

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION NO.10304 OF 2017

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

By way of its amended prayer in this writ petition, Hyundai Motor India Limited, the petitioner herein, sought a writ of *certiorari* quashing the order dated 17.03.2017 passed by the District Consumer Disputes Redressal Forum-II, Hyderabad (for brevity, 'the District Forum'), in E.A.No.49 of 2015 in C.C.No.83 of 2014 and to consequently direct the District Forum to recall the bailable warrants dated 08.02.2017.

The impugned order dated 17.03.2017 passed by the District Forum was upon a petition filed by the petitioner company in E.A.No.49 of 2015 in Consumer Case No.83 of 2014, under Section 70(2) CrPC, for recall of the bailable warrants issued earlier by the District Forum, *vide* order dated 08.02.2017. These warrants were issued to the registered factory of the petitioner company at Kanchipuram, Tamilnadu, and its South Regional Office at Hyderabad, both represented by its Managing Director. By way of the subject petition, it was submitted before the District Forum on behalf of the petitioner company that Ajay Gokapai, its Assistant Manager, was authorized to represent it and a prayer was made for recall of the bailable warrants issued earlier. The District Forum however noted that it had already passed orders in the case granting relief to the complainant and had taken cognizance under Section 27 of the Consumer Protection Act, 1986, leading to bailable warrants being issued to the petitioner company's Managing Director. As the

petitioner company had authorized Ajay Gokapai, its Assistant Manager, to represent the case on its behalf, the District Forum examined Sections 205, 206 and 305 CrPC and opined that the Managing Director of the petitioner company should appear before it at the time of examination under Sections 251 and 313 CrPC and also at the time of judgment. The District Forum therefore concluded that it would be just and reasonable to recall the bailable warrants only after the Managing Director presented himself before it, as the matter was coming up for Section 251 CrPC examination. The plea of Ajay Gokapai, the Assistant Manager of the petitioner company, that he may be permitted to represent the company and also its Managing Director, as per the Resolution passed by the Board of Directors of the petitioner company was not accepted and the recall petition filed under Section 70(2) CrPC was dismissed. Hence, the writ petition.

By order dated 23.03.2017 passed in W.P.M.P.No.12768 of 2017 filed in this writ petition, this Court granted stay of execution of the bailable warrants dated 08.02.2017 issued by the District Forum in E.A.No.49 of 2015 in C.C.No.83 of 2014. Thereafter, by a separate order dated 19.04.2017 in W.P.M.P.No.12769 of 2017 filed in this writ petition, this Court granted stay of all further proceedings in E.A.No.49 of 2015 in C.C.No.83 of 2014 on the file of the District Forum, taking note of the fact that the authorized representative of the petitioner company was held disentitled to represent it or its Directors before the District Forum and as such an embargo placed upon him by the District Forum required further examination.

Heard Sri R.Raghunandan, learned senior counsel representing Sri Ch.Pushyam Kiran, learned counsel for the petitioner company,

and Sri V.V.Ramana, learned counsel for the 1st respondent/complainant.

Though an appeal would normally lie to the Telangana State Consumer Disputes Redressal Commission, Hyderabad, against the impugned order dated 17.03.2017 passed by the District Forum, availability of this alternative remedy would not bar exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution as the case on hand reflects that the District Forum is acting in direct contravention of the statute. It is well settled that refusal to exercise jurisdiction under Article 226 by this Court is a self-imposed restraint and in a case of this nature, where it is manifest that the procedure adopted by the District Forum is contrary to law, availability of the appellate remedy would not hinder this Court from exercising writ jurisdiction. (See **COMMISSIONER OF INCOME TAX V/s. CHHABIL DASS AGARWAL**¹).

The short issue that falls for consideration is as to whether the interpretation and construction placed by the District Forum on Section 305 CrPC is valid and correct.

Sri R.Raghunandan, learned senior counsel, would point out that interpretation placed upon the provision by the District Forum is contrary to its very language. For the purpose of clarity, it would be appropriate to extract Section 305 CrPC:

‘305. Procedure when corporation or registered society is an accused: (1) In this section, “*corporation*” means an 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

¹ (2014) 1 SCC 603

representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

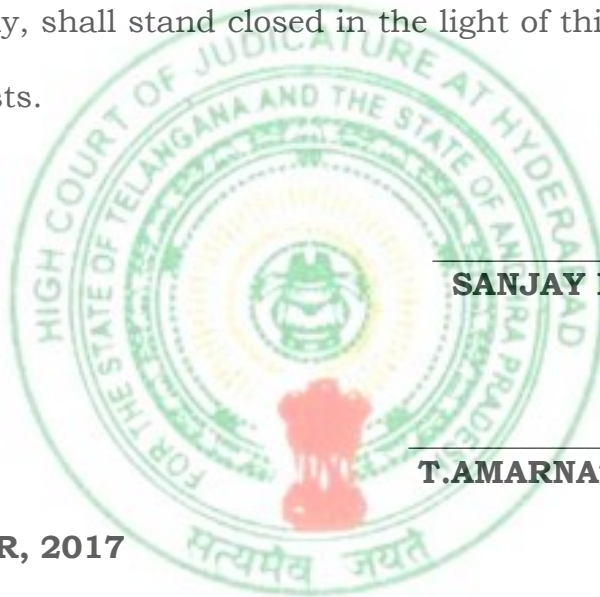
(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative 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.'

From a bare reading of the provision extracted *supra*, it is clear that where the representative of an accused corporation appears in a case, any requirement under the Code of Criminal Procedure, 1973, that the accused shall be examined shall be construed as a requirement that such representative shall be examined. Therefore, examination of the accused corporation, be it under Section 251 CrPC or under Section 313 CrPC, would mean examination of its authorized representative only. There is no dispute as to Ajay Gokapai, Assistant Manager, being the authorized representative of the petitioner company. A certified true copy of the Resolution passed in the 172nd meeting of the Board of Directors of the petitioner company on 10.01.2017 authorizing him to appear before the District Forum on behalf of the company in connection with E.A.No.49 of 2015 in C.C.No.83 of 2014 is placed on record. Therefore, insistence by the District Forum that the Managing Director of the petitioner company should appear for examination under Sections 251 and 313 CrPC is opposed to the very intent of the statutory provision. Trite to state, it is not open to the District Forum

to come up with its own procedure when it is admittedly bound by the procedure laid down in the Code of Criminal Procedure, 1973.

The impugned order dated 17.03.2017 passed by the District Forum in E.A.No.49 of 2015 in C.C.No.83 of 2014 is accordingly set aside. The District Consumer Disputes Redressal Forum-II, Hyderabad, shall therefore permit the authorized representative of the petitioner company, viz., Ajay Gokapai, its Assistant Manager, to appear before it in relation to the case as provided under Section 305 CrPC.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

T.AMARNATH GOUD, J

23rd OCTOBER, 2017

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