

Paper presentation on Section 313 of Criminal Procedure Code

**Section 313 of Criminal Procedure Code: Power to examine the accused.*

Object and scope:

The scope of the section 313 Cr.P.C is based on the Principles of Natural Justice “Audi Alteram Partem” which means that no one should be condemned unheard.

- The examination under Section 313 Cr.P.C. enables the accused to explain case against him. The explanation to have bearing on guilt or innocence of accused.
- The object of examination of the accused under section 313 Cr.P.C. as emphasised in **Sanatan Naskar & Another vs. State of West Bengal** AIR 2010 SC 3507 is that to establish a direct dialogue between the court and the accused i.e. to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain them.
- To test the veracity of the prosecution case. The examination of the accused is not a mere formality, the questions put to the accused and answers given by him, have great use.
- The scope of section 313 of the Cr.P.C. is wide and is not a mere formality. The object of recording the statement of the accused under section 313, Cr.P.C. 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.

The method of examination of the accused under section 313

Cr.p.c: was stated in **Dharnidhar v. State of U.P. & Others** 2010 AIR SCW 5658, that the court held that the proper methodology to be adopted by the court for recording the statement of the accused under section 313,

Cr.P.C., is to invite attention of the accused to the incriminating circumstances and evidence and invite his explanation. In other words, it

provides an opportunity to an accused to tell the court as to what is the truth and what is his defence.

The section 313 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 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 .

Examination of Accused:

The examination of accused under section 313 Cr.P.C in case of Summons Case and Warrant Case is dealt under section 313 (1)(b) proviso which states 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 section 313, Cr.P.C. In **Warrant Cases**, generally the examination of the accused under section 313 Cr.PC cannot be dispensed. It is mandatory rule that every judge should examine the accused. But when there is exceptional circumstance of undue hardship and large expenses etc., the general rule of personal presence can be dispensed the same view was laid by the Apex court

in K.Anbazhagan Vs. Supdt. Of Police AIR 2004 SC 524 and in Basavaraj R. Patil v. State of Collector AIR 2000 SC 3214,

“ the Apex Court also has held that as a general rule, it is necessary that in all cases the accused must answer the questions put to him under section 313(1)(b) by persons remaining present in the court. However, if remaining accused are present involves undue hardship and large expense the court can dispense such examination even in warrant cases after adopting a measure to comply with the requirements of section 313, Cr.P.C. in a substantial manner.”

Important points while conducting examination under section 313, Cr.P.C.:

The examination of accused under this section is mandatory in nature. This opportunity of examination under section 313 given to the accused, is part of a fair trial.

- ✓ The examination shall be after the prosecution evidence is closed, in order to provide an opportunity to the accused.

- ✓ The questioning the accused must be fair and framed in a form which an ignorant and illiterate person may be able to understand and give rational answers.
- ✓ In **Tara Singh v. State of Punjab** AIR 1951 SC 44 held that for section 313 Cr.P.C. examination, it is required that each material circumstance should be

put in simple and separately in a way that an illiterate person can appreciate and understand.

- ✓ It is imperative that each and every question must be put to the accused separately and their answers must also be recorded separately.
- ✓ The courts may rely on a portion of the statement of the accused and find him guilty in consideration of other evidence against him led by the prosecution. But such statement of under section 313, Cr.P.C. should not be considered in isolation but in conjunction with the prosecution evidence.
- ✓ Conviction cannot be based merely on the statement of accused under section 313, Cr.P.C. Conviction of the accused cannot be based merely on the statement made under section 313, Cr.P.C. as it cannot be regarded as a substantive piece of evidence.
- ✓ *In **Ram Naresh and Others v. State of Chhattisgarh** AIR 2012 SC 1357, **Munish Mubar v. State of Haryana** AIR 2013 SC 912 and **Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan** AIR 2013 SC 3150, the court held that*

“the accused has a duty to furnish an explanation in his statements under section 313, Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under section 313, Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.”

- ✓ An adverse inference can be taken against the accused only and if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same. But statement under section 313 not evidence.
- ✓ **In Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan;** AIR 2013SC 3150, the court observed that no matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the

accused and seek his explanation as regards the incriminating material surfaced against him.

- ✓ The court also observed that the circumstances which are not put to the accused in his examination under section 313, Cr.P.C., cannot be used against him and have to be excluded from consideration.
- ✓ Whether no answer/evasive or untrustworthy answer by the accused under section 313, Cr.P.C. justifies his conviction on this score.

“ In Nagaraj v. State (Tamil Nadu); (2015) 4 SCC 739, the Supreme Court observed that in the impugned judgement the High Court has found the answers of the accused under section 313, Cr.P.C. evasive and untrustworthy and held this to be another factor indicating his guilt.”

Conclusion:-

- Therefore, in all inquiries and trials Section 313 Cr.P.C. purpose is to give an opportunity to the accused to explain the incriminating material against him in evidence tendered by prosecution. Hence, examination of accused under section 313 Cr.P.c. is not mere formality. The Supreme Court clarified the legal position of section 313 Cr.P.C.
- **In Parsuram Pandey v. State of Bihar** (2004) 13 SCC 18 that “section 313, Cr.P.C. is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution.”
- And in **Asraf Ali v. State of Assam (2008) 16 SCC 328** “it is intended to benefit the accused and by way of its corollary, it benefits the court also in reaching the final conclusion and its intention is not to nail the accused

but to comply with the most salutary and fundamental principle of natural justice ***i.e. audi alteram partem.***”

Submitted by

***B. Jyotsna L.L.M
Junior Civil Judge
Amadalavalasa
Srikakulam***