

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 3755 Of 2017

Pradip Kumar Sengupta

Versus

Indrajit Sengupta

Petitioner in person : Mr. Pradip Kumar Sengupta

For the Opposite Party No. 1 : Mr. Anand Keshri

Mr. Abhijit Sarkar

Mr. Abhik Chitta Kundu

Heard on : 26.02.2021

Judgment on : 30.04.2021

JAY SENGUPTA, J:

1. This is an application challenging an order dated 16.08.2017 passed by the learned Chief Judicial Magistrate, Hooghly in Case No. C.R. 161 of 1992 under Sections 409, 468 and 471 of the Penal Code, thereby dismissing the petitioner's applications dated 04.08.2016 and 29.08.2016.

2. The petitioner appearing in person submitted as follows. The petitioner was the complainant in this case. He filed a petition dated 04.08.2016 before the learned Trial Court, *inter alia*, stating that in spite of raising of objections by him, the defence was cross-examining him on the

statement made by him under Section 200 of the Code. On this statement, the accused had no role to play. As such, the defence should not cross-examine him on matters stated by him in his initial deposition under Section 200 of the Code. Reliance was placed on a judgment of the Hon'ble Apex Court in Tahsildar Singh and Anr. vs. State of UP, AIR 1959 SC 1012 and it was submitted that it would be doing violence to the language of the proviso to Section 145 of the Evidence Act if the prior statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Reliance was also placed on the decision of the Hon'ble Apex Court in Chinnammal vs. State of Tamil Nadu and Ors., (1997) 1 SCC 145 in this regard. A similar prayer was made again on 29.08.2016.

3. Learned Counsel appearing on behalf of the accused/opposite party submitted as follows. The decisions relied upon by the petitioner had no relevance in this case. The law on this point was very clear that if a witness was to be contradicted with his previous statement in writing or reduced into writing, then the same had to be brought to the notice of the concerned witness. This was the only requirement and nothing else. There was no bar whatsoever on cross-examining the petitioner in respect of the initial deposition given by him under Section 200 of the Code. Right to cross-examine a witness cannot be curtailed in any manner. The learned Trial Court passed a reasoned order and quite rightly dismissed the petition dated 04.08.2016.

4. I heard the submissions of the complainant/petitioner appearing in person and the learned counsel for the accused/opposite party and perused the revision petition.

5. Section 145 of the Evidence Act may be quoted as under:

“Section 145: Cross-examination as to previous statements in writing.

–A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

6. There are two parts to the said provision. The first part requires that in the event a witness is cross-examined as to a previous statement made by him in writing or reduced into writing and relevant to the matters in question, the same may be done without such writing be shown to him or being proved. The second part provides that if it is intended to contradict the witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

7. Therefore, if the defence wants to cross-examine the complainant in respect of his previous statement in order to contradict him, the only requirement is that his attention must be called to those parts which are to be used for such purpose. It is thus amply clear that there is no absolute

bar on cross-examining a witness on his previous statement in writing or reduced into writing, in order to contradict him.

8. In Tahsildar Singh's case (*supra*), a Constitution Bench of the Hon'ble Apex Court, *inter alia*, held as under:

"The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real."

9. In Chinnammal's case (*supra*), the Hon'ble Supreme Court, *inter alia*, held as under:

"It is trite that a case has to be decided on the basis of the evidence adduced by the witnesses during the trial and any previous statements made by any of such witnesses can be used by the defence

for the purpose of only contradicting and discrediting that particular witness in the manner laid down in Section 145 of the Evidence Act. Under no circumstances can such previous statements be treated as substantive evidence as has been treated by the High Court in the instant case. In view of these well-settled principles of law, the High Court was first required to consider the statements made by the prosecution witnesses during trial and decide for itself whether those statements should be relied upon in view of their contradictions (if any) with their earlier statements, provided those contradictions had been brought on record under Section 145 of the Evidence Act, 1872.”

10. Here, it is nobody’s case that previous statement of a witness can be used as substantive evidence. However, such statements can be used to contradict a witness by cross-examining him and by following the procedure prescribed by the second part of Section 145 of the Evidence Act. Therefore, the ratios laid down by the Hon’ble Apex Court in the above referred cases do not help the petitioner’s cause any bit.

11. Besides, the Learned Trial Court has further held that the petitioner/complainant had not specifically stated his objection regarding any specific portion of a question.

12. Therefore, if the cross-examination of the petitioner is done by following the mandate of Section 145 of the Code, the same would not prejudice the petitioner in any way. I do not find anything to indicate that such procedure has been or would be departed from.

13. In view of the above, I do not find any merit in this revisional application. Accordingly, the same is dismissed.

14. However, there shall be no order as to costs.

15. Learned Trial Court is requested to conclude the proceeding, as expeditiously as possible, without granting any unnecessary adjournment to any of the parties.

16. The office of the learned Registrar General is directed to send a copy of this order forthwith to the petitioner at his address as mentioned in the cause title.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)

P. Adak