

(2013) 07 JH CK 0174

In the Jharkhand High Court

Case No : Criminal M.P. No. 907 of 2013

Paramby Anhony Chakochan @ Paramby Anhony Chacko @
P.A. Chacko

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233(2), 243(1), 247, 313, 313(1)
Penal Code, 1860 (IPC) — Section 279, 337, 427

Citation : (2013) 4 JLJR 324

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Das, for the Appellant;

Final Decision : Disposed Off

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. This application is directed against the order dated 28.6.2012 passed by the learned Judicial Magistrate, 1st class, Jamshedpur in Golmuri P.S. Case no. 105 of 2003 whereby and whereunder bail bond of the petitioner was cancelled and further it is also directed against the order dated 9.10.2012 as well as the order dated 11.1.2013 whereby the processes have been ordered to be issued under Sections 82 and 83 of the Code of Criminal Procedure.

2. Mr. Das, learned counsel appearing for the petitioner submits that the petitioner was put to trial to face charges under Sections 279, 337, 427 of the Indian Penal Code. After the case of the prosecution was closed, the petitioner was asked to remain present so that his statement be recorded u/s 313 of the Code of Criminal Procedure. On the date fixed, i.e. 28.6.2012, an application was filed u/s 317 of the Code of Criminal Procedure for exempting the petitioner from personal appearance. While moving that application, it was submitted orally before the court that it is not possible for the petitioner to attend the court as he

has gone abroad but the court without giving due consideration over it rather rejected the application filed u/s 317 of the Code of Criminal Procedure and at the same time, bail bond of the petitioner was cancelled. Subsequently, orders were passed for issuance of the processes under Sections 82 and 83 of the Code of Criminal Procedure.

3. Learned counsel further submits that when it was communicated to the court that it is difficult on the part of the petitioner to put appearance as he has gone abroad, the court should have allowed the petitioner to record statement u/s 313 of the Code of Criminal Procedure through his counsel, in view of the provision as contained in proviso to sub-section 1(b) of Section 313 of the Code of Criminal Procedure as in this kind of exigency, it would have been proper on the part of the court to get the statement of the accused recorded u/s 313 through his counsel and perhaps the legislature keeping in view this kind of exigencies in his wisdom would have thought it proper to put such kind of provision in the statute.

4. Further it was submitted that so far the orders dated 9.10.2012 and 11.1.2013 are concerned, that never seems to have been passed in accordance with law as before having any report relating to execution of warrant of arrest or the process issued u/s 82, an order have been passed for issuance of processes under Sections 82 and 83 of the Code of Criminal Procedure.

5. Having heard learned counsel appearing for the petitioner and learned counsel appearing for the State and on perusal of the record, it does appear that when the case was fixed for recording statement of the petitioner u/s 313 of the Code of Criminal Procedure, the petitioner was directed to remain present but on the date fixed, i.e. 28.6.2012, the petitioner did not appear physically, rather an application was filed u/s 317 of the Code of Criminal Procedure for exempting the petitioner from appearing personally. According to the counsel appearing for the petitioner, it was stated before the Court orally that the petitioner is presently at abroad and it would not be possible for him to come to the court in near future. When this matter was raised, anxious consideration should have been given by the court either to give sufficient time to the petitioner to present himself physically or to resort to the provision as is there under proviso to clause (b) of sub-section (1) of Section 313.

6. In such situation, the court does not seem to be justified in passing the order dated 28.6.2012 cancelling the bail bond of the petitioner. Further the orders passed on 9.10.2012 and 11.1.2013 also do not appear to have been passed in accordance with law. Accordingly, those orders are set aside.

7. So far the submission relating to recording of the statement of the accused through his counsel is concerned, I may refer to the provision as contained in proviso to clause (b) of sub-section (1) of Section 313 of the Code of Criminal Procedure which reads as follows:

313(1)(b)-shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case;

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

8. From its perusal it does appear that in a summons-case where presence of the accused has already been dispensed with, the court may also dispense with his examination under clause (b). The question does arise as to whether the benefit of the said provision can be given to an accused when his personal attendance has already been dispensed with triable in a summons-case or in any other offence also.

9. This question came up for consideration before the Hon''ble Supreme Court in a case of Basavaraj R. Patil and Others Vs. State of Karnataka and Others, where the Hon''ble Court posed a question " even in cases involving less serious offences, cannot the Court extend a helping hand to an accused who is placed in a predicament deserving such a help? Such question was posed after taking notice of the provision as contain in proviso in clause (b) of sub-section (1) of Section 313 which refers to summons cases.

10. The Court having posed the said question recorded hereunder:

Section 243(1) of the Code enables the accused, who is involved in the trial of warrant case instituted on police report, to put in any written statement. When any such statement is filed the Court is obliged to make it part of the record of the case. Even if such case is not instituted on police report the accused has the same right (vide Section 247). Even the accused involved in offences exclusively triable by the Court of Session can also exercise such a right to put in written statements [Section 233(2) of the Code]. It is common knowledge that most of such written statements, if not all, are prepared by the counsel of the accused. If such written statements can be treated as statements directly emanating from the accused, hook, line and sinker, why not the answers given by him in the manner set out hereinafter, in special contingencies, be afforded the same worth.

We think that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word "shall" in clause (b) to section 313(1) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the Court should, in appropriate cases, e.g., if the accused satisfies the Court that he is unable to reach the venue of the Court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship relieve him of such hardship and at the same time adopt a measure to comply with the requirement in Section 313 of the Code in a substantial manner. How this could be achieved?

If the accused (who is already exempted from personally appearing in the Court) makes an application to the Court praying that he may be allowed to answer the questions without making his physical presence in Court on account of justifying

exigency the court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters: (a) A narration of facts to satisfy the Court of his real difficulties to be physically present in Court for giving such answers. (b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning. (c) An undertaking that he would not raise any grievance on that score at any stage of the case.

If the Court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the Court to supply the questionnaire to his advocate (containing the questions which the Court might put to him u/s 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the Court, he shall forfeit his right to seek personal exemption from Court during such questioning.

11. Ultimately, the Court did hold that if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code.

12. In the instant case, as it appears from the fact that on the day when the case was fixed for recording the statement u/s 313 of the Code of Criminal Procedure, the petitioner was at abroad and reportedly he is still at abroad doing job over there and therefore, it would be difficult on his part to come to the court in near future.

13. Under this special exigencies, the petitioner may make prayer before the court for having recourse of the said provision so that the court may pass order keeping in view the said provision and also the decision as referred to above. Accordingly, this application stands disposed of.