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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ CRIMINAL MISCELLANEOUS CASE 3643 OF 2022 & CRL.M.A. 15303/2022

Between:-

SHRI BAL KISHAN,
S/O SHRI SITA RAM
R/O KOTHI NO.13, AKBAR ROAD
SERVANT QUARTER
NEW DELHI.PETITIONER

(Through: Mr. Tarun Chandiok, Advocate).

AND

STATE OF NCT OF DELHI RESPONDENT

(Mr. Utkarsh, APP for State with SI Pradeep Sharma, P.S. Lajpat Nagar.)

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Pronounced on : 08.09.2022

JUDGMENT**PURUSHAINDR KUMAR KAURAV, J.**

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against order dated 16.07.2022, whereby, the learned MM-01 (Mahila Court), Saket Courts Complex,



New Delhi, rejected the prayer of the petitioner-accused seeking dispensing with the recording of statement of the petitioner under Section 313 of Cr.P.C. or to direct for recording of statement afresh.

2. The learned counsel appearing on behalf of the petitioner vehemently submits that the impugned order is illegal, improper and the same has been passed in ignorance of the mandate of Section 313 of Cr.P.C. He submitted that as per the mandate of Section 313 of Cr.P.C., it is not only the incriminating material (evidence & documents) emerging in the examination-in-chief has to be confronted to the accused, but the evidence that has come on record during examination-in-chief, cross examination and re-examination is also significant. According to him, there was no incriminating material against him, therefore, it was not necessary to examine him. He also submitted that in any case, even if the accused has to be examined, the question put to him should be simple and separate. It is not possible for any accused to give his explanation for a long series of facts as has been done in the instant case. He, therefore, submitted that if at all the examination of the petitioner under Section 313 of Cr.P.C. is necessary, the petitioner-accused be directed to be re-examined. He also submitted that this court vide order dated 29.07.2019 in CRL.M.C. 3535/2019 directed the court below to re-examine the aforesaid aspect and pass appropriate order. The learned counsel has placed reliance on a recent judgment of the Hon'ble Supreme Court in the case of *Jai Prakash Tiwari v. State of Madhya Pradesh*¹, CRL.A. 704/2013 dated 04.08.2022, decision of a Coordinate Bench of this Court in the case of *Shyam Sunder @ Pappu v. The State*, CRL.A. 31/2005 dated 30.09.2013 and the decision of the High Court of

¹ (2022) SCC Online SC 966



Karnataka at Bangalore in the case of *Meenakshi v. State of Karnataka*, in Criminal Petition No. 2170/2021 dated 21.09.2021.

3. The learned APP for the State, on the other hand, has opposed the petition. He submitted that the instant petition is not maintainable. According to him, the present petition is an abuse of the process of law, inasmuch as, the petitioner earlier approached this court vide CRL.M.C. 3535/2019 and the said petition was sought to be withdrawn with liberty to raise all the contentions before the trial court. The liberty so granted was not to re-agitate the same issues but to raise the issues at the time of final decision of the trial. According to him, the issues raised in the earlier petition cannot be re-agitated in the present petition. He further submitted that the order dated 06.07.2019 passed by the learned MM, which was not interfered with by this Court became final and hence, no interference is called for. He also submitted that if the impugned order is perused the same would clearly prove that all contentions raised by the petitioner have been rightly dealt with by the learned MM and it has been found that the objection of the petitioner-accused cannot be accepted as there is acceptable incriminating evidence against him. According to him, the requirement of recording statement under Section 313 of Cr.P.C. cannot be dispensed with, as it is a mandatory requirement prescribed by law. He, therefore, submitted that in the instant case, no interference is called for, and the petition has been filed as a delayed practice.

4. I have heard learned counsel appearing for the parties and perused the record.

5. Section 313 of Cr.P.C. confers valuable rights upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21 of the



Constitution, as has been held in the decision of *Reena Hazarika v. State of Assam*². This Section empowers the court to examine the accused after the evidence for the prosecution has been taken. The object of empowering the Court to examine the accused is to give him an opportunity of explaining any circumstances which may tend to incriminate him and thus to enable the court, in case where the accused is undefended, to examine the witnesses in his interest. The examination of the accused under Section 313 of Cr.P.C. is not a mere formality. The questions put and the answers given have great use. The accused must be given opportunity to explain each and every circumstance appearing in evidence against him. Section 313 of Cr.P.C. prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him. In a prosecution proceedings, that opportunity is a valuable one and cannot be ignored. The trial court need to record statement under Section 313 of Cr.P.C. with utmost care and caution and there should not be any casual and cursory approach. The accused are to be specifically questioned about as to what is their defence against the incriminating material brought before him or her. This provision incorporates the valuable principle of natural justice '*audi alteram partem*', as it enables the accused to offer an explanation for the incriminating material appearing against him.

6. In view of the aforesaid legal position, if the facts of the present case are examined, the same would demonstrate that the petitioner-accused is facing the trial under Sections 354/452/506/509 of IPC. The statement of the petitioner-accused under Section 313 of Cr.P.C. was

² (2019) 13 SCC 289



recorded on 06.07.2019. Eleven questions were put to the accused and his answers were recorded therein. The question No. 1 to 4 and their respective answers are being reproduced as under

“Q.1 It is in evidence against you that on 21.08.2008 at 08:30 PM at J-59, 2nd floor, Lajpat Nagar-III, New Delhi, you entered into the house of complainant and used criminal force upon her to outrage her modesty. It is in evidence against you that you used obscene words against complainant and threatened to kill her. What you have to say?”

Ans. It is incorrect. In fact, I was not in town on the date of alleged occurrence as I had gone to Panipat to visit my chacha

Q.2 It is in evidence against you as deposed by PW-1 Prerna that on 21.08.2008 around 08:00 PM, while she was alone at her house, you (working as driver in her house) came and inquired about her parents. As mother of PW-1 had gone out, she proceeded towards her balcony to look for her and while she was crossing the room, you hugged her from behind and forcibly touched her breast by putting your hand inside her clothes. She brushed you aside with a fists blow and screamed for help. After this, you let her go and she ran and locked herself in a room. She deposed that you came outside that room and threatened to kill her if she disclosed the incident to anyone. You then left and she came out of her room. She narrated the incident to her mother when she returned home and on the next day, a complaint was made against you by her which she sought to be proved as Ex.PW1/A. You were arrested in presence of PW-1 vide arrest memo Ex.PW1/B. She correctly identified you. What you have to say?”

Ans. It is incorrect. I have been falsely implicated by PW-1 in collusion with PW-2 and PW-4.

Q.3 It is in evidence against you as deposed by PW-2 Sh.Narinder Sharma that he ran an advertising agency in the name of Critique Communications Pvt. Ltd. where you



were employed as a driver. He deposed that on 22.08.2008 his daughter informed him at around 02:00 PM that you had misbehaved with her on 21.08.2008 at 08:00 PM when she was alone at home. He deposed that his daughter did not inform him of the incident as she was under fear of your threat to kill her. She further informed him that you had forcibly touched her breast and used bad words and also misbehaved with her in a bad manner. He deposed that he took his daughter to police station on 22.08.2008 where her statement was recorded as Ex.PW1/A. Upon directions of the police, he produced document regarding your employment along with your attendance register as Mark AR running into 33 pages, copy of your provident fund as mark 'X', statement of bank as Mark 'Y'. He also deposed that prior to the present case, you had also been booked in another case at PS situated in front of Nehru Place behind Bhairo temple in a case for outraging modesty of minor girl. He deposed that his daughter, at the time of incident was 14 years of age and studied in class 9th. He correctly identified you in the court. What you have to say?

Ans. It is incorrect. I have been falsely implicated by PW-1 in collusion with PW-2 and PW-4. I was not in town on the alleged date of the incident.

Q.4 It is in evidence against you as deposed by PW-3 ASI Krishan Kumar (Duty officer) that on 22.08.2008, FIR in the present matter was registered vide Ex.PW3/B on rukka Ex.PW3/A. What you have to say?

Ans. It is incorrect. The FIR has been ante-timed”.

7. If the other answers given by the accused are also perused the same would demonstrate that he has denied the allegations and has offered his explanation that he has been falsely implicated by PW-1 in collusion with (PW-2) & (PW-4). He has also stated that he was not in town on the alleged date of incident. With respect to the FIR, he stated



that the same has been anti-timed. He also stated that (PW-5) has manipulated and concocted the documents pertaining to the case. According to his further explanation, PW-6 has given evidence against him at the behest of PW-5 and the instant case is a false case registered against him because the prosecutrix feared that the accused would disclose about her clandestine affair with one Aman to her parents.

8. In view of the nature of evidence produced against the petitioner-accused it would be seen that the trial court has not committed any error while granting him an opportunity to record his statement under Section 313 of Cr.P.C. When there is absolutely no circumstances appearing against the petitioner, there may or may not be any requirement to examine the accused under Section 313 of Cr.P.C. However, in the instant case, the witnesses have spoken against the petitioner, therefore, it is for the trial court while passing the final judgment to scrutinize the veracity of the material and pass appropriate order. But it cannot be said that there is no material at all against the petitioner.

9. This Court has also perused the order dated 06.07.2019. The learned Magistrate while rejecting the prayer of the petitioner has rightly recorded that there is no requirement of appreciating the entire evidence at the stage of statement under Section 313 of Cr.P.C. If a statement under Section 313 of Cr.P.C. is recorded the same does not lead to any inference of conviction.

10. So far as the judgment relied upon by the learned counsel for the petitioner in the case of **Jai Prakash Tiwari (supra)** is concerned, in that case the Hon'ble Supreme Court was dealing with an appeal against conviction at the instance of the accused. In paragraph No. 27 of the said judgment, it has been held that if all the circumstances are bundled



together and a single opportunity is provided to the accused to explain himself, he may not be able to put forth a rational and intelligible explanation. Such exercises which defeat fair opportunity are nothing but empty formality. Non-fulfilment of the true spirit of Section 313 Cr.P.C. may ultimately cause grave prejudice to the accused and the Court may not have the benefit of all the necessary facts and circumstances to arrive at a fair conclusion. The Hon'ble Supreme Court in that case found that the trial court refused to weigh the evidence of *alibi*. The said aspect was also not independently examined by the High Court. It is under the aforesaid circumstances the Hon'ble Supreme Court has reiterated the legal position with respect to Section 313 of Cr.P.C. and has held that Section 313 of Cr.P.C. confers valuable rights upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21 of the Constitution.

11. Another decision relied upon by learned counsel for the petitioner in the case of *Shyam Sunder @ Pappu (supra)* is concerned, the same was against the judgment of conviction and sentence for the offence punishable under Sections 394/34 IPC. In that case it was argued by the appellants that a very important incriminating factor of identification of the appellants by one of the witnesses was not put to the appellants at the time of recording of the statement under Section 313 of Cr.P.C. and, therefore, an argument was made that on that ground alone the appellants were to be acquitted. This court noted the earlier pronouncement of the Hon'ble Supreme Court in the matter of *Janak Yadav (supra)* and a decision of the Division Bench of this Court in the case of *N. Dev Dass Singha v. State* in CRL.A. 647/2010 and has held that since the appellant



was acquitted on account of insufficiency of evidence, therefore, there was no necessity to record a supplementary statement of the appellant therein.

12. The decision in the case of *Meenakshi (supra)* of the High Court of Karnataka at Bangalore is concerned, in that case statement under Section 313 of Cr.P.C. was sought to be quashed under Section 482 of Cr.P.C. Certain guidelines have been framed therein. Many questions did not contain incriminating evidence against the accused. The questions were not properly articulated and they were framed in complex statement rendering it difficult for the accused to understand them. In paragraph no. 8 of the order passed by the High Court of Karnataka at Bengaluru, the following guidelines were given by the High Court to be adhered to while recording statement under section 313 of the Cr.P.C. Para 8 of the order passed by the High Court of Karnataka and Bengaluru in the foresaid case, is being reproduced as under:

“ 8. From the above discussions, the following guidelines are given :-

(i) Only the incriminatory evidence must be picked out from oral and documentary evidence.

(ii) The questions must be framed in a simple language, as far as possible in short sentences.

(iii) The attention of each accused must be drawn to the evidence adverse or against him/her.

(iv) Sometimes, a witness may give evidence as regards the collective overt act of two or more accused and in that event a single question may be framed, but each accused must be questioned individually, and their answers must be recorded separately.

(v) It is also possible that two or more witnesses may speak identically regarding the overt act of an accused.



In that event, the substance of their evidence may be put in a single question.

(vi) The attention of the accused must be drawn to the marked documents and material objects if they are incriminatory.

(vii) The accused must be questioned regarding various types of mahazars or panchanamas only if they contain incriminatory evidence.

(viii) Accused need not be questioned in regard to evidence given by the formal witnesses, for example, an engineer who has drawn the sketch of scene of occurrence, a police constable submitting the FIR to the Magistrate, a police constable carrying seized articles to FSL, a police officer who has only submitted the charge sheet without conducting investigation, etc., unless anything incriminatory is found in such evidence.

(ix) If there are two or more accused, it is not necessary to prepare as many sets of questionnaires as the number of accused are. It is enough to prepare a single questionnaire, but the question must be directed towards a particular accused individually or two or more accused collectively. When a question is framed pointing out collective overt act of two or more accused, the answer of each accused must be recorded separately one after another.

(x) By virtue of amendment brought to Cr.P.C, the trial court judges may take the assistance of the Public Prosecutors and the defence counsel for framing the questions.

(xi) In case the Public Prosecutor or the defence counsel submits a set of questions, the trial court judges must scrutinize and adopt them with or without modification.

(xii) The court should record the answer or explanation given by the accused and should not insist upon the accused to give answer in one word, 'false' or 'true'."



13. By the Punjab Reorganization Act, 1966, a common High Court of Punjab and Haryana was established for the reorganized State of Punjab, Haryana and Union Territory of Chandigarh. A separate High Court for the Union Territory of Delhi was established by the High Court by the Delhi High Court Act, 1966. The law in respect of practice and procedure of Punjab High Court was made applicable to the High Court of Delhi as per Section 7 of Delhi High Court Act, 1966. After 31.10.1966, the day when Delhi High Court came into existence, certain amendments to the rules were made and certain rules were framed by the Delhi High Court. With respect to practice in trial of criminal cases, Part E of instructions to criminal courts in Delhi, Delhi High Court Rules and Orders would be applicable. Rule 12, Part –D, Chapter-1 of Practice in trial of criminal cases indicates that after all the witnesses for the prosecution have been examined and before the accused is called on for his defence, the Court must examine the accused and question him generally on the case as required by Section 342 (Old Section) and new Section 313 for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him. It is further stated therein that an examination of the accused for that purpose can also be made at any earlier stage of the case but such examination at the conclusion of the prosecution evidence is mandatory. The manner in which statements of the accused person should be recorded are detailed in Chapter 13 of the instructions to criminal courts in Delhi. In Rule 9 of Chapter 13, it is required that the question put under Section 313 of Cr.P.C., must be confined to the points brought out in the evidence and should not be in the nature of cross-examination of the accused person. Rule 14 of Chapter 13 of instructions to criminal case in Delhi, provides for the



mode in which the examination of the accused person is recorded. It is stated therein that the questions put to the accused and the answer given by him should be distinctly and accurately recorded. It is further provided that the examination must be read over to the accused and made confirmable to what he declares to be the truth. The Magistrate or the Judge must then certify under his own hand that the examination was taken down in his presence and hearing, and that the record contains a full and true account of what was stated.

14. It is thus seen that the requirement under law as per Section 313 of Cr.P.C. is that the accused must be questioned separately about each material circumstance which is intended to be used against him. The question must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. If the questions put to the petitioner are carefully perused, the same would clearly demonstrate that the learned trial Judge tried to formulate single question with respect to the testimony of each witness. The entire material/evidence adduced by a particular witness has been bundled in one question. If for example, the question No.2 is scrutinized, the same would reveal that the learned court below put to the petitioner that PW1 was alone at her residence and on that date the petitioner was working as a driver. The petitioner enquired about the parents of PW1. It is stated in the same question that the mother of PW1 had gone out and PW1 proceeded towards her balcony. When she was crossing room, the petitioner hugged her from behind and forcibly touched her breast by putting his hands inside her clothes. It is stated in the same question that she brushed him aside with her fists blow and she screamed for help. Thereafter, the accused allowed her to go and run away. PW1 locked



herself in a room. The petitioner threatened to kill her, if she discloses the incident to anyone. She then narrated the entire incidence to her mother when she returned from outside and then the complaint was made against the petitioner which was sought to be proved as Ex. PW1/A. The petitioner was arrested in the presence of PW-1. She also identified him. Having said all this, the question asked to the petitioner was as to what he had to say. If this entire question is examined, it can be seen that the same does not meet the requirement under Section 313 of the Cr.P.C. The same apparently is not couched in a way as required under the said provision. It is seen in the instant case that the accused was a driver. He cannot be expected to understand complex question and to answer them fairly. He is bound to be confused. Examination of accused is not a mere formality but it has a great use. It may have a fair nexus with the defence that the accused may choose to bring. Each and every circumstance will have nexus with the fairness of the trial. It is seen that it is not only long but confusing and rolled up questions were put to accused. The same have caused substantial prejudice to him. The question normally should be in a chronological order of events. Clear words and exact material against him has to be brought to the accused which he is expected to meet. Combination of certain circumstances in one question should be avoided. No Straight Jacket formula can be evolved, it would depend on the facts of each case as to what should be the nature of questions to the put to the accused.

15. In view of the aforesaid, the instant petition is allowed, the impugned order dated 16.07.2022 is set aside. The earlier statement of petitioner recorded under Section 313 of the Cr.P.C. are set aside. The



trial court is directed to record fresh statement of accused, in accordance with the mandate of Section 313 of the Cr.P.C. as indicated above.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 08, 2022

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