

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.05.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKADESH

Cr1.O.P.No.12727 of 2019
and
C.M.P.No.6572 of 2019

N.Sasikala

....Petitioner/Accused-3

Versus

The Assistant Director,
Enforcement Directorate,
Government of India,
Shashtri Bhavan,
IIIrd Floor, IIIrd Block,
26, Haddows Road,
Chennai - 600 006.

...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C praying to set aside the order passed in E.O.E.O.C.C.44/1998 dated 29.04.2019 by the learned Additional Chief Metropolitan Magistrate, (E.O.I) Chennai directing the Superintendent of Central Prison, Bangalore to cause the production of Accused-3/Petitioner before the Court on 13.05.2019 for questioning under Section 313 Cr.P.C.

For Petitioner :: Mr.R.Rajarathinam

For Respondent :: M/s.G.Hema

Special Public Prosecutor for Enforcement
Directorate

O R D E R

The petitioner is facing trial before the Court below for offence under Sections 8(1), 9(1) (a) of the FERA 1973 punishable U/s. 56(1) (i) of FERA 1973.

2. The Prosecution Witnesses have been examined and it was also closed by the Court below and the case is now at the stage of questioning under Section 313 Cr.P.C and the case is posted on 13.05.2019. At this stage, the Court below has directed the personal appearance of all the accused persons including the petitioner, who is now confined at Central Prison, Bangalore.

3. The learned counsel for the petitioner submitted that even earlier, at the time of framing of charges, the Court below had insisted for the personal appearance of the petitioner and the petitioner approached this Court by filing the CrI.O.P.Nos.28831, 28835, 28838 & 28840 of 2018. This Court directed the Court below to proceed further to question the petitioner on the charges through Video Conferencing, since the petitioner had already undertaken to participate in the proceedings through Video Conference.

4. The learned counsel submitted that the questioning under Section 313 Cr.P.C can also be conducted through Video Conferencing and the petitioner shall undertake not to question the procedure in future. The learned counsel also submitted an undertaking affidavit sworn to by the petitioner wherein, the petitioner has categorically stated that she will not question the procedure or claim any prejudice, if Section 313 Cr.P.C questioning is done under Video Conferencing facility.

5. The learned counsel for the petitioner also brought to the notice of this Court the judgement of the Hon'ble Supreme Court in Basavaraj R.Patil and others Vs. State of Karnataka and others reported in AIR 2000 SCC 3214 wherein, the Hon'ble Supreme Court, considered in detail about dispensing with the presence of the accused at the time of questioning under Section 313 Cr.P.C and the Hon'ble Supreme Court also impressed upon the usage of technology for the purpose of completing the proceedings in an effective manner.

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6. The learned Special Public Prosecutor appearing on behalf of the respondent submitted that the respondent does not have any objection, if Section 313 questioning is done through Video Conferencing, if the petitioner undertakes not to question the procedure in future.

7. The learned counsel further submitted that since the questioning will be done through Video Conferencing, the Court below cannot obtain the signature of the petitioner for the answers recorded by it through Video Conferencing. Therefore, the learned counsel submitted that directions may be given for getting the signature of the petitioner for the answers given by her during 313 questioning, so that the entire procedure can be completed effectively and the petitioner cannot claim any prejudice in future.

8. This Court has carefully considered the submissions made on either side. It will be relevant to extract the earlier order passed by this Court in CrI.O.P.Nos. 28831, 28835, 28838 & 28840 of 2018.

"2.The learned Senior counsel appearing on behalf of the petitioner brought to the notice of this Court, the earlier order passed by the learned Additional Chief Metropolitan Magistrate (E.O.1), Egmore, Chennai wherein, the Court below had decided to put the questions for the purpose of framing of charges through video conferencing. The learned Senior counsel specifically brought to the notice of this Court the following extracted portion of the order passed by the Court below:-

"16)Therefore in the light of the Law enunciated by the Hon'ble Supreme Court in the case of resorting to Video Conferencing facility this Court is of the view that this petition can be allowed accordingly.

In the result the petition is allowed subject to the following conditions.

1)In accordance with the pleadings in the petition and submissions made on behalf of the petitioner/A3, the petitioner shall file an undertaking in the form of Affidavit that no prejudice would be caused to her in any manner by dispensing with her presence during such questioning and such undertaking of the petitioner shall be attested by the concerned jail authority.

2)Considering the background of the case, it is considered necessary that the petitioner shall also state in the above said undertaking that in which

language i.e whether in Tamil or English the questions are to be put to her.

3)On filing such affidavit, the copy of this order shall be forthwith to be communicated to the Home Secretary of Government of Karnataka and to the Superintendent of Central Prison, Parapana Agrahara, Bengaluru, State of karnataka, where the petitioner is also at present in jail in the Crime No.13/AC/96/HQ in C.C.No.208/2004 on the file of 36th Additional City Civil Court and Sessions Judge, Special Court, Bengaluru in order to make necessary arrangements for video conferencing.

4)On failing to comply with the above conditions by the petitioner within two weeks from the date of this order, this petition shall stand dismissed, as it would be deemed that the petitioner is unwilling for examination by video conferencing facility."

3.The learned Senior counsel pointing out the above order passed by the Court below, contended that the present order directing the petitioner to be produced before the Court, was contrary to the earlier order and if at all the Court below wants to question the petitioner and frame charges, the same has to be done through video conferencing and there is no necessity to produce the petitioner before the Court.

4.The learned Additional Solicitor General appearing on behalf of the respondent would submit that the questioning can be done through video conferencing in view of the earlier order passed by the Court below and the specific undertaking given by the petitioner stating that the questioning can be made through video conferencing for the purpose of framing of the charges.

6.In view of the above undertaking given by the petitioner, there is no requirement to produce her before the Court below for questioning on the charges and the same can be done through video conferencing. On an earlier occasion, when the questions were put to the petitioner, it is seen from the records that she has

denied the charges, but however her signature is not found. It is only for this purpose, the Court below wants to again question the petitioner on the charges so that the irregularity can be rectified.

7. The order passed by the Court below, insofar as directing the production of the petitioner is hereby set aside. The Court below is directed to proceed further to question the petitioner on the charges through video conferencing. This procedure has already been agreed upon by the petitioner in her undertaking affidavit filed before the Court below and which has been extracted supra. In the result this Criminal Original Petition is disposed of with the direction to the Court below to question the petitioner on the charges through video conferencing and proceed further in accordance with law. The Court below shall keep in mind the time fixed by this Court for the completion of the proceedings while passing the orders in Crl.O.P.Nos.27827, 27829, 27831, 27833 of 2018, dated 29.11.2018."

9. From the above order, it is clear that the petitioner had agreed to answer the charges through Video Conferencing and therefore, this Court does not find anything wrong, if the petitioner is permitted to answer the 313 questioning also through Video Conferencing. This is moreso since the petitioner has filed an undertaking affidavit before this Court. The relevant portions of the affidavit is extracted here under:-

"3. The Petitioner/Accused undertakes to state that by dispensing with her presence during the questioning U/s. 313 Cr.P.C through Video Conferencing, no prejudice would be caused to her in any manner and she further submits that the questioning U/s. 313 are to be put to her in Tamil language only.

4. The petitioner respectfully submits she would not plead that she would be prejudiced on account of questioning under the Video Conferencing facility before this Hon'ble Court or any other forum. Further she may be questioned only in Tamil as that is the only language known to her.

Therefore, it is prayed that this Hon'ble Court may be pleased to accept this

undertaking affidavit and permit her to be examined U/s. 313 Cr.P.C through Video Conferencing in EO CC No.44/1998 on the file of Additional Chief Metropolitan Magistrate, Egmore(E.OI), Chennai.”

10. It will also be relevant to take note of the judgement of the Hon'ble Supreme Court in Basavaraj R.Patil and others Vs. State of Karnataka and others reported in AIR 2000 SCC 3214 and relevant portions are extracted hereunder:-

“ 19. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the Court in reaching the final conclusion.

21. But the situation to be considered now is whether, with the revolutionary change in technology of communication and transmission and the marked improvement in facilities for legal aid in the country, is it necessary that in all cases, the accused must answer, by personally remaining present in Court. We clarify that this is the requirement and would be the general rule. However, if remaining present involves undue hardship and large expense, could the Court not alleviate the difficulties. If the Court holds the view that the situation in which he made such a plea is genuine, should the Court say that he has no escape but he must undergo all the tribulations and hardships and answer such questions personally presenting himself in Court. If there are other accused in the same case, and the Court has already completed their questioning, should they too wait for long without their case reaching finality, or without registering further progress of their trial until their co-accused is able to attend the Court personally and answer the Court questions? Why should a criminal Court be rendered helpless in such a situation?

24. 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, eg., 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?

25. 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 this personal presence during such questioning. (c) An undertaking that he would not raise any grievance on that score at any stage of the case.

26. If the Court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the Court to supply the questionnaire to his advocate (containing the questions which the Court might put to him under Section 313 of the code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire [as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers]. If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the Court, he shall forfeit his right to seek personal exemption from Court during such questioning."

11. From the above judgement, it is clear that the Hon'ble Supreme Court has insisted upon a pragmatic approach in special exigencies wherein, the Hon'ble Supreme Court has suggested for the wide usage of technology in this regard. Today, technology has advanced to such an extent that the entire proceedings can be conducted through Video Conferencing, where the accused is confined in the Jail. Virtually, no prejudice will be caused, if the accused is questioned through Video Conferencing and there is no requirement to insist for her personal appearance in this regard.

12. In view of the above, the Court below shall not insist for the personal appearance of the petitioner during questioning under Section 313 of Cr.P.C and the questioning can be done through Video Conferencing. The Trial Court shall record the answers given by the petitioner for each question put to her and after the completion of the questioning, the Trial Court shall send the original record containing the questions and the answers recorded, through a special Messenger to Central Prison, Bangalore and the petitioner shall sign in the record in the presence of the Superintendent of Central Prison, Bangalore.

13. The record shall thereafter be brought back to the Court and made part of the case records. Since the entire process is going to be done in the presence of the counsel representing the petitioner, no prejudice will be caused to the petitioner in any manner.

14. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar/Vacation Officer

//True Copy//

Sub Assistant Registrar

To,

1. The Assistant Director,
Enforcement Directorate,
Government of India,
Shashtri Bhavan,
IIIrd Floor, IIIrd Block,
26, Haddows Road,
Chennai - 600 006.

2.The Public Prosecutor,
High Court, Madras.

3.The Superintendent of Central Prison,
Bangalore.

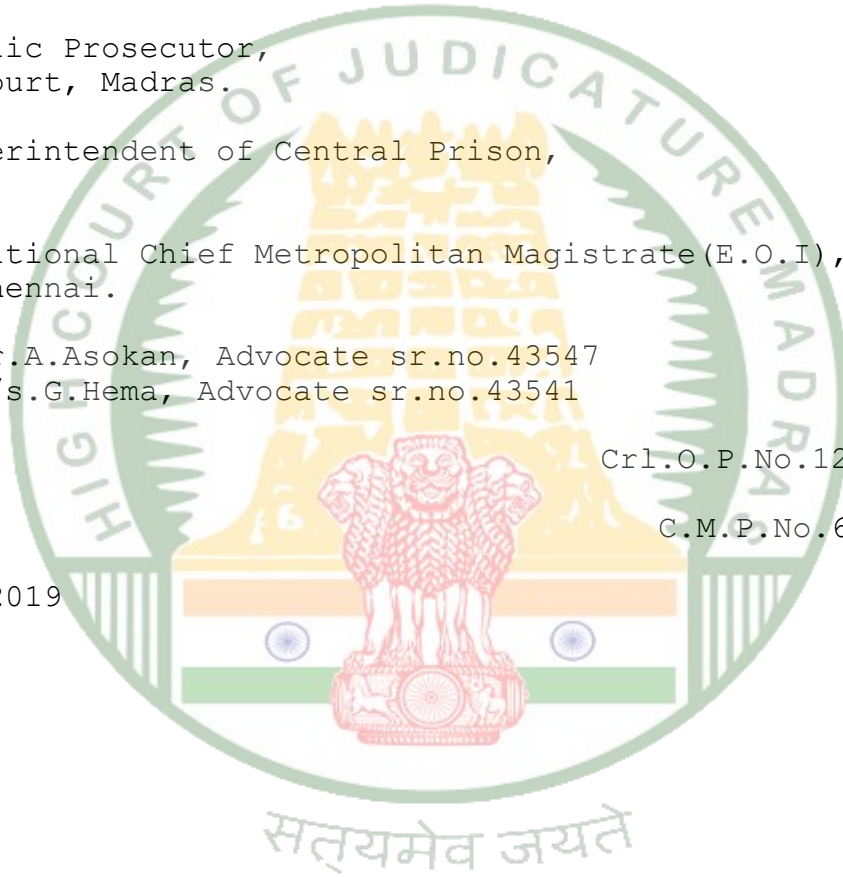
4.The Additional Chief Metropolitan Magistrate (E.O.I),
Egmore, Chennai.

+3cc to Mr.A.Asokan, Advocate sr.no.43547

+1cc to M/s.G.Hema, Advocate sr.no.43541

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