

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.3452 OF 2018

ORDER :

This Criminal Revision Case under Section 397 and 401 of the Code of Criminal Procedure, 1973, is arising out of the order dated 20.11.2018 passed in CrI.M.P.No.275 of 2018 in C.C.No.19 of 2018 on the file of XXI-Additional Chief Metropolitan Magistrate-cum-Special Sessions Court, Hyderabad. The petitioner is accused No.2 in C.C.No.19 of 2018.

2. CrI.M.P.No.275 of 2018 was filed by the petitioner/A.1-M/s.Laurus Edutech Life Skills Private Limited, under Section 305 of Code of Criminal Procedure (for short 'Cr.P.C') seeking permission of the Court to permit the Accused No.1-company to be represented by Mr. K.Satheesh Babu as its representative at the enquiry or trial or in the other proceedings before the trial Court. The trial Court on considering the material on record has allowed the petition, permitting the Accused No.1-company to represent Mr. K.Satheesh Babu. Aggrieved by the impugned order petitioner/Accused No.2 filed this Criminal Revision Case.

3. Heard learned counsel for the petitioner and learned Special Public Prosecutor for C.B.I.

4. Learned counsel for petitioner submits that the trial Judge, has not considered the provision under Section 305 (6) Cr.P.C., where under it was stated that if the question arises as to whether any person appearing as the representative of the Corporation in an inquiry or trial before a Court, is or is not

such representative, the question shall be determined by the Court.

5. It is the contention of learned counsel for the petitioner that the trial Court has not determined whether petitioner is a representative of the Company or not. As such, the order passed by the trial Court is not in accordance with law.

6. Learned Special Public Prosecutor for CBI submits that the present criminal revision case is not maintainable as it is an interlocutory order. He placed reliance on Section 305 (5) of Cr.P.C., which reads as under :

“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.”

7. Learned counsel for the petitioner further submits that the M/s. Laurus Edutech Life Skills Private Limited has appointed authorized representative Mr. K.Satheesh Babu and there is no dispute with regard to his appointment. Therefore, the provision under Section 305 (6) of Cr.P.C., is not applicable in this case. It is further submitted that it is the prerogative of the Company to appoint any Managing Director to act as authorized representative of the company.

8. The trial Court on consideration of the material on record has observed in Paragraph No.14 of its order that Vardhaman Jain is not arrayed as an accused in his individual capacity, who

was representing the company earlier, as he was shown as representative to Accused No.1-Company. It is further stated that in view of the provision under Section 305 of Cr.P.C., the Accused No.1-Company can authorize any person of its choice to represent the company and as such the Accused No.1-company authorized Mr.K.Satheesh Babu as a representative, and allowed the petition.

9. Section 305 of Cr.P.C., is a procedure when Corporation or registered society is an accused. Admittedly, M/s. Laurus Edutech Life Skills Private Limited, is the accused in this case. It is a Corporation registered under the Companies Act. As per Section 305 (5) of Cr.P.C, the Managing Director of the Corporation 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, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

10. In the instant case Mr. K.Satheesh Babu is appointed by the Company as an authorized representative to represent the company.

11. In view of the submissions made by the respondents that the 2nd accused has no say in this matter, as his rights are not prejudiced by the company appointing Mr.K.Satheesh Babu, he is not entitled to maintain this revision.

12. Learned counsel for the petitioner submits that Vardhaman Jain who is the Managing Director and the main

allegations as per the charge sheet are against him and therefore, he cannot be replaced with Mr.K.Satheesh Babu to represent the company.

13. So far as this contention is concerned, the allegations against Vardhaman Jain are proved through the evidence of witnesses, and if the rights of the petitioner herein are affected, the Court may take appropriate steps at an appropriate stage.

14. Having regard to the facts and circumstances of this case, and in view of the provision prescribed under Section 305 (5) of Cr.P.C., it is the prerogative of the company to appoint an authorized representative, the order of the trial Court in allowing the petition, does not requires any interference, whereas, proceedings are interlocutory in nature. Though it is contended that the order has become final and the rights of the parties would be affected, cannot be accepted at this stage for the reason that the appointment of authorized representative is only for the purpose of proceedings and as the Court has not given any final verdict against anybody, in respect of the offence alleged against the accused.

15. With the above observations, this Criminal Revision Case, is dismissed. Pending miscellaneous petitions shall stand closed.

GUDISEVA SHYAM PRASAD,J

18th December, 2018
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