



2025:DHC:8961



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

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Reserved on: 22nd August, 2025

Decided on: 09th October, 2025

+ **CRL.M.C. 8535/2024 & CRL.M.A. 32574/2024 STAY OF PROCEEDINGS**

NILESH AGARWAL

.....Petitioner

Through: Mr. Arjun Dewan, Mr. Akash Arora, Mr. Jasraj Singh Chhabra, Advs.

versus

INCOME TAX OFFICE (ITO)

.....Respondent

Through: Mr. Sunil Agarwal, Sr. Standing Counsel, Mr. Viplav Acharya, Ms. Priya Sarkar, Jr. St. Counsels, Mr. Utkarsh Tiwari, Adv.

+ **CRL.M.C. 8536/2024 & CRL.M.A. 32576/2024 STAY OF PROCEEDINGS**

RAKESH AGARWAL

.....Petitioner

Through: Mr. Arjun Dewan, Mr. Akash Arora, Mr. Jasraj Singh Chhabra, Advs.

versus



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INCOME TAX OFFICE (ITO)

.....Respondent

Through: Mr. Sunil Agarwal, Sr.
Standing Counsel, Mr. Viprav
Acharya, Ms. Priya Sarkar, Jr.
St. Counsels, Mr. Utkarsh
Tiwari, Adv.

CORAM**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. The present petitions have been filed by the Petitioners under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[“**BNSS**”]/(Section 482 of Cr.P.C.) seeking quashing of Complaint Case No. 3067/2020 titled as “*ITO v. Nilesh Agarwal*” and Complaint Case No. 3068/2020 “*ITO v. Rakesh Agarwal*”, as well as the summoning orders dated 06.06.2024 passed by the Ld. ACMM (Special Acts), Central District, Tis Hazari Courts, New Delhi [“**trial court**”].

2. Since the issues involved are common and arise out of identical facts, both petitions are being decided together by this common judgment.

FACTUAL BACKGROUND

3. The allegations of the prosecution are that M/s SNR Buildwell Pvt. Ltd. [“**the Company**”] failed to discharge tax liabilities for the



Assessment Years 2014-15, 2015-16 and 2016-17 leading the Income Tax Department to raise demand of tax dues amounting to Rs.4,44,82,912/-. During pendency of recovery proceedings, it was found that the Company, through its Director Rakesh Agarwal, transferred an Audi Car (bearing Registration No. UK 07 BE 2759) in favour of his daughter-in-law without adequate consideration. The Department treated this transfer as void under Section 281 of the Income Tax Act, 1961 and proceeded to prosecute the Directors under Section 276 of the Act.

3.1 Sanction for prosecution was accorded by the Principal Commissioner of Income Tax to prosecute the petitioner under section 276 of the Income Tax Act. The complaints were filed against the petitioners before the trial court, but notably the Company itself was not arrayed as an accused. The petitioners objected that in absence of the company being a party, prosecution against them is not maintainable.

3.2 By the impugned orders dated 06.06.2024, the trial court held that the complaints were maintainable, thereby rejecting their objections and listed the matter for framing of notice. Aggrieved thereby, the Petitioners approached this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

4. Learned counsel for the Petitioners contended that the prosecution is fundamentally flawed and assailed the maintainability



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of the complaint on the ground that the company, M/s SNR Buildwell Pvt. Ltd., has not been impleaded as an accused. It was submitted that the allegations in the complaint are entirely based on the acts and liabilities of the company, and the petitioners have been arraigned solely in their capacity as Directors. Reliance was placed on Section 278B of the Income Tax Act, 1961, which specifically provides that “where an offence under the Act has been committed by a Company, the Company as well as every person in charge of, and responsible to the Company for the conduct of its business shall be deemed to be guilty”. In such circumstances, prosecution of the Directors alone is impermissible in law.

4.1 Placing reliance on *Aneeta Hada v. Godfather Travels & Tours (2012) 5 SCC 661*, it was argued that arraignment of the company is a condition precedent for imposing vicarious liability upon its officers and is a *sine qua non* for maintaining prosecution against its Directors. The principle has been also re-affirmed in *Sharad Kumar Sanghi v. Sangita Rane (2015) 12 SCC 781*, *Sushil Sethi v. State of Arunachal Pradesh (2020) 3 SCC 240*, and *Dayle De’Souza v. Union of India (2021) 20 SCC 135* wherein it was held that where the acts alleged are attributable to the Company, Directors alone cannot be prosecuted without impleading the Company. It is submitted that since the company is not impleaded as a party before the Court, the continuation



of proceedings against the petitioners alone would be contrary to the settled law.

4.2 It was further urged that the reliance on Section 281 of the Income Tax Act is misconceived. The Supreme Court in ***TRO v. Gangadhar Vishwanath Ranade (1998) 6 SCC 658*** held that a Tax Recovery Officer has no jurisdiction to declare a transfer void under Section 281, and such relief can only be sought by instituting a civil suit. Consequently, the substratum of the prosecution itself is unsustainable.

4.3 Learned counsel submitted that allowing the trial to proceed in the present circumstances would amount to an abuse of the process of law and cause grave prejudice to the petitioners. It is prayed that the impugned orders be set aside, and the complaints be quashed in their entirety.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

5. *Per contra*, Learned Standing Counsel for the Respondent/ITO opposed the petitions and contended that the present petitions are wholly misconceived. It was submitted that the petitioners, as Directors of the company, deliberately transferred the company asset to frustrate recovery. Prosecution and sanction were granted against them specifically in their capacity as Directors, and the Trial Court rightly took cognizance.



5.1 The principal objection raised by the petitioners that the company was not arrayed as an accused was described as a mere technical defect. It is contended that such omission does not vitiate the complaint and is curable by way of amendment. It was urged that the petitioners cannot be permitted to take undue advantage of a procedural lapse. In support, reliance was placed on *Bansal Milk Chilling Centre v. Rana Milk Food Pvt. Ltd.* (2025 SCC OnLine SC 1509), *S.R. Kumar v. S. Sunaad Raghuram* (2015) 9 SCC 609, and *UP Pollution Control Board v. Modi Distillery* (1987) 3 SCC 684, to contend that courts have permitted amendment of complaints to cure such defects.

5.2 As regards reliance placed by the petitioners on *TRO v. Gangadhar Vishwanath Ranade* (supra), it was submitted that the said ruling pertained to the unamended Section 281. Post-amendment, the position of law is different, and civil and criminal proceedings can validly proceed in parallel. Reference was made to *Shriya Bhupal v. ACIT* (2018 SCC OnLine Hyd 141) and *Rashida Kamaluddin Syed v. Shaikh Saheblal Mardan* (2007) 3 SCC 548, to buttress the submission that the present prosecution is legally maintainable.

REASONING AND ANALYSIS

6. I have heard the submissions advanced by counsels for both parties and have also perused the material on record.



7. The core issue in the present case is “**Whether Directors alone can be prosecuted when the company, which is the principal offender, is not arraigned as an accused**”. Section 278B IT Act clearly states that where an offence is committed by a company, “the company as well as every person in charge” shall be deemed guilty. Section 278B creates a deeming fiction whereby both the Company and every person in charge are deemed guilty of the offence. The legislative intent is clear that the Company must first be arraigned; only then can its officers be fastened with vicarious liability. The structure of the provision is pari materia to Section 141 of NI Act. Thus, jurisprudence under Section 141 of NI Act is directly applicable.

8. The Hon’ble Supreme Court in *Aneeta Hada v. Godfather Travels & Tours* (supra) laid down that for maintaining prosecution against Directors under a vicarious liability provision, arraigning of the Company is imperative. It was held that the company being a juristic person has to be impleaded as an accused, and without it, the directors cannot be prosecuted. The Court clarified that commission of the offence by the company is the foundation, and only thereafter can liability extend to its Directors. This principle has been reiterated in *Sharad Kumar Sanghi* (supra), wherein proceedings against a Director were quashed for want of the company as an accused and in *Sushil Sethi* (supra) wherein the Court stressed that without impleadment of the company, prosecution of Directors cannot survive.



9. The present complaints are premised on the company's liability of its outstanding tax dues and alleged transfer of company asset. The petitioners are arraigned solely as "Directors." No independent allegation is made against them in their personal capacity as is evident from para 19 of the complaint which reads as under:

"19. It is relevant to state that the prosecution of the present accused is being done as a director of M/s SNR Buildwell Pvt. Ltd."

10. More particularly it is also evident from the Show Cause notice dated 31.10.2019 which is addressed only to the company and not to the petitioners thereby making it clear that the petitioners are being prosecuted only in their capacity of being Directors of the company on the basis of vicarious liability. The relevant portion of the Show Cause notice reads as under:

"5. In view of the above, you (in the capacity of Director of the company) are given an opportunity of being heard to show cause as to why prosecution u/S 276 of the Income Tax Act, 1961 should not be launched against you in default "that Sh. Rakesh Agarwal had intentionally transferred the ownership/registration of the above Audi car in favour of his daughter in law to prevent the said car from being taken in the tax recovery proceedings in the case of M/s SNR Buildwell Pvt. Ltd."

11. Hence, the omission to implead the company is therefore not a mere technical irregularity but goes to the root of jurisdiction.



12. The reliance of the respondent on *UP Pollution Control Board v. Modi Distillery* (supra) is misplaced and it cannot override the categorical law laid down in *Aneeta Hada* (supra) and subsequent decisions. Similarly, the judgments in *Bansal Milk* (supra) and *S.R. Kumar* (supra) do not dilute the mandatory requirement of impleading the company- when the act alleged is by the Company, its officers cannot be prosecuted in isolation. Thus, in absence of the Company being made an accused, the prosecution is contrary to Section 278B and the law declared in *Aneeta Hada* (supra).

13. Thus, on both settled law and the facts of this case, the continuation of prosecution against the petitioners as Directors alone without impleading the Company as an accused would be contrary to law and amount to an abuse of process.

14. For the reasons aforesaid, the impugned orders dated 06.06.2024 passed by the learned ACMM (Special Acts), Central District, Tis Hazari Courts in Complaint Case Nos. 3067/2020 and 3068/2020 are set aside. Furthermore, Complaint Case no. 3067/2020 titled “*ITO v. Nilesch Agarwal*” and Complaint Case no.3068/2020 titled “*ITO v. Rakesh Agarwal*” and all proceedings emanating therefrom also stand quashed.

15. Both petitions are accordingly allowed and disposed of alongwith pending application(s), if any.



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16. However, it is clarified that this judgment shall not preclude the respondent/ITO from pursuing other remedies in accordance with law.

RAVINDER DUDEJA, J.

OCTOBER 09, 2025

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