



Crl.O.P.No.27506 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27506 of 2018

and

CrL.M.P.Nos.15865 of 2018

M/s.Dharani Sugar Mills, Unit-II
Rep. by Chairman, Mr.Palani G.Periasamy,
Karaipoondi Village, Polur Taluk,
T.V.Malai District.

.. Petitioner

Vs.

Farmer Progressive Sangam,
Rep. by it's Secretary,
Mr.P.Subarmani, Aged 70 years,
Bahadur Street, Polur Town,
Thiruvannamallai District.

.. Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of CrL.R.C.No.11 of 2015 on the file of the learned Principal District and Sessions Judge, Thiruvannamalai and to examine the same and to set aside the order passed in CrL.R.C.No.11 of 2015



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on 08.10.2018 and to restore the order passed by the learned Judicial Magistrate, Polur in Crl.M.P.No.1725 of 2015 dated 05.05.2015.

For Petitioner : Mr.J.Elanjchezian
for Mr.G.Prabhakaran

For Respondent : Mr.Adithya Varadarajan

ORDER

The Petitioner/Accused in C.C.No.96 of 2008 filed CMP.No.1725 of 2015 under Section 305 of Cr.P.C., before the trial Court and the trial Court allowed the Petition, substituting the Petitioner Mr.Palani G.Periasamy, Chairman of Sugar Mill by one Mr.Kanthasamy, who is General Manager. Against the said order the Complainant filed Revision before the Principal District and Sessions Court, Thiruvannamalai in Crl.RC.No.11 of 2015, and learned Principal District and Sessions Judge, by order dated 08.10.2018 set aside the order of substitution made by the trial Court. Against which the present Petition is filed.

2.The Respondent filed a private complaint against M/s.Dharani



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Sugar Mills, Rep. by Chairman, Mr.Palani G.Periasamy. As per the direction of the Government of Tamil Nadu, the Director of Sugars by his letter dated 28.12.1995 stipulated transport tariff charges during the crushing seasons between 01.02.1995 and 30.09.1996 to be deducted for metric ton for 20 kms alone. The accused company instead of Rs.20/- deducted Rs.34/- per metric ton for 20 kms. In pursuant to the above, the Sugar Mill issued a transport tariff schedule dated 18.07.1996 during the crushing season year 01.02.1995 to 30.09.1996 decided to deduct at Rs.34/- per metric ton for 20 kms radius, for rest of the kilometers, the said Sugar Mill to bear the tariff cost. Contrary to the same, accused deducted the tariff of Rs.41.50/- per metric ton for 20 kms radius. Hence, misappropriation has been committed.

3.Initially a police complaint was lodged in Cr.No.321 of 2002, under Section 409 IPC before the Kalasapakkam Police Station. The case was referred as mistake of fact and R.C.S. was referred before the Court in RCS.No.20/05. Having no other option, for the misappropriation committed by the Sugar Mill, the complainant filed a private complaint and hence the Petitioner filed a quash Petition in Crl.OP.No.10324 of 2018. This Court by



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order dated 30.10.2014 dismissed the quash Petition. At that time, apart from other grounds, it was contended by the Petitioner to substitute the chairman by General Manager. This Court by order dated 30.10.2014 observed that the Petitioner to approach the trial Court for the same. Thereafter, they approached the trial Court and consequent orders have been passed.

4.The specific case of the Respondent/Complainant is that the Sugar Mill committed the offence of misappropriation. Further it is not in dispute that the Sugar Mill was managed by professionals and technocrats, who are assigned specific duties and responsibilities. The Petitioner being a Chairman of the said company and other companies, involved in various businesses. As a Chairman, he would chair the board meetings and other extraordinary meetings, otherwise he has nothing to do with from the day to-day affair of the company. Operation of the Sugar Mill was exclusively with General Manager and other officers. In view of the same, he had filed Petition under Section 305 Cr.P.C., before the trial Court.

5.The trial Court by well reasoned order considering all these



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aspects allowed the substitution Petition. Thereafter, the Respondent/Complainant filed a revision and the Sessions Court, set aside the order of the trial Court, for the reason that there was a delay in filing the substitution Petition. Calender Case is of the year 2008 and the substitution Petition filed in the year 2015. Further observing that the Petitioner has been functioning as Chairman right from the inception of the company. In view of the same, this substitution Petition cannot be considered.

6.Learned counsel for the Petitioner further submitted that it is not in dispute that accused is a company and the Petitioner represents company as Chairman, in his representative capacity as per Section 305 Cr.P.C., at any point of time, representative of the company can substituted. The learned counsel for the Petitioner relied upon the judgment passed by this Court in Crl.O.P.No.1256 of 2003 and referred to paragraphs 7, 8, 9 and 10, which reads as follows:

“7. It is the further contention of the learned counsel for the petitioner that the right to appoint a representative to represent the company (firm) in a criminal trial or inquiry is conferred on the company/firm under Section 305 of the Code



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of Criminal procedure and the prosecution cannot have anything to say that the company should appoint a person to represent it in the inquiry or trial. It is the further contention of the learned counsel for the plaintiff that the right given to the Company/firm under Sub-clause (2) of Section 305 Cr.P.C cannot be interpreted to mean a corresponding right available to the prosecution to name a person to be the representative of the company or firm and compel him to represent the company/firm in the enquiry.

8. The above said contention raised by the learned counsel for the petitioner is clearly tenable and the same has to be countenanced. What sub-section (2) of Section 305 Cr.P.C says is that where a Corporation (Firm in this case) 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(Firm in this case). The term used is "may" and not "shall" meaning that it is a right available to the Corporation/firm to appoint a representative to defend it in a criminal trial or inquiry. If the Corporation or Firm does not come forward to appoint a representative, the same doesn't mean that the prosecution can compel anybody to represent the Company (Firm). This shall be quite obvious if the entire



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Section 305 Cr.P.C is considered. For better appreciation the entire Section 305 Cr.P.C is reproduced hereunder:

"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 persons 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 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



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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."

9. According to Sub-clause (3) of Section 305 Cr.P.C., if a representative of a Corporation/Company (Firm) appears on behalf of the Company, then a requirement of the 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 the same shall be done in the presence of the representative or read, stated or explained to the representative. It also proceeds to state that any requirement for the examination of the accused shall be construed as a requirement of examination of such representative. Sub-section (3) contemplates voluntary appearance of a representative of the Company/Firm. It does not mean that anybody can be compelled by the prosecution or the Court to represent the company/firm. Then a question will arise as to what shall happen to the prosecution if nobody is appointed by the company/firm or nobody appears as a representative of the company/firm in the trial or inquiry in the criminal case before the Court. The answer is found in Sub-clause (4) which reads as follows:

"4. Where a representative of a corporation does not



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appear, any such requirement as is referred to in sub-section (3) shall not apply."

Therefore, it is abundantly clear that if process was properly served on the Corporation/Company/firm and the corporation/company (firm) does not enter appearance through a representative, then the requirement that certain things are to be done in the presence of the accused, like framing of charges and examination of witnesses in the presence of the accused shall not be applicable. Similarly, the requirement of examination of the accused also shall not be applicable. The only circumstance under which the Court can decide whether a person is or is not a representative of the Corporation/company/society/firm is when a person appears as representative of such body and a question arises as to whether such a person is or is not such a representative. Then only the question shall be determined by the Court.

10. As per Sub-clause (3) of the Section 305 Cr.P.C, which reads as follows:-

"(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



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representative shall be examined."

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The power conferred on the Court is to decide whether a person who appears as a representative of the company/firm is or is not a representative of the company or firm. The said power cannot be stretched further to say that the Court has power to direct any person, which it considers to be a representative of the company, to appear on behalf of the company."

In view of the same, order passed by learned Principal District and Sessions Judge, Thiruvannamalai, to be set aside.

7.Mr.Adithya Varadarajan, learned counsel for the Respondent submitted that the Petitioner is the Chairman of the company and he had held several meetings with the respondent/complainant. The members/farmers of the Respondent Sangam were assured by the Petitioner as Chairman, that the Sugar Mill would be operated transparently and farmers would be paid for the produce of Sugar cane without delay. Contrary to the assurance given, Sugar Mill deducted the amount due for farmers and misappropriated the same. For which the complaint has been lodged with the Kalasapakkam Police Station. The police failed to take any action. Thereafter, the complainant approached

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this Court, after direction of this Court, case registered, investigation commenced. Thereafter, final report filed as mistake of fact. The Petitioner filed protest petition and private complaint filed against the Sugar Mill's Chairman, who is a well known powerful, personality who earlier filed a quash Petition kept the quash petition pending for years, from 2008 to 2014. Thereafter, now by filing this Petition successfully stalled the trial for another seven years. The only intention of the Respondent is that the misappropriated amount to be recovered and farmers to be benefited, which is due to them.

8.Considering the submissions made by the learned counsels and on perusal of the materials, this Court finds that the order passed by this trial Court is proper. As per Section 305 of Cr.P.C, representative of the company or firm can be substituted at any stage, of course, following the procedure. In this case, it has been done so. The lower Appellate Court set aside the order of the trial Court, for the reason citing delay which is not proper. Admittedly, the Chairman Periyasamy is only a representative of the Accused Sugar Mill Company. The company alone is prosecuted.



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9.In view of the same, this Court set aside the order passed in Crl.R.C.No.11 of 2015 on 08.10.2018, by learned Principal District and Sessions Judge, Thiruvannamalai, and thereby restoring the order passed by the learned Judicial Magistrate, Polur in Crl.M.P.No.1725 of 2015 dated 05.05.2015

10.In fine, this Petition is allowed. Consequently, connected Miscellaneous Petition is closed. The case is pending from the year 2008, without any progress and only six witnesses to be examined. In view of the same, the trial Court is directed to conduct the trial as expeditiously as possible, on day to-day basis, if required and complete the trial within a period of four months from the date of receipt of a copy of this order.

19.10.2022

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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To

- 1.The learned Principal District and Sessions Judge,
Thiruvannamalai.
- 2.The learned Judicial Magistrate, Polur.
- 3.The Public Prosecutor,
High Court of Madras.



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M.NIRMAL KUMAR, J.

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