

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.685 of 2018

ORDER:

The order dated 19-2-2018 in CrI.M.P.No.216 of 2018 is unfortunately a classical example of how the learned Magistrate, Hasthinapuram, Ranga Reddy District could not understand the import of Section 313 (5) Cr.P.C. which was brought forth by way of Amendment Act, 5 of 2009 with effect from 31-12-2009.

The present Criminal Revision Case is filed at the instance of the accused who is facing a case under Section 138 of the Negotiable Instruments Act before the lower Court. Before the trial court, he filed a petition under Section 313 (5) Cr.P.C. requesting the Court to permit him to submit his written statement as against the questionnaire posed to him under Section 313 Cr.P.C. by the Court.

He also submitted a decision reported in *BOLLAM CHANDRAIAH v. STATE OF ANDHRA PRADESH* ⁽¹⁾, in support of his prayer.

The order of the learned Magistrate is quite unpalatable which reads as follows:

“Heard for both. The respondent has no objection to allow petition. The accused when does not want to answer questions in S.313 Cr.P.C., the effect will be that he is precluded from asking appellate court that he was not given opportunity to explain the circumstances. It amounts to waiver of benefits given u/s.313 Cr.P.C. In such circumstances petitioner is allowed, finding that the accused had waived his rights under S.313 Cr.P.C.”

While allowing the petition, the trial court took the request of the petitioner as if he was waiving benefits under Section 313 Cr.P.C.

¹ 2011 (1) ALD (CRL.) 676 (AP)

The observation of the trial court was that not answering the questions orally and making request to the court seeking permission to submit written arguments is to the effect that accused is precluded from complaining before the appellate court that he was not given an opportunity to explain the incriminating circumstances.

Unable to know the real import of the said order though it was allowed, the petitioner/accused filed the present Criminal Revision Case.

As the matter is purely an interpretation of proviso under Section 313 (5) Cr.P.C. this court is of the considered view that the revision can be disposed of at the admission stage without the necessity of affording a notice to the respondents.

Section 313 (5) of Cr.P.C.reads as follows:

"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".

Thus, a perusal of the above provision would show that when the court permits the accused to file his written statement as against the questions relating to the incriminating material found in the evidence, the same shall be treated as sufficient compliance of Section 313 Cr.P.C. If that being the provision and if the trial court contemplated to allow the petition filed by the petitioner, it is quite unknown as to why and how the court entertained a doubt that in case the accused were to be convicted and preferred an appeal, he would make a complaint before the appellate court that the trial court had not given him opportunity to explain the incriminating circumstances found in the evidence.

In the considered view of this court, such an observation is a bull in a china shop.

For the sake of clarity, it is reiterated that since the trial court permitted the accused to submit his written statement as against the questions to be put to him by the court under Section 313 Cr.P.C., the same shall be treated as sufficient compliance of Section 313 Cr.P.C. It is brought to the notice of this court that after passing the impugned order, the trial court straight away posted the matter for arguments and the matter is posted to 13-3-2018. In these circumstances, while upholding the order of the trial court to the extent of its allowing the request of the petitioner to submit the written answers to the questions put under Section 313 Cr.P.C., the trial court is directed to conduct the regular 313 Cr.P.C. examination and permit the petitioner/accused to submit his written answers and if he does so, treat the same as sufficient compliance of Section 313 Cr.P.C.

This Criminal Revision Case is disposed of accordingly.

As a sequel, miscellaneous applications pending if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dated 12th March, 2018.

Note:

Issue CC by 13-3-2018.

BO

Dvs

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



CRIMINAL REVISION CASE No.685 of 2018

Dated 12th March, 2018

Dvs