

(1997) 08 MAD CK 0070

In the Madras High Court

Case No : Criminal O.P. No. 4279 of 1997 and Criminal M.P. No. 3468 of 1997

Rasi Cements Ltd.

APPELLANT

Vs

Prithiviraj

RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 92 CompCas 560

Hon'ble Judges : S.M. Sidickk, J

Bench : Single Bench

Advocate : K. Ravi Anantha Padmanabhan, for the Appellant; Sampath Kumar, for the Respondent

Judgement

S.M. Sidickk, J.—This is petition filed by the petitioner u/s 482 of the Criminal Procedure Code, to set aside the order of the XIV

Metropolitan Magistrate, Egmore, Madras-8, dated January 29, 1997, passed in Crl.M.P. No. 1388 of 1996, in C.C. No. 3322 of 1994, and to

direct the XVI Metropolitan Magistrate, Egmore, Madras, to permit the petitioner to authorise one P. Suryanarayanan Rao in the place of B.

Suresh Yagneswar to represent the petitioner in the above case in C.C. No. 3322 of 1994.

2. It is the case of the petitioner-complainant company that on the dishonour of cheque for Rs. 8,07,978 issued by the respondent/accused, the

petitioner has filed a complaint u/s 138 of the Negotiable Instruments Act, in C.C. No. 3322 of 1994, on the file of the court of the XIV

Metropolitan Magistrate, Egmore, Madras, and one Suresh Yagneswar, an accountant of the complainant-company, was originally authorised to

represent the petitioner-company, who filed C.C. No. 3322 of 1994, on April 11,

1994, and subsequently, the abovesaid Suresh Yagneswar resigned from the petitioner's company, and thereupon the complainant/petitioner's company wanted to substitute one P. Suryanarayana Rao, who is working as Deputy Manager (Accounts) to represent the petitioner in C.C. No. 3322 of 1994, in the place of Suresh Yagneswar, and for that purpose the petitioner filed a substitution petition and the learned XIV Metropolitan Magistrate dismissed the application for substitution in Crl.M.P. No. 1388 of 1996, filed by the petitioner on January 29, 1997, and it is against this dismissal order passed in Crl.M.P. No. 1388 of 1996, that this application u/s 482 of the Criminal Procedure Code, has been filed by the petitioner.

3. On hearing learned counsel for both the sides, the point that arises for consideration in this petition is as to whether the petitioner is entitled to the relief prayed for in this petition u/s 482 of the Criminal Procedure Code.

4. Point : The learned XIV Metropolitan Magistrate, Egmore, Madras, has dismissed the application for substitution filed by the petitioner, which is a limited company in Crl.M.P. No. 1388 of 1996, on the sole ground that the petitioner has not submitted to the lower court, the resignation letter

of Suresh Yagneswar, who represented the petitioner's company in the complaint in C.C. No. 3322 of 1994. For so many reasons, an employee

can resign from his company and he need not submit any resignation letter. It is unreasonable to expect that all employees in a private company will

submit their resignation letter like Government servant in a Government office. Some times it may happen that the employees of a private limited

company like the petitioner herein can orally inform the petitioner-company that he has resigned from his job from such and such date and he

would no longer be available for the service of the company. In such circumstances one cannot be expected to produce the resignation letter which

the learned magistrate insisted upon before allowing the substitution application in Crl.M.P. No. 1388 of 1996. The learned magistrate cannot

compel the petitioner-company to produce the resignation letter of B. Suresh Yagneswar. In this respect, it is useful to note section 305(2) of the

Criminal Procedure Code, which states that 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. Similarly a company like the petitioner-company as the complainant may appoint another representative for very many reasons for the purpose of inquiry or trial and that cannot be prevented by insisting upon a resignation letter of the previous representative. An employee may even abandon his post in a private company and then inform orally that he has resigned from the said company. In such a situation, one cannot expect the resignation letter from the concerned employee. It is unreasonable on the part of the magistrate to expect that the resigned employee or a dismissed employee should continue the criminal proceedings on behalf of a company. So also in the present case, it is stated by the petitioner that their accountant has resigned his job and the learned magistrate should not have compelled the complainant-company to produce the resignation letter of Suresh Yagneswar, the previous employee of the petitioner-company. The learned advocate for the petitioner produced the xerox copy of the special power of attorney given to the new representative, Suryanarayana Rao, on April 13, 1995, whereby the said Suryanarayana Rao was authorised to represent the complainant-company to give evidence on behalf of the petitioner in all legal proceedings in any court of law in the State of Tamil Nadu. In those circumstances, I have no hesitation to come to the conclusion that the order of the learned Magistrate passed on January 29, 1997, dismissing the substitution application in CrI.M.P. No. 1388 of 1996, is not sustainable, and so the order dated January 29, 1997, in CrI.M.P. No. 1388 of 1996, passed by the learned XIV Metropolitan Magistrate, Egmore, Madras, has to be set aside, and the substitution application filed by the petitioner-company before the lower court in CrI.M.P. No. 1388 of 1996, has to be allowed, and the learned XIV Metropolitan Magistrate, Egmore, Madras, has to be directed to permit the petitioner to authorise Suryanarayana Rao to represent the petitioner-company in C.C. No. 3322 of 1994, in the place of Suresh Yagneswar.

5. Learned counsel for the petitioner has drawn my attention to one other ground on the basis of which the learned magistrate has dismissed the application for substitution before him. According to the learned magistrate, there is no specific provision of law under which the substitution petition can be filed and allowed. Learned counsel for the petitioner has brought

to my notice that there is no specific provision of law for filing applications like the petition to accept sureties, the petitioner for the return of documents filed by the sureties, and the petition to advance the hearing of an application and in such circumstances, the magistrate courts are also entertaining the applications for the abovesaid purposes and so the petitioner need not mention the provision of law under which he can file the substitution petition to replace and to substitute a representative of a limited company. This seems to be justifiable because in the absence of any specific provision of law if a limited company like the petitioner cannot file a petition for substitution in respect of his former employee, then ultimately the complaint will end in its dismissal on technical grounds. In the interest of justice, such applications like the petition to accept sureties, the petition for the return of the documents by the sureties and the petition for advancement of the hearing of an application are being entertained by the magistrate's courts, and it is also reasonable to entertain an application for substitution of a representative in respect of a private company to prosecute its complaint in the absence of a specific provision of law. This view is in consonance with the decision of the Supreme Court in K. M. Mathew v. State of Kerala [1992] LW (CrL.) 14, wherein it was held that no specific provision of law is required for a magistrate to drop proceedings or to rescind the process in a summons case and it is the judicial discretion of the magistrate to allow such proceedings. So also the present case before us is a summons case and it is in the judicial discretion of the magistrate to allow the application for substitution to replace a resigned employee to represent the petitioner's company and in his place to substitute a working employee to represent the petitioner's company to prosecute the complaint further filed on behalf of the petitioner's company. Hence, I hold that the petitioner is entitled to the relief prayed for, and this application has to be allowed, and accordingly, it is allowed, and consequently, I answer this point in favour of the petitioner.

5. In the result the petition is allowed. The order dated January 29, 1997, passed by the learned XIV Metropolitan Magistrate, Egmore, Madras-

8, in CrL.M.P. No. 1388 of 1996, in C.C. No. 3322 of 1994 is set aside for the reasons stated herein. The learned XIV Metropolitan Magistrate,

Egmore, Madras, is directed to permit the petitioner to authorise Suryanarayana

Rao to represent the petitioner-company in C.C. No. 3322 of 1994, in the place of Suresh Yagneswar. Consequently, the stay petition in Crl.M.P. No. 3468 of 1997 is dismissed as unnecessary.