

If a company that committed an offence before its dissolution or was struck off, the prosecution can get the company restored to existence and follow the procedure under Section 305 of the CrPC or under Section 342 of the BNSS

The Kerala High Court in the case of **Susan Thomas v. State of Kerala [Criminal. MC No. 6570 of 2022]** dated July 25, 2025, has recommended to the Parliament to amend the criminal procedural law and, if need be, special statutes, for effective prosecution of dissolved companies. The High Court observed that the procedures under Section 305 of the CrPC 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 are not in existence since it was dissolved or came to an end by operation of law, how they can be prosecuted is not dealt with under the CrPC or under the Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS].

Coming to cases under the PMLA Act, Section 70 also would apply insofar as offences committed by the company; however, Section 70 of the PMLA Act does not distinguish a company as an existing company or a non-existing company. At the same time, the procedure law is silent on how a company or corporation, or society, is prosecuted. Thus, obviously, there should be legislation to prosecute companies that commit various offences under various enactments, even after their dissolution or being struck off, and it is the legislative domain to do so.

Therefore, 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 the CrPC, if the same is in existence. Section 250 of the Companies Act even provides that, when a company is dissolved under Section 248 of the Companies Act, the same ceases 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.

Accordingly, the High Court concluded that a company, which committed an offence before its dissolution or was struck off, could not be 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 the CrPC 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. Thus, the Court held that the action of the prosecution in arraying the third accused as representative of the accused company was justified.

Link to the judgment - <https://hckinfo.keralacourts.in/digicourt/Casedetailssearch/fileviewcitation?token=MjAzNzAwMDY1NzAyMDIyXzQyLnBkZg==&lookups=b3JkZXJzLzlwMjI=&citationno=MjAyNTpLRVI6NTQ4Nzk=&isqr=1>