

IN THE HIGH COURT OF KARNATAKA AT BENGALURUDATED THIS THE 21ST DAY OF SEPTEMBER 2021

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No.2170 OF 2021**BETWEEN**

1. Smt. Meenakshi,
W/o Late Umesh,
Aged about 33 years,
R/at Karohatti Village,
T.Narasipura Taluk,
Mysuru-571124.
2. Sri Thrinethra,
S/o Somanna,
Aged about 25 years,
R/at Karohatti Village,
T.Narasipura Taluk,
Mysuru-571124.

...Petitioners

(By Sri N.Tejas, Advocate)

AND

State of Karnataka by
T Narasipura Police,
Mysuru-571124.
(Represented by learned
State Public Prosecutor
HCK, Bengaluru-01)

...Respondent

(By Sri R.D.Renukaradhya, HCGP)

This Criminal Petition is filed under Section 482 Cr.P.C., praying to quash the 313 statement recorded by order dated 22.02.2021 (Annexure-A) passed in S.C.No.10/2018 which is pending on the file of the Hon'ble II Additional District and Sessions Judge at Mysuru and consequently allow the petition to record fresh 313 statement against the petitions as sought for.

This Criminal Petition having been heard and reserved on 30.08.2021, coming on for pronouncement this day, the court pronounced the following:

ORDER

The petitioners are accused No.1 and 2 in Sessions Case No.10/2018 on the file of II Addl. District and Sessions Judge, Mysuru, facing trial for the offences punishable under Sections 302 and 201 r/w Section 34 of IPC. They have invoked jurisdiction of this court under Section 482 Cr.P.C. for quashing the statements under Section 313 Cr.P.C. recorded by the Sessions Judge.

2. Sri. N. Tejas, learned counsel for the petitioners, taking me through the questions framed by the Sessions Judge argued that the Sessions Judge

has totally overlooked the importance of examining the accused under Section 313 Cr.P.C. His argument was that Section 313 Cr.P.C. is an important stage during criminal trial, and since it affords an opportunity to the accused to give an explanation to the incriminating circumstances spoken to by the prosecution witnesses, the questions to be put to the accused must be specifically directed to the incriminating circumstances only and they should not be mere mechanical reproduction of evidence in examination-in-chief. He argued that in the case on hand, there are two sets of questionnaires which almost contain same questions. Many a question do not contain incriminating evidence against the accused. The questions are not properly articulated and they are framed in complex sentences rendering it difficult for the accused to understand them. He also submitted that although the accused offered

explanation for some of the questions, the Sessions Judge refused to record them and insisted on giving the answer in a single word – either 'false' or 'true'. His another submission was that the defence counsel was ready to assist the court in framing the questions as it is permitted now in view of amendment brought to Cr.P.C by Act 5 of 2009 (w.e.f.31.12.2009). Therefore it was his submission that the statements recorded under Section 313 Cr.P.C are to be set aside, and a direction may be given to the Sessions Judge for examining the accused once again properly and record their explanations that they want to give.

3. I have gone through the questions framed by the Sessions Judge. He has prepared two sets of questionnaires as there are two accused. But the questions in the two sets are almost common; they are lengthy; and the Sessions Judge has verbatim reproduced the evidence in examination-in-chief in the

form of questions. The questions thus framed by the Sessions Judge do not serve the intendment of Section 313 of the Code.

4. Section 313 of the Code embodies the fundamental principle of 'Audi Alteram Partem'. Since this is the stage where the accused gets an opportunity to explain an inculpatory evidence against him, the questions must be framed in such a manner as he or she understands them. The questions must be simple and specific to the evidence against the accused. A long string of questions couched in complex sentences must be avoided. Several distinct matters should not be rolled up, every question must cover a distinct incriminatory evidence. While questioning the accused, not only the incriminatory oral evidence but also the documents and the material objects indicating adverse evidence should be brought to the notice of the accused. In this context, I find it

very apt to refer to a judgment of the Supreme Court in the case of **TARA SINGH vs STATE [AIR 1951 SC 441]**. It is held :

"32. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to

be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the

error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of section 342, Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

5. The practice has been to prepare as many sets of questionnaires as the number of accused are. In all the sets, same questions are repeated, but to show that every accused is questioned individually, the signature of only one accused is taken on each set of questionnaire. Preparing the questionnaires equal to number of accused is not the correct procedure and it is also a waste of time. It is enough if only one set of questions is prepared, but what is required is to frame distinct questions as against every accused. If a witness speaks at a time against two or more accused, a single question against them may be

framed but their answers must be recorded separately one after another.

6. In the year 2009, amendment was brought to section 313 Cr.P.C. Probably with a view to saving the time of the trial court judges, they are permitted to take the assistance of the Public Prosecutors and the defence counsel in preparing the questions. Therefore, the trial court judges may direct the Public Prosecutors and the defence counsel to submit the questions to be put to the accused, and the questions prepared by them may be adopted after scrutiny and modification if required.

7. Sub-section (5) of section 313 of Cr.P.C inserted by Act 5 of 2009 enables the court to permit the accused to file written statement as sufficient compliance of the section. Therefore the trial court, may, depending upon facts and circumstances,

instead of recording the statement in question and answer form, permit the accused to file his written statement. If this procedure is resorted to, discretion must be exercised wisely.

8. From the above discussions, the following guidelines are given :-

- (i) Only the incriminatory evidence must be picked out from oral and documentary evidence.
- (ii) The questions must be framed in a simple language, as far as possible in short sentences.
- (iii) The attention of each accused must be drawn to the evidence adverse or against him/her.
- (iv) Sometimes, a witness may give evidence as regards the collective overt act of two or more accused and in that event a single question may be framed, but each accused must be

questioned individually, and their answers must be recorded separately.

- (v) It is also possible that two or more witnesses may speak identically regarding the overt act of an accused. In that event, the substance of their evidence may be put in a single question.
- (vi) The attention of the accused must be drawn to the marked documents and material objects if they are incriminatory.
- (vii) The accused must be questioned regarding various types of mahazars or panchanamas only if they contain incriminatory evidence.
- (viii) Accused need not be questioned in regard to evidence given by the formal witnesses, for example, an engineer who has drawn the sketch of scene of occurrence, a police constable submitting the FIR to the

Magistrate, a police constable carrying seized articles to FSL, a police officer who has only submitted the charge sheet without conducting investigation, etc., unless anything incriminatory is found in such evidence.

- (ix) If there are two or more accused, it is not necessary to prepare as many sets of questionnaires as the number of accused are. It is enough to prepare a single questionnaire, but the question must be directed towards a particular accused individually or two or more accused collectively. When a question is framed pointing out collective overt act of two or more accused, the answer of each accused must be recorded separately one after another.
- (x) By virtue of amendment brought to Cr.P.C, the trial court judges may take the assistance

of the Public Prosecutors and the defence counsel for framing the questions.

(xi) In case the Public Prosecutor or the defence counsel submits a set of questions, the trial court judges must scrutinize and adopt them with or without modification.

(xii) The court should record the answer or explanation given by the accused and should not insist upon the accused to give answer in one word, 'false' or 'true'.

9. As discussed already, in the case on hand, the questions are not properly framed. It is also alleged that the trial court judge did not record explanation given by the accused. For these reasons I find a ground for allowing this petition and pass the following

ORDER

The petition is allowed, the statements of the accused recorded under section 313 Cr.P.C are set aside. The trial court is directed to re-examine the accused under section 313 Cr.P.C following the guidelines set out above.

The Registrar General of the High Court is hereby directed to circulate this order to all the trial courts in the State.

The Karnataka Judicial Academy is hereby directed to prepare model questionnaire and circulate the same to all the trial courts for their guidance.

**Sd/-
JUDGE**

ckl/-