

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.1280 OF 2022

Ku Nalini D/o. Ramdas Dahat .VS. Vidyarthdhan S/o. Baburao Chaware

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr N. W. Nawab, Advocate for the Applicant

CORAM : G.A. SANAP, J.

DATE : DECEMBER 20, 2022.

Respondent was served long back. Respondent has failed to appear before this Court either in person or through Advocate.

2. I have heard learned Advocate for the applicant. Perused the record and proceedings.

3. In this application, the challenge is to the order, dated 16.06.2022, rejecting the question put in the cross examination by the learned Advocate appearing for the applicant to the respondent. The proceeding in question is filed under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'N. I. Act) by the respondent against the applicant. In the cross examination, the following question was put to the respondent.

“In SCC No. 15371 of 2015, during your course of cross-examination you have admitted that, since last 12 to 13 years I was meeting accused daily and you have given proposal for marriage but the family members of accused refused the proposal of your marriage ?”

Learned Magistrate rejected the question on the ground that the question pertains to SCC No. 15371 of 2015 between the same parties and as such, it is not permissible.

4. Learned Advocate submitted that the evidence of the respondent was recorded in SCC No. 15371 of 2015 and in the said case the respondent has given some vital admissions in the cross examination. However, when he was questioned about it, in this case he denied the said fact. Learned Advocate submitted that, therefore, by invoking the provisions of Section 145 of the Indian Evidence Act, 1872 (For short ‘ the Evidence Act’), it was necessary for him to cross-examine the respondent by drawing his attention to his earlier statement with a view to contradict him. Learned Advocate submitted that the production of the certified copy of the evidence of the respondent, from the earlier proceeding, would not have sufficed the purpose of the cross examination.

5. It is to be noted that object of the cross examination is to test the veracity and to impeach the credit of the witnesses by asking the relevant questions. Section 145 of the Evidence Act specifically provides the procedure for cross examination of witness as to the previous statement in writing. For the purpose of convenience, Section 145 is reproduced. It reads thus:

“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. Section 146 of the Evidence Act speaks about the questions to be lawful in the cross examination. The questions intended to test the veracity of the witness are lawful in the cross examination. Similarly, as per Section 155 of the Evidence Act, the questions relevant to impeach the credit can be asked to the witness in the cross examination. Section 155 (3) provides that if the credit of the witness is sought to be impeached on the basis of the previous statement, the same can be done by proof of a former Statements inconsistent with any part of his evidence, which is liable to be contradicted. In my view, perusal of Sections 145, 146 and 155 together would indicate that if the credit of the witness is to be impeached on the basis of the previous statement then that statement must be proved as per the provisions of Section 145 of the Evidence Act. The Statement sought to be used for the cross examination and contradiction is not necessarily to be made in the same proceeding. The object of the contradiction with a previous statement is to impeach the credit of the witness. It is to be noted that, therefore, in this case the cross examiner was right in asking the question to the witness in his cross examination consistent with the procedure prescribed under Section 145 of the Evidence Act.

7. Learned Magistrate, in my view, has not properly appreciated the question by applying the above provisions. The question framed clearly indicate that the witness was sought to be contradicted with his previous statement. Learned Magistrate without giving an opportunity to the witness, to answer the question, has rejected the question. The purpose of cross examiner would have been served if the witness had admitted the previous statement sought to be attributed to him by putting the question. In my view, therefore, the patent illegality, occurred at the behest of the Magistrate, is required to be corrected. Hence, following order.

ORDER

- i. The criminal application is allowed.
- ii. The order of Magistrate dated 16.06.2022, rejecting the question, is set aside.
- iii. The cross examiner is permitted to ask the question.
- iv. Learned Magistrate shall proceed to record further cross examination according to law.
- v. The criminal application stands disposed of, accordingly.
- vi. Pending criminal applications, if any, stand disposed of.
- vii. Authenticated copy of this order be provided to the parties.

(G. A. SANAP, J.)