



CRM-M-51359-2023 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Decided on: 16.10.2024

1. CRM-M-51359-2023

Surinder Pal Singh @ Pehalwan ...Petitioner

Versus

State of Punjab ...Respondent

2. CRM-M-62274 of 2023

Tarundeep Singh Sangha ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. SPS Sidhu, Advocate,  
for the petitioner in CRM-M-51359-2023.

Mr. Navneet Jindal, Advocate  
for the petitioner in CRM-M-62274-2023.

Mr. Akshay Kumar, AAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                                  | Sections                                                                                                      |
|---------|------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 6       | 08.06.2017 | Vigilance Bureau,<br>F.S.1, Punjab at<br>Mohali | 420, 465, 467, 468, 471, 506, 120-<br>B IPC read with Section 13 (1) (d)<br>read with Section 13(2) of PC Act |

1. Aggrieved by the framing of a common set of questions under Section 313 CrPC for all the accused in the above captioned FIR, the petitioner, who is one of such accused, has come up before this Court under Section 482 CrPC.

2. I have heard counsel for the parties and gone through the record, and its analysis would lead to the following outcome:



3. Counsel for the petitioner argued that the mandate of Section 313 CrPC is that a separate set of questions containing the evidence against the accused has been given to each of the accused, whereas the trial Court has supplied the same set of questions to all the accused irrespective of the evidence against them.

4. State counsel opposes such an application and has stated that every statement under Section 313 CrPC contains 6085 pages and separate statement under section 313 CrPC has been recorded/supplied of all the accused. State counsel further submits that in case some of the questions are not about the said accused, they may write that in their answer that it does not pertain against them, but considering the voluminous nature of the record containing 15000 pages and colossal size of 313 statement of 6085 pages and charge-sheet of 8000 pages and total 1350 documents, it's not a trial but marathon.

5. It would be appropriate to extract S. 351 of BNSS, 2023, which is successor to S. 313 CrPC, 1973, and is verbatim the same, and reads as follows:

BNSS 351. (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.

6. It would now be necessary to refer to the judicial precedents on the interpretation of these provisions and how the Courts have read it.

7. In *Tara Singh v State*, AIR 1951 AIR SC 441, a four-judge bench of Hon'ble Supreme Court holds,



[21]. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him." Now it is evident that when the Sessions Court is required to make the examination under this section the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that Court. It is not, therefore, enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them...

[28] ...It may be that in a given case cross examination would be futile, for, it would only elicit a denial, whereas a statement made by the accused which the Code directs should be used as evidence, for or against him, might be of great value. In any event the Code directs that the accused shall be afforded these opportunities and an omission to do so vitiates the trial if prejudice occurs or is likely to occur.

8. In *Hate Singh Bhagat Singh v. State of Madhya Bharat*, AIR 1953 SC 468, a three-judge bench of Hon'ble Supreme Court, in Para 26, holds, "We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can."

9. In *Ajmer Singh v. The State of Punjab*, AIR 1953 SC 76, a three-judge bench of Hon'ble Supreme Court holds,

[8]. ...We are of the opinion that when the Sessions Judge is required by that Section to make the examination of the accused, his duty is not discharged by merely reading over the questions and answer to the accused put in the committing magistrate's court and by asking him whether he has to say anything about them. It is not sufficient compliance with the Section to generally ask the accused that having heard the prosecution evidence what he has to say about it. The accused must be questioned separately about each material circumstance which is intended to be used against him...

10. In *Rama Shankar Singh v. State of W.B.*, AIR 1962 SC 1239, [Para 14], a three-Judge bench of Hon'ble Supreme Court holds,

[14]. ...The object of the section is to afford to the accused an opportunity of showing that the circumstance relied upon by the prosecution which may be prima facie against him, is not true or is consistent with his innocence. The opportunity must be real and adequate. Questions must be so framed as to give to the accused clear notice of the circumstances relied upon by the prosecution, and must give him an opportunity to render such explanation as he can of that circumstance. Each question must be so framed that the accused may be able to understand it and to appreciate what use the prosecution desires to make of the evidence against him. Examination of the accused under Section 342 is not intended to be an idle formality, it has to be carried out in the



interest of justice and fair- play to the accused : by a slipshod, examination which is the result of imperfect appreciation of the evidence, idleness or negligence the position of the accused cannot be permitted to be made more difficult than what it is in a trial for an offence..."

11. In *Jai Dev v. State of Punjab*, AIR 1963 SC 612, a three-Judge Bench of Hon'ble Supreme Court, in para 21, holds,

[21]. ...In exercising its powers under Section 342, the Court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the Court should put to the accused person detailed questions which may amount to his cross- examination. The ultimate test in determining whether or not the accused has been fairly examined under section 342 would be to enquire whether, having regard to all the question put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him.

12. In *Makan Jivan v State of Gujarat*, (1971) 3 SCC 297, Hon'ble Supreme Court, in Para 15, holds, "The trial court had a duty to put to each of the accused the various circumstances appearing against them and further put the prosecution case generally for the purpose of affording the accused an opportunity to explain the circumstances appearing against them.

13. In *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973(2) SCC 793, a three-Judge Bench of Hon'ble Supreme Court holds,

[16]. ...It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed."

14. In *State of Punjab v Sawaran Singh*, *State of Punjab v Sawaran Singh*, (2005) 6 SCC 101, Hon'ble Supreme Court holds, para-10.

"The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give



his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to accused bundling so many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial."

15. In *Ajay Singh Vs. State of Maharashtra*, MANU/SC/2617/2007, [2007 INSC 690], Hon'ble Supreme Court holds,

[12]. The word 'generally' in Sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should 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 so that he may be able to give such explanation as he desires to give.

[13]. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

16. In *Asraf Ali v. State of Assam*, (2008) 16 SCC 328, Hon'ble Supreme Court holds,



21."Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced."

17. In Ganesh Gogoi v. State of Assam, (2009) 7 SCC 404, Hon'ble Supreme Court holds,

20. the provisions of Section 313 Cr.P.C. are not meant to nail the accused to his disadvantage but are meant for his benefit. The provisions are based on the salutary principles of natural justice and the maxim "audi alteram partem" has been enshrined in them. Therefore, an examination under Section 313 Cr.P.C. has to be of utmost fairness.

18. In Sanatan Naskar v State of West Bengal, 2010(3) Crimes 201 (SC), (2010) 8 SCC 249 Hon'ble Supreme Court holds,

21-22."The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating



piece of evidence to the accused and grant him an opportunity to answer and explain...

19. In Mannu Sao v. State of Bihar, (2010) 12 SCC 310, Hon'ble Supreme Court in Para 8, holds, "The option lies with the accused to maintain silence coupled with simplicitor denial or in the alternative to explain his version and reasons, for his alleged involvement in the commission of crime."

20. In Raj Kumar v. State (NCT of Delhi), 2023 SCC online SC 609, Hon'ble Supreme Court holds,

[17]. The law consistently laid down by this Court can be summarised as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

21. In Mohan Singh v. Prem Singh & Anr., (2002) 10 SCC 236, Hon'ble Supreme Court



holds,

30. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction.

22. In Dehal Singh v. State of H.P., (2010) 9 SCC 85, [Para -23], Hon'ble Supreme Court holds,

Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act.

23. In Rafiq Ahmed @ Rafi v. State of U.P., (2011) 8 SCC 300 , [Para \_], Hon'ble Supreme Court holds, para 67 "It is true that the statement under Section 313 CrPC cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of events."

24. In Sujit Biswas v. State of Assam, (2013) 12 SCC 406, Hon'ble Supreme Court holds,

[17]. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself.

25. In the light of the judicial precedents mentioned above, and the legislative objective of S. 313 CrPC, 1973, and its new Avatar S. 351 BNSS, 2023 explicitly mandates that the incriminating circumstances appearing against each accused must be separately put to the said accused. Suppose the evidence that did not pertain to the said accused is put. In that case, any answer to such a question shall not be read against such an accused because it would exceed the statutory obligation, where the evidence appearing against an accused must be put and not the entire evidence or the evidence appearing against the other accused. Simply because the evidence is exhaustive, it cannot be a



justification for a shortcut or a straightforward approach for any Court to put entire evidence to every accused because, in such a situation, the possibility cannot be ruled out that the entire evidence creates confusion or creates a dilemma in the accused to explain or not to explain. Thus, the standard questionnaire to all the accused meets neither the legislative intention nor the Supreme Court's interpretation.

26. Consequently, the present petition is allowed, and the accused shall be supplied with a statement specific to them under section 313 CrPC, 1973/ S. 351 BNSS, 2023. If the accused still finds any question not pertaining to them, they may either keep quiet or explicitly state such a stand. However, if they opt to give an answer to any evidence that did not pertain to them, such answer shall not be read in trial or in any other case.

27. A report has also been received from the concerned Court that a direction to complete the trial within six months is causing extreme hardship because of the massive nature of the pages.

28. Given the above, the present petition is disposed of. This Court understands that it is impossible to conclude the trial within a period of six months, therefore, said direction be read as the efforts be made to conclude expeditiously but not later than December 31, 2025.

29. **Petitions allowed in aforesaid terms.** Pending applications, if any, stand closed and disposed of.

(ANOOP CHITKARA)  
JUDGE

16.10.2024  
Jyoti-II / Sonia Puri

Whether speaking/reasoned: Yes  
Whether reportable: YES