

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4973 of 2014

ORDER :

The petitioner is the accused. The 1st respondent is the *de facto* complainant in C.C.No.407 of 2013 pending on the file of the Special Judicial First Class Magistrate (Prohibition & Excise), Khammam. After trial, from the prosecution evidence, the accused was examined under Section 313 Cr.P.C. On that date and at the time of Section 313 Cr.P.C. examination, the accused though entitled to file any material of his probable defence, as part of his response to the questions as contemplated by Section 313 (4) Cr.P.C., he did not submit any such material as part of the answers, but for answering to the questions in either way. Subsequently and some time later, he filed a memo to receive his probable defence in the form of the written submissions, which was on 16.04.2014, whereas Section 313 Cr.P.C. was completed on 09.04.2014. That memo includes a petition said to have been filed under Section 91 Cr.P.C. on 04.04.2014. The question of subsequent filing by memo, after completion of Section 313 Cr.P.C. examination with the answers with no material at that time as part of answers filed, to receive does not arise, for no way contemplated in the procedure under Section 313 Cr.P.C., but for if at all after the prosecution evidence completed from the Section 313 Cr.P.C. examination for not discharged from any *prima facie* accusation, to enter the defence and in the course of defence either by coming to witness box by the accused with the leave of Court under Section 315

Cr.P.C. or by examining any witness to file any such memo or any such petition or any such document, as the case may be. Once that concession is there, there is nothing to interfere with the impugned order of the non-entertaining of the said memo which includes earlier petition as part of the memo.

2. With the above observations, the criminal petition is disposed of, rather than dismissal, to avail such remedy left open under law.

Miscellaneous petitions pending, if any, shall stand closed.

29th January 2019

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Dr. B. SIVA SANKARA RAO, J