

## EXAMINATION OF THE ACCUSED UNDER SECTION 313 Cr.P.C

### **Recording of examination of Accused :**

#### **As per Section 313 Criminal Procedure Code, 1973.:**

- 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 the help of prosecutor and defence counsel in preparing relevant questions which are to be put to the accused and the court may permit him filing of written statement by the accused as sufficient compliance of this section.

**The scope and object of Section 313 Cr.P.C :**

Section 313 Cr.P.C 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 each material circumstance appearing in 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 the trial ,if it is shown that the accused was prejudiced. The object of Section 313 Cr.P.C is to establish a direct dialogue between the court and the accused and if a point in the evidence is important against the accused and the conviction is intended to based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining and no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. The provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.

Even if the prosecution evidence is weak, court has to put incriminating circumstance to the accused and before recording statement of accused under sec 313 cr.p.c. the trial court is not expected to evaluate the evidence for the purpose of deciding whether or not he should question the accused. The law is equally well settled that the statement of the accused by it self is not evidence and the prosecution case is got to be provided by the evidence to be led. The statement of the accused may only add strength to the evidence adduced by the prosecution establishing the prosecution case. Even if it is assumed that the accused had made false statements while examined under section 313 Cr.P.C the law is well settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to established in order to succeed.

In Tanviben Pankaj Kumar Divetia Vs. State of Gujarath

(1997 ) 7 SCC 156

wherein it was held that the conviction of the accused is vitiated on account of not drawing the attention of the accused specifically to the incriminating facts alleged by the prosecution witnesses.

**Purpose of examination of the Accused U/sec . 313 Cr.P.C :**

In the opinion of the Hon'ble apex court the answers to the questions may sometimes be flat denial or outright repudiation of those circumstances and in certain cases the accused would offer some explanation to the incriminating circumstances. In very rare instances the accused even admit or own incriminating circumstance adduced against him, perhaps for the purpose of adopting legally recognized defence. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case.

The word " may" in clause (a) of subsection (1) in section 313 Cr.P.C indicates that even if the court does not put any question under that clause the accused cannot rise any grievance for it. But if the court fails to put the needed question under clause (b) subsection it would result in the handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him.

The expression " any circumstances appearing in evidence" means under section 313 Cr.P.C the court invites attention of the accused to the entire evidence of the prosecution and entire contents of all the documents relied upon by the prosecution including F.I.R., the contents of admissible confession statements and contents of dying declaration also have to be confronted to the accused in 313 Cr.P.C examination. Because those confessional statements and dying

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declaration are direct circumstances which incriminate the accused which was held in Maruthy College of Engineering and technology Vs. State of A.P, represented by public prosecutor, High court of A.P. , Hyderabad 2007 CRLJ 397.

The entire evidence of the each witness should not be covered by single question to be put to the accused who was asked to explain the same. It is the duty of the trial courts presiding officers to examine the accused properly and fairly bringing home to his mind in simple and clear language the exact case he has to meet and each material point that is sought to be made against him and of affording him a chance to explain it as he can and if he so desires.

Some case laws on examination of the accused under sec 313 cr.p.c.

1 .Brajendra Singh Vs State of M.P

( 2012 (2) SCC (Crl) 409)

wherin it was held by the Hon'ble Supreme court that Statement of an accused recorded when he was examined U/sec 313 Cr.P.C, can be used as evidence in so far as it supports the prosecution case when it is in line with the prosecution case.

2. R.Palanisamy Vs. State by Inspector of Police on 23<sup>rd</sup> April 2013

Wherein it was held by Hon'ble High Court of Madras “ that the term “Here before condemn “ which is the simplest meaning of the principle ‘Audi Alteram Partem’, a component of principles of natural Justice and is the idea behind examination of the accused U/sec 313 Cr.P.C examination is that an opportunity is given to the accused to give his explanation, his view as to the incriminating details, aspects, circumstances appearing against him in prosecution evidence before it being used against him and could be considered along with inculpatory information in the prosecution evidence.

Section 313 Cr.P.C., contemplates 2 types of examination of the accused. Actually, it is a dialogue between the accused and the court. Under Section 313(1)(a), at any stage of the case, the trial court 'may' examine the accused when it deem it necessary. So, it is discretionary and is not mandatory. However, under Section 313(1) (b), after the closure of the prosecution evidence, the trial court 'shall' examine the accused. Thus, it is mandatory. But such examination must be with reference to incriminating, in-culpatory statement, details and circumstances in the prosecution evidence available as against the accused. So, when no incriminating details or circumstance, information implicating the accused is available in the prosecution evidence, there is no occasion for the court to examine the accused under Section 313 (1) (b) Cr.P.C. Factual aspects of the case unaccompanied by any incriminating aspects or uncontraverted matters need not be put to the accused under Section 313 (1) (b) Cr.P.C.

### 3. Gian chand and others Vs. State of Haryana

AIR 2013 SC 3395

Wherein it was held by the Hon'ble Supreme Court that it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance in section 313 Cr.P.C, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of the Justice.

### 4. Munna Kumar Upadhyay Vs. State of Andhra Pradesh through Public Prosecutor, Hyderabad Andhra Pradesh. dt. 8<sup>th</sup> May, 2012

Wherein it was held that the object of Section 313 Cr.P.C is to serve a dual purpose, firstly to afford to the accused an opportunity to explain his conduct and secondly to use denials of established facts as incriminating evidence against him.

5. Ashraf Ali Vs. State of Assam ( ( 2008 ) 16 SCC 328 )

It was Observed as follows that Section 313 of Cr.P.C casts a duty on the court to put in an inquiry 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.

Section 313 Cr.P.C also empower that the accused also permitted to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The option lies with the accused to maintain silence coupled with simpliciter denial or in alternative to explain his version and reasons for his alleged involvement in the commission of the crime. 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 accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain.

The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

If the accused gave incorrect or false answers during the course of his statements U/sec 313 Cr.P.C, the court can draw an adverse inference against him.

6.. In State of M.P. v. Ramesh, (2011) 4 SCC 786,

“The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined his statement so recorded under Section 313 CrPC cannot be treated to be evidence within the meaning of Section 3 of the Evidence Act. 1872. Section 315 CrPC enables an accused to give evidence on his own behalf to disprove the charges made against him.

However, for such a course, the accused has to offer in writing to give his evidence in defence. Thus, the accused becomes ready to enter into the witness box, to take oath and to be cross-examined on behalf of the prosecution and/or of the accomplice, if it is so required.”

by  
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