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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 1 OF 2020

MEDICARE FOUNDATION PVT. LTD.,
THR. ITS DIRECTOR, ANIL KAUSHIK ...PETITIONER
Versus
STATE, THR. P.I. CBI/ACB/GOA AND 2
ORS. ...RESPONDENTS

Ms. Asha Desai, Advocate *for the Petitioner.*

Mr. S.G. Bhobe, Public Prosecutor *for Respondent No. 1.*

Mr. M. S. Joshi, Advocate *for Respondent No. 2.*

Mr. Arun Bras De Sa, Advocate *for Respondent No. 3.*

CORAM: MANISH PITALE, J.

DATED: 14th January 2022.

ORAL ORDER:

1. By this Writ Petition, the petitioner-Company (original accused no. 3) has approached this Court, challenging an order dated 25.11.2019, passed by the Sessions Court, whereby the petitioner-Company has been directed to depute some other authorized person, failing which, the prosecution is directed to take steps against the petitioner-Company (accused no. 3).

2. The said order is passed in the backdrop of a prosecution launched against the respondent no. 2 (original accused no. 1),

respondent no. 3 (original accused no. 2) and the petitioner-Company (original accused no. 3), for offences under Sections 119, 120, 201, 420 read with Section 120-B of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. During the course of the proceedings before the Sessions Court, an order dated 15.11.2018, came to be passed, whereby it was recorded that the respondent no. 3 herein (accused no. 2) was permitted to represent the accused no. 3 i.e. the petitioner-Company, in the proceedings. The said order appears to have been passed on a prayer to that effect made by the petitioner-Company i.e. the accused no. 3. In this backdrop, respondent no. 3 i.e. original accused no. 2 filed an application for recalling/modification of the order dated 15.11.2018. In the said application, it was specifically stated by the respondent no. 3 (accused no. 2) that neither an opportunity of hearing nor to file response to the request made on behalf of the petitioner (accused no. 3), was granted, while passing the order dated 15.11.2018. It was submitted that the respondent no. 3 (accused no. 2) was no longer a majority shareholder of the Company and he was holding a negligible share i.e. less than 2% and therefore, he could not represent the petitioner Company i.e. the original

accused no. 3. In this backdrop, a prayer was made for recalling the order dated 15.11.2018.

4. The Sessions Court passed the impugned order, observing that the accused persons were delaying the proceedings before the Sessions Court and it was found that since the respondent no. 3 (accused no. 2) had refused to represent the accused no. 3 i.e. the petitioner herein, it would be appropriate to direct the petitioner-Company to depute an authorized person in the proceedings.

5. While issuing notice in this Writ Petition, on 08.01.2020, this Court granted ad-interim stay and the said interim order has continued to operate.

6. Ms. Asha Desai, learned Counsel for the petitioner-Company submitted that the impugned order was unsustainable for the reason that there was no power in the Sessions Court to recall its own order dated 15.11.2018. It was further submitted that since respondent no. 3 i.e. the original accused no. 2 was a Director of the petitioner-Company, at the time when the offence was committed and he had knowledge of the affairs of the Company, he was the only person who could represent the petitioner-Company in the Court. It was submitted that this aspect was taken into account by the Sessions Court while passing

the order dated 15.11.2018 and that there was no basis to modify the same by passing the impugned order. It was further brought to the notice of the Court that that the Director, who was representing the petitioner-Company when this Writ Petition was filed, had subsequently retired.

7. Mr. Joshi, learned Counsel appearing on behalf of respondent no. 2 i.e. the original accused no. 1 submits that he has no submissions to make because the controversy raised by the petitioner in the context of the impugned order has no concern with the said respondent. It is submitted that the observation in the impugned order that the respondent no. 2 has delayed the proceedings is not correct.

8. Mr. Arun Bras De Sa, learned Counsel appearing on behalf of respondent no. 3 (accused no. 2) has invited attention of this Court to Section 305(6) of Cr.P.C. to contend that it is well within the powers of the Sessions Court to determine the question as to whether, a person appearing as a representative of a Corporation in a trial before a Court, is or is not, such a representative. According to the learned Counsel for the respondent no. 3, the Sessions Court has correctly exercised power while passing the impugned order.

9. This Court has perused the record and heard the rival contentions of the parties.

10. In the present case, there is no dispute about the fact that the respondent no. 3, who is the original accused no. 2, is facing prosecution before the Sessions Court. A perusal of the order dated 15.11.2018 shows that accused no. 2 (respondent no. 3 herein) has been “permitted” to represent accused no. 3 i.e. the petitioner-Company. A perusal of the record shows that there was no application or contention raised on behalf of respondent no. 3 (accused no. 2) at any stage, before the Sessions Court for permission to represent the petitioner-Company (original accused no. 3). This order dated 15.11.2018, has been passed on a prayer made in the reply to the application pending before the Sessions Court and the said reply was filed on behalf of the petitioner-Company.

11. Thus, the order dated 15.11.2018 was passed by the Sessions Court in the absence of any prayer or request made on behalf of respondent no. 3 (original accused no. 2) to represent the petitioner-Company. It is in this backdrop that the application for recall/modification was filed on behalf of the respondent no. 3 (accused no. 2). It was specifically stated in paragraph 5 of the said application that respondent no. 3 was no

longer majority shareholder and that he was having a negligible shareholding i.e. less than 2%. In fact, it is the case of the respondent no. 3 that he has only 1% share in the Company. After the said application was filed by the respondent no. 3 (accused no. 2), it was for the Managing Director of the petitioner-Company to discharge his duty and defend the petitioner-Company in the proceedings before the Sessions Court.

12. The aforesaid application on which the Sessions Court has passed the impugned order has been allowed by observing that it is for the petitioner-Company to depute an authorized person in the proceedings before the Sessions Court. This Court is of the opinion that the impugned order has been passed by exercising power under Section 305(6) of the Cr.P.C. Since respondent no. 3 (accused no. 2) is already facing prosecution in the aforesaid proceedings before the Sessions Court as an accused, it is not as if the impugned order has the effect of absolving the respondent no.3 from criminal liability, if any, in the proceedings. It has been correctly held that it is for the petitioner-Company (original accused no. 3) to depute an authorized person in the proceedings before the Sessions Court. It appears that due to the aforesaid controversy, the proceedings before the Sessions Court have been pending for no reason at all.

13. Considering the nature of the directions given in the impugned order, this Court is of the opinion that the fact brought to the notice of this Court that the person, who was the Director of the Company, when the Writ Petition was filed, has retired, can be of no consequence. This Court is of the opinion that the earlier order dated 15.11.2018, wrongly recorded that permission had been granted to the respondent no. 3 (original accused no. 2) to represent the petitioner-Company (accused no. 3). The impugned order is based on a correct exercise of power as per Section 305(6) of Cr.P.C. and therefore, it does not call for interference. Hence, the Writ Petition is dismissed. Needless to say, the interim order granted by this Court stands vacated. The Sessions Court is directed to proceed expeditiously in the matter.

MANISH PITALE, J.

VAIGANKAR
ESHA SAINATH

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