



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.R.C.NO.519 OF 2021

M/s.Arihant Foundations and Housing Ltd.,  
Rep.by its Managing Director  
Kamal Lunavath

.. Petitioner/Petitioner/Accused No.4

Vs.

State rep. by  
The Additional Superintendent of Police,  
CBI, ACB, Chennai.

.. Respondent

Prayer:

Criminal Original Petition filed under Section 397 r/w Sec.401 of Cr.P.C., to call for the records pertaining to the order, dated 12.08.2021 made in Crl.M.P.No.4263 of 2021 in C.C.No.29/2006 on the file of XIV Additional Special Court of CBI Cases, Chennai and set aside the same.

For Petitioner .. Mr.B.Kumar, Senior Counsel  
for Mr.C.Maniprabhu

For Respondent .. Mr.K.Srinivasan  
Special Public Prosecutor  
(Central Bureau of Investigation)

ORDER

This Criminal Revision Petition has been filed questioning the order, dated 12.08.2021 in Crl.M.P.No.4263 of 2021 in C.C.No.29 of 2006, now pending on the file of XIV Additional Special Judge for CBI cases at Chennai.

2. Crl.M.P.No.4263 of 2021 had been filed by the 4th accused/M/s.Arihant Foundations and Housing Ltd., represented by its Managing Director, Mr.Kamal Lunavath, having office at No.183, Poonamallee High Road, Kilpauk, Chennai - 600010, taking advantage of Section 305 of the Code of Criminal Procedure, seeking permission for substitution of afore named Managing Director by the Liaison Officer of the said company, Mr.S.Selvakumar to represent the company.



3. The said application came up for consideration before the learned Judge, presiding over the XIV Additional Special Judge for CBI cases, on 12.08.2021 and by order of even date, the application was dismissed. Primarily, the learned Judge has been swerved by the fact that the Calendar Case was of the year 2006. The case is now posted for framing of charges on 01.09.2021. Just prior to that hearing date, this particular petition has been filed and the learned Judge probably felt that the said application had been filed with an intention to frustrate further progress of the Calendar Case and to derail the commencement of the trial and to postpone the questioning of the accused on the charges.

4. Heard Mr.B.Kumar, learned Senior Counsel, on behalf of the revision petitioner and also Mr.K.Srinivasan, learned Special Public Prosecutor, on behalf of the respondent/ Additional Superintendent of Police, CBI, ACB, Chennai.

5. Though Mr.K.Srinivasan, Special Public Prosecutor requests time for filing counter, in view of the fact that the Calendar Case of the year 2006, the matter is posted for framing of charges tomorrow/01.09.2021, I proceed further after hearing the learned Senior Counsel on behalf the petitioner and the learned Special Public Prosecutor on behalf of the respondent.

6. Both the learned Senior Counsel and the learned Special Public Prosecutor took me through Section 305 of Cr.P.C., and it would only be advantageous, since the entire facts surrounds the interpretation the said provision, that Section 305 of Cr.P.C., is extracted in its entirety.

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 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



WEB COPY

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.

7. The only issue that weighs in the mind of the Court is if, the charges are to be framed in the presence of the Managing Director, Kamal Lunavath and thereafter this Court, on further hearing of the present revision petition, takes a decision to actually allow the revision petition and thereafter, permit substitution of the said Managing Director by the Liaison Officer, S.Selvakumar, then, whether, further proceeding of the trial could be, on that reason be frustrated by the accused, taking advantage of the fact that the said S.Selvakumar, was not present at the time of framing of charges, had actually not answered the charges and therefore, the Company cannot be bound either on his answers on questioning under Section 313 (1) (b) of Cr.P.C or on the further aspects on conclusion of trial.

8. However, both Mr.B.Kumar, learned Senior Counsel for the revision petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor stated that, the said apprehension might not be the case, since the representation under Section 305 of Cr.P.C is only on behalf of the company and it is the said company, which is the accused and the individual is not arrayed independently as an accused. It is informed to me that the transaction alleged



by the CBI inviting registration of the First Information Report and after further investigation, filing of final report, was actually conducted by the Managing Director, who was at that time incharge of the day to day operations of the 4th accused/company and who was the father of the Managing Director, Kamal Lunavath and who had unfortunately expired, who could therefore not be arrayed as an accused in the Calendar Case.

9. It is therefore stated that both the Managing Director, now shown, and the Liaison Officer, both have limited knowledge about the transactions and therefore, substitution will not be prejudicial to the interests of the prosecution.

10. Having considered the arguments put forth by the either side, in order to move the case forward, it would only be appropriate to interfere with the order passed in CrI.M.P.No.4263 of 2021 and direct the 4th accused/M/s.Arihant Foundations and Housing Ltd., be represented by its Liaison Officer, S.Selvakumar. I make it clear that the said S.Selvakumar should continue to represent the company from the point of framing charges till the final judgment is pronounced and at no point of time can the 4th respondent/company take refuge behind the ground that they have been wrongly represented or misrepresented by S.Selvakumar, during the course of the trial. The statements by S.Selvakumar would be directly binding on the said Company and they would naturally be bound by such statements.

11. With the above said observations, I would allow the Revision Petition and direct the learned XIV Additional Special Judge for CBI cases, Chennai to order substitution in so far as the 4th accused to be represented by the Liaison Officer, S.Selvakumar, instead of the Managing Director, Kamal Lunavath.

12. I am also informed that even earlier, at the time of application for discharge had been filed and had been declined by this Court, a direction had been given to try the case expeditiously, since the Calendar Case, is of the year 2006.

13. After framing of charges, whenever the learned Judge commences trial, the learned Judge may conduct the trial on a day to day basis. I know that it may not be practicably possible, therefore, even if it is not practicably possible, the learned Judge may grant only a maximum of three working days in between any two adjournments and grant not more than two



adjournments for the very same reason. Therefore, the learned Judge may commence trial after getting the convenience of both the prosecution and accused and thereafter, list out the order in which the witnesses are to be examined and conduct the course of trial proceed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

smv/grs

To

1. The Additional Superintendent of Police,  
CBI, ACB, Chennai.
2. XIV Additional Special Judge for CBI Cases,  
Chennai.
3. The Special Public Prosecutor,  
Central Bureau of Investigation,  
High Court of Madras.

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.43525

Crl.R.C.No.519 of 2021

NK(CO)  
CS/31/08/2021