IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

KAWRE KIRAN KALYAN
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CRIMINAL WRIT PETITION NO. 3508 OF 2022

Daffodil Projects Pvt. Ltd.,
Theough Abhijeet Pimple ...Petitioner
Versus
Deccan Water Treatment Pvt. Ltd. And Anr. ...Respondents

....

Mr. Girish Agrawal, Advocate for the Petitioner.

Mr. Manoj Mohite, Senior Counsel i/b Priyanka Chavan and Gaurav Jachak, Advocate for the Respondent Nos.1 and 2.

Mr. S. R. Agarkar, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 28th SEPTEMBER, 2022.

PER COURT:

1. The Petitioner has filed the complaint under Section 138 of the Negotiable Instruments Act against the Respondent Nos.1 and 2 before the Court of learned Judicial Magistrate First Class, Pune, which was numbered as Summary Criminal Case No.602 of 2012. The criminal complaint relates to dishonour of cheques issued towards alleged liability for supply of treatment plant. The total value of four cheques which were dishonoured was Rs.2,00,00,000/- (Rupees two crores). The complainant issued demand notice which was followed by filing of complaint. The process was issued, plea was recorded, the trial has commenced, evidence of complainant was recorded. The statement of the

accused was recorded under Section 313 of Code of Criminal Procedure on 22nd September, 2015. The accused had stated that, he is going to submit written statement. The respondent No.2 examined himself as defence witness No.1, on 5th November, 2015. He was cross-examined on 14th July, 2016 and 5th November, 2016. The cross-examination was not concluded and it was adjourned on the request of Advocate for the complainant. Subsequently the complainant/Petitioner preferred an application before the trial Court on 3rd March, 2017 seeking directions to the accused to produce the original or certified copies of the documents mentioned in the said application. Vide order dated 24th July, 2017, learned Magistrate directed the accused to produce the documents referred to in the said order. The complainant filed application for issuance of witness summons on 13th October, 2017. In the said application it was contended that, on the basis of the examination-in-chief of the accused, detailed cross-examination was conducted on behalf of the complainant, and in response to the question asked in the cross-examination, the accused has admitted the possession and custody of documents and shown willingness to produce those documents. Accordingly the complainant filed an application for production of the documents mentioned therein from the custody of accused. The said application was allowed. However, despite order passed by Court the accused avoided to produce documents. Those documents are necessary for the pusepose of further cross-examination of the accused and also to enable the Court to decide the fact is issue and other relevant facts summons be issued to Commissioner of Sales Tax Department, for the purpose of producing the documents. The learned Magistrate vide order dated 18th January, 2018 allowed the application preferred by complainant and issued witness summons for production of documents. On 16th March, 2021 the accused filed written statement under Section 313 of Cr.P.C. The Petitioner raised objection by filing on 13th November, 2021 for taking written statements of accused on record. The learned Judicial Magistrate First Class, Pune rejected the said written statement of the accused vide order dated 31st December, 2021. The respondent/accused challenged the said order by preferring criminal Revision Application No. 41 of 2022 before the Court of Sessions. The learned Sessions Judge vide order dated 11th May, 2022 set aside the order dated 31st December, 2021 and directed the trial Court to take written statement of the accused on record and consider it alongwith statement at Exhibit-108 recorded under Section 313 of Cr.P.C. while final adjudication.

2. The Petitioner is aggrieved by order dated 11th May, 2022

passed by the Sessions Court and hence preferred this Petition challenging the said order.

3. Learned Advocate for the Petitioner submitted as under:-

i. Learned Sessions Judge has committed error in setting aside the order passed by the learned Magistrate rejecting the written statement tendered by respondent No.2.

ii. The statement of the accused was recorded under Section 313 of Cr.P.C. on 22nd September, 2015. Although the accused had stated that, he would file written statement, he waited for a period of abut six years and than submitted the written statement. There was no explanation for delay in filing the written statement. The only explanation which was given is that, the previous Advocate did not handle the case properly and after change of Advocate the written statement was filed.

iii. The written statement is filed to fill up lacuna. It was filed after the accused has stepped into the witness box to examine himself as defence witness and while he is under cross-examination.

iv. The provision for filing written statement is made in the context when the accused is permanently exempted from appearing before the Court in accordance with Section 317 of Cr.P.C.

v. Learned Magistrate had assigned cogent reasons while rejecting the written statement.

vi. The learned Sessions Judge has failed to appreciate and misinterpreted the application of Section 313(5) of Cr.P.C., which is available when the accused is exempted from his personal appearance during the trial.

vii. The learned additional Sessions Judge failed to appreciate the restriction under Section 313(1)(b) of Cr.P.C.

viii. The respondent is under cross-examination and substantial part of his cross-examination is already recorded. The stage for filing written statement and any other document by the respondent in compliance of statement and Section 313 has been evaded and the accused cannot be permitted to file the written statement at belated stage.

4. Reliance is placed on the following decisions:-

i. AIR 2000 Sc 3214 Basavraj R. Patil & Ors Vs. State of Karnataka & Ors.

ii. (2011) 2 SCC 772 TGN Kumar Vs. State of Kerala & Ors.

iii. 2009 ALL MR (Cri) 1195 (S.C.) Inspector of Customs, Akhnoor J & K Vs. Yash Pal & Anr.

iv. (2001) & SCC 401 Bhaskar Industries Lts. Vs. Bhiwandi Denim & Apparels Ltd. & Ors.

v. 2016 CRI. L.J. 678 Sajeev Vs. State of Kerala

vi. 2011 (3) CRIMINAL COURT CASES 159 (A.P.) Bollam Chandraiah Vs. State of A. P.

vii. 2019(3) CRIMINAL COURT CASES 596 (DELHI) Raja @ Dayanand Vs. State of N.C.T. of Delhi

5. Senior Advocate Mr. Mohite appearing for the Respondent Nos.1 and 2 submitted as follows:-

a. Law does not prescribe any limitation for filing written statement under Section 313 of Cr.P.C.

b. No prejudice would be caused to the complainant on filing of written statement by accused.

c. Merely on the ground of delay, the accused cannot be deprived of right to defend himself. There is no infirmity in the order passed by the learned Sessions Judge.

d. The accused are facing prosecution under Section 138 of the Negotiable Instruments Act and are required to rebut the presumption under Section 139 of the Negotiable Instruments Act. Hence fair opportunity must be given to the accused to defend themselves.

e. The trial is not over. Although the statement of the accused was recorded under Section 313 of Cr.P.C. on 22nd September, 2015, the evidence of the defence witness had commenced on 5th November, 2015. He is under cross-examination from 14th July,

2016. The complainant had preferred applications for production of documents and issuance of witness summons. The applications are allowed. The written statement is filed by the accused before conclusion of cross-examination. The complainant is at liberty to proceed with the cross-examination on the basis of the defence. No prejudice would be caused to complainant.

f. Section 313 of Cr.P.C. was amended and the accused in summons case is provided right to submit written statement.

g. The contention of the learned Advocate for the Petitioner that, the written statement could be filed in the event of exemption under Section 317 of Cr.P.C. is untenable in law Section 313 does not provide such prerequisite.

h. The learned magistrate had committed an error while rejecting the written statement. There is no illegality in the order passed by the learned Sessions Judge.

6. Section Section 313 of Cr.P.C. reads as follows:-

> "(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary; (b) shall after the

> witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case: Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).
> (2) No oath shall be administered to the accused when he is examined under sub-section (1)
> (3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.
> (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
> (5) The Court may take help of prosecutor and defense 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."

Clause five has been introduce by way of amendment w.e.f 31st

December, 2009 which permits filing of written statement by the accused as sufficient compliance of the said section. The said provision no where indicates that, the written statement could be filed by the accused, only in the eventuality in a summons case where the Court had dispensed with the personal attendance of the accused. The proviso to Section 313(1) would only indicate that, the recording of statement under Section 313 can be dispensed with in a summons case where the Court had dispensed with the personal attendance of the accused.

7. It is not in dispute that, the accused is prosecuted for offence under Section 138 of Negotiable Instruments Act. The evidence of complainant was recorded. Pursuant to that the statement of the accused was recorded under Section 313 of Cr.P.C. on 22nd September, 2015. In answer to question No.65, the accused had indeed stated that he is going to submit the written statement. It is not disputed that the such written statement was not submitted by the accused immediately thereafter. It was submitted on 16th March, 2021. It is relevant to note that, the trial was not concluded immediately after recording the statement of the accused under Section 313 of Cr.P.C. The accused examined himself as defence witness. His examination-in-chief was recorded on 5th November, 2015. The cross-examination was conducted at the

instance of complainant on 14th July, 2016 and 5th November, 2016. It was not concluded. At the request of the Advocate for the complainant the cross-examination was differed to next date on 5th November, 2016. Subsequently, the complainant preferred an application seeking direction to the accused to produce documents. The said application was preferred on 3rd March, 2017. It was allowed by order dated 24th July, 2017. It appears that, the complainants grievance was that, the accused had not produced the documents inspite of the order of learned Magistrate and hence the complainant preferred another application on 13th October, 2017 for issuance of summons to Commissioner of Sales Tax Department to produce certain documents which were also part of the application dated 3rd March, 2017. The application for issuance of summons was allowed on 18th January, 2018. It appears in between there was no progress in trial. The accused tendered the written statement on 16th March, 2021. It is pertinent to note that, the cross-examination was not over. Before the trial Court was concluded and before the end of cross-examination of defence witness (accused) the written statement was submitted. Thus, no prejudice is caused to the complainant.

8. The learned Sessions Judge while allowing the applications preferred by the Respondent Nos.1 and 2 had observed that, the

examination of the accused as defence witness is going on. The stage of the trial is for recording cross-examination of the accused. Even applying the provisions of Section 313(1)(b) of Cr.P.C. the Court can take written statement on record as it is a part and parcel of statement recorded under Section 313 of Cr.P.C. The amended provision i.e. clause five of Section 313 of Cr.P.C. provides that the accused can be permitted to file written statement in compliance of the provision under Section 313 of Cr.P.C. Since the cross-examination of the defence witness is pending, even at this stage, if the written statement of the accused is taken on record, there would not be any prejudice to the complainant. The accused can be cross-examined by the complainant. Fair opportunity will be available to the complainant.

9. The purpose of Section 313 of Cr.P.C. is to give fair and enough opportunity to accused to defend the complainant and to explain the circumstance arrived against him. In a complaint under Section 138 of Negotiable Instruments Act the burden is on the accused to rebut the presumptions under the Act. Hence fair opportunity is necessary to be given to the accused. No doubt there is delay in filling the written statement. However, factual aspect of this case are sufficient to permit the accused to file written statement.

10. Section 313 of Cr.P.C. is based on fundamentals of fairness. The statement of the accused affords the accused an opportunity to explain his conduct and to use denials of established facts as incriminating evidence against him. Filing of the written statement is provided under Section 313 of Cr.P.C. is sufficient compliance of the said provision.

11. Several decisions placed for consideration by learned counsel for the Petitioner were delivered in the facts of the respective cases. The decisions are not adverse to the case of the respondent/accused. In the case of Basavraj Patil and Ors (Supra), it was held that, recording of the statement under Section 313 of Cr.P.C. can be dispensed with if the accused has been exempted from personally appearing before the Court. In the case of TGN Kumar Vs. State of Kerala and Ors. (Supra), it is held that, dispensing with personal attendance of the accused cannot be circumscribed by laying down any general direction. While considering application under Section 205, the magistrate has to bear in mind nature of case, conduct of the person summoned and the court shall examine whether any useful purpose would be served by requiring personal attendance of the accused in a summons case when personal appearance of accused has been dispensed with under Section 205. A discretion is vested in

magistrate to dispense with personal examination of accused under Section 313 of Cr.P.C. In the case of Inspector of Customs, Aknoor J & K Vs. Yash Pal & Anr. (Supra), it was observed that, the object of Section 313 is intended to benefit the accused and the Court in reaching the final conclusion. In Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. and Ors. (Supra), it is held that discretion to dispense with the personal attendance should be exercised in rare cases. Where attendance of accused is dispensed with magistrate can record plea of the accused. In the case of Sanjeev Vs. State of Kerala (Supra) it was held that, the presence of the accused can be dispensed with by Court on being satisfied of his incapacity or inability. The Advocate can represent him to participate in the inquiry under Section 313 of Cr.P.C.

12. The question before this Court is not about dispensing with the recording of statement under Section 313 of the Cr.P.C. The Statement of the accused is already recorded. The only question is that, the written statement was submitted belatedly. The aforesaid decisions no where indicates that, the written statement can be allowed to be presented only in the event of exemption being granted by the Court from appearing in the proceedings. No interference is called for in the impugned order passed by the learned Sessions Judge.

ORDER

i. Criminal Writ Petition No.3508 of 2022 is rejected and disposed off.

ii. Since the trial is pending from 2012, the trial Court is requested to make an endevour to conclude the same expeditiously and as far as possible within a period of one year from the date of receipt of this Order.

(PRAKASH D. NAIK, J.)