

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1142 OF 2018**

LIZ HENRIETTA DO CARMO GRACIAS,
THR. HER ATTORNEY, JOHN VALENTINO
CARVALHO.,

... PETITIONER

Versus

VIKRAM FERNANDO VELHO.,

... RESPONDENT

Shri Aires Rodrigues, Advocate for the Petitioner.

CORAM : C.V. BHADANG, J.

Date : 14th December, 2018

ORAL ORDER:

Heard Shri Rodrigues, the learned Counsel for the petitioner for some time.

2. The only contention raised by the learned Counsel for the petitioner is that the Trial Court was in error in holding that the question in the cross examination has to be confined to the pleadings of the parties and cannot travel beyond the pleadings.

Reliance is placed on the decision of this Court in the case of (i) *Gajanan Laxman Bhalchandra Vs. Rangrao Amrutrao Deshpande & Others*, 1980 Mh.L.J. 821, (ii) *Neema Hingarh Vs. Ashish Hingarh*, 2015 SCC Online Bom 2571 and (iii) *Ajit Sukhijia Vs. Edgar Francisco Valles & Others*, 2016(3) Mh.L.J. 242.

3. The brief facts are that the respondent has filed a matrimonial petition for dissolution of marriage against the petitioner. During the cross examination of PW-1, the petitioner asked the question whether, the brothers of the respondent had published legal notices in daily Herald on 26.10.2018 and Navhind Times on 29.10.2018, which was answered in the affirmative by the respondent. Thereafter, the learned Counsel for the petitioner sought to produce copy of the legal notices on record, which was objected to.

4. The learned Trial Court while refusing to allow the production of the said notices, has held that the cross examination is on certain events and happenings in the family, pending the present suit and does not form the part of the matrimonial petition. Although the petitioner had right to impeach the credibility of the witness, this according to the learned Trial Court, has to be done based on the factual pleadings and the cross examination cannot travel beyond the facts pleaded.

5. There cannot be any manner of doubt as held by this Court in the case of **Ajit Sukhijia** (supra) that in a given case,

the cross examination need not be limited to the facts stated in the examination in chief as provided under Section 146 of the Evidence Act. However, such cross examination has to be relevant to the dispute involved. The Supreme Court in the case of **Special Cell, New Delhi Vs. Navjot Sandhi alias Afshan Guru, (2003) 6 SCC 641** has held thus:

“the endeavour of the Court wherever there is a serious dispute with regard to the relevancy and admissibility of a question should be to elicit the answer of the witness after noting the objections. The final decision to reject particular evidence as irrelevant or inadmissible can be if required taken at the end of the trial. This procedure benefits even the Appellate Court as in a case where the question is disallowed or excluded from evidence and the Appellate Court feels that the same was essential, it is at this stage not required to remand back the matter for re-examination of the witness. Cross-examination is the main tool of an accused to test the veracity of the evidence of the witness and discredit his trustworthiness. Moreover, this does not mean that the Trial Court will not exercise its discretion in disallowing irrelevant questions.”

(Emphasis supplied)

It can thus clearly be seen that cross examination is a main tool of an adversary to test the veracity of the evidence of the witness and to discredit his trustworthiness. This, however,

would not mean that the Trial Court will not exercise its discretion in disallowing irrelevant questions. It is thus obvious that the question would depend upon facts and circumstances of each case.

6. Coming to the present case, by the impugned order, the learned Trial Court has not disallowed any question. In fact, the question as to the publication of the legal notices has been allowed and answered by PW-1 in the affirmative. However, the petitioner cannot produce/prove the copy of the legal notices, through the cross examination of PW-1 as admittedly, PW-1 is not the author of these notices. In that view of the matter, no exception can be taken to the ultimate decision of disallowing the legal notices, through the cross examination of PW-1. If at all the petitioner wants to produce and prove the legal notices, the petitioner can do so, in accordance with law. If the notices are produced, the learned Trial Court shall independently decide whether, such production can be allowed, after hearing the parties. The Writ Petition is disposed of in the aforesaid terms.

C.V. BHADANG, J.