

(2018) 09 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Criminal Revision No.20 Of 2013 & Ia No. 08 Of 2013

Mohit Gupta And Ors. @APPELLANT@Hash State Of Jammu & Kashmir

Date of Decision : 07-09-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 342, 354, 363, 376, 511
Code of Criminal Procedure 1973, — Section 342

Citation : (2018) 09 J&K CK 0011

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This criminal revision has been filed against the order dated 20.03.2013 of learned Additional Sessions Judge, Jammu, arising out of FIR

No.165 of 2000 registered with Police Station Pacca Danga, Jammu, for commission of offences punishable under Sections 363, 342, 354, 376 & 511

RPC.

2. Petitioners in the memo of criminal revision have stated that the trial Court by virtue of order dated 20.03.2013 has again directed recording of the

additional statements of the petitioners/accused under Section 342 Cr. P. C. It is stated that the said order is against the law and facts, so the same is

not sustainable. It is stated that the power exercised by the trial Court while passing the impugned order is contrary to the provisions of Section 342

Cr. P. C., as the statement can be recorded only once. It is further stated that the trial Court has no power to fill the lacunas left by the prosecution

and the trial Court has misconstrued the aforesaid provisions while passing the order impugned.

3. On the other hand, learned counsel for the respondent-State submits that the purpose of recording again the statements under Section 342 Cr.P.C.

is to put incriminating circumstances to the accused, so that he may not be prejudice in his defence.

4. I have considered the rival contentions and the arguments of learned counsel for the parties.Â

5. From the perusal of the impugned order, it reveals that during the course of final arguments, the trial Court has come to the conclusion that certain incriminating circumstances, which has come in the evidence of prosecutrix and PW Balwant Singh, Tehsildar, pertaining to the identification of the accused have not been put to them: so in order to seek their explanation the trial Court again directed recording of the additional statements of the petitioners/accused under Section 342 Cr.P.C.

6. The operative part of the impugned order dated 20.03.2013, reads as under:-
â??From the close scrutiny of the statement of prosecutrix, it is apparent that prosecutrix in her cross examination deposed that she has identified the accused in an identification parade conducted by a Magistrate at Police Station and she had also admitted her signatures over the â??Identification Parade Memo? in the file. Similarly PW Balwant Singh, the then Naib Tehsildar, Executive Magistrate, Jammu has proved his handwriting and signatures over the said memo exhibited as EXPWBS/1,2,3 in the file conducted by him at police Station, Pacca Danga on 24.07.2000 with regard to the identification of accused by the person who put signatures over the said memo in his presence.

Â Undisputedly, the aforesaid circumstances in the evidence of two prosecutrix witnesses mentioned above were required to be put to the accused at the time of recording their statements under Section 342 Cr.P.CÂ in order to seek their explanation but having not done so, I thing, keeping in view the mandate of aforesaid section this Court is not powerless at this stage to put relevant questions to the accused relating to their identification in the course of their further examinationÂ and certainly it will not cause any prejudice to them because apartÂ from having a right to tender explanation to the incriminating circumstances against them in the evidence of above mentioned two prosecution witnesses, they can also have an option to lead defence evidence in rebuttal if they chose to do so.

Â Viewed thus, the objection raised by the learned senior counsel for the accused is rejected and file to come up for recording further statement of

accused under Section 342 Cr.P.C on 5.4.2013.â??

7. Section 342 of Cr.P.C. reads as under:-

â??Power to examine the accused (I) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him,

the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary,

and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is

called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court

may draw such inference from such refusal or answers as it thinks just.

(3) 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. [(4) No oath shall be administered to the accused

when he is examined under sub Section(1)].

8. There is no dispute between the parties that any material evidence, if not put to an accused while being examined under Section 342 Cr.P.C. would

cause him prejudice and vitiate trial. This position is otherwise fairly settled. It has time and again been emphasized that examination of an accused

under Section 342 Cr.P.C. is very important aspect of trial and any material which is to be used against the accused for recording a finding against

him is required to be put to him so that he is given an opportunity to explain the same. There is also no scope of much debate that any circumstance or

material when not put to the accused at the trial would prejudice the accused as well prosecution, because such a material or circumstance cannot be

taken into consideration for recording any finding against accused or in favour of prosecution.Â Such evidence is required to be excluded from

consideration to avoid any prejudice to an accused person. Section 342 Cr.P.C. is mandatory in nature and mandates that any circumstances

appearing in the evidence against an accused is required to be put to him, enabling him to explain such circumstances. The scope and object of

examination of the accused under section 342 Cr.P.C. 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 them.Â

9. Section 342Â Cr.P.C. consists of two parts. The first confers discretion ("may") to the Court to question the accused at "any stage" of an inquiry

or trial without previously warning him. Under this section the Court is required to question him generally on the case after the witnesses for the

prosecution have been examined and before he is called for his defense. The second part is mandatory and imposes upon the Court a duty to examine

the accused at the close of the prosecution case, to give him an opportunity to explain any incriminating circumstances appearing against him in the

evidence and to state, whatever he wishes to, in his defense. He is not bound to answer the questions. Under Sub-section (3) the answers given by the

accused may be taken into consideration in the inquiry or trial. His statement is material upon which the Court may act, and which may prove his

innocence. Under Sub-section (4) no oath is administered to him. The reason is that when he is examined under the provision, he is not a witness.Â

10. Section 540 empowers the Court to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or

recall and re-examine any person already examined, for "the just decision" in a case. The same could be after the examination of the accused under

Section 342. In the course of evidence so recorded, adverse materials or circumstances may be shown which would have to be put to the accused. It

is possible that the materials adduced before the Court, pursuant to orders under Section 540, may contain some adverse circumstances which mayÂ

have not been put against the accused when he was examined, after conclusion of the prosecution evidence. Therefore, it would be idle to contend

that Section 342 Cr.P.C. deals only with one point in time at the trial stage and the Court cannot call the accused to answer the incriminating

circumstances again. There is no implied prohibition in calling upon the accused to again answer questions, which have been left by way inadvertently

or oversight.Â

11. In this case, once the statements of accused have been recorded on 26.11.2005 under section 342 Cr.P.C, thereafter even defense witnesses

were produced; but at the time of argument trial Court found that some incriminating circumstances stated by PWS Prosecutrix and PW Balwant

Singh Tehsildar with regard to identification of accused were not put to accused while recording their statements u/s 342 Cr.P.C. on 26.11.2005, to

which counsel for accused raised objections. Court by way of detailed order impugned overruled the objections and posted the file for further

recording of the statements of accused under section 342 Cr.P.C. in this regard. I have accordingly gone through the statements of prosecutrix, PW

Balwant Singh and statements of petitioners/accused which were already recorded under Section 342 Cr.P.C. Apparently, incriminating material

which had come in the evidence of prosecutrix and PW Balwant Singh, Tehsildar pertaining to identification were not put to the petitioners/accused.

12. There is no bar in the Code of Criminal Procedure that, Court if comes to the conclusion that some incriminating material were not put to the

accused person while recording the statement under Section 342 Cr.P.C., it cannot call the accused again for putting the left over incriminating

material to accused for getting their explanation.

In view of the above, I find no ground to interfere with the order of learned Additional Sessions Judge, Jammu. Therefore, the instant criminal revision

is, accordingly, dismissed. Record of Court below be sent back with direction to decide the case expeditiously.