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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 6021/2025 & CRL.M. As. 25599-25600/2025

SMALL FARMERS AGRIBUSINESS CONSORTIUM .....Petitioner

Through: Mr. Dalip Singh, Advocate.

versus

RAVI KUMAR AGARWAL & ANR. .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **28.08.2025**

1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (formerly Section 482 of the Code of Criminal Procedure, 1973[2]) assails order dated 19th January, 2024 passed by MM-08 (NI Act), District South, Saket, New Delhi in CT CASE No. 2358/2019 titled as "***Small Farmers Agribusiness Consortium (SFAC) vs. Ravi Kumar Agarwal & Anr***" filed under Section 138 of the Negotiable Instrument Act, 1881[3]. The Petitioner is the complainant in the said case.

2. The impugned order reads as follows:

> *"19.01.2024*
> *Present: Sh. Dalip Singh, Ld. Counsel for the complainant.*
> *Sh. Mohd. Arshad, Ld. Counsel for accused no. 01.*
> *Accused no. 02 is company.*
> *Summons issued on the LDOH to accused no. 02 received back served.*
> *This court is of the view that accused no. 02, company is duly served. In case of non-appearance of accused no. 02 the case will be*

[1] "BNSS"
[2] "Cr.P.C."
[3] "NI Act"

proceeded against them ex-parte.

Exemption application moved on behalf of accused no. I. Heard. ***Allowed*** *for today only, with a direction to the accused to remain present on the NDOH.*

Let summons be issued to the witnesses mentioned at serial no. 01 of the list of witnesses filed on behalf of the accused (on the basis of PF already filed), returnable on NDOH.

List of witnesses dated 11.07.2023 be sent to witness concerned.

Last and final opportunity is given to the accused to lead DE.

Re-list on ***12.03.2024*** *for DE."*

3. Counsel for the Petitioner submits that the Magistrate's direction to proceed *"ex parte"* against the company (Accused No. 2) is impermissible in criminal law, since the Code contemplates the continuous presence of the accused during trial and provides for coercive processes to secure such presence. It is urged that in the absence of any representative of the company, the trial cannot validly proceed, and if the company is not convicted for want of its presence, Accused No. 1, being a director of the company, would also stand discharged, thereby causing prejudice to the Petitioner.

4. The issue that arises for consideration is whether the Magistrate can proceed with the trial, *ex parte,* against Accused No. 2, upon recording due service of summons and noting the absence of appearance.

5. The objection that there can be no *ex parte* proceedings in criminal trials is broadly correct where the accused is a natural person, since the Code ordinarily requires the presence of the accused at the stage of recording evidence. However, the position is distinct in respect of a juristic entity. A company cannot be arrested, produced or remanded, nor can it be declared a proclaimed offender. This distinction is addressed by Section 305 Cr.P.C. (Section 342 of BNSS), which reads as follows:

"305.Procedure when corporation or registered society is an

accused.—(1) In this section, 'corporation' means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).
*(2) 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.*
(3) Where a representative of a corporation appears, any requirement of this 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.
(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.
(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the court shall, unless the contrary is proved, presume that such person has been so appointed.
(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a court is or is not such representative, the question shall be determined by the court."

(Emphasis supplied)

6. A reading of the above provision makes it clear that where the accused is a company, it may appoint a representative for the purposes of the inquiry or trial, and where such representative appears, all requirements of the Code to be complied with in the presence of the accused are deemed to be satisfied in the presence of the representative. Sub-section (4) specifically stipulates that where a representative of the company does not appear, the requirements of sub-section (3) shall not apply. In other words, if despite

due service the company chooses not to nominate a representative, the court is not bound to indefinitely defer the proceedings for want of the accused's physical presence.

7. Two further features of the NI Act framework are also relevant. First, under Section 141 of the NI Act, the company must necessarily be arraigned as an accused for vicarious liability to be fastened upon persons in charge of its affairs[4]. This requirement ensures that the company is impleaded, but it does not transform the juristic entity into a bodily entity capable of coercive production. Secondly, cheque dishonour proceedings are intended to be summary and primarily compensatory[5]. Permitting a corporate accused to stall proceedings by abstaining from appearance, despite due service, would frustrate both the summary character of the jurisdiction and its compensatory object.

8. In this backdrop, what the Magistrate called *"ex-parte"* is best understood as a decision to proceed in the absence of a duly-served corporate accused that has chosen not to appoint a representative. Thus, the petitioner's contention that the Magistrate was obliged to employ "coercive measures" until the company physically appeared is misconceived, since measures such as warrants, proclamation, or custody have no meaningful application to a juristic person. The correct safeguard lies in strict proof of service and in a reasoned order recording the non-cooperation and non-appearance of the company. Within those parameters, the continuation of the trial and, if guilt is established, the imposition of an appropriate sentence of fine upon the company would be in consonance with both the text of Section

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[4] Aneeta Hada v. Godfather Travels AIR 2012 Supreme Court 2795; N. Harihara Krishnan vs J. Thomas AIR 2017 Supreme Court 4125

305 Cr.P.C. and the underlying purpose of the NI Act.

9. In view of the above discussion, this Court finds no infirmity in the course adopted by the Magistrate. The petition is, accordingly, dismissed.

SANJEEV NARULA, J

AUGUST 28, 2025
as

[5] Meters & Instruments (P) Ltd. v. Kanchan Mehta AIR 2017 SUPREME COURT 4594