

(2016) 11 MAD CK 0128

In the Madras High Court

Case No : CrI.R.C. No. 947 of 2015 and M.P. No. 1 of 2015

National Collateral Management Services Ltd.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 305
Essential Commodities Act, 1955 — Section 7(1)(a)(ii)
Penal Code, 1860 (IPC) — Section 420

Citation : (2016) 4 MLJCriminal 756

Hon'ble Judges : P. Velmurugan, J.

Bench : Single Bench

Advocate : K. Srinivasan, (Special Public Prosecutor), for the Respondent/CBI;
V.S. Rajan for V.S. Rajan Associates, for the Petitioner

Final Decision : Allowed

Judgement

P. Velmurugan, J. - The Criminal Revision Case is filed to call for the records in Cr.M.P. No. 197 of 2015 in C.C. No. 63 of 2009 on the file of the Chief Judicial Magistrate, Puducherry, and to revise the same.

2. The case of the prosecution is that:

The instant case in RC.9/E/2007-CBI/EOW/CHENNAI was registered on the reference made by the Government of Puducherry. Initially, Shri Mahadevan, Dy.Tahsildar, CS & CA, Puducherry preferred a complaint dated 31.10.2007 to the Superintendent of Police, Food Cell, Puducherry to investigate the case regarding the rice loaded in the railway wagons booked for Bekkavalu, Kakinada, A.P., and also kept at the godowns situated at the premises of M/s. JR Foods and at M/s. MAA Foods at Puducherry suspected to be PDS rice, illegally procured and stored at Puducherry and to take appropriate action. Based on this complaint, Shri N. Ramachandran, Superintendent of Police, Food Cell Police, Puducherry registered a case in Cr.No. 29/2007 dated 31.10.2007 under section 420 IPC r/w. Section 7(1)(a) (ii) of Essential Commodities Act, 1955 r/w. Clause 6(4) (i)(ii) of Public

Distribution System (Control) Order 2001 and filed the FIR in the court of JM I, Puducherry. Subsequently, the Government of Puducherry referred this case to CBI for further investigation. Accordingly CBI/EOW/CHENNAI registered the case on 31.12.2007 under section 120-B r/w.420 IPC and Section 7(1) (a) (ii) of Essential Commodities Act-1955 r/w.Clause 6(4) (i) (ii) of Public Distribution System (Control) Order, 2001.

3. The averments of the petition mentioned in the Cr.MP. 197/2015 in C.C.No. 63/2009 before the lower court is as follows:

The petitioner has been charged in the above case by the respondent for the alleged offences under section 120-B r/w. 420 IPC and Section 7 (1) (a) (ii), Sections 8 and 10 of the Essential Commodities Act, 1955 r/w. Tamil Nadu scheduled Commodities (Regulation of Distribution of Card System) Order, 1975 and Public Distribution System (Control) Order, 2001 and substantive offences thereof. The petitioner/Accused A15 has filed Cr.M.P. No. 3760/2013 in C.C. No. 63/2009 on the file of this court seeking permission to represent by its Authorised Representative, however on 12.02.2014, this court dismissed the said petition on the ground that there are sub-delegation of powers and no reasons has been assigned by the petitioner company as to why he was removed to represent the company etc., In the above case as per FIR, Mr. Arun David/Accused No. 14 was named and appointed by the prosecution to represent the petitioner company/A15 as its Authorised Representative. In this case, it has to be seen that Mr. Arun David/A14 has committed the offences as per the prosecution and whether he has acted adverse to the interest of the petitioner company which shall be proved only during the course of trial. As the petitioner company felt proper to defend the case through their authorised representative, the petitioner has decided to appoint a proper person who is managing the affairs of the company to represent the above case on behalf of the company. Hence, it is just and necessary to remove the name of Mr. Arun David as the representative of the petitioner company/A15 and to substitute the name of Mr. S. Jayaraman as its authorised representative. Hence the petition.

4. Counter to the above said averments is as follows:

The investigation established that Arun David (A14) joined in M/s. National Collateral Management (A15) (NCMSL) as Collateral Manager on 10.03.2006 at Puducherry. He was specifically appointed for looking after the rice stocks hypothecated to ICICI Bank by M/s. Ananthammal Kasi Exporters Pvt. Ltd., at M/s. JR Foods and M/s. Maa Foods godowns, Puducherry. As a collateral Manager, he received rice stocks at the said godowns and supervised the stocks and its safety. He prepared "Arrival Reports" of the Rice received and stocked in godowns and he used to hold the keys of the godowns and arrange for unloading of rice stocks and fumigation of stocks. The Arrival Reports indicates the date of arrival of rice stocks into godowns, number of bags received, tonnage, total quantity in the warehouse and description of commodity. The Arrival Reports were signed by Arun David/A14 in the capacity of Collateral Manager of the said

company and he was having the custody of said PDS Rice stored at two designated Warehouses at Puducherry. Moreover, the gunny bags seized from the godowns supervised by Arun David/A14 had marking of FCI. So it is very well within the knowledge of Arun David/A14, who is representing M/s. National Collateral Management Services Limited/A15 about PDS rice being stored in the godowns. Thus, it is established that Arun David/Acollateral Manager of the said company, in connivance with other accused persons with dishonest intention facilitated the storage of illegal procured PDS rice, transported the same through M/s. Ananthammal Kasi Exporters/A1 and released the funds of the ICICI Bank for such illegal purchasers. Hence, the respondent prayed to dismiss the petition.

5. The learned counsel for the petitioner would submit that the case is pending before the learned Chief Judicial Magistrate, Pondicherry in C.C. No. 63/2009. The petitioner herein/A-15 had filed a petition under section 305 of Cr.P.C., seeking an order to permit the petitioner to be represented by an authorised representative, S. Jayaraman, Area Manager of A15 Company in the main case. After hearing the arguments, the trial court, without considering the main object of the Section 305 of Cr.P.C., has simply dismissed this application against which the present revision has been filed by the petitioner before this court. He would further submit that the NCMSL is a corporation under the meaning of Section 305(1) of Cr.P.C., it is not left open to the prosecution or the court to decide as to who will represent the Corporation. It is clearly mandated under Section 305(2) (ii) that where a corporation is the accused person or one of the accused persons in any inquiry, it is permitted to appoint a representative for the purpose of enquiry or the trial. Therefore, the discretion of representing the Corporation is left to the Corporation and not as determined by the prosecution. Further he would submit that a person of choice of the Corporation is not a concession given to the Corporation. But, it is the substantive right regulated by Section 305 (2) of Cr.P.C., and the vested right cannot be taken away either by the CBI or the Hon"ble Trial Court. The learned Trial Judge failed to see that A14 who himself is an accused cannot represent the Corporation. The interest of each of the accused is different which is precisely the reason of giving a special privilege to the corporation to be represented by a person to their choice. The Trial Court has not understood the scope of the Section 305 (2) of Cr.P.C. properly and dismissed the petition and the order passed by the trial court is perverse and therefore, the same is liable to be set aside and he prays for setting aside the order.

6. The learned counsel for the respondent has no serious objection for allowing this Revision Case.

7. Heard both the learned counsel for the revision petitioner and the learned counsel for the respondent and entire materials on records placed before the court are perused carefully.

8. The petitioner herein has been arrayed as 15th respondent in the C.C.No. 63/2009 on the file of the learned Chief Judicial Magistrate, Puducherry. The A15 Company is represented by one Arun David. The said Arun David is

independently shown as A14. Therefore, the Management has passed a resolution in which A15 /petitioner herein has to be represented through one S. Jayaraman in the place of Arun David.

9. On reading of Section (ii) and (v) of 305, it clearly shows that the Corporation or the Society is having a right to appoint any person to represent for the corporation or company.

The extraction of Section 305 (2) and (5) reads as follows:

(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.

(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.

10. The Trial Court without considering the above said facts has dismissed the petition. The reason stated in the order is that "on perusal of the said CrI.M.P. 3760/2013, it seems that the sub delegation of the petitioner company is not sustainable since the Board of Directors has passed such a resolution giving the power to one Sanjay Kaul and furthermore, if such applications are allowed, then the case never can be disposed since the company can pass resolution even once in week to change such representation of the A15 company and it would cause delay in conducting the case. As rightly decided by this court on 12.02.2014 in the said Cr.M.P.197/2015 in C.C. No. 63/2009, if such applications are allowed, then the case never can be disposed since the company can pass resolution even once in a week to change such representation of the A15 company and it would cause delay in conducting the case, hence this court is not in a position to permit the person who signed in the petition to represent the A15 Company".

11. On perusal of the records absolutely there is no materials to show that petitioner/A15 Company had filed petitions frequently before the trial court to change the representative. Therefore, in the absence of any materials available on records, the reason assigned for dismissing the order is not acceptable and the same is not legally valid. Under such circumstances, the order passed by the trial court is liable to be set aside. Accordingly, this revision petition is allowed by setting aside the order dated 20.04.2015 in M.P. No. 197 of 2015 in C.C. No. 63 of 2009 on the file of the learned Chief Magistrate, Puducherry. Consequently, connected miscellaneous petition is closed.

12. The petitioner is directed to cooperate for earlier disposal of the case.