

(2013) 11 JH CK 0086

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 232 of 2013

Rameshwar Sao and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2013) 11 JH CK 0086

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant;

Judgement

P.P. Bhatt, J.—Petitioners by way of filing the present writ petition prayed for quashing/setting aside the statement taken u/s 313 Cr.P.C. dated 16-09-2013 by the learned Additional Session Judge, F.T.C., IV, Dhanbad on the ground that when these petitioners have already been examined under sec. 313 Cr.P.C. on 08-07-2010, examination of the accused u/s. 313 second time on 16-09-2013 is completely abuse of the process of the court. The short fact of the case is that the petitioners were made accused in connection with Topchanchi (Hariharpur) P.S. case NO. 102 of 2000 u/s 302/201 and 34 I.P.C. After commitment of the case and the examination of the prosecution witness the petitioners were examined u/s 313 Cr.P.C. on 08-07-2010. After closing of the evidence and conclusion of the argument the petitioners were again examined u/s. 313 on 16-09-2013.

2. The learned counsel for the petitioners submitted that the examination of the accused persons for the second time is without any valid reason and only with a view to fill up the lacuna of the prosecution witnesses. He further submitted that the examination of the accused u/s. 313 Cr.P.C. cannot be done in a manner which can be said to be a cross examination of the accused.

The learned counsel for the petitioners to support his submission referred to and

relied upon the case of Ranjan Dwivedi and Another Vs. C.B.I.,

3. On the other hand, the learned counsel for the respondents submitted that the petitioners have not disclosed the fact that by second examination u/s. 313 of Cr.P.C. what prejudice has been caused to the petitioners. He further submitted that the petitioners' objection with regard to the examination of accused has been turned down by the learned court below by a reasoned order. The learned counsel for the respondents also referred to and relied upon decisions reported in case of Shobhit Chamar and Another Vs. State of Bihar, , Rusi Biswal Vs. Nakhyatramalini Devi and Others, , Ajit Kumar Chowdhry Vs. The State of Bihar, and Ashraf Ali Vs. The State of Assam.

4. Before going into the merits of the case I would like to quote the provisions given u/s 313 of Cr.P.C. Section 313 of Cr.P.C. reads as follows:-

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 question 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;

5. From bare perusal of the aforesaid provision, it appears that under clause (1) (b) the word "shall" is used and as such is a mandatory clause and it provides duty to the court to question the accused regarding all the incriminating materials against him, the violation or any lapse or omission by the court can lead to irreversible consequences, despite existence of materials which may be incriminating. But under clause (1)(a) there appears the word "may at any stage" and as such it gives an option to the court to examine the accused at any stage for enabling the accused personally to explain any circumstances appearing in the evidence against him. The legislature, therefore, does not put any bar for examination of the accused second time u/s. 313 of Cr.P.C. and empowers the court under clause (1)(a) to put such question as the court considers necessary.

6. At the time of argument the learned counsel for the petitioners pointed out upon query raised by this court that an application was submitted by the accused person opposing examination of accused second time u/s. 313 and the said application was rejected by the court below. The said order was never challenged by way of filing appropriate proceedings. I have also perused the judgment cited by the petitioners. In this said judgment also, the learned Single judge of Delhi High court hold that there is no implied prohibition in calling upon the accused to again answer questions. The Only suggestion given by the Delhi High Court is that the power to call the accused to answer questions more than once, after the conclusion of prosecution evidence should not be used in a routine or mechanical

manner. In the case in hand the learned court below while rejecting the said application has assigned laudable reasons require for recording of further statement of accused which appears to be in the interest of accused persons hence the judgment cited by the learned counsel for the petitioners does not help the case of the petitioners.

7. Now on perusal of the various decision cited by the learned counsel for the respondents, it appears that in the case of Shobhit Chamar and Another Vs. State of Bihar, it is held that the challenge to the conviction based on non-compliance of Section 313 Cr.P.C. first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them. In the case of Rusi Biswal Vs. Nakhyatramalini Devi and Others, It is held that the section is wide in its language and does not limit the power of the Court to examine the accused at any particular stage. The Court can examine him as often as it thinks it necessary to do so, to enable the accused person to explain any circumstances appearing against him in the evidence, the object of the section being to see whether the accused can give an innocent explanation of the facts spoken to against him. There is nothing in the language of the Section which would prevent the Court from examining the accused even after the defence evidence has been recorded. In the case of Ajit Kumar Chowdhry Vs. The State of Bihar, it was held that omission in complying with S. 342, Cr.P.C. (corresponding to Sec. 313 of the amended Act) does not necessarily vitiate the trial. Unless injustice results from an irregularity in complying with S. 342, interference on this ground would not be justified.

8. The judgment cited by the learned counsel for the petitioners does not help to the petitioners' case. As discussed above in all the aforesaid judgment it is held that when no prejudice is caused to accused for compliance of the provision contained in Section 313 of Cr.P.C. then it cannot be challenged. In view of provision contained in Section - 313(1)(a) of Cr.P.C. the trial court may examine the accused second time at any stage of trial, if the trial court think that it is necessary for the disposal of the case.

9. In view of above position the petitioners are required to show as to what prejudice is likely to be caused on account of recording of further statement again. It appears that in the instant case the petitioners are not in a position to show as to what prejudice is likely to be caused on account of recording of further statement of accused again. Under the circumstances the submission made by the learned counsel for the petitioners cannot be accepted. Moreover it also appears that the petitioners have not stated facts regarding filing of an application opposing recording of statement of accused and reason order passed thereon by the court. Thus present petition is filed by suppressing material fact and therefore on this count also the same deserves to be rejected. For the reasons as aforesaid, writ dismissed.