

**Court No. - 16**

**Case :-** APPLICATION U/S 482 No. - 11291 of 2023

**Applicant :-** Bandana Guha

**Opposite Party :-** State Of U.P. Thru. Central Bureau Of Investig. Anti Corrup. Lko.

**Counsel for Applicant :-** Abul Fazal Jaffrey, Shubhi Guha

**Counsel for Opposite Party :-** Anurag Kumar Singh

**Hon'ble Subhash Vidyarthi, J.**

1. Heard Sri Abul Fazal Jaffrey, learned counsel appearing for the applicant as well as Sri Dharmendra Kumar Singh holding brief of Sri Anurag Kumar Singh, learned counsel for the C.B.I and perused the record.

2. By means of the instant application the applicant has sought following prayer:-

*"... to quash the N.B.W. issued by CBI court for not appearing for statement U/s 313 CrPC in criminal case no.07/2009 (State vs P.K. Dutta & another), section 120-B, 420, 468 & 471 IPC & u/s- 13(2) read with section 13(1) P.C. Act, 1988, arisen out of R.C. 006/2008/A0010, registered with the Central Bureau of Investigation, Anti corruption Branch, Lucknow..."*

3. Although the prayer does not make a mention the date of order of which Non Bailable Warrant has been issued and it does not refer to any order annexed with the affidavit filed in support of the application. Annexure-1 annexed to the affidavit filed in support of the application, is a copy of the order sheet of the trial court, which indicates that on 06.09.2023 the trial court had recorded in the order sheet that the applicant had not appeared for recording her statement under Section 313 Cr.P.C. in spite of a cost of Rs.500/- having been imposed upon her. The matter was fixed on 15.09.2023 for recording her statement under Section 313 Cr.P.C. on which date, the applicant was directed to remain present in person on 15.09.2023, again the

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applicant did not appear and the matter was fixed for 22.09.2023 and a cost of Rs.500/- was again imposed upon her. Similar position repeated on 22.09.2023 and 07.10.2023. On 07.10.2023, the trial court recorded that the applicant did not appear on the past several dates for which reason her statement under Section 313 Cr.P.C. could not be recorded. The matter relates to the year 2007 and it is included in the matter regarding which this Court has made an action plan for expeditious disposal but trial could not proceed because of the repetitive non appearance of the applicant, therefore, applicant's application for exemption from appearance was rejected and a non bailable warrant was issued against her.

4. From the aforesaid facts, it appears that the present application under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 07.10.2023.

5. Learned counsel for the applicant has submitted that Section 313 Cr.P.C. is meant to protect the rights of the accused persons and sub-section 5 of Section 313 Cr.P.C. provides that 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. Learned counsel for the applicant has submitted that inspite of issuance of non bailable warrant the Court should have permitted the applicant to file written statement for her defence.

6. *Per contra*, learned counsel for the C.B.I. has opposed the application and he has submitted that keeping in view the conduct of the applicant no relief should be granted to the applicant.

7. Section 482 Cr.P.C. protects the inherent power of the High Court to make such orders as may be necessary to give effect to any order passed under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Inherent powers are to be exercised to prevent the abuse of the process of any Court or to secure ends of justice.

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8. Conduct of the applicant, as evident from the facts recorded by the trial Court in the orders 06.09.2023, 15.09.2023, 22.09.2023 and 07.10.2023, indicates that she is not cooperating with expeditious disposal of the trial, although the FIR in question was lodged in the year 2007 and the case was registered in the court in the year 2009, the case is quite old and it is included amongst the cases regarding which this Court has prepared an action plan for expeditious disposal.

9. Reasons for non appearance of the applicant has been disclosed in the affidavit filed in support the application are that the applicant is 68 years old woman, she is suffering from multiple health issues and she had undergone a surgical operation of Retina. Although the date of surgery has not been mentioned in the affidavit, learned counsel for the applicant stated that the surgery was carried out sometime in the year 2020.

10. Continued non appearance of the applicant inspite of repetitive orders imposing costs against the applicant, due to reason that the applicant has undergone eye surgery on undisclosed date in the year 2020, does not appear to be justified.

11. Learned counsel for the applicant has prayed that the applicant may be granted permission to submit written statement of her defence as provided under Section 313(5) Cr.P.C. However, no such request has been made by the applicant either before the trial court or in the application filed before this Court, therefore, keeping in view the conduct of the applicant, this Court finds no reason to accede with the aforesaid prayers.

12. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court rendered in **Keya Mukherjee vs Magma Leasing Limited & Ors** : 2008 (8) SCC 447 wherein while considering the provisions of Section 313 Cr.P.C., the Hon'ble Supreme Court has held that *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*

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*Code is to be interpreted as obligatory on the court and it should be complied with when it is for the benefit 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 could this be achieved.*

**13.** In the present case, no such circumstance has been pleaded by the applicant, which may satisfy the Court that she is unable to reach the venue of the Court for any justifiable reason and, therefore, the aforesaid judgment does not help the applicant in the present case.

**14.** Having considered the aforesaid facts and circumstances of the case, I am of the view that the present case does not warrant exercise of inherent power of this Court in favour of the applicant. The application lacks merit and is hereby **rejected**.

**(Subhash Vidyarthi, J.)**

**Order Date :-** 22.11.2023  
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