

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19407-2025 (O&M)

Date of Decision: 08.04.2025

Amritpal Singh

... Petitioner

VS.

Rahul Ahuja

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Namit Gautam, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 BNSS has been filed by the petitioner, *inter alia*, with a prayer to quash the impugned order dated 10.10.2024 (Annexure P8) passed by JMIC, Ludhiana in COMA-2589-2014 dated 21.04.2014 (Annexure P2) vide which the objection raised by the petitioner to turn the witness DW5 Sumesh Chadha as hostile has been decided against the petitioner and in favour of the complainant.

(2). Learned counsel for the petitioner contends that at the time of testimony of DW5 Sumesh Chadha recorded on 05.05.2023 (Annexure P7), the said witness produced the HDFC Bank account statement Ex.DW5/G to demonstrate the payment made by him in the wake of sale deed Ex.DW5/A which showed that the transaction took place leading to examination of DW10 i.e. Manager of the HDFC Bank which establishes the fact that there had been transfer of amount of Rs.2 Crores from the account of Rajneesh Ahuja, father of the respondent into the account of Sumesh Chadha, who in turn got prepared demand draft of Rs.1,80,18,000/- in favour of Kovalam Investment and Trading Co.Ltd., however, these facts were never put for examination of the respondent and as such, the respondent in connivance

with Sumesh Chadha and Kovalam Investment Trading Co.Ltd. cheated the petitioner.

(3). It is further argued that from the testimony of DW-9 ASI Tarsem Singh i.e. call detail records along with the location of towers, it was revealed that at the time of registration of the sale deed between Kovalam Investment and Sumesh Chadha, the Respondent was present at the office of Sub Registrar, Ludhiana, though the sale deed was executed in the name of Sumesh Chadha, but the said call records were not in possession of the petitioner at the time of examination of the respondent, due to which these facts could not be put to the respondent at that time.

(4). He submits that the record produced clearly proves that the amount deposited by Rajneesh Ahuja in the account of Sumesh Chadha was for the purpose of sale deed and not for the purpose of purchase of cars as stated by DW-5 and the same is being denied intentionally while being hand in glove with the other party and in such circumstances, such witness apparently would be considered as not speaking the truth but suppressing it, inasmuch as either the said witness was false at that time or making false statement before the court, therefore, there is no reason why such witness be not declared hostile.

(5). Having heard learned counsel for the petitioner, this Court is of the considered view that the instant petition deserves to be rejected, for the reason that it is not the case of the petitioner that the witness ever resiled, withdrew or made such statement which was contradictory to what he earlier made before the police or during the trial proceedings. Further, the petitioner has also failed to establish that the testimony of Sumesh Chadha in court is

significantly different from their pre-trial statement or is openly antagonistic to the calling party's case nor does the said witness was proved unwilling to tell the truth, or evasive, or deliberately suppressed the facts, thereby injuring the case of the party who called them.

(6). Merely giving testimony unfavorable to the party who called them does not make a witness hostile if the witness is speaking the truth. A witness who simply fails to support the case of the party calling them, without any positive indication of hostility or contradiction, cannot be automatically declared hostile. Nevertheless, a witness making statement relating to past of the prosecution case before the sessions court, different than that made by him before the committing magistrate does not necessarily make him a hostile witness.

(7). A hostile witness is the one who by the manner in which he delivers his answers or evidence shows that he is unwilling to tell the truth. Also, if a witness who states the truth which goes against the party producing him does not make him 'Hostile'. Only a witness who has been gained over by the opponent party can be said to be a hostile witness and not the one who does not speak as per the whims of the party producing it before the Court.

(8). In view of the above discussion, no ground has been made out to interfere with the impugned order dated 10.10.2024 (Annexure P8) passed by the JMIC, Ludhiana.

(9). Dismissed.

08.04.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No