

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2102 of 2021

**Ganesh Chandra Das
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Kusal Kumar Mukherjee, Adv.

For the State : Mr. Binoy Panda, Adv.

Judgement on : 20.07.2022.

Bibek Chaudhuri, J.

The petitioner is the accused in Banshihari Police Station Case No. 91/2007 under Section 279/304A of the Indian Penal Code. The said case was registered as G. R. Case No. 457/2007 and trial of the case was taken up by the Learned Judicial Magistrate, Gangarampur at Buniadpur. On conclusion of trial the Learned Magistrate passed judgment and order of conviction and sentence in G. R. Case No. 457/2007 against the petitioner. The petitioner preferred an appeal before the Learned Sessions Judge, Dakshin Dinajpur at Balurghat which was registered as Criminal Appeal no. 1/2019. The Learned Sessions Judge by her judgment dated 23rd August, 2021 allowed the aforesaid appeal setting aside the order of conviction and sentence passed by the Trial Court as stated above and remanding the case back to the Trial Court with the following directions: -

“That the instant criminal appeal be and the same is remanded to the Learned Trial Court for limited issue of holding the examination of the appellant/convict under Section 313 of the Criminal Procedure Code *de novo*, for giving an opportunity to the appellant/convict to explain the incriminating evidence against him, in the light of the above observations made by this Appeal Court hereinabove.”

The petitioner has challenged the said order dated 23rd August, 2021 passed in Criminal Appeal No. 1/2019 on the ground that an accused cannot be asked to explain the “incriminating evidence” against him.

I have heard Mr. Kushal Mukherjee, Learned Advocate on behalf of the petitioner and the Learned Public Prosecutor-in-Charge.

It is submitted by Mr. Mukherjee that the Trial Court cannot be directed to examine the accused under Section 313 of the Code of Criminal Procedure to explain the incriminating evidence against him because in such a case, the Trial Court will have to come to a finding that certain evidence is incriminating against the accused. This finding by the Trial Court may prejudice the accused before conclusion of trial.

Section 313 of the Code of Criminal Procedure runs thus:-

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 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 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.

Plain reading of Section 313 goes to suggest that the Trial Court is under obligation to examine the accused under Section 313 of the Code of Criminal Procedure explaining the circumstances appearing in the evidence against him. By using the term "incriminating evidence", the Court of appeal practically wanted to mean the circumstances appearing in the evidence against the accused.

It is within the jurisdiction of the Court of appeal to decide as to whether the accused was properly examined under Section 313 of the Code of Criminal Procedure or not. If the Court of Appeal finds that the accused was not examined under Section 313 of the Code of Criminal Procedure properly and he was not able to explain the circumstances appearing in the evidence against him, it is within the jurisdiction of the Court of Appeal to remand the case back to the Trial Court directing fresh examination of the accused under Section 313 of the Code of Criminal Procedure in accordance with law. In view of such circumstances I do not find any reason to interfere with the order passed by the Learned Court of Appeal in Criminal Appeal No. 1/2019.

It is, however, needless to say that a reply to any of the circumstances appearing in the evidence against the accused while examination under Section 313 of the Code of Criminal Procedure cannot be the sole basis of his conviction. The reply of an accused may at best be treated as a circumstance in the cases based on circumstantial evidence that may lead to the Court to decide either against or in favour of the accused.

Therefore, the petitioner cannot be said to be prejudiced by the order passed by the Court of the Appeal while disposing of the Criminal Appeal No. 1/2019.

The criminal revision is, therefore, **dismissed** on contest, however, without cost.

(Bibek Chaudhuri, J.)