

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

Criminal Appeal No.78 of 2007

Sri Uttam Majumder,
S/o Late Santosh Majumder
of Sukantanagar, P.S. Belonia,
District - South Tripura.

..... *Appellant.*

-Vs -

The State of Tripura.

..... *Respondent.*

B_E_F_O_R_E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

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|----------------------------|---|-------------------------------|
| For the appellant | : | Mr. P K Biswas, Sr. Advocate. |
| For the respondent | : | Mr. R C Debnath, Addl. P.P. |
| Date of hearing & judgment | : | 20.06.2014. |
| Whether fit for reporting | : | Yes. |

JUDGMENT & ORDER (ORAL)

None for the appellant.

2. On 11th March, 2014 on going through the record this Court has observed that the statement recorded by the trial Court under Section 313 Cr.P.C had not been properly recorded. Only the questions under Section 313 Cr.P.C had been typed out. Against the question no.1 which is a general question as to whether the accused had heard the evidence recorded in open Court, the answer has been typed out as 'yes' and it appears that the 'yes' was typed out at the time when the questions were framed under Section 313 Cr.P.C. I am

saying this because a perusal of the remaining statement recorded under Section 313 shows that all the other questions have been left unanswered. There is no answer of the accused to any of the questions which have been typed out. The accused has signed each page of the statement and, thereafter, the Additional Sessions Judge has recorded that the above examination was taken in his presence and hearing and contains full and true account of the statement made by the accused. To say the least, there is total illegality in the manner in which the statements of the accused have been recorded under Section 313 Cr.P.C. The certificate is obviously false.

3. A statement under Section 313 Cr.P.C is not a mere formality. This is the statement where the accused puts forth his defence. All incriminating circumstances have to be put to the accused and his answers have to be recorded. In the present case, I find that probably the questions were prepared by the Judge in his Chamber. The statement was not probably recorded in the presence of the Judge because except for question no.1, the answers of the accused have not been recorded against any of the other questions. Only his signatures have been obtained. The certificate of the presiding officer that the above examination was taken in his presence and hearing, and it contains a full and true account of the statement made by the accused, is a false certificate. This virtually amounts to forging the judicial record.

4. This Court would have not hesitated to take action against the erring judicial officer but for the fact that he has since retired. The manner in which the statement under Section 313 was recorded clearly indicates that the trial Court gave no importance to the statement. In fact no statement of the accused has been recorded because there is no answer of the accused to any of the material questions wherein the incriminating circumstances were put to him. Therefore, in the eyes of law no statement under section 313 Cr.P.C has been recorded. Therefore, I have no option but to set aside the judgment of conviction and remit the matter back to the Additional Sessions Judge, Belonia, South Tripura, who shall now properly record the statement of the accused under Section 313 Cr.P.C after putting all incriminating circumstances to him and, thereafter, decide the matter one way or the other.

5. The petitioner who is on bail shall continue to remain on bail.

6. The Registrar General is directed to send a copy of this order to each and every member of the Tripura Judicial Service. They shall ensure that statements under Section 313 Cr.P.C are recorded properly in accordance with law. If any case comes to the notice of this Court in future where a statement is recorded in such a manner wherein the answers of the accused are not recorded but the Judge has signed the statement certifying that the statement was

recorded in his presence then the concerned Judicial Officer may face departmental action and lose his job. If, any such sort of statement comes to the notice of this Court in future very strict action shall be taken.

The appeal is disposed of.

CHIEF JUSTICE

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