THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.607 of 2016

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC') by the petitioner/A1 Company is directed against the orders, dated 11.08.2015, of the learned XI Special Magistrate, Secunderabad, Hyderabad, passed in Crl.MP.No.3090 of 2013 in CC.No.498 of 2013.

2. I have heard the submissions of *Sri A. Chandra Sekhar*, learned counsel for the petitioner/A1 Company, the learned Public Prosecutor (TG) representing the 1st respondent-State, and of *Sri P. Sri Harsha Reddy*, learned counsel for the 2nd respondent-complainant. I have carefully perused the material record. The parties in this revision case shall hereinafter be referred to as the petitioner/A1 Company and the 2nd respondent-complainant.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The petitioner/A1 Company, which is a limited company, is the 1st accused in the afore-stated Calendar Case taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The 2nd accused is the Chairman of the petitioner/A1 Company. On service of summons, the afore-stated Miscellaneous Petition is filed under Section 305 of the Code to permit one Simhadri to represent the petitioner/A1 Company, *inter alia,* pleading that the petitioner/A1 Company is a juristic person being a limited Company and that it authorised the said Simhadri, by a Board resolution, dated 21.01.2013, to represent it. The said application was orally resisted by the 2nd respondent-complainant, *inter alia,* stating that the petitioner/A1 Company and the others who are arraigned as accused in the complaint case are all liable to be punished as stated in the complaint and, therefore, the petitioner/A1 Company has to be represented by its Chairman, who is the 2nd accused, and no permission can be accorded to the authorised representative who was said to have been authorised by a resolution of the Board of the petitioner/A1 company. On merits and by the order impugned in the revision, the trial Court dismissed the petition, *inter alia,* observing that in view of the special provisions under the N.I.Act, the petition is liable to be dismissed and that Section 305 of CrPC is not applicable. Aggrieved thereof, the petitioner/A1 Company filed this revision case.

4. Learned counsel for the petitioner would submit as follows: - 'The trial Court dismissed the petition without assigning any reasons much less proper reasons. The petitioner/A1 Company being a limited Company is a juristic person. The Company can be represented in the Calendar Case by any of its authorised representatives, who is duly authorised by a Board resolution to represent it. The observation of the trial Court that in view of the special provisions under the N.I.Act, the provision of Section 305 of CrPC is not applicable to the case on hand is erroneous and unsustainable. The trial Court ought to have seen that the Chairman is the 2nd accused and since he is arraigned in his individual capacity as 2nd accused, he is anyhow required to appear before the trial Court in his said capacity unless he is permitted to be represented either by authorised agent or a special vakalat holder or his presence is otherwise dispensed with on a request made in accordance with the procedure established by law. Therefore, the insistence of the 2nd respondent-complainant that the petitioner/A1 Company shall also be represented by the Chairman in the present proceeding but not by its authorised representative is untenable and the order of the trial Court is unsustainable.'

5. Learned counsel for the 2nd respondent-complainant while supporting the orders of the trial Court would submit as follows; 'As per the provisions of the N.I.Act, a Company can be arraigned as an accused; however, every person who

at the time the offence was committed was in-charge of and was responsible to the Company for the conduct of its business as well as the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished in accordance with law. Section 141 of the N.I. Act specifically deals with offences by companies. Hence, there is no illegality or infirmity in the order of the trial Court in not granting permission to the petitioner-A1 Company to be represented by the person who is said to have been duly authorised by Board resolution, dated 21.01.2013.'

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. A plain perusal of the complaint shows that the petitioner/Company and its Chairman are A1 & A2 in the array of accused. Learned counsel for the petitioner/A1 Company fairly submits that since A2 is its Chairman and as he was also arraigned as an accused, he is required to appear before the trial Court along with the other accused unless he is permitted to be represented either by authorised agent or a special vakalat holder or his presence is otherwise dispensed with on a request made in accordance with the procedure established by law.

8. In the light of the facts and submissions of both the sides, which are stated supra, it is now to be seen as to whether permission can be accorded to the petitioner/A1 Company to be represented in the Calendar Case by a authorised representative, who is duly authorised by a resolution of the Board of the Company. In this regard, it is necessary to first refer to the provision of Section 305 of CrPC as well as Section 141 of the N.I.Act, as the trial Court referred to the said provision also in the impugned order.

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.

(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.

(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 b e 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.

(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.

<u>Section 141 of N.I.Act:</u>

141. Offences by companies.__ (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this chapter.

Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.__ For the purposes of this section, __

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

9. I have gone through the above provisions carefully. Before proceeding further, it is necessary to refer to the authorisation said to have been given by the Board of the petitioner/A1 Company by its resolution, dated 21.01.2013, to Simhadri to represent it in the above Calendar Case. The said resolution verbatim reads as under:

> "RESOLVED THAT Mr.N.V.Simhadri – DGM of the Company be and is hereby authorised to institute or defend legal proceedings, civil, criminal for and on behalf of the Company in Hyderabad & Secunderabad and for this purpose to sign and verify the petitions, applications, affidavits, make statements, give evidence, swear on oath, compromise or withdraw the same, file replies, reply affidavits and execute the Vakalatnamas, engage counsels and do all that may be necessary for the effective discharge of the powers granted hereunder for and on behalf of the Company."

As rightly pointed out, the authorisation is a general authorisation whereby the said Simhadri was authorised to institute and defend legal proceedings on behalf of the Company in Hyderabad and Secunderabad. There is no specific reference in the Board resolution to the present Calendar Case. Under sub-section (3) of Section 305 of the Code '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.' Therefore, where a Corporation is the accused person or one of the accused persons in an enquiry or trial, it may appoint a representative for the purpose of enquiry or trial and such appointment need not be also under the seal of the Corporation in view of the provision of Section 305 of the Code. However, in view of the language of the provision, this Court is of the view that a general authorisation authorising a person to appear on behalf of the Corporation and represent it may not be sufficient and the authorisation must be with specific reference to the enquiry or trial in respect of which such authorisation is given. Therefore, the general authorisation which is being relied upon by the petitioner-A1 Company may not be a sufficient authorisation in the well considered view of this Court.

10. In that view of the matter, though not for the reasons mentioned by the learned Magistrate, for the reasons stated supra, this Court finds that the revision case is devoid of merit and, therefore, the order impugned brooks no interference.

11. Accordingly, the Criminal Revision Case is dismissed; however, reserving liberty to the petitioner/A1 Company to file a fresh application before the trial Court for the same relief by producing a proper authorisation specifically authorising its representative to represent the petitioner-A1 Company in the subject proceeding before the trial Court as envisaged under Section 305 of the Code.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

06.07.2017
Vjl