

**12.05.2022**

Sl. No. 55.

Mithun

Ct.No.42.

**IA No: CRAN/1/2010 (Old No:CRAN/639/2010)**

**In**

**CRR 2505 of 2009**

**(Via Video Conference)**

In the matter of : **Aveek Sarkar.**

...petitioner.

Mr. Sandipan Ganguly, Sr. Adv.

Mr. Sabyasachi Banerjee, Adv.

Mr. Somopriyo Chowdhury, Adv.

Mr. Soumitra Datta, Adv.

...for the appellant.

Ms. Sreyashee Biswas, Adv.

...for the O.P.

The petitioner is one of the accused in C-Case No.806 of 1997 pending in the Court of the learned Chief Judicial Magistrate, South-24-Parganas at Alipore. It appears from the impugned order dated 8<sup>th</sup> July, 2009 that the personal appearance of the accused persons were exempted under Section 205 of the Code of Criminal Procedure during the pendency of the trial. 8<sup>th</sup> July, 2009 was fixed for examination of the accused persons under Section 313 of the Cr.P.C. Prior to the said date on 2<sup>nd</sup> June, 2009, one Sumit Das, a third party to the proceeding filed an application praying for passing an order dispensing with the personal appearance of the petitioner for his examination under Section 313 Cr.P.C. and to give a questionnaire to the learned

Advocate which would be returned to the Court after giving reply to the said questionnaire.

The learned Magistrate rejected the said application on the ground that the applicant is not a party to the proceeding and therefore, such application cannot be entertained.

Aggrieved by the said order, the petitioner has preferred the instant criminal revision in the year 2009 and for such very small matter, the trial of the case is under a halt.

It is submitted by Mr. Sandipan Ganguly, learned Senior Counsel that in view of the decision of ***Basavaraj R. Patil & Ors. Vs. State of Karnataka & Ors.*** reported in (2000) 8 SCC 740, the Court may permit examination of an accused on affidavit.

It is also submitted by him that to give effect to the aforesaid decision in ***Basavaraj (supra)***, Sub-section (5) was inserted to Section 313 by Amendment Act 5 of 2009 with effect from 31<sup>st</sup> December, 2009 wherein it is stipulated:-

**"313(5).** 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."

Mr. Ganguly also refers to the proviso to Section 313(1) of the Code where it is stated that in summons cases, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under Clause(b).

Learned Advocate for the opposite party, on the other hand, submits that though personal appearance was dispensed with, he was under obligation to appear during his examination under Section 313 of the Cr.P.C. Moreover, Proviso to Section 313(1) does not attract in this case because in summons procedure case, if the Court thinks that examination of the accused under Section 313 of the Cr.P.c. does not require, it may also dispense with his examination but it does not mean that his personal attendance would be dispensed with.

Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record, I may be permitted to record that the decision of **Basavaraj (supra)** was pronounced by the Hon'ble Supreme Court to avoid unnecessary delay in the trial of a case. In the said report, the accused persons used to stay in another State. They would have to come to the Court covering a long distance bearing huge expenses. Under such circumstances, the Hon'ble Supreme Court evolved the procedure of examination of the accused by submitting questionnaire and sending reply

to the Court duly affirmed by the accused and his learned Advocate. In the instant case, the accused is staying in Kolkata. At the same time, I am not unmindful to note that the accused is an octogenarian. He has already resigned from being the Editor of the particular newspaper. Therefore, the accused may be examined as per the decision of ***Basavaraj(supra)*** coupled with Sub-section 5 of Section 313 as examination of 313 has not been concluded as yet. However, in order to avail of such procedural benefit, the accused shall have to file an application duly affirmed by him. If such application is filed by the accused, the learned Trial Judge shall consider the said application after giving an opportunity to the private opposite party to file a written objection to dispose of the said application in accordance with law without being influenced in any way by the observation made hereinabove in this order while disposing of the instant revisional application and also the order dated 8<sup>th</sup> July, 2009.

The instant revisional application, is, thus, disposed of with the above observation.

Urgent photostat certified copies of this order may be delivered to the Counsel for the parties, if applied for, upon compliance of all formalities.

( **Bibek Chaudhuri, J.**  )

