

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE Nos.2951 & 2954 of 2015

COMMON ORDER:

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Since the issue involved in both the revisions is common and the parties are one and the same, they are heard together and being disposed of by this common order.

These two revisions are filed by A.1 to A.3 challenging the orders both dated 04.11.2015 passed in CrI.M.P.No.1538 of 2015 in C.C.No.103 of 2014 and CrI.M.P.No.1319 of 2015 in C.C.No.102 of 2014 respectively, by the III Special Magistrate, Hyderabad dismissing the applications filed by the petitioners invoking the provision under Section 313(1) Cr.P.C. to dispense with their personal attendance for examination under Section 313(b) Cr.P.C.

The brief facts of the case are that the petitioners herein are facing trial for an offence under Section 138 of Negotiable Instruments Act on the complaint filed by the first respondent herein. In an earlier occasion, pending the C.C., the petitioners preferred applications to dispense with their presence before the trial Court and the same were dismissed. Aggrieved thereby, petitioners preferred CrI.R.C.Nos.1793 and 1797 of 2014 before this Court. This Court partly allowed the revisions on 12.9.2014 dispensing with the presence of the petitioners during the time of trial. In the said applications, the rejection by the trial Court for dispensing with the presence of the petitioners under Section 313(1)(b) Cr.P.C. is also challenged.

The learned counsel appearing on behalf of first respondent-complainant submitted that since an earlier application preferred by the petitioners challenging the dismissal order by the trial Court for dispensing with the presence of the petitioners under Section 313(1)(b) Cr.P.C. is dismissed, the present petitions are not maintainable.

This Court perused the records and heard the arguments.

In the earlier revisions preferred by the petitioners challenging the dismissal order by the trial Court in dispensing with their presence, this Court has not passed any specific order as far as dispensing with the presence of the accused under Section 313(1)(b) Cr.P.C. Further the present revisions preferred after filing fresh applications before the trial Court seeking dispensing with their presence under Section 313(1) Cr.P.C. The said provision enables the accused to answer the questions under Section 313 Cr.P.C. through their counsel.

313. Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(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).

(2) No oath shall be administered to the accused when he is examined under sub- section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

[\(4\)](#) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this Section".

Sub-Section (5) was introduced in [Section 313](#) Cr.P.C. by Code of Criminal

Procedure [\(Amendment\) Act](#), 2008 with effect from 31st December, 2009. The purpose behind the said amendment was to give statutory recognition to the procedure facilitating the examination of the accused. The Law Commission in its 154th report in 1996 while evaluating the purpose of [Section 313](#) of the Code reiterated the need for this provision as a valuable safeguard to the accused in the trial processes and observed:

"We are of the view that the Court can take the assistance of the prosecutor and defence counsel and prepare the questions which are to be put in a concise form to the accused under [Section 313](#). The Court can also permit the filing of the written statements by the accused as sufficient compliance with [Section 313](#)."

As seen from the above provision, the one category of offences which is specifically exempted from the rigour of Section 313(1)(b) of the Code is "Summons cases". In the present case, the petitioners' presence was already dispensed with during the entire trial. Hence, this Court is of the view that permitting the petitioners herein to answer the questionnaire under Section 313 Cr.P.C. through their counsel would not cause any prejudice to the first respondent-complainant as well as cause any prejudice to the trial before the trial Court. Hence, the impugned orders of the trial Court are liable to be set aside.

In the result, both the revisions are allowed and the impugned orders are set aside. The trial Court is directed to permit the petitioners herein to answer the questionnaire under Section 313 Cr.P.C. through their counsel.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

04th December, 2015

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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CRIMINAL REVISION CASE No.2110 of 2015

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