

**CRM-M-48005-2024 (O&M)****1****206****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-48005-2024 (O&M)****Date of Decision: 16.01.2025**

NAVEEN

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGHPresent: Mr. R.S.Ghumman, Advocate
for the petitioner

Mr. Anmol Malik, DAG, Haryana.

Mr. S.S.Jattan, Advocate and
Ms. Varsha, Advocate for respondents No.2 & 3.

KIRTI SINGH, J.(Oral)

Prayer in the present petition is for quashing the impugned order dated 18.09.2024 (Annexure P-7) passed by the Court of Id. Additional Sessions Judge, Special Court, Kaithal in case FIR No.352 dated 21.12.2021 under Sections 363 and 366-A of Indian Penal Code registered at Police Station Kalayat, District Kaithal, whereby application seeking correction in answer to question No.11 in the statement under Section 313 Cr,P.C. was dismissed.

2. Learned counsel for the petitioner inter alia submits that the petitioner has been falsely implicated in the present case for the offence of enticing away the minor daughter of the complainant on the pretext of marriage, wherein final report was submitted under Sections 363, 366 A, 376 (2)(n), 376(3) of IPC and Sections 4(2) and 6 of the POCSO Act, 2012. Thereafter, the statement of the petitioner-



child-in-conflict was recorded in absence of his counsel under Section 313 Cr.P.C. in English language, without explaining in Hindi language as to what was written therein. He contends that the petitioner being illiterate (9th fail), could not understand English, and that his statement was wrongly recorded.

3. *Per contra*, learned counsel appearing on behalf of respondents No.2 & 3 submits that the statement was recorded in accordance with established procedure. It is the petitioner's duty to ensure adequate representation during trial proceedings. The petitioner has failed to establish any legal infirmity in the impugned order, which has been rightly passed by the learned trial Court.

4. Learned State counsel submits that it was after the completion of the evidence that the statement of child offender under Section 313 Cr.P.C. was duly recorded before the learned trial Court as per law. Now the offender wants to change his stand which is against the law and thus, non sustainable.

5. Having heard learned counsel for the parties, it transpires that the statement of the petitioner was recorded in the absence of his counsel and that too in a language which he, as averred, did not understand, being an illiterate. It is also pertinent to note that during the course of trial, the victim and the complainant (mother of the victim) did not support the prosecution version and were declared hostile.

6. Before adjudging the matter, it would be imperative to examine the provisions contained in Section 313 of Cr.P.C. which reads hereunder:

“Section 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 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.

1[(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.]”

7. The scope of Section 313 Cr.P.C. was elaborated by the Hon’ble Supreme Court in **Lattu Mahto v. The State of Bihar (now Jharkhand), 2008**

(3) RCR (Criminal) 467:

*“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 (AIR 1963 Supreme Court 612)* 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 :*

"The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to inquire 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 *audi 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 for 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.”*



8. The Division Bench of this Court in **Sucha Singh v. State of Haryana, 2012 CriLJ 259**, made similar observations which are contained hereinunder:

*“14. Section 313 Criminal Procedure Code has been provided to give the accused a fair chance to explain his stand with regard to the circumstances in the evidence, which have been collected against him and has come on record during the trial. An onerous responsibility has been put on the Court to make the accused to understand the case of the prosecution as made out against him as also the evidence which has been collected by the prosecution. This provision has been cautiously incorporated in the Code of Criminal Procedure so that the accused gets a fair trial. The questions, which are to be put to the accused by the Court, must be simple, clear, specific and in simple language which can be understood and appreciated even by the ignorant and illiterate person(s). The attention of the accused needs to be drawn to the specific points in the charge and in the evidence, on which the prosecution claims that the case is made out against the accused. Fairness, therefore, requires that each material circumstance and incriminating material should be put simply and clearly to the accused lest he is deprived of his valuable right of explanation as his statement made under Section 313 Criminal Procedure Code can be taken into consideration by the trial Court in judging the innocence or guilt of the accused, therefore, noncompliance or violation of this Section would vitiate the trial as has been held by the Hon'ble Supreme Court in the case of **Ranvir Yadav v. State of Bihar, (2009) 6 SCC 595.**”*

9. A bare perusal of the provision under Section 313 Cr.P.C. read in light of the aforesaid judgments makes the object of the provision amply clear, i.e., to ensure fair hearing for the accused. In the instant case, where the statements of the petitioner were recorded and was signed by him without translating it to a language known to him, that too in the absence of his counsel, seems perverse to the principles of natural justice, thereby warranting interference by this Court.

10. As a fallout of the aforesaid, the present petition is allowed and order dated 18.09.2024 (Annexure P-7) passed by Additonal Sessions Judge, Special Court, Kaithal is set aside with the direction to re-record the statement of petitioner



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under Section 313 Cr.P.C. for correction of answer to question No.11 in the presence of his Advocate.

Pending application(s), if any, also stands disposed of accordingly.

16.01.2025

Kavita

Whether speaking/reasoned
Whether reportable

(KIRTI SINGH)
JUDGE

Yes/No
Yes/No