

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CR No.8743 of 2017 (O&M)

Date of decision: 23.01.2018

Dera Baba Ram Chandergir and another

..... Petitioners

Versus

Haridev Bharti and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Lajpat Sharma, Advocate
for the petitioners.

Mr. Pankaj Bali, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-petitioners are in the revision petition against the order dated 20.09.2017 declining their request to declare PW-9 Mukesh Kumar, a witness as hostile and grant opportunity to the plaintiffs to cross-examine him.

Learned trial Court has refused to declare Mukesh Kumar, PW-9 as hostile on the ground that since Mukesh Kumar has been partly cross-examined, therefore, now Mukesh Kumar is a witness of the defendant and the plaintiffs at this stage cannot be permitted to get the witness declared hostile and hence, no permission to cross-examine him can be granted.

Section 154 of the Evidence Act deals with such situation. It is extracted as under:-

“Question by party to his own witness – The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the

adverse party.

[Nothing in this section shall disentitle the person so permitted under sub-section (1), to reply on any part of the evidence of such witness].”

A reading of the Section 154 does not restrict the operation of the provision to a particular stage in the examination of a witness. A witness can be got declared hostile during the examination which includes examination-in-chief as well as cross-examination.

Hon'ble Supreme Court in AIR 1964 (SC), 1563 titled 'Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat' has already dilated upon this aspect and held as under:-

“Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever, witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, (sic-re-examination) permit the person calling him as witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of Section 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High Court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the

answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief. In the present case what happened was that some of the witnesses faithfully repeated what they had stated before the police in the examination-in-chief, but in the cross-examination they came out with the story of insanity of the accused. The court, at the request of the Advocate for the prosecution, permitted him to cross-examine the said witness. It is not suggested that the Advocate appearing for the accused asked for a further opportunity to cross-examine the witnesses and was denied of it by the court.”

In view of the aforesaid, the impugned order passed by the learned trial Court declining the request of the plaintiffs-petitioners to get the witness i.e. PW-9, Mukesh Kumar hostile and declining permission to cross-examination is erroneous.

Hence, the order under revision is set aside. Mukesh Kumar, PW-9 who has in cross-examination started making statement contrary to what was stated by him in cross-examination is declared hostile. The plaintiffs-petitioners shall be permitted to cross-examine the witness. Since the defendants have already completed the cross-examination, therefore, they would be also granted opportunity to further cross-examination, if such opportunity is prayed for.

Learned counsel has further submitted that while passing the order, the Court has already closed the evidence of the plaintiffs, although, plaintiffs were to tendered certain documents.

Keeping in view the aforesaid fact, learned trial Court would also permit the plaintiffs to tender the documentary evidence.

In view thereof, the order under challenge is set aside and the revision petition is allowed.

23.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No