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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.10170 of 2022

and

CRL.M.P.No.6028 of 2022

N.Jayalakshmi

... Petitioner / 3rd Accused

Vs.

State rep.by
The Inspector of Police
W.28, AWPS, Ambattur

... Respondent / Complainant

Prayer :- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order passed in C.M.P.No.268 of 2022 in C.C.No.108 of 2008 in CNR No.TNTR29-000295-2022 on the file of Judicial Magistrate at Ambattur.

For Petitioner : M/s.R.T.Sundari

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed to set aside the order passed in C.M.P.No.268 of 2022 in C.C.No.108 of 2008 in CNR No.TNTR29-000295-2022 on the file of the learned Judicial Magistrate at Ambattur.

2. The petitioner who is the mother-in-law of the defacto complainant , aged 78 years is facing trial for offences punishable under Sections 498A, 506(i) of IPC and Section 4 of the Dowry Prohibition Act. According to the petitioner she is suffering from Breast Cancer and hence unable to travel to the Court. Therefore, she sought her personal appearance be exempted before the trial Court Court. However, the trial Court rejected the said prayer.



3. The learned counsel for the petitioner submitted that dispensing with the physical appearance of the petitioner was sought only because of her physical incapacity due to cancer and there is no bar under law to give such an exemption in exceptional case and prayed for allowing this petition.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that if the petitioner gives an undertaking by filing necessary affidavit that no prejudice would be caused to her in any manner, by dispensing with the personal appearance during examination, she may be exempted.

5. Heard both sides.

6. It is relevant to note that normally in summon cases were personal appearance of the accused is already dispensed with, her presence also would be dispensed with for answering any question under Section 313 of Cr.P.C that was the position prior to the amendment of Section 313 of Cr.P.C. Clause 29 of the Bill amends Section 313 Cr.P.C relating to power of the court to examine the accused. The clause inserts a new sub-section (5) to the said Section so as to eliminate delay in trial. Accordingly, the Amendment Act, 2009 has brought sub-section (5) within the purview of Section 313 Cr.P.C which reads as follows:-

"(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".

7. From amendment introduced, the Court makes it very clear that in an extraordinary situation, Court can exempt the personal appearance of the petitioner instead written statement can be received as a proper compliance for the questioning under Section 313 of Cr.P.C. It is relevant to note that the Apex Court in a judgment reported in AIR 2000 SC 3214 in the case of Basavaraj R.Pattil and others Vs. State of Karnataka and others has held as follows:-

66. The majority view laid down by K.T.Thomas, J. for himself and on behalf of S.N.Variava, J is contained in paragraphs 21,23,24,25,26 and 27 of the judgment (supra) which is reproduced hereunder for convenient reference"

"21. But the situation to be considered now is whether with the revolutionary change in technology of communication and transmission and the marked improvement in facilities for legal laid in the country, is it necessary that in all cases, the accused must



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answer, by personally remaining present in Court. We clarify that this is the requirement and would be the general rule. However, if remaining present involves undue hardship and large expense, could the Court not alleviate the difficulties. If the Court holds the view that the situation in which he made such a plea is genuine, should the court say that he has no escape but he must undergo all the tribulations and hardships and answer such questions personally presenting himself in Court. If there are other accused in the same case and the Court has already completed their questioning should they too wait for long without their case reaching finality or without registering further progress of their trial until their co-accused is able to attend the Court personally and answer the Court questions? Why should a criminal Court be rendered helpless in such a situation?

23. Section 243(1) of the Code enables the accused, who is involved in the trial of warrant case instituted on police report, to put in any written statement. When any such statement is filed the Court is obliged to make it part of the record of the case. Even if such case is not instituted on police report the accused has the same right (vide Section 247). Even the accused involved in offences exclusively triable by the Court of Session can also exercise such a right to put in written statements (Section 233(2) of the Code). It is common knowledge that most of such written statements, if not all, are prepared by the counsel of the accused. If such written statements can be treated as statements directly emanating from the accused, hook, line and sinker, why not the answers given by him in the manner set out hereinafter, in special contingencies, be afforded the same worth".

24. We think that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word "shall" in clause (b) to Section 313(1) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefits of the accused. But if it works to his great prejudice and disadvantage the Court should, in appropriate cases, e.g., if the accused satisfies the Court that he is unable to reach the venue of the Court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship relieve him of such hardship and at the same time adopt a measure to comply with the



requirements in Section 313 of the Code in a substantial manner. How this could be achieved?".

25. If the accused (who is already exempted from personally appearing in the Court) makes an application to the Court praying that he may be allowed to answer the questions without making his physical presence in Court on account of justifying exigency the Court can pass appropriate orders thereon, provided such application is accompanied by an affidavit sworn to by the accused himself containing the following matters: (a) A narration facts to satisfy the Court of his real difficulties to be physically present in Court for giving such answers (b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning (c) An undertaking that he would not raise any grievance on that score at any stage of the case. "26. If the Court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the Court to supply the questionnaire to his advocate (containing the questions which the Court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the Court, he shall forfeit his right to seek personal exemption from Court during such questioning."

8. Such being the position, when the petitioner expresses her inability due to cancer treatment there is no difficulty in granting exemption for her personal appearance for compliance of Section 313 of Cr.P.C. Accordingly this Court is of the view that the impugned order rejecting the personal appearance is set aside and the petitioner shall file necessary affidavit before the trial Court indicating that no prejudice would be caused to her in any manner due to the dispensation with her personal appearance during questioning, besides an undertaking that she would not raise any grievance on that score at a later stage of the case.



9. On such affidavit being filed, the trial Court shall supply the questionnaire to his advocate (containing the questions which the Court might put to her under Section 313(1) (b) Cr.P.C) and fix the time limit during which the same has to be returned duly answered by the petitioner. The affidavit shall also contain an affirmation that the answers were furnished to the counsel by the petitioner herself. The petitioner should affix her signature on all the sheets of the answered questionnaire. If she does not wish to give any answer to any of the questions she is free to indicate that fact at the appropriate place in the questionnaire. If the petitioner fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the Court she shall forfeit her right to seek personal exemption from Court during such questioning.

10. Accordingly, the petition is ordered and the lower Court shall prepare the questionnaire and hand over the same to the learned counsel for the petitioner within a period of 15 days from the date of receipt of a copy of this order. Thereafter, the petitioner shall present explanation within two weeks before the trial Court and thereafter the lower Court shall dispose of the case within a period of three months. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

dpq

To

1. The Judicial Magistrate
Ambattur.

2. The Inspector of Police
W.28, AWPS, Ambattur

3. The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to M/s.R.T.Sundari, Advocate, S.R.No.33946

CRL.O.P.No.10170 of 2022
and CRL.M.P.No.6028 of 2022

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NSK/30/06/2022