



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.2826 of 2016
and Crl.MP.Nos.1482, 1483 & 1484 of 2016

Tamil Nadu Petro Products Limited,
Manali Express Highway,
Represented by its Managing Director,
Muthukaruppan, Manali, Chennai - 68.

(Amended as per order on Crl.MP.7487/21
in Crl.OP.2826/16 dated.09.08.2021)

...Petitioner/A3

Versus

The Additional Deputy Commercial Tax Officer,
Commercial Tax Department,
Puducherry.

.. Respondent

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 08.12.2015 made in Crl.R.C.No. 9 of 2014 on the file of II Additional Sessions Judge, Puducherry, confirming the order dated 21.04.2014 made in Crl.M.P.No.6739 of 2009 in C.C.No.506 of 2006 on the file of Judicial Magistrate No.I, Pondicherry.

For Petitioner : Mr.S.Karthikeyan
For Mr.T.K. Ravikumar

For Respondent : Mr.Bharath Chakravarthy
Public Prosecutor, Pondicherry.



O R D E R

This petition has been filed to set aside the order dated 08.12.2015 made in CrI.R.C.No. 9 of 2014 on the file of II Additional Sessions Judge, Puducherry, confirming the order dated 21.04.2014 made in CrI.M.P.No.6739 of 2009 in C.C.No.506 of 2006 on the file of Judicial Magistrate No.I, Pondicherry.

2. The respondent/complainant filed a complaint in C.C.No.506 of 2006 against the petitioner and others for the offences under Sections 190(1) (a) of CrPC., r/w Section 49(1) (a), 49(2)(b), 49(2)(d) of the PGST Act, 1967 r/w Sec.34 IPC., Rule 56 of the PGST Rules, 1967 r/w Section 34 IPC and also under Sections 177, 409, 420 IPC and Section 34 IPC. The petitioner herein is the 3rd accused in C.C.No.506 of 2006 on the file of Judicial Magistrate No.I, Pondicherry. During the pendency of the calendar case, the respondent/complainant filed a petition under Section 305 of CrPC., to permit the company to appoint a representative and to represent on behalf of Company/A3 in this case, and the same was dismissed by order dated 21.04.2014. Challenging the same, the petitioner/A3 filed a petition in CrI.R.C.No.9 of 2014 under Sections 397 r/w Section 401 of CrPC., to revise the order of the Court below and the same was dismissed by the learned II Additional Sessions Judge, Pondicherry, dated 08.12.2015. Aggrieved by the said order, the petitioner/A3 filed a Criminal Original Petition before this Court to set aside the order dated 08.12.2015 made in CrI.R.C.No.9 of 2014 on the file of II Additional Sessions Court, Pondicherry.

3. The learned counsel appearing for the petitioner submitted that the petitioner is the 3rd accused namely M/s. Tamil Nadu Petroproducts Limited in C.C.No.506 of 2006 on the file of Judicial Magistrate-I, Pondicherry, is a body incorporated under the Companies Act, 1955 and the said company has a right under Section 305 of CrPC., to appoint some one to represent on behalf of Company during the trial. At this stage, the respondent/complainant has no right to say that the Managing Director is to represent the case, which is in clear violation of Section 305 of CrPC. Hence, he prays to permit the company to appoint a representative under Section 305 CrPC., and permit him to represent on behalf of the 3rd accused in the above case. He further submitted that the resolution dated 29.07.1999



stating that the Managing Director was authorised to nominate a person to represent the company and accordingly, Mr.Ramamurthy, was authorized by letter dated 29.03.2007, who was representing the company in Court matters. The authorisation letter was kept in abeyance, the said Ramamurthy resigned on 29.05.2009 and hence, another authorization letter dated 29.05.2009 was given in favour of Mr.Ralph and the same was produced before the Court on 28.10.2009 along with a petition under Section 305 CrPC., During the pendency of the petition before the Court below namely Mr.Ralph retired and based on the resolution dated 12.02.2014 Mr.Syed Jalal, Deputy Manager was authorized to represent the Company and the same was accepted and the same was produced before the Court below. Hence he prays to set aside the order dated 08.12.2015.

4. The learned Public Prosecutor (Pondicherry) submitted that the petitioner's company/A3 has not stated that the liability fixed under Section 305 CrPC., on a person who is in charge of responsible in the above said company for the conduct of the business was intended to get over resort to Section 305 CrPC., which has permitted a person to be representative of a Company. He further submitted that the petitioner/A3 has not stated that the proposed representative would give undertake that he was a responsible person to the Company for the conduct of the business at the time of alleged commission of offence and indicated the details of a person who is liable to be proceeded against if the company is found guilty.

5. Heard Mr.Mr.S.Karthikeyan for Mr.T.K. Ravikumar, learned counsel appearing for the petitioner and Mr.Bharath Chakravarthy, learned Public Prosecutor (Pondicherry) appearing for the respondent and perused the materials available on record.

6. On perusal of the documents and typed set of papers, it is clear that the complainant filed a complaint against the petitioner and two others. The petitioner is the 3rd accused namely M/s.Tamil Nadu Petroproducts Limited, represented by Mr.R.M.Muthukaruppan, Managing Director of the Company and it has been cited as an accused citing its representative who is responsible for the said offence of the relevant point of time by citing its Managing Director and Chief Operating Officer as 3rd accused but the said Managing Director and the Chief



Operating Officer authorized one Mr.Ramamoorthy who lead executive tax (Commercial Tax) to act on behalf of the company to execute the legal proceedings on behalf of the company as per the resolution passed by the Board of Directors of the Company at their meeting held on 29.07.1999 but the same could be applied in case of any legal proceedings initiated as arrayed an accused and the representative of the said Muthukaruppan has been arrayed as A3 who is responsible for the said act of the company at the relevant point of time and the charges can be decided only after full trial but he cannot further delicate his possession of accused of some other person and he cannot be reported or substituted by another person in terms of section 305 CrPC., As such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

7. In view of the above discussion, this Court is not inclined to interfere with the order passed by the Court below, dated 08.12.2015 made in CrI.R.C.No. 9 of 2014 on the file of the Court of II Additional Sessions Judge, Puducherry, confirming the order dated 21.04.2014 made in CrI.M.P.No.6739 of 2009 in C.C.No.506 of 2006 on the file of the Judicial Magistrate No.I, Pondicherry. Further, the petitioner is at liberty to raise all the grounds before the trial Court. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the entire process within a period of four months from the date of receipt of a copy of this Order.

8. With the above direction, the Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CJ CONF)

// True Copy //

Sub Assistant Registrar

msm



To

1. The II Additional Sessions Judge,
Puducherry.

2. The Judicial Magistrate No.I,
Pondicherry.

3. -do- through The Chief Judicial Magistrate
Puducherry.

4. The Additional Deputy Commercial Tax Officer,
Commercial Tax Department, Puducherry.

5. The Public Prosecutor,
Pondicherry.

Cr1.O.P.No. 2826 of 2016
and Cr1.MP.Nos.1482, 1483 & 1484 of 2016

SR-II (CO)

K.RK. (11.10.2021)