

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

320

Criminal Revision No.1491 of 2006

Date of Decision: May 9<sup>th</sup>, 2017

Jalour Singh @ Pappi

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI**

Present: Mr. Ashok Kumar Khunger, Advocate  
for the petitioner.

Mr. S.S. Chaudhary, Deputy Advocate General, Punjab,  
for the respondent.

**AUGUSTINE GEORGE MASI, J. (ORAL)**

This revision is directed against the judgment dated 15.07.2006 passed by the Additional Sessions Judge (*Ad hoc*), Fast Track Court, Bathinda, upholding the judgment of conviction and order of sentence dated 17.01.2006 passed by Judicial Magistrate Ist Class, Bathinda, whereby petitioner was convicted for the offence punishable under Section 61(1)(a) of the Punjab Excise Act, 1914 and sentenced to undergo rigorous imprisonment for a period of six months with fine of ₹1,000/- with default stipulation to undergo simple imprisonment for 30 days.

2. It is the contention of learned counsel for the petitioner, without going into the merits of the case, that the judgment of conviction and order of sentence dated 17.01.2006 passed by the Judicial Magistrate Ist Class, Bathinda, as also the dismissal of the appeal on 15.07.2006 by the Additional Sessions Judge (*Ad hoc*), Fast Track Court, Bathinda, cannot sustain on the ground that the basis which would have determined as to whether the recovery of alleged countrymade liquor contained in 528 bottles from the jeep is based upon the report of the Chemical Examiner which

report has not been put to the petitioner-accused in the statement under Section 313 of the Code of Criminal Procedure. In the absence of such a report having been put to the petitioner, the petitioner has been prejudiced as a statutory right conferred upon him which is based upon the principle of fair chance to explain his stand, with regard to the circumstances and the evidence collected against him which has come on record during the trial, has been rendered non-est having the effect of annulment of the judgment of conviction and sentence passed by the Courts below. In support of this contention, he has placed reliance upon the Division Bench judgment of this Court in *State of Haryana Versus Lal Chand* 2000 (2) RCR (Criminal) 522, *Daya Ram Versus State of Haryana* 1987 (1) RCR (Criminal) 675 and *Jagdish Versus State of Haryana* 2008 (4) RCR (Criminal) 218. He contends that in these judgments, although the same relate to the Prevention of Food Adulteration Act, 1954, the principle would be the same as the report of the Public Analyst was not put to the accused during his examination under Section 313 of the Code of Criminal Procedure which resulted in setting aside the conviction of the accused. He, therefore, submits that the present revision petition deserves to be allowed.

3. Learned counsel for the respondent, on the other hand, contends that the report of the Chemical Examiner was very much the part of the challan and the petitioner was aware of the same as copies thereof had been provided to him. No prejudice as such has been caused to the petitioner. Merely because the said report has not been put to the petitioner while recording his statement under Section 313 of the Criminal Procedure Code, the petitioner cannot take a plea that he has been prejudiced in any manner. He, thus, prays for non-acceptance of the plea of the counsel for the

petitioner and for dismissal of the revision petition.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the judgments passed by the Courts below as also the records.

5. It is not in dispute that the report of the Chemical Examiner was a part of the challan and it is also an admitted fact that Chemical Examiner's report was not put by the trial Court to the petitioner while recording his statement under Section 313 of the Code of Criminal Procedure. It would not be out of way to mention here that the report of the Chemical Examiner was of prime importance with regard to the determination of the contents of the bottles which are alleged to have been recovered from the jeep, which is asserted to have been driven by the petitioner, which fact although is disputed by the petitioner as he was not arrested from the spot.

6. While considering the intent and purpose for which Section 313 of the Code of Criminal Procedure had been enacted, the Division Bench of this Court in *Sucha Singh Versus State of Haryana 2011 (5) R.C.R. (Criminal) 59* has observed as follows:-

*“11. Section 313. Power to examine the accused.- (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 summon-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 questions, 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 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.*

*12. Two occasions are contemplated under the Section for the examination of the accused. The first relates to the putting of questions at any stage of the trial or inquiry and the second when the prosecution evidence is over and the accused is called upon to enter his defence. In the former case, there is no obligation on the Court to put any questions but it may do so to the extent it considered necessary. The discretion is of the Court and the questioning is purely optional. In the latter case, however, it is imperative for the Court to question the accused generally on the case.*

*13. The requirement of this Section is that the accused be examined for purpose of enabling him to explain any circumstances appearing in the evidence against him personally, except where the statute provides otherwise. The principle of audi alteram partem, which was an elementary rule of justice, also finds its compliance in this Section as also the principle that no person should be condemned unheard. The accused should be heard not merely on what is prima-facie proved against him but also with regard to the evidence and circumstances appearing against him. It is based on and is in furtherance to one of the most fundamental principles to*

*be observed in a criminal trial that the accused should be called upon to explain the evidence against him which can be relied upon to hold him guilty and thus should be given an opportunity of stating his own case and explain his stand in this regard.*

*14. Section 313 Code of Criminal Procedure has been provided to give the accused a fair chance to explain his stand with regard to the circumstances in the evidence, which have been collected against him and has come on record during the trial. An onerous responsibility has been put on the Court to make the accused to understand the case of the prosecution as made out against him as also the evidence which has been collected by the prosecution. This provision has been cautiously incorporated in the Code of Criminal Procedure so that the accused gets a fair trial. The questions, which are to be put to the accused by the Court, must be simple, clear, specific and in simple language which can be understood and appreciated even by the ignorant and illiterate person(s). The attention of the accused needs to be drawn to the specific points in the charge and in the evidence, on which the prosecution claims that the case is made out against the accused. Fairness, therefore, requires that each material circumstance and incriminating material should be put simply and clearly to the accused lest he is deprived of his valuable right of explanation as his statement made under Section 313 Code of Criminal Procedure can be taken into consideration by the trial Court in judging the innocence or guilt of the accused, therefore, noncompliance or violation of this Section would vitiate the trial as has been held by the Hon'ble Supreme Court in the case of Ranvir Yadav v. State of Bihar, (2009) 6 SCC 595”.*

7. In view of the above position in law, the contention of the counsel for the petitioner deserves acceptance.

8. That apart, the judgments on which reliance has been placed by

the counsel for the petitioner, may be, under a different statutory provision but the principle enunciated therein would be fully applicable to the case in hand where again this Court had proceeded to hold that when the report of the Public Analyst had not been put to the accused while recording statement under Section 313 Cr.P.C., the conviction and sentence of the accused cannot sustain.

9. The appropriate course would have been to remand the case back to the trial Court for putting the report of the Chemical Examiner to the accused under Section 313 Cr.P.C. and thereafter to proceed with the case but keeping in view the fact that the incident is of the year 2003, the petitioner having already undergone the protracted trial followed by the pendency of the present revision petition, it would not be appropriate to remand the case at this belated stage for proceeding from the stage of recording statement under Section 313 Cr.P.C. The present petition, therefore, is allowed by setting aside the impugned judgment dated 17.01.2006 passed by the Judicial Magistrate Ist Class, Bathinda, and the judgment dated 15.07.2006 passed by the Additional Sessions Judge (*Ad hoc*), Fast Track Court, Bathinda, acquitting the petitioner on the above grounds.

**May 9<sup>th</sup>, 2017**  
*Puneet*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No