IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4942/2019

SANJEEV S. MALHOTRA
Age 54 yers,Occ: business
residing at 10/81, Punjab
Bagh(West),
NEW DELHI 100 026. .... **PETITIONER.**

VERSUS

1. THE STATE OF MAHARASHTRA
2. UNION OF INDIA
(At the instance of Sr.Inspector
CBI, EOW, Mumbai) .... **RESPONDENTS.**

....

Mr.Niranjan Mundargi a/w Omkar P. Mulekar for the Petitioner.

Miss Rebecca Gonsalvez, Advocate for respondent no.2.

Mr.R.M.Pethe, APP for the State.

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CORAM : A. M. BADAR, J.

DATE : 14TH JANUARY 2020.

ORAL JUDGMENT:

1. Heard. Rule. Heard forthwith.

2 Order passed below Exhibit 264 i.e. application by the present petitioner/accused no.2 to secure presence of accused no.1 Company is impugned in this petition.

3. The petitioner/accused no.2 is said to be a Director of accused no.1 Company namely 'M/s Sudarshan Overseas Limited'. It is stated that he resigned from the Company from 01.04.2008 and subsequently one Parmender Rana came to be appointed as Additional Director of accused no.1/Company. From 08/09/2008 said Parmender Rana is stated to be appointed as the Managing Director of accused no.1/ Company. According to the prosecution case, acts of offence took place from April to October 2008. Averments are to the effect that the invoices issued after 19.4.2008 are

bogus. On completion of investigation, accused no.1/Company namely 'M/s Sudarshan Overseas Limited' alongwith other accused came to be chargesheeted for offences punishable under Section 120-B r/w 420, 467, 468 and 471 of the Indian Penal Code as well as under Section 13(2) r/w 11 and 13(1) (d) of Prevention of Corruption Act,1988. The petitioner, as stated above came to be arraigned as accused no.2.

4. Charge as against petitioner/accused no.2 is reported to be framed and his plea is also recorded. He then filed an application-Exhibit 264 for securing the present of accused no.1/C company. That application came to be rejected with a direction to the petitioner/accused no.2 as well as accused no.3 to remain present on the next date for recording their plea by asking them to represent accused no.1/Company.

5. Heard the learned counsel appearing for the

petitioner/accused no.2. By relying on the judgments in the matter of **i) Puneet Gupta and Anr. Vs. State, ILR (2013)II Delhi 834 and ii) Ram Narayan Sharma V. State of Assam, 2017 SCC OnLine Gau 1004,** the learned counsel for the petitioner argued that summons to the Corporation can be served through its Managing Director, local Manager or Secretary as per provisions of Section 63 of the Criminal Procedure Code and then such Corporation may choose to appoint its representative for the purpose of representing the Corporation for the trial of offences alleged against the Corporation. The learned trial court ought not to have compelled accused no.2 i.e. present petitioner to represent the Company by answering the Charge levelled against the Company. The learned counsel further argued that defence of the petitioner/accused no.2 is totally different than the defence which may be raised on behalf of accused Company and therefore, the impugned order can not be sustained. As against this, the learned counsel appearing for contesting respondent i.e. CBI, opposed the application by contending that in the application filed in the learned trial court, the petitioner has not stated that the official liquidator is appointed for winding up the Company and he is incharge of the Company. The learned counsel for CBI further argued that it was for the learned trial court to issue summons to the Corporation.

6. I have considered the submissions so advanced and also perused the impugned order. Undisputedly, accused no.1 is a registered Company by name 'M/s Sudarshan Overseas Limited'. It is distinct entity than its Director. Section 63 of Criminal Procedure Code deals with the procedure for issuing summons on corporate bodies. It reads thus;

> 63. Service of summons on corporate bodies and societies- Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in

> which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

7. The Criminal procedure Code also contemplates procedure when the Company is arraigned as accused. The procedure of trial of offences against the Company can be found in Section 305 of Criminal Procedure Code, which reads thus,

> **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 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.

(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 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

8. It is thus, clear that on receiving the summons issued by the trial court, accused Company may appoint representative for the purpose of trial and such appointment can be made on simple letter even without the seal of the Corporation. When such representative of Corporation appears before the Court for answering the Chargesheet, any thing which is done in presence of such representative, can be construed as a thing done in presence of the Company. Even statement of accused/Company under section 313 of the Criminal Procedure Code can be recorded by examining such representative of the accused.

9. At this juncture it is apposite to quote the observations of Delhi High Court in the matter of Puneet (cited supra) as found in relevant portion of paragraph 10 of its Judgment. It reads thus,

> 10. Thus, it would be seen that a company can be represented through a representative appointed for this purpose. Sub-section (3)

> says that where a representative of a company appears, any requirement of this Code that anything shall be done in the presence of the accused, shall be construed as a requirement that, that thing shall be done in presence of the representative. Sub-section(4) says that if the representative of the corporation does not appear, the requirement as referred in sub-section (3) shall not apply. Thus, simply because there was nobody to represent the company, the directors could not have been summoned to appear as accused. The right course to be adopted was to issue summons to the company through its principal officer and it is for the company to decide as to through whom it is to be represented. Thus, simply on the ground that the company was not being represented, its directors who are the Petitioners herein could not have been summoned to face prosecution.

10. Similarly, in para 17 of its Judgment in the matter of Ram Narayan Sharma, the Gauhati High Court has held thus,

> 17. A conjoint reading of Section 63 and Section 305 of Cr.P.C. would show that after the process is served in the manner provided in Section 63 Cr.P.C. the Corporation may appoint a representative for the purpose of the inquiry or trial as provided in Section 305(2) Cr.P.C. It is, thus, evident that when the accused is a corporate body it

> is not for the Court to decide who shall represent the Corporate body. The Court can issue the process in the manner as provided under Section 63 Cr.P.C. and the representative will be appointed by the Corporate body for the purpose of representing the Corporate body during trial.

11. It is thus, clear that for prosecuting a Company as accused, the Court is required to issue process against the company and then becomes choice of the accused Company to nominate its representative to answer the Charge. The corporation by itself is a distinct legal entity than its director. Therefore, the impugned order directing the petitioner/accused no.2 to answer the charge levelled against the accused Company by signing the plea on behalf of the company can not be sustained. Hence, the order.

ORDER

1. The petition is allowed in terms of prayer clause (b) qua the petitioner.
2. The impugned order below Exhibit 264 qua the present petitioner is quashed and set aside.

(A. M. BADAR, J.)