



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

CRIMINAL REVISION APPLICATION NO. 161 OF 2024

APPLICANTS

1. Dharamraj s/o Tulshiram Velturkar,
Aged about 69 years, Occu: Retired,
R/a Abhay Nagar, Rameshwari Ring Road,
Nagpur.
2. Ravidas s/o Shivram Rangari,
Aged about 70 years, Occu: Retired,
R/a Plot No. 26, H.B. Estate, Sonegaon,
Post- Khamla, Nagpur-440025.

VERSUS

NON-APPLICANT

Central Bureau of Investigation,
Administrative Building, Seminary Hills,
Nagpur

Mr. Sashibhushan Wahane, counsel for applicants.

Mr. Prashantkumar Sathianathan, special prosecutor for non-
applicant.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **04/02/2025**

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally with the consent of learned

counsels appearing for the parties.

3. By this revision application, the applicants have challenged the order passed by Sessions Judge, Chandrapur, below Exhibit No. 105 declaring PW.4 as a hostile witness. It is contended that on 31/08/2023, the prosecution examined PW-4 Shriram Maroti Khatole, and during the examination-in-chief, the prosecution declared the witness as hostile by stating that the witness resiled from his statement made during the investigation. The application was allowed, and the prosecution was permitted to cross-examine the witness.

It is the contention of the learned counsel for the applicants that the witness has not disclosed the statement and the case of the prosecution. He was answering the questions properly, but the prosecution abruptly declared him hostile without following the due procedure, and therefore he filed an application to discard the evidence of this witness.

4. The said application is strongly opposed by the State on the ground that as the witness was not supporting the prosecution case, and therefore, by taking permission from the trial court, he was declared hostile. Hence, no illegality is

committed by the court in allowing the prosecution to cross-examine the witness.

5. Learned counsel for the applicants submitted that Section 154 of the Indian Evidence Act, 1872 authorizes the court in its discretion to permit the person who calls a witness to put any question to him, which might be put in cross-examination by the adverse party. He submitted that, casually, a witness cannot be declared hostile; the hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him.

6. In support of his contention, he placed reliance of *Gura Singh Vs. State of Rajasthan, [2001 Cri. L.J. 487 SC]*, and *Sudhakar Tukaram Dhatrak Vs State of Maharashtra, 2009 ALL MR (Cri) 2535*, and submitted that the witness cannot be casually declared as a hostile witness. The hostile witness is described as one who does not desire of telling the truth at the instance of the party calling him.

7. In Sudhakar's case, the Hon'ble Apex Court held that under the common law, a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling

him, and an unfavorable witness is one called by a party to prove a particular fact in issue or relevant opposite test. In India, the right to cross-examine the witnesses by the party calling him is governed by the provisions of the Indian Evidence Act, 1872. Section 142 requires that leading questions cannot be put to the witness in examination-in-chief or in re-examination except with the permission of the court.

8. Learned Special Prosecutor submitted that there may be a procedural defect, but it is not sufficient to discard the evidence of the said witness. He submitted that the trial court has considered that the witness is not answering properly, and therefore, the permission was sought, and therefore, the witness is declared hostile.

9. After hearing both sides and on perusal of the order passed by the Sessions Court, it reveals that merely on asking by the prosecution to declare him hostile, the witness was declared hostile. In fact, the procedure that the prosecutor has to ascertain from the witness is whether he is supporting the prosecution or not, and he shall put the questions to him to ascertain his facts, and thereafter, if the witness is not responding to the prosecution

and he is giving evasive answers or the answers are contrary to the statement made under Sections 161 or 164 of Cr.P.C., then with the permission of the court, the prosecution can be permitted to put leading questions. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence, he cannot, as a matter of general rule, be treated as washed off the record altogether. The term “hostile”, “adverse” or “unfavourable” witness is not known to the Indian Evidence Act. The rule of not permitting a party calling the witness to cross-examine is relaxed under the common law by evolving the terms (“hostile witness and unfavourable witness”). Under the common law, a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him, and an unfavorable witness is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact. Section 154 of the Indian Evidence Act authorizes the court, in its discretion, to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The courts are, therefore, under a legal obligation to exercise a discretion vesting in them in a judicious manner by proper application of mind and keeping in

view the attending circumstances. Permission for cross-examination in terms of Section 154 of the Evidence Act cannot and should not be granted at the mere asking of the party calling the witness. The right to cross-examine the witnesses by the party calling him is governed by the provisions of the Indian Evidence Act, 1872. Section 142 requires that leading questions cannot be put to the witness in examination-in-chief or in re-examination except with the permission of the court. The court can, however, permit leading questions as to the matters which are introductory or undisputed or which have, in its opinion, already been sufficiently proved. Therefore, in order to grant such permission, the material is to be brought on record to show the adverse witness.

Thus, in view of the above facts and circumstances, it is apparent that the trial Court has permitted the learned Prosecutor to cross-examine the witness on mere asking. Admittedly, the procedure is not followed by the Sessions Court.

10. Considering the submission made by learned counsel that the evidence of this witness is to be discarded, it cannot be accepted merely because the witness is declared hostile. The said witness is not discredited and can still be believed. However,

considering that no prejudice should be caused to the accused, the opportunity is to be granted to the accused.

11. In view of the above facts and circumstances, the revision application is allowed. Accordingly, I proceed to pass the following order:

- a] The Sessions Court directed that on filing the application by the accused, the Sessions Court shall give an opportunity to the prosecution to file a reply on this application.
- b] The Session Judge, after receipt of the application from the accused and after giving the opportunity to the prosecution, decides whether the witness can be declared hostile on the following due procedure in view of Section 154 of the Indian Evidence Act.
- c] The Sessions Court shall also consider the objection raised by the accused as to declaring the said witness hostile and thereafter proceed with the trial.

12. The revision application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]