

**Criminal Revision****PRESENT : The Hon'ble Justice Ashim Kumar Roy****Judgment On : 15-02-2010.****C.R.R. No. 28 of 2010  
Kamalesh Polley  
versus  
The State of West Bengal****Point :**

**Re-examination:** Whether it is permissible to file application on behalf of the State after the argument was concluded, with a prayer for examination of the accused under Section 313 of the Code of Criminal Procedure in respect of certain circumstances appearing in the evidence against him - Code of Criminal Procedure, 1973- S. 313

**Fact:** In course of trial of the petitioner of a charge under Sections 302/201 of the Indian Penal Code, after the argument was concluded, an application was filed on behalf of the State with a prayer for examination of the accused under Section 313 of the Code of Criminal Procedure in respect of certain circumstances appearing in the evidence against him. The Learned Trial Court allowed such prayer. Hence, this criminal revision.

**Held:** If from the evidence of the prosecution witnesses any incriminating circumstance appears against an accused the same cannot be used against him without giving an opportunity to the accused to explain the same. Thus, when it is found a few such incriminating circumstances by mistake was not put to the accused in his examination under Section 313 of the Code, in such circumstances if the prosecution is allowed to re-examine the accused under Section 313 of the Code as regards to those circumstances that would not cause any prejudice to any of the parties. (Paragraph – 2)

For Petitioner: Mr. Abhijit Kumar Adhya

**The Court:**

1. In course of trial of the petitioner of a charge under Sections 302/201 of the Indian Penal Code, after the argument was concluded, an application was filed on behalf of the State with a prayer for examination of the accused under Section 313 of the Code of Criminal Procedure in respect of certain circumstances appearing in the evidence against him. The Learned Trial Court

allowed such prayer. Hence, this criminal revision.

2. Indisputably, if from the evidence of the prosecution witnesses any incriminating circumstance appears against an accused the same cannot be used against him without giving an opportunity to the accused to explain the same. Thus, when it is found a few such incriminating circumstances by mistake was not put to the accused in his examination under Section 313 of the Code, in such circumstances if the prosecution is allowed to re-examine the accused under Section 313 of the Code as regards to those circumstances that would not cause any prejudice to any of the parties. On the other hand, the same is very much necessary for just decision of the case.

In view of above, I do not find any wrong in the order impugned and same does not deserve any interference. This application has no merit and, accordingly, stands dismissed.

However, I make it clear if after examination of the accused under Section 313 of the Code, if the accused intended to examine any defence witness to explain such circumstances the Learned Court shall allow their such prayer and defence may be permitted to re-argue the case on those points. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

( *Ashim Kumar Roy, J.* )

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