

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.8004 of 2013

ORDER:

This petition is filed seeking for quash of the proceedings in CC.No.40 of 2013 on the file of the Additional Judicial Magistrate of First Class, Ponnur, Guntur District.

2. Heard counsel for the petitioners and the learned Public Prosecutor, who takes notice for first respondent. None appears for the second respondent in spite of notice.

3. This petition came to be filed under very peculiar circumstances. The case was filed against the petitioners, who are A1 to A4, in Cr.No.87 of 2012. The offences alleged were under Sections 498-A of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act.

4. The counsel for the petitioners submits that the case against A3 was split up at the stage of examination under Section 313 of the Criminal Procedure Code, as he was not present on that date and the judgment was pronounced in CC.No.40 of 2013 dated 30.11.2015, as regards other accused, who are A1, A2 and A4, acquitting them of the charges. Now the cause in this petition survives only in respect of the third petitioner/A3. The counsel further brings to the notice of this Court that a petition, being CRLPMP.No.5813 of 2013 in CC.No.40 of 2013, was filed by the third petitioner seeking for dispensing with his personal presence for examination under Section 313 Cr.P.C. but the same was dismissed on 21.10.2015.

5. A copy of the order in CRLPMP.No.5813 of 2013, which is filed seeking the above relief, shows that the third petitioner approached this Court in CRLP.No.1337 of 2013 and this Court granted permission to the third petitioner to leave the country for USA and that there was an undertaking given by the third petitioner to be present before the Court, if it is required by the Court. The order further shows that the Court took the petition filed by the third petitioner, as being in violation of the orders of the High Court permitting the third petitioner to leave the country.

6. The order of this Court, no doubt, is admitted to be as such but the point that has to be decided here is whether in the circumstances stated by the third petitioner, his presence was necessary for the examination under Section 313 Cr.P.C. The Court need not opine that filing of a petition to exempt him from being present for Section 313 Cr.P.C. examination itself is a violation of the High Court's order. This Court only directed the petitioner to be present when the Court insists for his presence. It does not mean that the petitioner cannot seek the Court for dispensing with his presence. Whether his presence is required or not is the question that has to be decided. When there are reasons for granting such relief, there need be no insistence on his presence. His giving an undertaking or not is not the touchstone on which, the necessity of his presence should be tested. The Court below in the said order took into consideration the decision of the Supreme Court in *BASAVARAJ R. PATIL v. STATE OF KARNATAKA* [AIR 2000 SC 3214] relied upon by the third petitioner herein wherein the Supreme Court observed as follows:

“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 requirements 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.”

7. The facts dealt with by the Supreme Court would show that the accused therein was also exempted from personal hearing in the Court. The third petitioner herein filed a petition seeking for dispensing with his presence for examination under Section 313 Cr.P.C. stating that the answers given by A1 and A2 may be treated as answers given by him. He also stated that the written statement filed by A1 and A2 can be deemed as being filed him also. The judgment of the Supreme

Court seems to have been not understood by the Court in the proper perspective.

8. The theme underlying Section 313 Cr.P.C. is to appraise the accused of the evidence that comes forth against him and to render an opportunity to him to explain the reasons to not believe such evidence. When the accused, in the present case, gave up such privilege that is offered to him, there need not be any insistence from anyone, for his presence, to formally deny the evidence that comes against him. The case has ended in acquittal against the other accused. A copy of the judgment is also filed. It shows that no corroboration was found in the evidence of P.Ws.1 to 3 and that there are improvements in their evidence and that there was delay of 15 days in giving the report and by considering all those circumstances, the other accused were acquitted. All the said circumstances would also be in favour of the third petitioner herein, who stands on the same footing, which can be understood from the nature of allegations made in the complaint. Hence, continuation of further proceedings against the third petitioner would only result in abuse of process of law.

The criminal petition is allowed and all further proceedings in CC.No.40 of 2013 on the file of the Additional Judicial Magistrate of First Class, Ponnur, Guntur District against the third petitioner are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

November 28, 2017
DSK

T. RAJANI, J

