

(1975) 01 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : O.M.P. No. 117 in Civil Suit No. 17 of 1969

Shri Shankar Nath and Others

APPELLANT

Vs

Shri Jagat Ram Kuthiala and Others

RESPONDENT

Date of Decision : 02-01-1975

Acts Referred:

Evidence Act, 1872 — Section 138, 154

Citation : (1975) 4 ILR HP 46

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; H.S. Thakur, P.N. Nag, B.B. Vaid and Remesh Chand, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is an application on behalf of Defendant No. 1 presumably u/s 154 of the Evidence Act to enable him to put questions to the witness Shri Rattan Chand D.W. 5 by way of cross-examination. Ordinarily a party calling a witness is not permitted to cross-examine him. The discretion is given to the Court u/s 154 to permit a party calling a witness to put a few questions by way of cross examination and the obvious purpose is to elicit the truth in the statement made by the witness. The application itself discloses certain definite reasons what for the witness is being called for cross examination. It is submitted therein that the Defendant had produced the witness to prove the contents of certain documents and that an assurance was given by the witness that "he would not state anything in the Court which may be prejudicial to the rights of Defendant No. 1". The grievance of the Defendant No. 1 is that in his cross-examination the witness stated about the setting up of a Water Supply Scheme at Haroli and that statement was in support of the Plaintiffs. Therefore, the purpose is to cross-examine the witness on the statement which he made in cross examination in respect of the Water Supply Scheme which is said to be the main avocation of the disputed Trust. It is noted significantly that there is no averment in the

application that the witness spoke untruth or that there was any discrepancy in his statement.

2. The witness Shri Rattan Chand is not only one of the Plaintiffs but is also a trustee and as such the Defendant No. 1 should have known that he was likely to support the Plaintiffs on the point of trust and its functions. Merely because the party asks for cross-examination of his own witness, the Court is not to grant permission by way of routine. The discretion to be exercised is certainly judicial based on sound principles. The party calling the witness has to lay down foundation before he can be permitted to cross-examine his own witness. The foundation so laid down has to necessarily refer to the statement made by the witness either inside the Court or even outside so that a discrepancy is pointed out in the two statements made by him and an effort is made to probe deep into his statement and the truth is elicited. In the instant case neither any grounds are set out in the application nor any grounds are otherwise made out as to whether the witness gave two contrary statements and the party was at a loss to understand as to where the truth was laid. That was the chief purpose for which the cross-examination could be permitted u/s 154 of the Evidence Act. A witness is not necessarily hostile if in speaking the truth as he knows, his testimony happens to go against the party calling him. The purpose of Section 154 can only be to find out if the witness is one of the truth and can be relied upon, because cross-examination is the most powerful and effective instrument for bringing out and testing truth. But that is far from saying that a witness is hostile whether his testimony is such that it does not support the case of the party calling him. Such a view would seriously undermine the independence, integrity and dignity of a witness in a Court of law. The ground for declaring a witness hostile for the purpose of cross-examination may be made out not only with reference to his statement in the examination in chief but also with reference to his statement in the cross-examination. u/s 138 of the Evidence Act the cross-examiner is not supposed to confine his attack upon the witness by referring to the statement made in examination in chief. The cross-examination is not confined to the facts which the witness testified in his examination in chief. When the Defendant No. 1 called the witness and examined him he should have rest assured that he was likely to state about the trust and its functions. The section, does not entitled him for instance to say "I propose to call my opponent and cross-examine him". This is exactly what is being attempted to be done. As was observed in *Saraswathamma and Anr. v. Bhadramma and Anr.* AIR 1970 Mys 157 the fact that a witness has become hostile has to be established by eliciting information such as could give an indication of hostility. In the present case no such attempt has been made to establish by eliciting information that the witness was speaking untruth or that he perverted or gave contrary statement so that there was indication of hostility and truth was required to be elicited by way of cross examination.

3. The learned Counsel relied on *Ranjit Singh and Anr. v. State* AIR 1952 H&P 81. There can be no quarrel with the proposition that the party cross-examining the

witness may elicit information which was not given by the witness in his examination in chief. This is obviously so in view of Section 138 of the Evidence Act when questions can be put by way of cross-examination not necessarily confined to the statement disclosed by the witness in the examination in chief. However, in that case before the learned Judicial Commissioner, the witness in his cross-examination elicited certain information which ran counter to what the stand of the prosecution was in the examination in chief, to which the witness himself testified. Thus there was a clear contradiction in the two statements made by the witness and in order to reconcile the discrepancy and to elicit the truth the learned Judicial Commissioner observed that permission to cross-examine the witness u/s 154 should have been granted. Therefore, the facts of that case will be of no help to the Petitioner.

4. In this view of the matter I do not consider that any ground is made out for granting permission to Defendant No. 1 to cross-examine the witness Shri Rattan Chand D.W. 5 and the application is rejected.