
(2016) 09 CAL CK 0053
In the Calcutta High Court
Case No : C.R.R. No. 2518 of 2016

M/s. G.K.W. Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, Section 305

Citation : (2017) 1 AICLR 949 : (2016) 4 CalCriLR 577

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Mr. Debasis Roy and Mr. Ayan Bhattacharya, Advocates, for the Petitioner; Mr. Ayan Basu, Advocate, for the State

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J. - Order dated 30.06.2016 passed by the learned Metropolitan Magistrate, Calcutta in M.F. Case No. 197 of 2015 has been assailed. By the said order prayer of dispensing with personal attendance of the petitioner no. 2 was turned down and the prayer of petitioner no. 1/company to be represented through pleader under Section 305 of the Code of Criminal Procedure was also rejected.

2. Mr. Roy, learned Counsel appearing for the petitioners with Mr. Bhattacharya, learned Counsel, submits that it is within the discretion of the accused Corporation to decide as to who would represent it before the learned Trial Court. Hence, learned Magistrate acted illegally in permitting the pleader to represent the Corporation under Section 305 Cr.P.C. in the said trial. It is also submitted that the petitioner no. 2 is an executive of the company and remains busy in running the administration of the said company and he did not challenge his identity in the course of the proceeding and it is further submitted that in view of the nature of the alleged offence and the fact that he is a busy official who has to go out frequently from Calcutta his personal attendance ought to have been dispensed with under Section 205 Cr.P.C.

3. On the other hand, Mr. Basu, learned Counsel appearing for the State submits that the order of the learned Magistrate does not call for any interference.

4. I have heard both the parties. Coming to the issue of representation of the accused Corporation under Section 305 of the Code of Criminal Procedure I find that the learned Trial Court did not allow the prayer on the ground that the pleader had sought to represent the said Corporation. There is a fine yet significant distinction in the representation of the accused Corporation under Section 305 of the Code of Criminal Procedure and that of an accused under Section 205/317 of the Code of Criminal Procedure by a pleader. Firstly, only a juristic body i.e. a Corporation may avail of Section 305 of the Code of Criminal Procedure whereas the privilege of Section 205/317 of the Code of Criminal Procedure is sought for on behalf of an individual accused. Representation under Section 205/317 of the Code of Criminal Procedure must mandatorily be through a pleader who represents such accused in the instant case. The representation by a pleader under Section 205/317 of the Code of Criminal Procedure does not be the concerned learned Counsel in the shoes of the accused and it is only for the convenience of the accused in an appropriate case that such privilege is extended whereas representation under Section 305 of the Code of Criminal Procedure is a matter of legal necessity as a juristic person must be represented by a human agency and accordingly such human agency is nothing but an alter ego of the accused juristic entity in the course of trial. The purpose and ambit of the aforesaid provisions are to be borne in mind while testing the contention whether a pleader may be permitted to represent a Corporation under Section 305 Cr.P.C. A pleader representing an accused in a trial ought to be an independent individual who would espouse the cause of the accused but shall not be identified with the accused in any manner whatsoever. The independent identity of the pleader in the course of trial would naturally stand compromised if he is required not only to plead on behalf of the accused Corporation but also becomes the alter ego of the said Corporation under Section 305 of the Code of Criminal Procedure.

5. Mr. Basu, learned Counsel for the State, rightly referred to sub Section (3) of Section 305 of the Code of Criminal Procedure wherein it has been unequivocally provided that any action in the course of trial done before the representative of the accused person will be deemed to have been done in the presence of the accused Corporation itself. In the light of the aforesaid provision, any action of the representation of the accused Corporation would also be deemed to be that of the Corporation and the independent identity of a pleader from that of the litigant who he represents would naturally get diffused in case he is permitted to represent the Corporation under Section 305 Cr.P.C.

6. In view of the aforesaid discussion, I am of the opinion that it would not be prudent to permit the Corporation to be represented a pleader representing it in the case. However, any person other than the pleader representing the Corporation in the trial may be chosen by the said Corporation in terms of sub

Section (5) of Section 305 of the Code of Criminal Procedure and the Court cannot insist on a particular individual to represent the Corporation in that regard in a given case.

7. It is needless to mention as the accused Corporation cannot be sent to custody even if it is found is guilty of commission of the alleged offence, the question of committing the representative of the Corporation to custody on its behalf cannot arise. Any direction by the Court for committing the representative of the accused Corporation to custody, is, therefore, contrary to law. Nonappearance/non-cooperation of the representative of the Corporation resulting in delay and dilate of trial may, however, be effectively taken care of by passing appropriate orders of attachment of the assets of the company, in accordance with law.

8. I, therefore, give liberty to the petitioner no. 1/company to forthwith nominate a representative other than a pleader to represent it before the learned Trial Court in accordance with law. Such representative shall appear before the learned Trial Court on the next date of hearing and submit necessary documents in terms of sub Section (5) of Section 305 of the Code of Criminal Procedure to justify his status. In the event, no steps are taken by the petitioner no. 1 company in that regard, it shall be open to the learned Trial Court to resort to appropriate coercive measures against it in accordance with law. With regard to dismissal of the prayer of petitioner no. 2 to be represented under Section 205 of the Code of Criminal Procedure, I am of the opinion that bearing in mind the nature of the offence and the fact that the petitioner no. 2 is a busy official his personal appearance may be dispensed with and he may be permitted to be represented through his learned Counsel under Section 205 of the Code of Criminal Procedure on condition that if he is furnish an affidavit that he shall not challenge his identity during trial or raise any prejudice with regard to the trial being conducted in presence of his learned Counsel and that he shall appear before the learned Trial Court as and when called for by the said Court in the interest of justice.

9. With the aforesaid directions, the revisional application is disposed of.