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Ranjan Dwivedi and anr. Vs. C.B.i. Thr. the Director General

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Court : Delhi

Decided On : Nov-15-2007

Reported in : 2008CriLJ1440; 146(2008)DLT684

Judge : S. Ravindra Bhat, J.

Acts : Evidence Act - Sections 10; Code of Criminal Procedure (CrPC) - Sections 164, 231, 232, 233(2), 243(1), 247, 281, 281(2), 311, 313, 313(1), 362, 397 and 482; Code of Criminal Procedure (CrPC) - Sections 342 and 342(1); Constitution of India - Article 21

Appeal No. : Crl. Rev. P. No. 142/2007 and Crl. M.A. No. 2835/2007

Appellant : Ranjan Dwivedi and anr.

Respondent : C.B.i. Thr. the Director General

Advocate for Def. : R.M. Tewari, Adv.

Advocate for Pet/Ap. : R.S. Sharma and; Feroze Ahmad, Advs. in Crl. Rev. P. No. 142/2007 and Crl. M.A. No. 2835/2007,;

Disposition : Petition dismissed

Judgement :

S. Ravindra Bhat, J.

1. In these revisional proceedings, under Section 397, Criminal Procedure Code ('Cr.PC.'), the petitioners impugn orders of the Special Judge, dated order dated 27.02.2007 (which directed recording of the statement Under Section 313 Cr. P.C). By order dated 06.03.2007, the application to recall the first impugned order was rejected. The third order under challenge is dated 21-3-2007.

2. The facts necessary to decide the proceedings are that due to a bomb explosion at Samastipur Railway Station, at 6.30 p.m on 02.01.1975 Shri L.N. Mishra, the then Railway Minister sustained serious injuries. He expired on 03.01.1975 in the morning at 9 am at Danapur, Bihar. The matter was investigated initially by local police, C.I.D and later by CBI. A few persons earlier arrested were discharged. Two of them made confessional statements and one was recorded Under Section 164 Cr. P.C. The CBI gave them a clean chit. In June 1975 internal Emergency was imposed and the Ananda Marg sect was banned. The case was later transferred for trial to Delhi. As of today four persons i.e. Santoshanand, Sudevanand, Gopal Ji and Ranjan Dwivedi are accused, and are facing trial.

3. The prosecution evidence was closed on 16.04.1986. Thereafter, the accused wanted statements of certain witnesses to be recorded as Court witnesses who, it was alleged, were deliberately left out by the prosecution agency i.e. CBI. The controversy reached the Supreme Court, which by judgment and order dated 17.11.1992 decided Criminal Appeal Nos. 698-699 of 1992. The appeals of the applicant- accused persons were partly allowed, and the following directions were issued:

Instead we hold that it will be open to the Additional Sessions Judge to decide whether or not he would like to examine all or any of those persons as court witnesses at any stage after the statements of the accused have been recorded Under Section 313 of Code, that is to say, that it may come to that conclusion even prior to the accused being called upon to enter upon their defense.

4. It is alleged that the above order held that accused should not be robbed of their right to move the court at the stage of Section 232 of the Cr PC. From 10.01.1994 the Trial Court started recording statement of accused under Section 313 of Cr. P.C. Ranjan Dwivedi, one of the revisionists, was examined in the end and his

statement was closed on 17.12.2004. The trial Court started recording evidence of the Court witnesses from 13.05.2005 and the last witness Shri Arun Kumar Mishra appeared on 10.01.2007, when his examination was deferred till the a time cassette was not repaired. However, in order to facilitate the trial, DW-1 was examined and completed on 19.01.2007. The revisionist, Shri Ranjan Dwivedi filed an application under Section 232 Cr. P.C. on 23.01.2007. The Trial Court noted this in the order dated 08.02.2007. According to the trial court, entering into the defense was conditional and subject to the right reserved by Ranjan Dwivedi for moving an application under Section 232 Cr. P.C. The trial Court by its order allowed the hearing of the application under Section 232 Cr. P.C. and fixed 14.02.2007 for the purpose.

5. On 14.02.2007 an application was moved by CBI for recording statement of Ranjan Dwivedi under Section 313 Cr. P.C. relating to eight witnesses. It is averred that the said 8 witnesses were examined in 1982- 1983; PW-5 was examined on 24.03.1982, PW-6 from 26.03.1982 to 07.04.1982, PW-9 from 21.04.1982 to 22.04.1982, PW- 30 on 25.08.1982, PW-40 on 10.09.1982, PW-71 on 16.02.1983, PW-111 from 26.05.1983 to 29.07.1983 and PW-115 on 04.08.1983 were examined. The trial Court by the first impugned order dated 27.02.2007 directed recording of the statement Under Section 313 Cr. P.C. An application to recall this order was made by the accused.

6. By order dated 06.03.2007 the Trial Court dismissed the application of the accused for recall of its previous order relating to recording of statement under Section 313. Both the orders are under challenge in Criminal Revision petition Nos. 142 and 143 of 2007. The trial court, by order dated 21.03.2007 recorded that the remaining defense witnesses would be examined. That said order is under challenge under Criminal Revision Petition No. 180 of 2007.

7. Mr. M.L. Lahoty and Mr. Arvind Kumar, learned Counsel submitted that once an accused is examined under Section 313(1)(b) Cr. P.C., he cannot be re-examined afresh at the stage when an application Under Section 232 Cr. P.C. is pending hearing on merits and also when the other accused persons have already entered into their defenses. In this case, DW-1 Rudranand had been examined. It was

further submitted that in a case of conspiracy, due to provisions of Section 10 of the Evidence Act, all questions relevant against one accused are relevant against another. It is thereforee, necessary to legally presume that all the three other accused persons have to suffer the same agony of re-examination under Section 313(1)(b) Cr. P.C.

8. Learned Counsel submitted that accused persons have already suffered for more than 32 years in this case and serious prejudice has been caused to them. It is further submitted that recording of the statement Under Section 313 Cr. P.C. amounts to serious illegality in the trial and is a denial of the Fundamental Right to fair trial guaranteed under Article 21 of the Constitution of India. Learned Counsel urged that the statement of the accused were recorded for a period of over 11 years i.e. from 10.01.1994 to 17.12.2004. There, is under the circumstances, is no justification for their re-examination.

9. It was urged that the CBI had been preparing questions and answers as mentioned in the order dated 14.12.2001 and also in the application of Ranjan Dwivedi dated 13.08.2004. Thus, in any event factually or even under equity, there should not be any re-examination of accused Ranjan Dwivedi further to the order of the trial judge dated 27.02.2007.

10. It was submitted that Section 313 of Cr. P.C. was codified after the report of 41st Law Commission. The present Section 313 of Cr. P.C is identical to the earlier Section 342 of the old code. Sub-section (1) of 342 has now been divided into Clauses (a) and (b). Clause (a) uses the expression 'may' in order to indicate that the matter is completely left to the discretion of the court enabling it to put any questions to an accused during enquiry or trial in order to satisfy itself in respect of any circumstances appearing against the accused in such enquiry of trial. Section 342(1) of old Code was as under:

for the purpose of enabling the accused to explain any circumstances appearing in evidence against him, the court may, at any stage of enquiry or trial, without previously warning the accused, put such questions to him as the court considers necessary and shall for the purpose aforesaid, questions him generally on the case after the witnesses for the prosecution have been examined and before he is

called on for his defense.

Thus the aforesaid Section 342(1) has been recast into Section 313(1)(a) and (b) with a proviso. The Law Commission in its 41st report considered the various decisions and all other questions and concluded that in a summons case where personal attendance of the accused is exempted, the court should have power to dispense with his examination, but in all other cases he should be examined personally even if the accused has been exempted from his personal appearance. Now the court has to mandatorily examine the accused under Section 313 after the prosecution evidence is closed and before he is called for giving his evidence.

11. Learned Counsel submitted that Section 313 of Cr. P.C. deals with two situations, delineated specially in Clauses (a) and (b). They are two different provisions and one of them is mandatory. Clause 313 (1) (a) is discretionary as is intended by the use of word 'may'. In this clause the Legislature has further used the words 'at any stage' which gives a right to the court to put such questions as are necessary. This clause specifically deals with the power of the Court. It is further submitted that this clause is not necessarily to be in conformity with Section 281(2) of Cr. P.C. Under Clause (a) the court is entitled to put any questions to the accused at any time up-to the end of the trial and before final acquittal or sentence is awarded. The court may or may not record such questions in the order sheet as it is nothing but clarification on certain aspects/circumstances put to the accused in form of questions. It is also permissible that while statement of the accused is recorded under Clause (b), that power under Clause (a) may be used by the Court but not vice-versa.

12. Section 313 is, according to counsel, only intended for benefit of the accused and to some extent for the benefit of the court as well. This clause is mandatory. The power can be exercised only at a particular stage, which too is defined by the Code. The stage is when the prosecution evidence is closed and before the accused is called upon to enter into his defense. It thereforee, means that the stage is set by the Legislature. It has to be exercised only once, i.e. after conclusion of prosecution evidence under Section 231 of Cr. P.C and before Section 232 of Cr. P.C. comes in to play. Counsel submitted that Section 313(1)(b)

is to be read along-with Section 281 of Cr. P.C., where all questions and answers have to be recorded by the Court duly signed by it as well as by the accused. Both clauses in Section 313(1) Cr. P.C. have been specially carved out, as there was no guideline in Section 342 existing in the earlier Code.

13. Learned Counsel placed reliance on the decisions reported as Mir. Mohd. Omar and Ors. v. State of West Bengal : [1989]3SCR735 ; State of Maharashtra v. Sukhdev Singh : 1992 CriLJ3454 ; Usha K. Pillai v. Union of India and Ors. : 1993 CriLJ2669 and Basavaraj R. Patil and Ors. v. State of Karnataka : 2000 CriLJ4604 in support of the submission that the primary objective behind enactment of Section 313 is to the benefit of the accused. It cannot be construed as a charter for the prosecution, to take advantage of its omissions regarding the onus it has to discharge. Thus, accused persons cannot be examined time and again on the pretext that certain questions have not been put to them specially under the Section 313(1)(b) Cr. P.C. According to counsel, the stage defined under Section 313(1)(b) Cr. P.C; once the said stage is crossed, re-examination of the accused is not permissible. It was urged that the prosecution cannot move an application on the ground that non-examination of the accused prejudices its case. It is a vested right of the accused, for his benefit.

14. Learned Counsel submitted that re-examination of the accused not only results in prejudice and the harassment to him but robs the procedural right under Section 232 of Cr. P.C. It was urged that the Supreme Court held in its judgment and order dated 17.11.1992 that an application under Section 232 Cr. P.C shall be decided after prosecution evidence is completed and also after the court witnesses are examined. In this case the Court witnesses were examined and the defense started examining its witnesses specially when DW-1 has been examined on behalf of Santoshanand and Sudevanand. The re examination of an accused under Section 313 in a case of conspiracy shall mean re examination of all the accused persons; due to Section 10 of the Evidence Act. It will cause serious prejudice to the accused persons besides the case is already delayed for more than 32 years and shall be against the interest of the accused.

15. The CBI, at the threshold, submits that under the provisions of Section 362 Cr. P.C, save as otherwise provided by the Code or by any other law for the time being in force, no court, when it has signed its judgment or order disposing of a case, shall alter or review the same except a clerical or arithmetical error. In relation to Section 313 Cr. P.C. it is submitted that the provision empowers the Court to examine the accused after the evidence for the prosecution is concluded. The object of empowering the Court to examine the accused is to afford him an opportunity of explaining circumstances which may tend to incriminate him. The object of such questioning by the Court is to give him an opportunity of explaining the circumstances that appeared against him in the evidence. The act of examination of the accused under Section 313 Cr. P.C. is to establish a direct dialogue between the Court and the accused. Counsel urged that if a factual aspect is important, and conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it.

16. Learned Counsel submitted that through questioning under Clause 1 (a) of Section 313 is discretionary, the questioning under Clause Section 313(1)(b) is mandatory; the object being to afford opportunity to the accused to personally explain any circumstances appearing in evidence against him. Section 313 Cr. P.C embodies the fundamental principle of 'audit Alterm Partem'.

17. It was submitted that the duty of the Court, while examining an accused, is not to put to him the entire evidence on record. The duty is to put specific circumstances of incriminating nature upon which the prosecution relies, and which appear from the evidence on record. The specificity must be in regard to the circumstances appearing against him. It is the duty of the Court to seek Explanationn from the accused with reference to any particular circumstance as being sufficient to sustain the conviction. In this context the questions, which are not put to the accused, cannot be used against him, subsequently. Learned Counsel submitted that in Sharad Birdhi Chand Sharda v. State of Maharashtra reported in : 1984 CriLJ1738 , where the Supreme Court held that circumstances not put to the accused must be completely excluded because the accused did not have any chance to explain them. Counsel also relied upon the judgment reported

as Rusi v. Nakhyatramalini (1953) Cut 623 to submit that nothing in the language of the provision prevents the Court from examining the accused; even after the defense evidence has been recorded.

18. From the above narrative, the undisputed facts are that, the case was at the stage of examination of defense witnesses. One defense witness was examined. The revisionist requested for the hearing under Section 232 Cr. P.C, at the stage of examination of a defense witness. The CBI, at that point, filed an application that the depositions of PWs 6,9,30,40,71,111 and 115 contain incriminating circumstances which had not been put to the accused Ranjan Dwivedi due to an inadvertence and the same had to be put to him, for seeking his Explanationn. The Special Court heard the matter. The revisionist Ranjan Dwivedi raised objection to the request of the CBI. Eventually, the Court allowed the CBI's application. The Court considered statements of PWs 5,6,9,30,40,71,111 and 115 and observed that their depositions could be used as incriminating circumstances against the accused Ranjan Dwivedi. The revisionists filed applications before the Court for modification/ review of the order dated 27.02.2007 but they were dismissed by the Court through order dated 06.03.2007.

19. The revision petition raises interpretation as to the scope and content of Section 313 and whether the court can recall, as it were, an accused for putting forward additional queries or 're-examination' under Section 313, after having gone through the exercise in an earlier part of the trial.

20. Section 313 of Cr. PC reads as follows:

313. 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 defense, 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 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 question, 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.

21. In Basavraj R. Patil, the three judge decision of the Supreme Court reviewed the entire previous law on Section 313, including the rulings in Shivaji Sahabrao Bobade v. State of Maharashtra : 1973 CriLJ1783 ; Usha K. Pillai (supra); and Bibhuti Bhusan Das Gupta v. State of West Bengal : 1969 CriLJ654 ; it also considered the previous provision, i.e. Section 342 of the old Code as well as recommendations of the 41st Report of the Law Commission and held as follows:

18. What is the object of examination of an accused under Section 313 of the Code - The section itself declares the object in explicit language that it is 'for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him'. In Jai Dev v. State of Punjab : [1963]3SCR489 , Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focussed on the ultimate test in determining whether the provision has been fairly complied with. He observed thus (Para 21 of AIR and Cri LJ):

The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.19. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit

the Court in reaching the final conclusion.

20. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim 'audit alteram partem.' The word 'may' in Clause (a) of Sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the Court does not put any question under that clause the accused cannot raise any grievance of it. But if the Court fails to put the needed question under Clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

21. But the situation to be considered now is whether, with the revolutionary change in technology of communication and transmission and the marked improvement in facilities for legal aid in the country, is it necessary that in all cases, the accused must answer, by personally remaining present in Court. We clarify that this is the requirement and would be the general rule. However, if remaining present involves undue hardship and large expense, could the Court not alleviate the difficulties. If the Court holds the view that the situation in which he made such a plea is genuine, should the court say that he has no escape but he must undergo all the tribulations and hardships and answer such questions personally presenting himself in Court. If there are other accused in the same case, and the Court has already completed their questioning, should they too wait for long without their case reaching finality, or without registering further progress of their trial until their co-accused is able to attend the Court personally and answer the Court questions 'Why should a criminal Court be rendered helpless in such a situation'

22. The one category of offences which is specifically exempted from the rigour of Section 313 of the Code is 'Summons cases'. It must be remembered that every case in which the offence triable is punishable with imprisonment for a term not exceeding two years is a 'summons case'. Thus, all other offences generally belong to a different category altogether among which are included offences

punishable with varying sentences from imprisonment for three years up to imprisonment for life and even right up to death penalty. Hence there are Several offences in that category which are far less serious in gravity compared with grave and very grave offences. Even in cases involving less serious offences, cannot the Court extend a helping hand to an accused who is placed in a predicament deserving such a help?

23. Section 243(1) of the Code enables the accused, who is involved in the trial of warrant case instituted on police report, to put in any written statement. When any such statement is filed the Court is obliged to make it part of the record of the case. Even if such case is not instituted on police report the accused has the same right (vide Section 247). Even the accused involved in offences exclusively triable by the Court of Session can also exercise such a right to put in written statements (Section 233(2) of the Code). It is common knowledge that most of such written statements, if not all, are prepared by the counsel of the accused. If such written statements can be treated as statements directly emanating from the accused. hook, line and sinker, why not the answers given by him in the manner set out hereinafter in special contingencies, be afforded the same worth.

24. We think that a pragmatic and humanistic approach is warranted in regard to such special exigencies. The word 'shall' in Clause (b) to Section 313(1) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the Court should, in appropriate cases, e.g., if the accused satisfies the Court that he is unable to reach the venue of the Court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship relieve him of such hardship and at the same time adopt a measure to comply with the requirements in Section 313 of the Code in a substantial manner. How this could be achieved?

25. If the accused (who is already exempted from personally appearing in the Court) makes an application to the Court praying that he may be allowed to answer the questions without making his physical presence in Court on account of justifying exigency the Court can pass appropriate orders thereon, provided such

application is accompanied by an affidavit sworn to by the accused himself containing the following matters: (a) A narration of facts to satisfy the Court of his real difficulties to be physically present in Court for giving such answers. (b) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning. (c) An undertaking that he would not raise any grievance on that score at any stage of the case.

26. If the Court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the Court to supply the questionnaire to his advocate (containing the questions which the Court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire [as a matter of precaution the Court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for answers). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the Court, he shall forfeit his right to seek personal exemption from Court during such questioning.

27. In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code.

28. In the present case the trial Court can pass appropriate orders if an application is made by the accused relating to the examination under Section 313 of the Code, in the light of the legal principles stated above. This criminal appeal is disposed of accordingly.

22. Section 313 consists of two parts. The first confers a discretion ('may') to the Court to question the accused at 'any stage' of an inquiry or trial without previously warning him. Under Section 313(1)(b) the Court is required to question him generally on the case after the witnesses for the prosecution have been examined and before he is called for his defense. The second part is mandatory and

imposes upon the Court a duty to examine the accused at the close of the prosecution case, to give him an opportunity to explain any incriminating circumstances appearing against him in the evidence and to state, whatever he wishes to, in his defense. He is not bound to answer the questions. Under Sub-section (4) the answers given by the accused may be taken into consideration in the inquiry or trial. His statement is material upon which the Court may act, and which may prove his innocence. Under Sub-section (2) no oath is administered to him. The reason is that when he is examined under the provision, he is not a witness.

23. It has been held that:

(1) The privilege of making a statement under Section 342 (now 313) is personal to the accused. The clear intention of the section is that only he and nobody else can be examined under it. (Bibhuti Bhusan Das Gupta);

(2) The provision is intended for the benefit of the accused, to explain circumstances which may appear adverse to him, so that he can explain them. (Basavraj Patil);

(3) The principle underlying Section 313 is audit alteram partem, to afford an opportunity to the accused to explain adverse materials or circumstances ((Basavraj Patil and Shivaji Sahabrao Bobade);

(4) Materials not put to the accused, under Section 313, Cr PC cannot be used later against him by the court (Shivaji Sahabrao Bobade; Sharad Birdichand Sarda)

24. A close scrutiny of the four judgments on Section 342 of the old Code, and 313 of Cr. PC would show that the Supreme Court was never confronted with a fact situation where the court felt it necessary to call upon the accused under Section 313, after having previously recorded statements under Section 313(1)(b). The issue here is whether the language of the provision impliedly enacts a bar on such 'recall' and 're-examination' by the court.

25. A criminal trial, more than anything else, is a quest to arrive at the truth. Rules of evidence and procedure have been enacted to lend predictability, transparency and certain basic safeguards in the process. Seen from this larger perspective, while the dominant objective of Section 313 is undoubtedly to afford an opportunity to the accused to explain incriminating circumstances, the overall contextual background cannot be ignored altogether. Facially, the difference in approach between the discretionary questioning 'at any stage' by the court and the mandatory questioning, at the end of the prosecution evidence, of the accused is supported by the text of the statute. The question is whether this difference lends support to the argument that there can be only one stage of questioning, and the accused cannot ever be called upon to answer questions 'generally' again under Section 313(1)(b).

26. The Code, in my opinion, affords certain answers. For instance, Section 311 empowers the court to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, for 'the just decision' in a case. This could well be after examination of the accused under Section 313. In the course of evidence so recorded, adverse materials or circumstances may be shown which would have to be put to the accused. Section 319 similarly enables the court to summon any person, if it appears from the evidence that such person not being the accused has committed any offence for which he could be tried together with the accused. It is possible that the materials adduced before the court, pursuant to orders under Section 319, may contain some adverse circumstances which may not have been put against the accused when he was examined, after conclusion of the prosecution evidence. These are just two instances; they can well multiply, depending on the peculiarities of trial processes and orders made at different stages, in revision or under Section 482, Cr PC, to secure the ends of justice. thereforee, it would be idle to contend that Section 313(1)(b) deals only with one point in time at the trial stage and the court cannot call the accused to answer the incriminating circumstances again. Neither the provision, nor the authorities, as I see them, point to such inflexibility; there is no implied prohibition in calling upon the accused to again answer questions. Having said as much, it must be stated that the power to call the accused to answer questions more than once, after the

conclusion of prosecution evidence should not be used in a routine or mechanical manner.

27. In this case, the statement of accused Ranjan Dwivedi itself spanned over a decade. The evidence of court witnesses were thereafter recorded. The prosecution witnesses were examined in the early nineteen eighties. In the circumstances, having regard to the length of time consumed, the court apparently did not put some circumstances which could be construed as incriminating, to the accused. Now, as observed in an earlier part of the judgment, Section 313 is for benefit of the accused; yet it is also an important step in the trial, as it fixes what the court deems to be incriminating circumstances which the accused should answer. If all such circumstances are not put to the accused, the court cannot rely upon them later. The provision is thereforee of immense importance. Any lapse or omission by the court can lead to irreversible consequences, despite existence of materials which may be incriminating. In this context, the prosecution cannot be said to act without jurisdiction in drawing to the notice of the court such omissions which may otherwise prove fatal to its case.

28. In the above circumstances, I find no infirmity with the two impugned orders dated 27-2-2007 and 6.3.2007. There can however be a small issue of prejudice to accused Santoshanand and Sudevanand, for which suitable directions are made in the succeeding paragraph. As regards the later order dated 6-3-2007, the court's approach is in consonance with Section 362 of Cr. PC and the judgment of the Supreme Court in Adalat Prasad v. Rooplal Jindal : (2004)7SCC338 .

30. As regards the challenge to the order dated 21-3-2007, I am of the opinion that requiring the accused Ranjan Dwivedi to answer questions under Section 313 does not in any manner take away or denude his right to move the court under Section 232.

31. The trial court is directed to complete the questioning of accused Ranjan Dwivedi, on the matters it deems appropriate, within 3 months from today. The court shall hold proceedings on a day to day basis. Thereafter, it shall commence examination of defense witnesses on behalf of accused Santoshanand and Sudevanand. These directions are necessary, because the latter accused face

charges of conspiracy; any statement of co-accused may become relevant against them. These are subject to the rights reserved in favor of accused Ranjan Dwivedi, by the Supreme Court. It would be in the interests of justice, that the sequence indicated in these directions, is followed, to avoid prejudice to the accused.

32. The revision petitions are dismissed, but subject to the directions in the preceding paragraph. There shall be no order on costs.

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