IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision No.1399 of 2017
and
Crl.M.P.No.13749 and 13750 of 2017

S.R.Srinivasan .. Petitioner/Accused-3

Versus

State rep.by
Inspector of Police,
CBI/BS&FC/Banagalore. .. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the order of proceedings dated 31.07.2017 (A.Diary Extract in CC No.65/2000, on the file of XI Additional Special Judge, (CBI cases relating to Banks and Financial Institutions) Chennai and to issue appropriate direction in the facts and circumstances of this case.

For Petitioner .. Mr.R.Loganathan

For Respondent .. Mr.K.Srinivasan,
Spl.PP. CBI Cases.

O R D E R

The petitioner herein is the 3rd Accused in C.C.No.165 of 2002 on the file of the XI Additional Special Judge, (CBI Cases relating to Banks and Financial Institutions), Chennai. One of the co-accused is M/s. Sujatha Films Private Limited, arrayed as 8th Accused. Though the prosecution has filed final report against 9 accused persons, of which A3 to A6 are officials of Nationalized Bank, others are private individuals and Limited Company namely M/s. Sujatha Films Private Limited and M/s. G.V.Films Privated Limited. While laying charge sheet, both these Limited Companies were represented by the 1st Accused G.Venkateswaran. Pending trial, he died and therefore, the prosecution has made one RV.Gurupatham as representative of M/s. Sujatha Films Private Limited (A-8) and one A.H.Abdul Hameed, as representative of M/s. G.V.Films Private Limited (A-9).

2.It appears that Mr.R.V.Gurupatham has approached this Court challenging the action of prosecution to make him as representative of M/s. Sujatha Films Private Limited and succeeded in it. Thus, the 8th Accused M/s. Sujatha Films Private Limited has been left without any human representative. In such circumstance, the prosecution has filed a memo before the trial court in Crl.M.P.No.2710 of 2015 in C.C.No.65 of 2000 to split up the 8th Accused since they are not able to serve notice to 8th Accused company, requesting them to nominate a representative and proceed under Section 305 (2) of Cr.P.C.

3.The trial court while allowing the said petition to split up the case against 8th Accused company, had also directed the prosecution to take necessary steps to summon Mrs. Sujatha who was one of the Directors of M/s. Sujatha Films Private Limited at the time of launching the prosecution, so to enable herself to present before the court and to represent the 8th Accused company or nominate somebody else. This order was challenged by A-2-T.R.Venkataraman and A-3-S.R.Srinivasan who are the petitioners in Crl.R.C.Nos.1108 and 1109 of 2015.

4.After hearing the contentions raised by the accused persons as well as the prosecution, this Court has passed the following order:-

> "6.It is seen from the records that the accused 8 and 9 have obtained loans from the concerned bank and at the time of granting loan, the accused 2 to 7 have served in the concerned bank. Considering the fact that the specific case put forth on the side of the respondent is that all the accused have contrived themselves and committed the alleged offence, this Court is of the view that the presence of 8th accused is very much essential for better adjudication.
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> 7.As pointed out earlier, the respondent has filed a final report against all the accused under Sections 120(b), 420, 467, 468 and 471 of IPC and also under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.
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> 8.Considering the nature of the offences alleged to have been committed by all the accused as stated earliere, the case against 8th accused cannot be split up. But the Court below, without considering the role alleged to have been played by 8th accused has erroneously split up the case. In view of the discussions made earlier, the impugned order passed in Crl.M.P.No.2710 of 2015

is liable to be set aside.

In fine, these Criminal Revision Cases are allowed. Consequently, the connected Miscellaneous Petitions are closed. The order passed in Crl.M.P.No.2710 of 2015 in Calendar Cases No.65 of 2000 by the court below is set aside and the petition filed in Crl.M.P.No.2710 of 2015 is dismissed. The respondent is strictly directed to effect service of summons to the 8th accused."

5.Pursuant to this order dated 30.10.2015, the prosecution has tried to serve notice to the 8th Accused company but could not succeed. Therefore, an application has been filed by the prosecution under Section 305(4) of Cr.P.C., stating that the records of the Registrar of Companies reveal that M/s. Sujatha Films Private Limited (8th Accused) had not filed any ROC records since 2001 and had become defunct company. Therefore, the prosecution has sought indulgence of the XI Additional Special Court for CBI Cases, Chennai, to proceed under Section 305(4) of Cr.P.C., since the matter is pending for more than 17 years.

6.The trial court after considering the order passed by this Court earlier in Crl.R.C.No.1108 of 2015 and 1109 of 2015 dated 30.10.2015, has held that as per the order of the Hon'ble High Court summons were issued to 8th Accused company but CBI could not serve summons, because M/s. Sujatha Films Private Limited has vacated from the premises during 2004 and no office is functioning in the given address. The summons sought to be served on the 8th Accused company was returned unserved with the above endorsement and no particulars is available with the Registrar of Companies about the Management and Directors etc. In the said circumstance to comply with the directions of the Hon'ble High Court for speedy disposal to proceed with the case without any further delay, allowed the petition treating the 8th Accused as absconding accused.

7.T.R.Venkataraman, who is the petitioner in Crl.R.C.No.1108 of 2015 and S.R.Srinivasan, who is the petitioner in Crl.R.C.No.1109 of 2015 had approached this Court to set aside the order of the trial Court dated 31.5.2017. This Court after hearing the counsel for the petitioner as well as the prosecution has passed the following order:-

"5.On a perusal of the Section 305 Cr.P.C., and also the orders specifically passed by this Court as referred above, I am of the view that it is the duty of the prosecution to serve summons on the 8th accused. Therefore, the prosecution shall take summons to the eighth accused and ascertain the present status of the company in Registrar of Companies Office and if the company exists, serve summons to the persons who are representing the eighth accused. If the prosecution is able to establish before the Court of law that the eighth accused is not in existence, then the trial court shall proceed against the remaining accused, since the case is pending for more than seventeen years."

With the said observation this Court has directed the trial court to take up the exercise of serving summons to the 8th Accused company and complete the process within two months and proceed with the case.

8.Pursuant to this directions the prosecution has taken steps to serve summons on the 8th Accused company representative, but failed since there is no existence of the company in the last known address. Therefore, memo has been filed by the Special Public Prosecutor before the trial court stating that summons could not be served on the 8th Accused company in the last known address. Report from the Registrar of Companies indicates that the company has not filed its Statutory Returns since 2002 and it has become defunct. Along with the report furnished by the Registrar of Companies, the learned Public Prosecutor sought for appropriate orders from the trial court. The trial court vide its order dated 31.7.2017 has recorded the memo and thereafter ordered to issue fresh summon for P.W.1 for continuation of his chief-examination.

9.The present revision petition is filed challenging this order on the ground that:

1. The order allowing the memo filed by the Special Public Prosecutor intimating the return of summons unserved is passed hurriedly.
2. The contention of the prosecution that 8th Accused company has not filed its statutory return since 2002 and therefore become defunct is baseless and unfound.
3. The prosecution has not made any efforts to secure the other Directors of the 8th Accused company available as per the Articles of Association and Memorandum of Association furnished too them and available with them.
4. The existence of the second Director namely Mrs.Sujatha staying overseas and her address is made known to the prosecution, the prosecution has not taken any steps to request her to represent the 8th Accused company namely M/s. Sujatha Films Private Limited or to nominate anyone to represent the company.
5. M/s. Sujatha Films Private Limited had Certificate of

Incorporation dated 28.5.1987 issued by the Registrar of Companies. Therefore, the conclusion arrived at by the trial court that it has become defunct is not correct.

6. A public limited company for non-filing of return cannot be termed as defunct till its wound up as per the law.

Hence, the adjudication of the trial court dated 31.7.2017 is liable to be set aside and the court should issue appropriate direction to the trial court in this regard.

10.Heard the learned counsel for the petitioner as well as the learned Special Public Prosecutor for CBI cases.

11.Based on the complaint given by Sri.R.R.Sharma, General Manager and Chief Vigilance Officer, Central Bank of India, Central Office, Mumbai, First Information Report was registered by the Inspector of Police, CBI, BS&FC, Bangalore in RC 5(E)/CBI/BS&FC/BLR on 31.10.1996 against (1) G.Venkateswaran, Chairman, M/s.GV Films, Madras (2) Smt.Sujatha Venkateswaran, Director, M/s. Sujatha Films, Madras (3) T.R.Venkataraman, Manager, Central Bank of India, Nungambakkam Branch, Madras (4) S.R.Srinivasan, Accountant, Central Bank of India, Nungambakkam Branch, Madras. S.R.Srinivasan is the petitioner herein.

12.The allegation as found in the FIR is that the named accused and others entered into a criminal conspiracy to cheat the Central Bank of India, Nungambakkam Branch, Madras and in furtherance to the said conspiracy, T.R.Venkataraman (2nd Accused) and S.R.Srinivasan (3rd Accused) with dishonest intention to cheat the Central Bank of India, Nungambakkam Branch, Madras, has allowed G.Venkateswaran of G.V.Films and Sujatha Venkateswaran of Sujatha Films to draw unauthorizedly and indiscriminately a sum of Rs.375 lakhs over and above the limit sanctioned to them against the securities furnished. By diversion of funds, the Bank has incurred wrongful loss to the extent of Rs.1054.68 lakhs in the account of G.V.Films and Rs.339.30 lakhs in the account of Sujatha Films. Pursuant to this First Information Report, dated 31.10.1996, the prosecution has completed investigation and had laid final report on 19.12.2000 against 9 persons as stated above, wherein it is alleged that G.Venkateswaran (A-1) had in connivance with the other accused during the period between 1988 and 1992, had cheated the Central Bank of India, Nungambakkam Branch, Madras, to the tune of Rs.13.92 Crores by dishonestly and fraudulently producing false documents and used the same as genuine.

13.G.Venkateswaran had been arrayed as A-1 and also representative of Sujatha Films(A-8) and G.V.Films (A-9). Since G.V.Venkateswaran died pending trial, the prosecution has taken all efforts to appoint a representative for the 8th Accused and 9th Accused company as contemplated under Section 305(2) of Cr.P.C. While one R.V.Gurupatham was appointed as representative of Sujatha Films and A.H.Abdul Hameed was appointed as representative of G.V.Films, R.V.Gurupatham has filed Crl.R.C.No.1236 of 2011, challenging the order of the trial court nominating him as representative of 8th Accused company, wherein this Court has passed the following order:-

> "Considering the submissions of the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent, the order dated 20.07.2011, passed on the basis of the memo filed by the Public Prosecutor in C.C.No.65 of 2000 in so far as the accused No.8 is concerned, is set aside, and the matter is remanded to the lower court to enable the company/accused No.8 to nominate any person of its choice to represent it. For the said purpose, the learned XI Additional City Civil and Sessions Judge is directed to nominate its representative giving reasonable time and the said exercise shall be completed within a period of three months from the date of receipt of a copy of this order."

14.After this order, the prosecution has made all attempts to serve summon on 8th Accused company but has ended in futile. So in order to proceed with the trial pending since 2002 attempt has been made by the prosecution to split up the case against the 8th Accused. Though the trial court has allowed the same, it has been set aside on petition filed by A-2 and A-3. In the said petition, this Court has observed that presence of A-8 is very much essential for adjudication and directed the prosecution to take effective steps to serve summons on 8th accused. The attempts to serve summons on 8th Accused had failed and therefore the prosecution has sought for the indulgence of the trial Court to proceed further without the representative being nominated on behalf of the 8th Accused company.

15.It is pertinent to point out at this juncture, that it is not the case of the petitioner that 8th Accused company was never served the summons in this case. It was served on G.Venkateswaran and it was represented by G.Venkateswaran, who later died and thereafter the prosecution has nominated one V.Gurupatham with leave of the trial court. However, this Court has quashed that order. Thus, 8th Accused company is now left unrepresented. Even according to the counsel for the petitioner 8th Accused company is a Public Limited Company and it is a juristic body. Under Section 305 of the Code, the procedure as to how an incorporated company to be represented is enunciated. For better appreciation the provision of law is extracted below:-

> "305. Procedure when corporation or registered society is an accused.
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> (1) In this section, "corporation" means 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 inquiry or trial, it may appoint a representative for the purpose 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."

16.Plain reading of this provision makes very clear that an incorporated company is an accused person under an enquiry or trial which may appoint a representative for the purpose of enquiry or trial. Sub-Section (4) of Section 305 made it further clear where the representative of the Corporation does not appear, any such requirements as is required is Sub-Section (3) shall not apply. In this context though this Code has made it very clear in Sub-Section (6) if a question as to whether any person appearing as a representative of the Corporation in a trial before a Court is not such, representative, the question shall be determined by the Court. So, this Court on more than two occasions in this case at the instance of this accused or other co-accused has made very clear that the 8th Accused company incorporated under the statute, have right to be represented by nominee. When one such representative was nominated by the trial court, at the intervention of this Court that order was quashed.

17.So, when this petitioner approached this Court against the order splitting the case against the 8th Accused, this Court has rightly held that the presence of 8th Accused is necessary and therefore, 8th Accused need not be split up and the respondent may take effective steps to serve summons to the 8th Accused. Again when the prosecution tried to serve summons on 8th Accused and could not succeed, by invoking Section 305(4) the prosecution has sought indulgence of the trial court to proceed further in the absence of any nominated representative for 8th Accused company, the same was allowed by the trial Court. But for no good reason, Accused No.2 and 3 approached this Court in Crl.R.C.No.774 of 2017 and Crl.R.C.No.802 of 2007 and this Court vide order dated 9.6.2017 and 14.6.2017 respectively, has directed the prosecution to take steps to serve summons to the 8th Accused and ascertain the present status of the 8th Accused company in the Registrar of Companies and if the company exists serve summons to the representative of the 8th Accused company and if the company does not exist the trial court shall proceed as against the remaining accused and two months time was granted to the prosecution to complete the said exercise of serving summons.

18.Having failed in serving summons despite taking all efforts as per the direction of this Court passed in the earlier orders in Crl.R.C.Nos. 1108 and 1109 of 2015 dated 30.10.2015, and the orders passed in Crl.R.C.No.774 of 2017 dated 9.6.2017 and in Crl.R.C.No.802 of 2007 dated 14.6.2017, the trial court has recorded the inability pleaded by the prosecution for serving summons on 8th Accused company and proceed further. This Court finds no illegality in the order passed by the trial court.

19.In cases of incorporated companies the procedure prescribed under the Code is that once summons served on the incorporated company, the company may appoint a representative to contest the case. If no representative is appointed by the company, procedures set out under Sub-Section (3) of Section 305 of the Code will not apply. In this case, the prosecution has served summons on the Chairman of the company G.Venkateswaran, who till his life time represented the company. After his demise the trial Court has nominated V.Gurupatham, as representative of the 8th Accused company at the instance of the prosecution. High Court has quashed the said order of nominating him as the representative of M/s. Sujatha Films. Thereafter, 8th Accused has not taken any interest in nominating a representative. All attempts taken by the prosecution to serve summons on 8th Accused company had went in vain. The report of Registrar of Companies clearly indicates that 8th Accused company has become defunct and nobody to represent the company. Therefore, in the said scenario, the prosecution against the company being a juristic person, has to be proceeded without being represented by any human agency. No doubt, company cannot defend itself without aid of a human agency, but then in law when there is no provision to appoint a representative by any other manner except by the persons who are administering the company and if none available.

20.Under these circumstances, the petitioner who is accused of conspiracy with other bank officials and the Late Chairman of the defunct company for sanctioning of loan over and above the limit prescribed, causing loss to the bank to the tune of Rs.13.92 Crores cannot protract the proceedings under a flimsy pretext that summons should be served on the non existing company 8th Accused, and it should chose to nominate a representative, till then the trial should not proceed. When Section 305 Cr.P.C. contemplates all these eventuality and had specifically stated under Sub-Section (4) that in case of failure on the part of the company to nominate a representative the company will be losing the privileges mentioned in Sub-Section (3), given to private individuals. Except this no other consequent shall follow if a company fails to nominate its representative. It does not mean that trial against the other accused persons who have put their brain together to commit the crime should not be tried.

21.This Court finds that the perpetrators of the crime have succeeded in protracting the trial by raising same plea in a different style. However, this court has uniformly held that case against 8th Accused need not be split up but attempts may be made to ensure 8th Accused is put to notice again and afford an opportunity to the company to nominate a representative.

22.When prosecution has taken all steps to serve summons on 8th Accused repeatedly but could not succeed in its attempt, just because the company on its own has not nominated a representative the trial need not be stopped. Therefore the order passed by the trial court is perfectly legal and valid. There is no essence in this revision petition. Hence, the Revision Petition is dismissed. Consequently, Crl.M.P.No.13749 and 13750 of 2017 are closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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Copy to:

1. The XI Additional Special Judge,
   (CBI cases relating to Banks and
   Financial Institutions) Chennai

2. The Inspector of Police,
   CBI/BS&FC/Banagalore.

3. The Special Public Prosecutor,
   CBI Cases, High Court, Madras.

+1cc to Mr.R.Loganathan, Advocate, S.R.No.83049

Crl. Rev.No.1399 of 2017

CS/29/11/17