

(2016) 03 CAL CK 0103
In the Calcutta High Court
Case No : C.R.R. No. 719 of 2016

Pravin N. Shah & Others

APPELLANT

Vs

State of West Bengal & Another

RESPONDENT

Date of Decision : 07-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313(5)

Citation : (2016) 2 AICLR 822 : (2016) 3 CalCriLR 711

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Ayan Bhattacharyya, Ayan Chakraborty, Hareram Singh, Advocates, for the Appellant; Saibal Mondal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J.—The proceeding in Case No. C/23151/2012 under Sections 138/141 of the Negotiable Instruments Act, 1881 pending before the learned 4th Metropolitan Magistrate, Calcutta has been assailed.

2. Mr. Ayan Bhattacharyya, learned advocate appearing for the petitioners restricted his submissions to the fact that his clients may be permitted to respond to the questions in writing under Section 313 of the Code of Criminal Procedure in response to a questionnaire by the Court in view of the law declared by the Apex Court in the case of Basavaraj R. Patil & Ors. v. State of Karnataka & Ors., 2000 (8) SCC 740. He further submitted that the petitioners are all residents of Maharashtra and some of them are also women who are confined to household work.

3. There would be undue delay if the petitioners are required to appear in person and respond to the examination under Section 313 of the Code of Criminal Procedure.

4. Mr. Saibal Mondal, learned advocate appearing for the opposite party no.2 submits that due to procrastination by the petitioners, there is undue delay in the

trial.

5. It is trite law that Section 313 of the Code of Criminal Procedure is a direct dialogue between the Court and the accused. The accused, therefore, is required to be personally present in court for such examination. However, one cannot also lose sight of the fact that in a summons trial such a provision may be dispensed with in the event, the personal attendance of the accused has been dispensed with in the trial. In *Basavaraj R. Patil & Ors. v. State of Karnataka & Ors.* (Supra), Apex court while dealing with a warrant triable case held that the examination under Section 313 of the Code of Criminal Procedure being essentially for the benefit of the accused, the same may be permitted to be conducted through a questionnaire provided the accused in the said case undertook that he shall not suffer any prejudice thereby and his physical attendance would cause severe inconvenience and undue hardship. The Apex court observed as follows:

"26. 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 under Section 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 an answer). 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.

27. In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code."

6. Similar view was taken in *Keya Mukherjee v. Magma Leasing Limited & Anr.* reported in (2008) 8 SCC 447.

7. It may also be appropriate to refer to a subsequent amendment of Section 313 of the Code of Criminal Procedure namely, sub-section 5 thereof wherein it has been provided that the Court may permit the accused to file a written statement as sufficient compliance of this section.

8. Under such circumstances, I set aside the warrants of arrest issued against the petitioners on condition they make an application within a fortnight praying for their examination under Section 313 of the Code of Criminal Procedure through the questionnaire accompanied by an affidavit sworn by each of them stating that they have been dispensed with their personal attendance in the instant proceeding and that they give an undertaking that they shall not raise

any prejudice in the event they are examined under Section 313 of the Code of Criminal Procedure in such manner. Upon making such application, the Court shall issue a questionnaire to the learned lawyer representing the said accused persons and it shall be open to the accused persons to respond to the said questionnaire through a properly authenticated affidavit after affixing their signatures to the sheets of each questionnaire. The answers to the said questionnaire so signed and authenticated by an affidavit shall be furnished before the court within seven days from the date of handing over the questionnaire to the learned lawyer representing the accused persons before the trial court. Thereafter, the trial court would conclude the proceeding within three months thereafter without granting unnecessary adjournment therein.

9. In the event no application is filed by the petitioners, as aforesaid, or they fail or neglect to respond to the questionnaire in the aforesaid manner within the time stipulated, the warrants of arrest shall stand revived and be executed against them in accordance with law.

10. This revision petition is disposed of with the aforesaid direction.

11. Photostat certified copy of this order, if applied for, be given to the petitioner on usual undertaking.