

(2010) 12 SHI CK 0491
In the High Court Of Himachal Pradesh
Case No : Cr.A No. 52 of 2001

State of H.P

APPELLANT

Vs

Kanwar Singh Rawat and Others

RESPONDENT

Date of Decision : 18-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2010) 12 SHI CK 0491

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Judgement

Surjit Singh, J.—While going through the record, we find that examination of the accused-Respondents, u/s 313 of the Code of Criminal Procedure, has been recorded in a manner that it makes no head or tail. Therefore, it was quite difficult, if not impossible, for the accused-Respondents to understand what was the case against them and how should they be explaining the same. Questions put to the Respondents are not in proper sequence, because of which the Respondents can take the plea, if convicted, that they had not been afforded effective opportunity to explain the incriminating circumstances appearing against them in the prosecution evidence.

2. Section 313 of the Code of Criminal Procedure is an enabling provision. The object is to enable the accused to explain every circumstance appearing against him, in prosecution evidence. Circumstances are required to be put in the form of questions, in proper sequence, and when questioning is not in proper sequence that is bound to create confusion in the mind of any person, leave alone a person standing criminal trial, who is supposed to be under stress.

3. Prosecution's story, in the present case, is that applications were moved in the name of private land owners by forest lessees to the forest officials, for grant of permission to fell trees, standing on such private land. Those applications were marked by the forest officials to the revenue officials, for carrying out demarcation. On the basis of demarcation given by the revenue officials, trees

were to be marked by forest officials, on the land shown as private land of the applicants/land owners. Allegation is that trees were marked on Government land, under the cover of marking on private land and this was done in pursuance of a conspiracy hatched by officials of Forest Department, Revenue Department, private land owners and forest lessees.

4. The trial Court has examined the accused Respondents, u/s 313 of the Code of Criminal Procedure, putting questions to them not in the proper sequence. For example, examination of the accused Respondents starts with the question regarding seizure of some documents. The examination is based on seriatim of the witnesses, examined by the prosecution, ignoring the sequence of events, as alleged and proved by the prosecution. Not only this, some of the questions read that witnesses mentioned therein have proved given documents. However, it is not specified what is the substance of those documents or what fact or circumstance is proved/sought to be proved (by the prosecution) by such documents.

5. We are of the considered view that in case we dispose of the appeal, on the basis of the record, including examination of the accused-Respondents as it is on record and ultimately hold the Respondents guilty, the judgment would be liable to be set aside by our superior Court, on this ground alone that the accused-Respondents had not been properly examined, u/s 313 of the Code of Criminal Procedure and that improper examination amounted to denial of opportunity to explain away the circumstances appearing against them, in the prosecution evidence.

6. In view of the abovestated position, appeal is accepted, judgment of the trial Court is set aside and the case is remanded to the trial Court, with a direction to examine the accused-Respondents afresh, u/s 313 of the Code of Criminal Procedure, in accordance with the aforesaid observations and the requirement of law and also in such a manner that the object of the provision of Section 313 of the Code of Criminal Procedure, is achieved and to dispose of the case afresh.

Appeal stands disposed of. Parties are directed to appear before the trial Court on 6th January, 2011.