

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.390 OF 2017
IN
CRIMINAL WRIT PETITION NO.2339 OF 2015

Javed Munhi Khan
versus

Applicant

Ahmed Abdul Saleji and another

Respondents

None present for applicant.
Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th June 2018

PC :

1. This an application preferred by the applicant-petitioner seeking clarification of order dated 10th July 2015 passed in Criminal Writ Petition No.2339 of 2015.

2. The applicant-petitioner is prosecuted for offence under Section 138 of Negotiable Instruments Act. After recording the evidence, the statement of the applicant-accused was recorded under section 313 of Code of Criminal Procedure, 1973 (`Cr.PC) on 21st November 2014. The applicant preferred an application before the Trial Court stating that the applicant was not put to notice of caution before recording statement under section 313 of Cr.PC and therefore the statement recorded under section 313 be recalled. The Trial Court rejected the said application by order dated 12th February 2015. While rejecting the said application the Trial Court observed that there is no provision for recall of the statement recorded under

section 313 of Criminal Procedure Code and in the event accused desires to add some thing to his earlier explanation, he may file his written statement in accordance with Section 313(5) of Criminal Procedure Code. There will be no prejudice to either side. Liberty was granted to the defence to file its written statement and the complaint was listed for final arguments along with written statement of defence.

3. The order dated 12th February 2015 was challenged in this Court by preferring Criminal Writ Petition No.2339 of 2015. The said petition was filed on 15th June 2015. This Court by order dated 10th July 2015 dismissed the said petition. While dismissing Writ Petition No.2339 of 2015 it was observed that although the petitioner-applicant was not put to notice before recording the statement under section 313 of Cr.P.C, the admission given by him were in respect to construction of a building and not in relation to issuance of cheque and dishonour thereof. Hence, no prejudice has been caused to him by the said admissions. He has denied all the questions pertaining to the cheque and the liability. The Court, therefore, observed that recording of statement without notice to the petitioner-applicant has not caused any prejudice to him.

4. Although the said order was passed on 10th July 2015, another application was preferred by the applicant before this Court viz Criminal Application NO.395 of 2015 for clarification of the said order on 28th August 2015. The said application was dismissed for want of prosecution on 17th June 2016. No attempts were made to restore the said application. By preferring present application, the applicant again seeks clarification of the order dated 20th July 2015.

The said order cannot be reviewed and in the light of observations made by the Court while dismissing the Writ Petition No.2339 of 2015, no clarification is required. Apparently the applicant is trying to protract the proceedings of Trial Court. The statement under section 313 of Cr.PC was recorded on 21st November 2014. Although Writ Petition No.2339 of 2015 was dismissed on 10th July 2015, after a period of about three years, the applicant has preferred present application for clarification of the said order.

5. Taking into consideration all the aforesaid aspects, the application deserves to be rejected. Accordingly Criminal Application No.390 of 2017 is rejected.

(PRAKASH D. NAIK, J.)

MST