

(1989) 09 OHC CK 0048

In the Orissa High Court

Case No : Criminal Rev. No. 490 of 1985

Maharastra Vegetable Products Ltd. and Another	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 15-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 305, 305(3), 305(6)

Citation : (1990) 3 OCR 108

Hon'ble Judges : J. Das, J

Bench : Single Bench

Advocate : Asok Mukherjee and S.K. Das, for the Appellant; B.S. Misra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

J. Das, J.—This revision, petition arises out of the order dated 19.10.1985 passed by Sri B.K. Mohanty, S.D.J.M.-in-charge, Cuttack, in 2(c) CC No. 459 of 1983 directing issue of N.B.W. against the accused persons.

2. The Food Inspector, Cuttack Municipality, Cuttack submitted P.R. against three business establishments. Accused No. 3 Maharastra Vegetable Products Ltd. through their Managing Director, Kashinath Mangel filed a vakalatnama and also appointed and authorised their representative Shankarlal Ramchandra Sharma to represent on behalf of the company in the case. On behalf of the authorised agent, Shankarlal Ramchandra Sharma, a petition u/s 305, Code of Criminal Procedure, was filed with an undertaking that the authorised representative would appear in Court as and when his presence may be necessary and it was also prayed that the application of the corporation should be noted, The S.D.J.M.-in-charge Mr. B.K. Mohanty rejected the petition as no bail petition had been filed and directed to issue N. B. W. against the accused persons. Against this order, the revision petition has been filed.

3. The learned advocate for the Petitioners argued that the impugned order is

quite unwarranted and it violates the provisions of Section 305, Code of Criminal Procedure and hence the said order is illegal.

4. There is much force in the contention of the learned advocate for the Petitioners. A corporation, or a registered society can also be an accused in a criminal case in certain circumstances. However, there, is clear provision with regard to representation of corporation or registered society in a criminal case as envisaged in Section 305, Code of Criminal Procedure which reads as follows:

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 enquiry 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.

Thus, Section 305 contains everything necessary for proper representation of the corporation or registered society. Even a prescribed provision has been made that where a representative of a corporation does not appear then the corporation will be deprived of the privileges of the representation envisaged in the provisions of the Code of Criminal Procedure Hence, the only requirement after service of notice on corporation or registered society is that it should appear through a representative. Even the Court has been given the power under

Sub-section (6) of Section 305, Code of Criminal Procedure to decide any dispute as to whether a person representing a corporation is a representative of the corporation or not. In these circumstances, there is absolutely no scope to issue N.B.W. either against the corporation or against the representative of the corporation. Hence, the impugned order dated 10.9.85 is illegal and unwarranted and the same must be set aside.

5. In the result, the revision petition is allowed and the impugned order dated 10.9.85 is set aside. It is directed that the lower Court shall strictly proceed u/s 305, Code of Criminal Procedure when the accused is a corporation.