCC 405** was overruled on that point. Hon'ble Division Bench of Madras High Court in the judgment dated 23rd November, 2022 passed in Crl. RC No. 1513 of 2022 **(V. Lakshmi Vs. Directorate of Enforcement)** has held applicability of the same principle even in a proceeding under the PMLA:-

“4. The short point that falls for consideration is, when a juristic person has been arrayed as an accused in a prosecution, who should have to represent it. This question has been answered by this Court in **V. Umamaheswari Vs. State represented by the Inspector of Police, Economic Offence Wing – II, Virudhunagar District and Another**, wherein the law governing Section 305 Cr.P.C. has been discussed and stated as under:-

11. It is not the duty of the prosecution nor the Court to nominate the person to represent Gayathri Chits (A-1) and Selvam Finance (A-2). Section 305 Cr.P.C., clearly states that the accused Corporation may appoint a representative for the purpose of the inquiry or trial. Dictates of common sense demands that some human being must represent A-1 and A-2 to answer the charges, engage an advocate to defend them and answer the questions under Section 313 Cr.P.C. etc. of Course, the human agent appointed for the Corporation cannot be personally convicted and sentenced for the offence committed by the Corporation. Obviously, a sentence of imprisonment cannot be awarded to a juristic person and only fine can be imposed. Therefore, it is open to Gayathri Chits (A-1) and Selvam Finance (A-2) to appoint anyone including one of the accused, namely A-3 to A-10 to represent them in the prosecution. If no arrangement is made by Gayathri Chits (A-1) and Selvam Finance (A-2), then they will have to suffer the consequences and cannot plead prejudice at a later point of time. Hence, liberty is given to Gayathri Chits (A-1) and Selvam finance (A-2) to appoint anyone to represent them before the Trial court and that can be one of the accused or an outsider also, but, with due authorization under the seal of Gayathri Chit (A-1) and Selvam Finance (A-2). However, this cannot be a ground for discharging the present petitioner/A-9from the prosecution

5. As stated above, it is for the juristic entity to nominate a person to represent it in the prosecution and on failure to do so, the said entity cannot claim prejudice at a later point of time, especially, when it is shown that summons on the said entity has been served. In this case, the petitioner appears to have filed a memo stating that Dr. V. Sudhakar, Principal of the College, would represent the sixth accused in the prosecution.

25. The Bombay High Court also in the case of **Sanjeev S. Malhotra Vs. the State of Maharashtra in Criminal writ petition no. 4942 of 2019** held on 14th January, 2020 in a proceeding under Negotiable Instrument Act, whose provision under section 141 is *pari materia* with section 70 of PMLA that neither the prosecution nor the court can insist that a particular person has to represent the company. It is the prerogative of the company which has to be summoned in its own name at its registered address and

upon such receipt of such summon, the company has to nominate a person of its own choice to represent the company. In paragraph 10 and 11, the courts observation is as follows:-

"10. Similarly, in para 17 of its Judgment in the matter of Ram Narayan Sharma, the Gauhati High Court has held thus, 17. A conjoint reading of Section 63 and Section 305 of Cr.P.C. would show that after the process is served in the manner provided in Section 63 Cr.P.C. the Corporation may appoint a representative for the purpose of the inquiry or trial as provided in Section 305(2) Cr.P.C. It is, thus, evident that when the accused is a corporate body it is not for the Court to decide who shall represent the Corporate body. The Court can issue the process in the manner as provided under Section 63 Cr.P.C. and the representative will be appointed by the Corporate body for the purpose of representing the Corporate body during trial.

11. It is thus, clear that for prosecuting a Company as accused, the Court is required to issue process against the company and then becomes choice of the accused Company to nominate its representative to answer the Charge. The corporation by itself is a distinct legal entity than its director. Therefore, the impugned order directing the petitioner/accused no.2 to answer the charge levelled against the accused Company by signing the plea on behalf of the company cannot be sustained. Hence, the order.

ORDER

- 1. The petition is allowed in terms of prayer clause (b) qua the petitioner.*
- 2. The impugned order below Exhibit 264 qua the present petitioner is quashed and set aside."*

26. In the instant case petitioners specific case is that no summon has been issued or served at the registered office of the Company. Section 65 of PMLA clearly stipulates that provision of Cr.P.C. shall apply so far the provision of the PMLA is consistent with the provision of Cr.P.C. I have already stated that Section 70 is *pari materia* with section 141 of the Negotiable Instrument Act (in short N.I. Act) and this High Court in **O.N. Geoenka Vs. State of West Bengal** reported in **(2003) 3 CHN 304** held that where the company is being prosecuted the court cannot insist on particular persons to represent the company under section 305 of the

Cr.P.C. the relevant paragraphs i.e. para 19-22 of the said judgment runs as follows:-

19. *From the aforesaid two facts, it is sufficiently clear that this petitioner does not want to represent the company for cogent reason and in such a situation hardly there is any provision in the Code itself compelling him to represent the company despite his clear objection in the matter.*

20. *That being the position, upon consideration of the entire materials and the chequered nature of the case, I am very much inclined to interfere with the impugned order itself passed by the learned Magistrate directing this accused petitioner to appear before the said Court personally to express his consent whether or not he wants to represent the company and in that view of the fact the aforesaid portion of the order stands set aside.*

21. *But from the materials available, it has become clear that there has been delay in concluding the trial itself for various reasons and for which I could really appreciate the anxiety of the opposite party No. 2 for carriage of the present proceeding upto its end.*

22. *For such reasons and to obviate further difficulties with regard to the progress of the trial, I like to put it on record that while setting aside the portion of the aforesaid order as indicated above, I direct the learned Magistrate to invoke the provision of section 63 of the Code of Criminal Procedure for inviting the attention of the accused No. 1 to select its representative for the purpose of conclusion of the present trial and if within one month from the date of receipt of such notice, no steps is taken by the company for appointing his representative in this case, in such event, the learned Magistrate shall proceed in accordance with the provision of section 305(4) of the Cr. P.C. without insisting upon the company for selecting his representative further in connection with this case.*

27. The judgment relied on behalf of OP/ED in ***I Jayraj Vs. Sri Arabida, 1998 SCC Online Mad 680*** is a judgment passed by Single Bench and the Division Bench of the same High Court in ***E.D. Vs. Muthuswammy and others*** reported in ***2004 SCC Online Mad 1093*** did not concur with the view expressed by the Single Bench in ***I Jay Raj Case***. The judgment relied by the ED in ***Suresh Chandra Rai Vs. State of Jharkahnd*** reported in ***2010 SCC Online Jharkhand 1028*** is factually distinguishable since in the said proceeding the Director/ erstwhile Director of the company was being separately prosecuted. The argument advanced on behalf of ED that PMLA is special statue and it provides for independent prosecution and property attachment therefore, such act has precedence over other laws and therefore under the PMLA, court can compel an unwilling Director, even if

he has resigned from the company long back to represent company irrespective of the fact that he has been separately prosecuted in his individual capacity, does not hold water. Section 70 of the PMLA is no way in conflict with section 305 of Cr.P.C. or section 141 of N.I. Act. It is the corporation within the meaning of section 305 Cr.P.C. and as such the said company alone can appoint a representative for facing the prosecution.

28. Needless to say that representation of a company during inquiry or trial must not be confused with liability of a company in case the offence is committed by the company. For example when a company went into liquidation during the pendency of proceeding or prior to that , it is the official liquidator and not the Director, who is legally entitled to represent the company but liability of the Director, in committing the offence shall remain in accordance with PMLA and his exemption will be restricted only from the liability to represent the company who has been arrayed as an accused. The complainant is not empowered to make the petitioner to represent the accused company. Since the company/accused no. 23 is a juristic person and on the date of launching the prosecution the petitioner herein had severed all ties with the accused company the petitioner cannot be compelled to plead on behalf of the accused company under section 246 (2) of Cr.P.C. and the petitioner also cannot be compelled to answer the questions under section 311 Cr.P.C. unless he is being appointed by the company/accused to represent in an inquiry or trial.

29. In such view of the matter **CRR 3146 of 2023** is allowed.

30. The portion of the order dated 3rd November 2022 passed by learned CBI Court Bichar Bhavan in MA case no. 1 of 2013, by which the court

below rejected petitioners prayer for due representation of accused no. 23 and expunging the name of petitioner as representative of accused no. 23, is hereby set aside. Learned Magistrate is hereby directed to invoke the provision of section 63 of the Code of Criminal Procedure for inviting the attention of accused no. 23 by serving a summon to the registered office of the company for inviting the attention of the accused no. 23 to select its representative for the purpose of trial of the instant proceeding and if no step is taken by the company in appointing his representative in the case, the learned magistrate shall proceed in accordance with the provision of law under section 305(4) of the Cr.P.C. without insisting upon the company for selecting his representative further in connection with this case. Be it also mentioned that the entire process must have to be completed within a period of 60 days from the date of communication of the order to the court below by either of the parties.

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

(DR. AJOY KUMAR MUKHERJEE, J.)