

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.628 of 2011

<i>Sri Soumyaranjan Patnaik</i>		<i>Petitioner</i>
	<i>versus-</i>	
<i>Sri Dharmananda Baral</i>		<i>Opposite Party</i>

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
25.02.2022

06.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 11th February, 2011 passed by the learned J.M.F.C., Bhuban in 1.C.C. No.75 of 2008.
3. Heard.
4. It appears from the materials available on record that the Petitioner has made a petition before the court below to dispense with his personal attendance for examination under Section 313, Cr.P.C., but the same has been refused vide order dated 11th February, 2011. However, the Petitioner has come forward to challenge the same.
5. During course of hearing, it is submitted by the learned counsel for the Petitioner that the order being illegal, the same be set aside and the Petitioner be allowed to file a fresh petition before the court below to dispense with his examination under Section 313, Cr.P.C. and the trial court may be directed to consider the same in accordance with law.

6. It appears from the materials available on record that the Petitioner's personal appearance was dispensed with. The Petitioner thereafter made prayer to dispense with his examination under Section 313 of Cr.P.C. However, the prayer made in this regard was refused vide impugned order.

7. Needless to say that the court has necessary jurisdiction to dispense with the examination of the accused, if it is a summons case and the accused personal appearance is dispensed with. Even if warrant case also the mandate of law is that an accused without being examined, if file a written statement, the same can be stated to be sufficient compliance of Section 313 of Cr.P.C. in view of the mandate of Section 313(5) of Cr.P.C.

8. The purpose of Section 313, Cr.P.C. is to provide the accused an opportunity to explain the incriminating circumstances appearing against him. The same is provided an opportunity for the accused to state before the Court with regard to incriminating materials appearing against him during the trial. Therefore, it being for the benefit of the accused and in spite of the same, the accused not willing to avail of such benefit, the same is to his peril.

9. Hence, the Court for the said reason should not have insisted for appearance of the Petitioner to examine himself under Section 313 of Cr.P.C., particularly when the mandate of law is aforesaid.

10. I would, therefore, allow this Criminal Misc. Case and quash the impugned order and direct the Petitioner to file a fresh petition in this regard before the court in seisin over the matter within six weeks hence and if such petition is filed, the court in seisin over the matter shall do well to pass necessary order for dispensing with his personal

appearance to record the accused statement and if required allow him to file a written statement explaining the circumstances appearing against him.

11. With the aforesaid order, this Criminal Misc. Case stands disposed of.

(S. Pujahari)
Judge

DA

