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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 14th May, 2019

+ **CRL.REV.P. 566/2019 & CRL.M.A. 10137/2019**

RAJA@ DAYANAND Petitioner
Through: Mr. Ritesh Bahri and Mr. Vipin
Bansal, Advs.

versus

THE STATE OF NCT OF DELHI Respondent
Through: Mr. Ashish Dutta, APP

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

CRL.M.A. 10137/2019 (for exemption)

Allowed, subject to all just exceptions. Application stands disposed of.

CRL.REV.P. 566/2019

1. This criminal revision petition assails the order dated 18.04.2019 (hereinafter to be referred as the 'impugned order') passed by the Additional Sessions Judge, Karkadooma Courts, Delhi (hereinafter to be referred as 'the Trial Court') in S.C. No. 44243/2015 arising out of the FIR No. 277/01 registered under Sections 302, 34 and 120-B of the Indian Penal Code, 1860 (hereinafter to be referred as 'the IPC') and Sections 25, 27, 54 and 59 of the Arms Act, 1959 (hereinafter to be referred as 'the Arms Act') at Police Station: Shahdara, Delhi. A prayer has been made to set aside

the said impugned order and for a direction to the Trial Court to supply an advance copy of the questionnaire to the accused ('petitioner' herein) in order to enable him to file the written statement in terms of Section 313 (5) of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'the Cr.P.C.').

2. Briefly stated, the facts of the present case are that, an FIR No. 277/01 was registered against the petitioner and the other co-accused persons under Sections 302, 34 and 120-B of the IPC and Sections 25, 27, 54 and 59 of the Arms Act at Police Station: Shahdara, Delhi. Thereafter, on 01.11.2001, the charge-sheet was filed against the petitioner and the other co-accused persons. Consequently, on 24.2.2003, charge was framed against the petitioner and the other co-accused persons by the Trial Court under Sections 302, 120-B of the IPC and Sections 25, 27 and 30 of the Arms Act. On 21.2.2019 the prosecution had closed its evidence. Thereafter, on 25.3.2019, an application under Section 313 (5) of the Cr.P.C. was moved before the Trial Court by the petitioner and the other co-accused persons to supply copy of questionnaires in advance in order to enable them to file the written statement. On 18.4.2019, the Trial Court heard both the parties and dismissed the application moved under Section 313 (5) of the Cr.P.C. holding that barring few situations where the statements under Section 313 Cr.P.C. of the accused persons cannot be recorded by calling them personally except with undue delay and inconvenience, their statements under Section 313 of the Cr.P.C. should be recorded personally in the Court. The Trial Court also held that even if the accused persons want to file their written statements,

law does not require to provide them an advance copy of the questionnaire for the said purpose. The Trial Court further directed that the petitioner and the other accused persons be present on the next date of hearing for recording their statements under Section 313 of the Cr.P.C.

3. Aggrieved by the afore-mentioned order dated 18.4.2019, the petitioner has filed the present revision petition.

4. Learned counsel for the petitioner submitted that in view of the judgment passed by the Manipur High Court in the case titled ***Langpoklakpam Kiranjit Singh v. State of Manipur*** 2018 CrL.L.J. 1262, the petitioner is entitled to have an advance copy of the questionnaire for the purpose of filing the written statement, and the Trial Court erred in dismissing the application filed under Section 313 (5) of the Cr.P.C.

5. Per Contra, the learned APP for the State submitted that the Trial Court was right in holding that an advance copy of the questionnaire should not be provided to the petitioner because the petitioner was present throughout the trial and is well aware of the evidence which came on record. It is further submitted by the learned APP that the entire exercise of providing advance copy of the questionnaire to the petitioner and then granting him time for filing his written statement would add delay to the present proceedings.

6. It is also submitted by the learned APP for the State that the petitioner nowhere sought permission before the Trial Court to file his written statement in the application filed by him for the supply of an advance copy of the questionnaire.

7. I have heard the learned counsel for the parties, perused the record and have also gone through the judgment relied upon by the learned counsel for the petitioner.

8. So far as the filing of the written statement is concerned, the Trial court vide the impugned order dated 18.4.2019 has already granted an opportunity to the petitioner to file the same thereby stating that it shall be open to the petitioner to file the written statement if he wishes so, on the next date of hearing before the Court when he is present for the purpose of recording his statements under Section 313 of the Cr.P.C. Relevant paragraphs of the said impugned order are reproduced hereunder:

“9. No doubt, the legislature by incorporating Sub. Sec. (5) in Sec. 313 CrPC, has made a provision which allows the accused persons to file their written statements but at the same time, one may not lose sight of the fact that the word “may” is used therein, which clearly shows that discretion has been conferred upon the Court to allow the accused to file the written statement but accused cannot ask as a matter of right to file written statement, as is being agitated by the accused persons in para 4 of the application under consideration. It is also relevant to note that there are two stages provided in Sec. 313 (1) CrPC when Court can call upon accused to explain any circumstances appearing in the evidence against him. The first is at any stage as provided in Sec. 313(1)(a) and the word “may” has been used therein and second is after the prosecution evidence is closed as provided in Sec. 313 (1)(b) CrPC and the word “shall” is used therein. It is also relevant to note that Sec. 313 (1) CrPC provides that the accused shall be personally called upon to explain any circumstances appearing in the evidence against him, which would convey the intention of legislature that barring few situations where the

statements u/s 313 CrPC of accused persons cannot be recorded by calling them personally except with undue delay and inconvenience, their statements u/s 313 CrPC should be recorded personally in the court. Even if the accused want to file their written statements, law does not require to provide them advance copy of questionnaire for said purpose. The decision of the Hon'ble Manipur High Court as relied on behalf of accused persons, nowhere provides that the questionnaire is to be provided to the accused on his mere asking or that it is mandatory in each and every case to provide such questionnaire to the accused in order to enable him to file his/her written statement. Moreover, I also find substance in the submission made by Ld. SPP that the accused persons nowhere sought permission to file their written statements in the application under consideration. Although, their counsel sought to point out that prayer for being supplied with advance copy of questionnaire to enable them to file written statement, necessarily implies that they are also seeking permission to file their written statements but I do not agree with the said submission.

10. In the light of aforesaid discussion, I do not find any merit in the application under consideration. Consequently same is hereby dismissed.

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Vide separate order of even date, the application u/s 313 (5) CrPC moved on behalf of accused persons, has been dismissed. It is hereby directed that the accused persons shall remain present for recording their statements u/s 313 CrPC. However, it shall be open for them to file their written statements if they so wish before the Court on the next date.

Put up on 13.05.2019 at 2:00 pm for recording statements u/s 313 CrPC. ”

9. As regards the judgment in the matter of ***Langpoklakpam Kiranjit Singh*** (supra), it has been held therein that generally

furnishing of the questionnaire by the Court to the accused to enable him to file his written statement under Section 313 Cr.P.C. should be normally allowed by the Trial Court, unless the Court is of the view that such request has been made to delay the trial or is vexatious and not warranted under the circumstances, as it is the discretion of the Court. The Manipur High Court taking into consideration the facts of that case, noted that the accused had already been examined under Section 313 of the Cr.P.C. and as such, he was already aware of the questions put to him by the Court. As such, he would be at liberty to file his written statement to the questions already put by the Court to him irrespective of the oral answers the accused had already given to the Court. However, the judgment in the matter of ***Langpoklakpam Kiranjit Singh*** (supra) does not lay down that the questionnaire should be provided to the accused in advance in each and every case.

10. Even otherwise, it is a settled law that the general rule is that, an accused must answer the questions under Section 313 of the Cr.P.C. by personally remaining present in the Court and it is only in exceptional circumstances that the general rule can be dispensed with. Therefore, the Trial Court was right in holding that Section 313 of the Cr.P.C. provides that barring few situations where the statement under Section 313 Cr.P.C. of the accused cannot be recorded by calling them personally except with undue delay and inconvenience, his statement under Section 313 Cr.P.C. should be recorded personally in the Court.

11. In ***K. Anbazhagan vs. The Superintendent of Police and Ors.***, 2004 CriLJ 583, the Supreme Court has held as under:

“33...In our view, the grounds recited in the application

as referred to above, were not at all mitigating circumstances to have granted dispensation of personal appearance. To say the least, that was a ploy adopted to circumvent the due process of law. Mr. Venugopal has drawn our attention to the decision of this Court rendered in *Basavaraj R. Patil v. State of Karnataka*, where this Court allowed the accused to dispense with personal appearance and make application to the court praying that he may be allowed to answer the questionnaire without making his physical appearance in court under the conditions stipulated therein. That order was rendered in exceptional exigency circumstances. The accused was in a far-away country - America and he had to incur a whopping expenditure and undertake a tedious long journey solely for the purpose of answering the court questions. This authority makes it clear that the general rule remains that the accused must answer the questions by personally remaining present in Court. It is only in exceptional circumstances that the general rule can be departed/dispensed with. In this case respondent No.2 is holding the position of the Chief Minister of Tamil Nadu. She was available at Chennai. There was no exceptional-exigency or circumstances such as her having to undertake a tedious long journey or incur a whopping expenditure to appear in Court to answer the questions under Section 313 Cr.P.C. None of the facts, which have weighed with the consideration of the Court in Basavaraj's case (*supra*), was available in the given case. The grounds given in her application do not make out any case for granting exemption from personally appearing to answer question under Section 313.”

12. I do not find any substance in the submission of the learned counsel for the petitioner that the petitioner is entitled to have an advance copy of the questionnaire for the purpose of filing the written statement. Taking into consideration the object and intent of Section

313 of the Cr.P.C., the intention of the legislation has never been to supply an advance copy of the questionnaire to the accused except in very exceptional circumstances. The questions under Section 313 of the Cr.P.C. are confined to the evidence already on record, the copies whereof must have been available with the accused and his counsel by that time hence, there is no need for supplying the questionnaire in advance. Reference can be made to the case, ***Dakshinamoorthy and Ors. vs. Union of Territory of Pondicherry***, 2002 CriLJ 2359, wherein the High Court of Madras has held as under:

“14. After the witnesses for the prosecution have been examined, a duty is cast upon the Court to question the accused personally to explain any circumstances appearing in the evidence against him. The prosecution witnesses are subject to chief and cross-examination in the presence of the accused and copies of their testimony are provided to the accused then and there. The questions under Section 313 of Cr.P.C. are confined to the evidence already on record, the copies of which are available with the accused and his counsel by then and hence there is no need for supplying questionnaire in advance. There is bound to be time gap between the closure of prosecution evidence and the proceedings under Section 313 of the Code and it will afford reasonable time for reflection of mind. The contention of the petitioners that non-furnishing of the questionnaire under Section 313 of the Code in advance for reflection of mind will amount to violation of Articles 14 19(1)(a) and 21 of the Constitution of India is devoid of merit and cannot be accepted. There is no violation of the principles of natural justice as contended by the petitioners. The trial Court has rightly rejected the petition and there is no reason to set it aside.”

13. In the light of the settled proposition of law as noticed above, and the facts of the present case, that the petitioner was present through out the trial and was well aware about the evidence which has come on record before the Trial Court and additionally, on the ground that the Trial Court has already given permission to file the written statement to the petitioner, if he so wishes, hence, I do not find any flaw or infirmity in the order dated 18.04.2019 passed by the Trial Court.

14. Thus, this Court concurs with the view taken by the Trial Court and is of the opinion that taking into account the facts of the present case and the law laid down in this regard, there is no requirement of supplying the questionnaire in advance by the Trial Court to the petitioner in this case. The prayer in the present petition to supply the copy of the questionnaire in advance to the petitioner is vexatious and is not warranted and the Trial Court has rightly used its discretion as per law while refusing to supply the advance copy of the questionnaire to the petitioner.

15. There is no merit in the present petition. Accordingly, the same is dismissed.

CHANDER SHEKHAR, J

MAY 14, 2019/rk