

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9567 of 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code to quash the order dated 15.09.2017 in CrI.M.P.No.2027 of 2017 in C.C.No.219 of 2015 passed by the V Additional Judicial First Class Magistrate, Rajamahendravaram, permitting the 1st respondent/A1 to answer the questions put to him in compliance of Section 313 Cr.P.C. on skype/video conference and record the same by the advocate commissioner and submit report.

The main grievance of the petitioner is that the 1st respondent did not appear before the Court on any dates of adjournments and avoided by simply obtaining pre-arrest bail including examination under Section 313 Cr.P.C. But the Court allowed the petition filed by the petitioner referring various judgments on certain conditions which are not in accordance with the guidelines laid down by this Court.

Learned counsel for the petitioner reiterated the contentions while drawing the attention of this Court to a judgment in **Krishnaveni Nagam v Harish Nagam** (Transfer Petition (Civil) No.1912 of 2014, dated 09.03.2017) and requested this Court to direct the Magistrate to follow the guidelines issued by the Apex Court.

Sri Syed Gouse Pasha, learned counsel for the 1st respondent brought to the notice of Court, the guidelines formulated by the Delhi High Court for video conference in **International Planned Parenthood Federation (IPPF) v Madhubala Nath** (FAO (OS) 416 of 2015 and C.M.No.13475 of 2015(stay)) and informed to this

Court that the examination under Section 313 Cr.P.C. was completed and no purpose would be served if any direction is given to the trial Court to examine the accused under Section 313 Cr.P.C by following the guidelines issued by this Court.

The purpose of examination under Section 313 Cr.P.C. is to give an opportunity to explain the incriminating circumstances in the testimony of prosecution witnesses on the principle of natural justice. But the answers given in the examination under Section 313 Cr.P.C. cannot be used for deciding the case. There are many judgments, which permits the Courts to record evidence of witnesses by video conferencing and this Court in **Sirangai Shoba @ Shoba Munnuri rep. by GPA M.Narayana Rao v Sirangi Mralidhar Rao, rep.by her Power of Attorney Smt Sirangi Vijayalakshmi** (C.R.P.No.337 of 2017, dated 19.10.2016) permitted the Court to record the evidence of witnesses by skype. When examination of witness is permitted by video conference which will have serious impact on the issues, unless the presence of other persons to prompt the witness, is ruled out. But examination of accused under Section 313 Cr.P.C. even if any person is present, it will have no impact on the decision of the case, since those answers cannot be used in deciding the complicity of the accused at the end of the trial. Therefore, the effect of examination of accused by video conferencing is virtually nil, it is only a formality in compliance of principles of natural justice. Therefore, examination of the accused under Section 313 Cr.P.C. by video conferencing can be permitted.

The only grievance of learned counsel for the petitioner that the trial Court did not follow the guidelines formulated by this Court for examination of witness by video conference etc. he also

requested this Court to set aside the examination if any recorded under Section 313 Cr.P.C by the Magistrate through video conference and direct the Magistrate to follow the guidelines and record the examination of the accused only.

The trial Court issued specific guidelines in paras 7 to 15 of the order at pages 4 to 10, but they are not strictly in adherence to the guidelines formulated by this Court. Therefore, examination of the accused under Section 313 Cr.P.C. by the trial Court is eschewed, while directing the Magistrate to follow the guidelines formulated by this Court for examination of any witness or accused by video conference.

Accordingly, the criminal petition is allowed to the extent indicated, modifying the order dated 15.09.2017 in CrI.M.P.No.2027 of 2017 in C.C.No.219 of 2015 passed by the V Additional Judicial First Class Magistrate, Rajamahendravaram with specific direction to follow the guidelines formulated by this Court for video conferencing.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY,J

08.12.2017
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