
(2009) 04 MAD CK 0138

In the Madras High Court

Case No : Criminal R.C. No. 819 of 2007 and M.P. No's. 1 of 2007 and 1 of 2009

State

APPELLANT

Vs

M. Gopalakrishnan and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Evidence Act, 1872 — Section 145, 154

Penal Code, 1860 (IPC) — Section 120(B), 409, 420, 467, 468

Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 2 LW(Cri) 804

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : N. Chandrasekaran, Special Public Prosecutor, for the Appellant;
Sundar Mohan, for R1 and Party-in-person for R3, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This Criminal Revision Petition has been preferred against the against the Order, dated 16.03.2007 made in CrI.M.P.

No. 391 of 2006 in C.C. No. 17 of 2001 on the file of the Principal Special Judge for CBI Cases, Chennai.

2. The case has been filed against the respondents under Sections 420 r/w 120B, 409, 467, 468 IPC and Section 13(2) r/w 13(1)(d) of

Prevention of Corruption Act. It is not in dispute that it is a part-heard case, pending before the court below. One Mr. V. Ramanan, who was the

General Manager, Indian Bank, retired in the year 2003 was examined as P.W.2 before the court below. According to the petitioner, the said

witness, P.W.2 had deposed his evidence in chief, supporting the prosecution case, however, turned hostile, while he was cross-examined by the

third respondent/A3. Since P.W.2 deposed evidence, during cross-examination

against the prosecution case and in favour of the third

respondent/A3, learned Public Prosecutor requested the court below, to treat him hostile, but the request was negated by the trial court.

3. It is seen that the revision petitioner herein had filed a petition before the court below seeking permission to treat the said prosecution witness

(P.W.2) as a hostile witness, since he did not support the prosecution case and to cross-examine him, but that was negated unreasonably by the

court below, hence, the revision has been preferred before this Court.

4. Learned Special Public Prosecutor further submitted that after adducing evidence in chief, as per the prosecution case, P.W.2, being a retired

officer of the Bank, deliberately supported the respondents/A3, with an ulterior motive, for reasons best known to him. Therefore, the said witness

could have been treated by the court below only as a hostile witness and permitted the petitioner/complainant to cross-examine the witness.

However, the court below did not permit the petitioner to treat him hostile and cross-examine the witness (P.W.2). Learned Special Public

Prosecutor further contended that it is a settled proposition of law that the prosecution witness who deposed evidence against the prosecution case

should have been treated as hostile witness, as requested by the prosecution, however, the court below refused to treat the witness hostile, though

he had voluntarily deposed evidence against the prosecution case and supported the third respondent/A3 in his cross-examination.

5. Mr. Sundar Mohan, learned Counsel appearing for R1 submitted that as per the impugned order, P.W.2 has not exhibited any element of

hostility and therefore, there was no necessity to treat him hostile by the prosecution. Learned Counsel appearing for R1 and also R3, who

appeared party-in-person, drew the attention of this Court to paragraph number 18 and other paragraphs of the impugned order. Paragraph 18 of

the orders reads as follows:

In view of the above discussion it is held that P.W.2 has not exhibited any element of hostility. As already stated the answers mentioned in the

petition given by P.W.2 in the cross-examination were on the basis of the statement of LW 58 and further statement of LW 21 and certain other

records which have not been put up for perusal to P.W.2 at the time of issue of Ex.P.7 sanction order. The reasons stated in the petition are not

convicting. Hence, this petition is dismissed.

They further contended that certain documents were not shown to P.W.2 at the time of passing the sanction order. After perusing the document,

he deposed evidence against the prosecution case and therefore, according to the respondents, P.W.2 need not be treated as hostile witness to be

cross-examined by the petitioner herein.

6. Per contra, Learned Special Public Prosecutor drew the attention of this Court to paragraph number 14 and other portions of the impugned

order. It is seen that P.W.2 answered in his cross-examination as follows:

I agree that the accused N. Chandrasekara Rao is a knowledgeable person with honesty and integrity.

7. In Ex.P.7, sanction order, as held by the court below, nothing is mentioned about the knowledge of A3. The Court below has given a finding in

paragraph number 14 of the impugned order as follows:

In Ex.P.7, nothing is mentioned about the knowledge of A3. Likewise, it is not stated in Ex.P.7 that A3 is a dishonest person and enjoys bad

reputation. When such being the case, the evidence given by P.W.2 that A3 is a knowledgeable person with honesty and integrity cannot be taken

as something against what is stated in Ex.P.7, the sanction order.

According to the learned Special Public Prosecutor, the aforesaid finding of the court below is totally self-contradictory. The trial Court has come

to a conclusion that P.W.2 had answered in his cross-examination, based on the records and statement of witnesses, though he had not answered

anything, based on the document, that was perused by him before the cross-examination to depose that the third respondent/A3 was a

knowledgeable person with honesty and integrity. Learned Special Public Prosecutor further submitted that P.W.2, himself was the sanctioning

authority for the prosecution of the case, but with a deliberate intention, he has supported the third respondent/A3, totally contrary to his evidence

in the chief-examination, with a wrong notion that he would not be treated hostile, if he depose evidence, in support of the third respondent/A3 and

against the prosecution case, during his cross-examination. As P.W.2 deposed evidence against his own order of sanction, under Ex.P.7, it is the

duty of the revision petitioner to plead before the court below, for treating him a hostile witness, however, the court below rejected the vital legal

plea, raised by the Special Public Prosecutor.

8. In the chief-examination, P.W.2 deposed that he had accorded sanction order for the prosecution of N. Chandrasekara Rao, Scale-V Officer

(R3), V. Srinivasan, Scale-IV Officer (R7) and Kumarasamy, Scale-III Officer (R6) and the sanction order was issued by him on 02.03.2001

under Ex.P.7 (7 sheets). He has further stated in the chief, that he had perused the documents relevant to the prosecution case, copy of the FIR,

investigation report, statement of witnesses and expert documents etc., applied his mind over the same and having satisfied that a prima facie case

has been made out against the aforesaid three officers, he accorded the sanction, under Ex.P.7. It is also seen that P.W.2 has deposed a clear

evidence in his chief, supporting the prosecution case, being the disciplinary authority, he has accorded sanction for the prosecution against the

respondents 3, 6 and 7 under Ex.P.7. In the chief examination, he has categorically stated that he had perused the document relevant to the case,

copy of the FIR, investigation report, statement of witnesses and expert documents etc., applied his mind over the same and having satisfied that

prima facie case has been made out against the third respondent/A3 and other officers, he issued the sanction order, Ex.P.7.

9. In the cross-examination by R3 (A3), the prosecution witness (P.W.2) has stated as follows ""I agree that the accused Mr. Chandrasekara Rao

is a knowledgeable person with honesty and integrity"" and has further stated in his cross-examination that the allegation of the prosecution stating

that the third respondent/A3 had facilitated the release of the credits as wrong. He has further deposed that A3 had not abused his authority for

passing any wrongful loss to the Indian Bank or wrongful gain to any one including himself. He has further stated in the cross-examination that It is

true that A3 was not a member of any conspiracy and there was no need for the prosecution of A3 either under Prevention of Corruption Act or

under IPC. P.W.2, was the authority, who accorded sanction for prosecuting the third respondent/A3, having supported the prosecution case in

the chief examination, saying that he had perused the copy of the FIR statements of the prosecution witnesses and other relevant records, satisfied

with the same, accorded sanction for the prosecution of the third respondent/A3 and others, strangely in his cross-examination, changed his version

and stated that the third respondent/A3 is a knowledgeable person, with honesty and integrity. There is no special circumstance or materials available for P.W.2 to change his version during the cross-examination.

9. Learned Special Public Prosecutor in support of his contention relied on the following decisions:

1. Sat Paul Vs. Delhi Administration,
2. Shri Rabindra Kumar Dey Vs. State of Orissa,
3. G.S. Bakshi v. State (Delhi Admn.) AIR 1979 SC 569
4. Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat,
5. K. Anbazhagan v. Superintendent of Police AIR 2004 SC 524

10. The third respondent who appeared party-in-person submitted that there is no error or infirmity in the impugned order passed by the court

below and also cited the following decisions, in support of his contention.

1. State Vs. Smt. Indirakumari and Others,
2. P. Ramachandra Rao Vs. State of Karnataka,
3. Shri Rabindra Kumar Dey Vs. State of Orissa,
4. V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P.,

The aforesaid decisions cited by the third respondent are not directly applicable to the fact and circumstance of the case.

11. In Sat Paul Vs. Delhi Administration, , the Hon''ble Supreme Court has held that the discretion conferred by Section 154 on the Court, is

unqualified and untrammelled and it is to be liberally exercised considering the witness''s demeanour, temper, attitude, bearing or the tenor and

tendency of his answers, or from a perusal of his previous inconsistent statement or otherwise, thinks that the grant of such permission is expedient

to extract the truth and to do justice. It has been made clear by the Hon''ble Apex Court that the grant of such permission to treat the witness

hostile and permitting to cross-examine the witness is expedient to extract the truth and to do justice. The grant of such permission does not

amount to an adjudication by the court as to the veracity of the witness and u/s 145 of Evidence Act, 1872 and the evidence of the prosecution

witness cannot be discarded as a whole, based on the evidence adduced in the cross-examination.

12. The Hon''ble Supreme Court by a Three Judge Bench in Shri Rabindra Kumar Dey Vs. State of Orissa, has ruled that Section 154 of

Evidence Act, confers a judicial discretion on the Court, to permit cross-examination and does not contain any conditions or principles which may

govern the exercise of such discretion. It is, however, well-settled that the discretion must be judiciously and properly exercised in the interests of

justice and cross-examine the witness.

13. In G.S. Bakshi v. State (Delhi Admn.) reported in AIR 1979 SC 569, the Hon''ble Apex Court has held that u/s 154 of Evidence Act, when

can a prosecution witness be declared to be hostile. As per the decision, when a prosecution witness turns hostile by stating something, which is

destructive of the prosecution case, the prosecution is entitled to plead that the witness be treated as hostile. In such case, the trial Court must

allow the Public Prosecutor to treat the witness as hostile and to cross-examine the witness.

14. In K. Anbazhagan v. Superintendent of Police reported in AIR 2004 SC 524, at page number 536, it has been held as follows:

The Public Prosecutor will be at liberty to apply that the witnesses who have been recalled and cross-examined by the accused and who have

resiled from their previous statement, may be again recalled. The Public Prosecutor would be at liberty to apply to the Court to have these

witnesses declared hostile and to seek permission to cross-examine them. Any such application if made to the Special Court shall be allowed. The

Public Prosecutor will also be at liberty to apply that action in perjury to be taken against some or all such witnesses. Any such application/s will be

undoubtedly considered on its merit/s.

15. Three Judge Bench of the Hon''ble Apex Court in Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, at page number 1569 has held that

Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is

concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise

the power when the circumstances demand and to confine this power to the stage of examination-in-chief is to make it ineffective in practice.

16. It has been made clear by the Hon''ble Apex Court that a clever witness in

his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, (sic-re-examination) permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. To confine the operation of Section 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the Section which are not there and that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness, on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The ruling of the Hon'ble Supreme Court in the above referred decision is squarely applicable to the facts and circumstances of this revision petition.

17. On perusal of catena of decisions rendered by the Hon'ble Apex Court, it is clear that at any stage of the examination of the witness, the court can apply its discretion judiciously, treat the witness hostile and permit the party to cross-examine the witness. It has been made clear that it is only the judicial discretion of the court, in order to meet the ends of justice. It need not be confined to chief examination of the witness alone.

18. In the instant case, P.W.2, who was the senior officer of the Bank and also the sanctioning authority to initiate criminal proceeding against the respondent, has categorically deposed in his chief, that he had gone through the copy of the FIR, all relevant material papers, statement of witnesses and after having satisfied, accorded sanction for the prosecution of the third respondent (A3), however, cleverly he changed his version in the cross-examination stating that the said accused is a knowledgeable person with honesty and integrity and that there was no possibility for him to have collusion with the other accused to commit the offence. There is no satisfactory reason for the said witness adducing directly a contradictory evidence, supporting the third respondent/A3, while he was cross-

examined by the said accused.

19. Considering the materials available on record, I am of the view that there is no change of circumstance available for P.W.2, to adduce such

hostile evidence during his cross-examination. P.W.2, being the sanctioning authority, for the prosecution, as contended by the learned Special

Public Prosecutor, has deliberately supported the third respondent/A3 against his own order, whereby he had accorded sanction and the evidence

adduced in his chief examination. Had his version in the cross-examination been true, there could be no necessity for him to accord sanction to

prosecute the third respondent/A3. His evidence in the chief shows that he had perused the copy of the FIR, statement of witnesses and other

relevant materials and having satisfied himself, accorded sanction. However, in the cross-examination, without any basis, he changed his version,

for the reasons best known to him, which cannot be justified. In such circumstances, as contended by the learned Special Public Prosecutor, I am

of the view that the Court below could have exercised its discretion judiciously, treated him hostile, whereby permitting the Special Public

Prosecutor appearing for the petitioner to cross-exam the witness.

20. Considering the facts and circumstances, it is a clear error apparent on the part of the Court below in overlooking the legal position, based on

the material facts available on record. The court below has failed in exercising its discretion judiciously. Hence, I am of the view that this Criminal

Revision Petition has to be allowed and the order passed by the Court below has to be set aside, permitting the revision petitioner to treat P.W.2

hostile and to cross-examine the witness.

21. In the result, this Criminal Revision Petition is allowed and the impugned order, dated 16.03.2007 passed by the Court below in CrI.M.P. No.

391 of 2006 is set aside, holding that the petitioner/complainant is entitled to treat the witness hostile and cross-examine him with reference to the

hostile portion of evidence adduced by him and further, the Court below is directed to dispose the case, according to law, uninfluenced by the

order of this Court, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions

are closed.