



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
CRL.O.P. (MD)No.5258 of 2017

and
Crl.M.P. (MD)Nos.3722 and 3723 of 2017

M/s.Aluminium India,
represented through its
Managing Partner, Niranjana Vyas : Petitioner/ Accused No.1

Vs.

The Arasan Aluminium Industries Pvt.Ltd.,
Through its Power Agent Sridharan : Respondent/ Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to pass orders to quash the complaint in C.C.No.3 of 2017 insofar as the petitioner is concerned proceedings on the file of Judicial Magistrate Court, Sivakasi and pass any other appropriate orders in the facts and circumstances of the case.

For Petitioner : Mr.N.Sundareshan

O R D E R

Arasan Aluminium Industries Private Limited has launched a prosecution in C.C.No.3 of 2017 before the learned Judicial Magistrate, Sivakasi, for an offence under Section 138 of the Negotiable Instruments Act against M/s.Aluminium India, represented through its Managing Partner Niranjana Vyas and three others as accused. Challenging the prosecution, Niranjana Vyas is before this Court.

2. Heard Mr.N.Sundareshan, learned counsel for the petitioner.

3. The learned counsel for the petitioner contended that Niranjana Vyas was the partner of M/s.Aluminium India and had resigned from the partnership on 27.05.2016 itself and that he had also issued a paper publication to that effect and, therefore, he cannot be made as an accused. He also contended that the impugned cheque that has been issued by M/s.Aluminium India has been signed by Suresh Kumar Vyas (A-2) and not by Niranjana Vyas. Hence, he prays for quashment of the prosecution.

4. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner.

5. Admittedly, in this case, the impugned cheque has been issued by a Partnership Firm, which is a Company within the meaning of Section 141 of the Negotiable Instruments Act.



Therefore, the complainant has rightly made M/s.Aluminium India as A-1. An artificial person, like a Company requires to be represented by a human agency before the Trial Court and this is provided by Section 305 of the Code of Criminal Procedure. A person representing a Company in a criminal prosecution cannot be held criminally liable and inflicted with any sentence of imprisonment. The non-natural person can only be inflicted with a sentence of fine and the representative cannot be sent to Jail. However, on this ground alone, the prosecution cannot be quashed. An opportunity should be given to the petitioner to demonstrate before the Trial Court that he has nothing to do with M/s.Aluminium India and a further opportunity should be given to M/s.Aluminium India to appoint some other human agency to represent in C.C.No.3 of 2017.

6. With the above observation, this Court directs the petitioner to file an appropriate petition before the Trial Court contending that he has nothing to do with M/s.Aluminium India and opportunity may be given to M/s.Aluminium India to appoint some one else to represent the company. The petitioner shall approach the Trial Court within two weeks from the date of receipt of a copy of this order. The petitioner can be represented by an advocate on special vakalat and not on mere memo of appearance. The presence of the petitioner before the Trial Court during the enquiry is dispensed with. It is also seen that Suresh Kumar Vyas (A-2) has been shown as Partner/Authorized Signatory of M/s.Aluminium India. He can also represent M/s.Aluminium India (A-1) and answer questions under Sections 251 and 313 of the Code of Criminal Procedure. If M/s.Aluminium India fails to appoint a representative, they will have to face the consequences and later, they cannot plead prejudice. The Trial Court shall complete the proceedings in the petition filed by Niranjana Vyas within three months thereof.

7. This Criminal Original Petition is closed with the above direction. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate Court, Sivakasi.

2.The Chief Judicial Magistrate, Virudhunagar at Srivilliputhur
+1 CC to M/s.N.SUNDARESHAN, Advocate, SR No. 54574

SML

PSM/RSK/SAR3/10.05.2017/2P/4C

Order made in

CRL.O.P. (MD) No.5258 of 2017

Dated:-27.04.2017