



Crl.R.C.No.1513 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **G.CHANDRASEKHARAN**

Crl.R.C.No.1513 of 2022
and Crl.M.P.Nos.17665 & 17666 of 2022

V.Lakshmi

.. Petitioner/Accused No.6

Vs

Directorate of Enforcement represented
by its Assistant Director,
Government of India, II & III Floor,
'C' Block, Murugesu Naicker Office Complex,
No.84, Greaves Road, Thousand Lights,
Chennai – 600 006.

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set
aside the order dated 02.11.2022 passed in Crl.M.P.No.15870 of 2022 in
C.C.No.1 of 2019 on the file of the Principal Sessions Court, Chennai.



Crl.R.C.No.1513 of 2022

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.A.S.Balaji
For Respondent : Mr.P.Sidharthan
Special Public Prosecutor (ED)

ORDER

(Made by *P.N.PRAKASH, J.*)

This criminal revision case has been filed by the petitioner seeking to set aside the order dated 02.11.2022 passed in Crl.M.P.No.15870 of 2022 in C.C.No.1 of 2019 on the file of the Principal Sessions Court, Chennai.

2. The minimum facts that are required for deciding this petition are as under:

2.1 The Directorate of Enforcement (for brevity “the ED”) has filed a complaint in C.C.No.1 of 2019 in the Principal Sessions Court, (Special Court for the Cases under the Prevention of Money Laundering Act, 2002 [for brevity “the PMLA”), Chennai, for the offences under Section 3 r/w 4 of the PMLA against Dr.S.Murukesan and five others.



CrI.R.C.No.1513 of 2022

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2.2 In the said complaint, the sixth accused has been shown as Adhiparasakthi Dental College & Hospital (for brevity “ADCH”), Melmaruvathur, Kancheepuram District – 603 319, represented by V.Lakshmi, Chief Executive Officer, ACMEC Trust; while so, V.Lakshmi filed a petition in CrI.M.P.No.15870 of 2022 in C.C.No.1 of 2019 under Section 305 Cr.P.C. in the trial Court, for deleting her name and permitting ADCH to nominate a person to represent the said entity in the trial.

2.3 The said petition has been dismissed by the trial Court on 02.11.2022, aggrieved by which, V.Lakshmi has filed the present case.

3. Heard Mr.B.Kumar, learned Senior Counsel representing Mr.A.S.Balaji, learned counsel on record for the petitioner and Mr.P.Sidharthan, learned Special Public Prosecutor (ED) appearing for the respondent.



4. The short point that falls for consideration is, when a juristic person has been arrayed as an accused in a prosecution, who should have to represent it. This question has been answered by this Court in ***V.Umamaheswari Vs. State represented by the Inspector of Police, Economic Offence Wing – II, Virudhunagar District and Another¹***, wherein, the law governing Section 305 Cr.P.C. has been discussed and stated as under:

“11. It is not the duty of the prosecution nor the Court to nominate the person to represent Gayathri Chits (A-1) and Selvam Finance (A-2). Section 305 Cr.P.C., clearly states that the accused Corporation may appoint a representative for the purpose of the inquiry or trial. Dictates of common sense demands that some human being must represent A-1 and A-2 to answer the charges, engage an advocate to defend them and answer the questions under Section 313 Cr.P.C., etc. Of course, the human agent appointed for the Corporation cannot be personally convicted and sentenced for the offence committed by the Corporation. Obviously, a sentence of imprisonment cannot be awarded to a juristic person and only fine can be imposed. Therefore, it is open to Gayathri Chits (A-1) and Selvam Finance (A-2) to appoint anyone including one of the accused, namely A-3 to A-10 to represent them in the prosecution. If no arrangement is made by Gayathri Chits (A-1) and Selvam Finance (A-2), then they will have to suffer the consequences and cannot plead prejudice at a later point of time. Hence, liberty is given

¹ decided on 11.01.2018 in CrI.R.C.(MD).No.910 of 2017



CrI.R.C.No.1513 of 2022

to Gayathri Chits (A-1) and Selvam Finance (A-2) to appoint anyone to represent them before the Trial Court and that can be one of the accused or an outsider also, but, with due authorization under the seal of Gayathri Chits (A-1) and Selvam Finance (A-2). However, this cannot be a ground for discharging the present petitioner/A-9 from the prosecution.”

5. As stated above, it is for the juristic entity to nominate a person to represent it in the prosecution and on failure to do so, the said entity cannot claim prejudice at a later point of time, especially, when it is shown that summons on the said entity has been served. In this case, the petitioner appears to have filed a memo stating that Dr.V.Sudhakar, Principal of the College, would represent the sixth accused in the prosecution.

6. The learned Special Public Prosecutor submitted that in the affidavit that was filed by V.Lakshmi in support of the petition in CrI.M.P.No.15870 of 2022, she had not stated that Dr.V.Sudhakar would represent the sixth accused and only after the orders were reserved, a memo was filed to the said effect, which was of course rejected by the trial Court.



CrI.R.C.No.1513 of 2022

7. The learned Senior Counsel representing the learned counsel on record for the petitioner submitted that ADCH (sixth accused) has nominated Dr.V.Sudhakar to represent it in the trial Court.

In view of the foregoing discussions, this criminal revision case stands allowed by setting aside the order dated 02.11.2022 passed in CrI.M.P.No.15870 of 2022 in C.C.No.1 of 2019 on the file of the Principal Sessions Court, Chennai. Liberty is given to the petitioner to file fresh petition under Section 305 Cr.P.C. with an affidavit stating that Dr.V.Sudhakar would represent the sixth accused along with the supporting affidavit of Dr.V.Sudhakar and on such petition being filed, the same shall be allowed and Dr.V.Sudhakar may be permitted to represent the sixth accused in C.C.No.1 of 2019.

(P.N.P., J.) (G.C.S., J.)
23.11.2022

Index: Yes/No
nsd



CrI.R.C.No.1513 of 2022

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To

- 1.The Assistant Director,
Directorate of Enforcement,
Government of India, II & III Floor,
'C' Block, Murugesu Naicker Office Complex,
No.84, Greaves Road, Thousand Lights,
Chennai – 600 006.

- 2.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.1513 of 2022

P.N.PRAKASH, J.
and
G.CHANDRASEKHARAN, J.

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