



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.698 of 2017andCrl.M.P.(MD)Nos.7961 and 7962 of 2017

M/s.Aluminium India
represented through its Managing Partner Niranjan Vyas,
S/o.Chiranjilal Vyas,
No.61-A, M.G.Road,
Ranikunj,
Secundrabad-500003,
Regd Office, Centuary Bhavan,
Dr.Annie Besant Road,
Bombay-400025.

: Revision Petitioner / Petitioner /
Accused No.1

-Vs.-

- 1.The Arasan Aluminium Industries Pvt. Ltd.,
Through its Power Agent Sridharan,
1/C4, Thiruthangal Road,
Sivakasi,
Virudhunagar District :Respondent / Respondent / Complainant
- 2.Suresh Kumar Vyas,
S/o.Chiranjilal Vyas,
Partner and Authorised Signatory.
- 3.Kashap Vyas,
S/o.late Baiju Vyas,
Partner.
- 4.Karthik Vyas,
S/o.late Baiju Vyas,
Partner. : Respondents/Respondents/Accused 2-4

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to call for the records from lower Court and set aside the order in Crl.M.P.No.7681 of 2017 in C.C.No.3 of 2017 dated 10.08.2017 on the file of the learned Judicial Magistrate No.1, Sivakasi by allowing the revision.

For Petitioner : No appearance

For R-1 : Mr.N.Dilip Kumar

For R-2 to R-4 : No appearance

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 No.1, Sivakasi for the offence under Section 138 of the Negotiable Instruments Act against M/s.Aluminium India, represented by its Managing Partner Niranjana Vyas and three others as accused. M/s.Aluminium India, represented by its Managing Partner Niranjana Vyas filed Crl.O.P.(MD)No.5258 of 2017 for quashing the prosecution on the ground that Niranjana Vyas is not a Managing Director and that he had retired from the business activities of M/s.Aluminium India. This Court passed final orders in Crl.O.P.(MD)No.5258 of 2017 on 27.04.2017 by issuing the following directions:

"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. "

Thereafter, M/s.Aluminium India, represented by Niranjana Vyas filed Cr.M.P.No.6351 of 2017 in C.C.No.3 of 2017 for discharge under Section 245 Cr.P.C., instead of filing an application under Section 305 Cr.P.C.. When Arasan Aluminium Industries Private Limited (Complainant) raised this objection, M/s.Aluminium India filed another petition under Section 305 Cr.P.C., in Cr.M.P.No.7681 of 2017 in C.C.No.3 of 2017 before the learned Judicial Magistrate No.1, Sivakasi. Thus, it is obvious that M/s.Aluminium India has been adopting dilatory tactics in order to prevent the trial Court from proceeding with the trial. Ultimately, the learned trial Judge dismissed Cr.M.P.No.6351 of 2017 and Cr.M.P.No.7681 of 2017 by two separate orders dated 10.08.2017. M/s.Aluminium India has filed this present Criminal Revision Case challenging the order dated 10.08.2017 in Crl.M.P.No.7681 of 2017.

2. It is seen that Niranjana Vyas is not a stranger to M/s.Aluminium India and that he continues to be a partner.

3. It is the submission of the counsel for M/s.Aluminium India that Niranjana Vyas is not the Managing Partner and that he is not actively involved in the business affairs of the company. The trial Court has also erroneously proceeded to examine Niranjana Vyas in Crl.M.P.No.7681 of 2017 as to whether Niranjana Vyas was involved in the business activities of M/s.Aluminium India to bring him within the net of Section 141 of the Negotiable Instruments Act. The short issue before the trial Court was, who should represent M/s.Aluminium India? In the earlier order dated 27.04.2017 passed by this Court in Crl.O.P.(MD)No.5258 of 2017, this Court has clearly clarified the legal position and has observed that a representative of a juristic person appointed under Section 305 Cr.P.C., cannot be personally held liable. Therefore, the apprehension of Niranjana Vyas appears to be ill founded. The trial Court has also misunderstood the meaning of Section 305 Cr.P.C., and the impact of the order passed by this Court in Crl.O.P.(MD)No.5258 of 2017 dated 27.04.2017 leading to multiplicity of applications.

4. Though the reasons given by the trial Court for dismissing Crl.M.P.No.7681 of 2017 are not legally correct, yet this Court cannot permit Niranjana Vyas to walk away from the prosecution in C.C.No.3 of 2017 until a substitute for him is appointed by M/s.Aluminium India. Niranjana Vyas is none other than the brother



of Suresh Kumar Vyas(A2) and the paternal cousin of Kashap Vyas (A3) and Karthick Vyas (A4). Thus, it appears that all Vyases are indeed putting obstacles in the course of trial by taking specious stances. This Court does not find any merit in this petition. Hence, this Criminal Revision Case is dismissed.

WEB COPY

5. If Niranjana Vyas does not appear before the trial Court, the trial Court can proceed with the prosecution against M/s.Aluminium India (A1) and against Suresh Kumar Vyas(A2), Kashap Vyas (A3) and Karthick Vyas (A4) in C.C.No.3 of 2017 and M/s.Aluminium India (A1) will have to suffer the consequences in view of Section 305(4) Cr.P.C.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1 The Judicial Magistrate No.1, Sivakasi.

2 The Chief Judicial Magistrate, Virudhunagar at Srivilliputhur.

+1CC to Mr.N.Sundarasan, Advocate, SR.No. 49998

+1CC to Mr.S.C.Herold Singh, Advocate, SR.No. 49608

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No. 49535

Order made in
Cr1.R.C.(MD)No.698 of 2017

sm

AM/SKN RSK/SAR 2/08.03.2018/4P/6C