

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRR No. 51/2014

Ashok Kumar, Age 38 years,
S/o. Sh. Om Parkash, R/o. Garar,
Tehsil Akhnoor, District Jammu

.....Appellant(s)/Petitioner(s)

Through: Mr. G. S. Thakur, Adv.

vs

State through Station House Officer,
Police Station, Khour.

..... Respondent(s)

Through: Mr. P. D. Singh, Dy.AG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER
07.05.2024

ORAL:

1. The petitioner was put to trial and consequently convicted for commission of offences under sections 279, 338 and 304-A RPC by the court of Judicial Magistrate 1st Class, Akhnoor (hereinafter to be referred as 'the trial court') and was convicted vide judgment dated 15.05.2013 and sentenced to undergo six months simple imprisonment and a fine of Rs. 1000/- for commission of offence u/s 279 RPC. The appellant was further sentenced to undergo six months imprisonment and a fine of Rs. 1000 for offence under section 338 RPC and simple imprisonment of two years and a fine of Rs. 2000/- for offence under section 304-A RPC.
2. Against the judgment dated 15.05.2013 passed by the learned trial court, the petitioner preferred an appeal before the court of Principal Sessions Judge, Jammu (hereinafter to be referred as 'the appellate court') and the

learned appellate court vide its judgment dated 04.08.2014, dismissed the appeal filed by the petitioner.

3. The petitioner has assailed the judgment passed by the appellate court thereby upholding the judgment of the trial court in the present revision petition, on the ground that the learned trial court has not rightly appreciated the evidence and that the trial court in terms of section 342 of the Code of Criminal Procedure (for short the Code) was under obligation to put whole of the incriminating evidence to the petitioner for seeking his explanation, which has not been done in the instant case.
4. Mr. Thakur learned counsel for the petitioner has argued that the learned trial court had not put the incriminating prosecution evidence to the petitioner in accordance with the mandate of the law, which disabled the petitioner to tender explanation to the evidence and rebut the same. He has placed reliance upon the judgment of the Hon'ble Supreme Court of India in **Raj Kumar v. State (NCT of Delhi), 2023 SCC Online SCC 609**.
5. Heard learned counsel for the parties and perused the record.
6. While scanning the record in order to determine the contentions raised by the learned counsel for the petitioner, this Court finds that the learned trial court recorded the statement of the petitioner on 19.02.2013 and the statements of all the witnesses were put to him in one line only, the practice which has been deprecated by the Hon'ble Supreme Court in its various judgments. In the case of "**Premchand v. State of**

Maharashtra, (2023) 5 SCC 522”, the Hon’ble Supreme Court of India

has held as under:

15.1. Section 313 CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.

15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.”

(emphasis added)

7. Further, the Hon'ble Supreme Court of India in '**Raj Kumar v. State (NCT of Delhi), 2023 SCC OnLine SC 609**' has held as under:

17. The law consistently laid down by this Court can be summarized as under:

(i) **It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;**

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) **In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.**

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.

(emphasis added)

8. The purpose of putting material evidence distinctively and separately to the accused is to enable the accused to tender his explanation and if the incriminating evidence is not put in the manner aforesaid, then it amounts to condemning the accused unheard.

9. In view of the above, the judgment of the trial court is not sustainable in the eyes of law and the appellant court too has not taken note of this legal

infirmity, therefore, the judgment of the appellate court also is not sustainable in the eyes of law.

10. Accordingly, the instant revision petition is allowed and the judgment of the appellate court dated 04.08.2014 upholding the judgment dated 15.05.2013 passed by the learned trial court in charge-sheet titled “ State versus Ashok Kumar” arising out of FIR No.19/2006 of P/S Khour is set aside. The matter is remanded back to the learned trial court. The learned trial court shall comply with the mandate of section 342 of the Code as explained by the Supreme Court in its pronouncements as mentioned above and thereafter, shall proceed in accordance with law, without being influenced in any manner in respect of any observation made either by the trial court or by the appellate court as the case may be.
11. The petitioner is directed to appear before the learned trial court on 01.06.2024. The Registry is directed to return the original record to the trial court forthwith along with a copy of this order.

(RAJNESH OSWAL)
JUDGE

Jammu:
07.05.2024
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No