



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-41176-2021
Reserved on 12.09.2024
Date of decision: 26.09.2024

Paul Van Ooijen

...Petitioner

Versus

Vijay Kumar Garg

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Randeep Singh Rai, Sr. Advocate with
Mr. G.S. Sullar, Advocate,
Mr. Akhilesh Singh, Advocate and
Mr. Ishwar Sethi, Advocate for the petitioner.

Mr. Akshay Bhan, Sr. Advocate with
Mr. H.P.S. Sandhu, Advocate for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. Petitioner has filed present petition under Section 482 of Cr.P.C seeking quashing of order dated 05.09.2018 (Annexure P-10) vide which the Court of Judicial Magistrate Ist Class, Chandigarh issued summons to the petitioner in criminal complaint No.15919-2013 (previous No.16009-2008) titled as Vijay Kumar Garg Vs. M/s DSM Pharmaceuticals Products and order dated 10.01.2020 Annexure P-13 vide which bailable warrants of the petitioner were issued without effecting his personal service and order dated 28.02.2020 Annexure P-16 vide which petitioner was directed to be summoned through non bailable warrants of arrest and the subsequent similar order dated 03.09.2021 (Annexure P-20) passed in aforesaid criminal complaint filed under Section 420 IPC.

2. In response to notice of motion, respondent appeared through his counsel and filed short reply.

3. I have heard the counsel for the parties.

4. The Senior counsel for the petitioner has *inter alia* submitted that respondent/complainant filed criminal complaint against M/s DSM Pharmaceuticals Products [DSM Pharma Chemicals (formerly known as M/s



DSM Fine Chemicals, Netherlands B.V. (previously known as M/s DMS Andeno B.V.)], the Netherlands through P.Van Ooijen, its authorized representative. It has been further argued that petitioner worked as a Controller for aforesaid Company and is resident of Amsterdam (Netherlands). The petitioner quit the Company in 1998 and thereafter, he is having no relationship with the Company. Further, the Company was liquidated and de-registered under the laws of Netherlands and it cease to exist w.e.f. 01.06.2017. So, the Company is to be impleaded through the liquidator.

5. The Senior counsel for the petitioner while referring to provision of Section 305 Cr.P.C has submitted that in the present case, Company is impleaded as an accused through the present petitioner as its authorized representative. A representative of the Company is not to be considered as an accused and he is not liable for punishment and as such he cannot be summoned through non bailable warrants of arrest by equating him as an accused and he cannot be asked to furnish bail bonds and surety bonds and petitioner cannot be forced to represent the Company. In support of his contentions, the counsel for the petitioner has placed reliance on the decision of this Court in ***Dow Agro Science India Private Limited Vs. Central Bureau of Investigation 2013 SCC Online P & H 16323*** and decision of the Andhra Pradesh High Court at Amaravati in case titled ***Mannam Venkata Krishna Rao Vs. State of A.P. by Public Prosecutor and others 2022 SCC Online A.P. 3027.***

6. The Senior counsel for the petitioner has also assailed the impugned order dated 05.09.2018 Annexure P-10, on the ground that the same was passed without following the mandatory provision of Section 202 Cr.P.C as the petitioner is a permanent resident of Netherlands.

7. On the other hand, the Senior counsel appearing on behalf of respondent while supporting the impugned orders has contended that respondent Vijay Kumar Garg has filed complaint against M/s DSM Pharmaceuticals Products. [DSM Pharma Chemicals (formerly known as M/s DSM Fine Chemicals, Netherlands B.V. (previously known as M/s DMS Andeno B.V.)], the Netherlands through the present petitioner P.Van Ooijen, being the authorized representative of the said Company. It has been further submitted that there is no illegality in the impugned orders which are passed in



accordance with the provisions of law. The Senior counsel for the respondent has further argued that Sub section 6 of Section 305 Cr.P.C provides that if a question arises as to whether a person appearing as the representative of a Company in a trial is or is not such representative, the question shall be determined by the Court concerned. Thus, as per the aforesaid provision, in case the petitioner is aggrieved by the impugned orders, the petitioner is having an alternative remedy by moving an application before the learned trial Court and on this sole ground, the present petition filed by the petitioner invoking inherent powers of the High Court under Section 482 Cr.P.C, is not maintainable. In support of his contention, the Senior counsel for the respondent has placed reliance upon the decision of Hon'ble Supreme Court in ***Madhu Limaye Vs. State of Maharashtra 1977 (4) SCC 551.***

8. The Senior counsel for the respondent while placing reliance upon the judgment of Hon'ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation Chandigarh 2023 (2) RCR (Criminal) 161***, has submitted that the petitioner cannot escape his penal liability, even if, the Company gets dissolved.

9. The Senior counsel for the respondent has further argued that in the present revision petition, no objection is raised by the petitioner, that the impugned order is passed in breach of the provisions of Section 202 Cr.P.C.

10. In rebuttal, the Senior counsel for the petitioner while referring to the ratio laid down by Hon'ble Supreme Court in ***Vijay and another Vs. State of Maharashtra and another (2017) 13 SCC 317***, has submitted that mere availability of alternative remedy cannot be a ground to dis-entitle the relief under Section 482 Cr.P.C.

11. I have considered the submissions made by counsel for the parties.

12. As far as the plea taken by the counsel for the respondent that the present petition is not maintainable as there is an alternative remedy available to the petitioner by moving an application under Section 305 Cr.P.C, is concerned, law is well settled that nothing in Cr.P.C, not even Section 397 Cr.P.C, can affect the amplitude of inherent power provided under Section 482 Cr.P.C, as has been held by the Hon'ble Supreme Court in ***Prabhu Chawla Vs. State of Rajasthan and another (2016) 16 SCC 30.*** However, the inherent



powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:- (i) to give effect an order under the Court. (ii) to prevent the abuse of the process of Court. (iii) to otherwise secure the ends of justice. The power of the High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the Court alone exists.

13. In the instant case, afore-stated criminal complaint is filed against a private Company through the present petitioner being its authorized representative.

14. Section 305 Cr.P.C, provides for procedure when Company or Corporation is impleaded as an accused in a criminal case. The said provision of law is set out herein below:-

“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 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 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.”

15. From a bare perusal of Sub Sections (2) and (3) of Section 305 Cr.P.C, it is apparent that when a Company or Corporation is being prosecuted in a criminal case, in that case process may be issued against the



Company and the Company be given a chance to nominate a representative on its behalf to face the trial. Thus, it is apparent that where a Company is an accused person, it has to appoint a representative in the trial. A choice has been given to the Company to appoint a person to represent it. The complainant or the Court cannot decide who will represent the Company by naming that person.

16. It is also settled position of law that an authorized representative of the Company is not to be equated as an accused and he is not liable for punishment. It is nowhere provided in law that like an accused, bail bonds and surety bonds are to be taken or in his absence, non bailable warrants of arrest be issued to procure the presence of the representative of the Company, as has been held by this Court in *Jay Switches (India) Private Limited through Its Authorized Representatives Jitender Taneja Vs. State of Haryana and another* 2014 SCC Online P & H 9517.

17. This Court do not consider it necessary to adjudicate on issue of non compliance of the provision of Section 202 Cr.P.C, in the present petition.

18. Keeping in view the above discussion, the impugned orders whereby the petitioner was directed to be summoned through bailable warrants or non bailable warrants of arrest deserve to be set aside. Since, the petitioner is not an accused, he cannot be asked to furnish bail bonds also.

19. The present petition is allowed to the extent stated above. However, it is made clear that the cognizance against the Company has not been set aside by this order.

20. The observations made herein above shall remain confined to disposal of the present petition and will have no bearing whatsoever, on the merits of the case.

26.09.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No