

(2000) 07 MAD CK 0002

In the Madras High Court

Case No : Criminal Revision Case No. 1275 of 1999 Criminal Revision Petition
No. 1275 of 1999 and Criminal M.P. No. 9832 of 1999

State

APPELLANT

Vs

P.V. Bhupathi and Others

RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Evidence Act, 1872 — Section 154
Penal Code, 1860 (IPC) — Section 120B, 193, 467, 471
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2000) 2 LW(Cri) 909

Hon'ble Judges : Bakbar Basha Khadiri, J

Bench : Single Bench

Advocate : A. Packiaraj, Special Public Prosecutor, C.B.1, for the Appellant; A. Kulasekaran, for the Respondent

Final Decision : Allowed

Judgement

Bakbar Basha Khadiri , J.—This revision is against the orders passed by the learned X Metropolitan Magistrate, Chennai in the course of

the chief examination of one Sivan alias Sivalingam as a witness in C.C.No.3666 of 1999.

2. This matter has arisen in this way:-

The first respondent Bhupathi was working as Chairman and Managing Director of the Neyveli Lignite Corporation. The second respondent is his

wife. The rest of the respondents are his close relative and friends. A case u/s 13(2) of the Prevention of Corruption Act was registered against the

first respondent in Crime No.RC.21(A)96. According to the prosecution, pending trial in that case, the first respondent with the assistance of the

other respondents purchased certain stamp papers of very low denomination and

created some documents anti-dating them as if there was a joint family and the joint family properties were sold by the other members. That has been done by the first respondent to explain the disproportionate assets. Regarding fabrication of documents, a case in C.C.No.3666 of 1999 u/s 120B r/w 467, 471 and 193 I.P.C. was registered. One Sivan @ Sivalingam who was an employee of the tenth respondent turned as an approver. The tenth respondent is a jeweller. The case of the prosecution is that with the assistance of the tenth respondent and the approver, the other respondents created anti-dated purchase bills to explain away the disproportionate assets. The approver Sivan @, Sivalingam was examined as witness for prosecution. In the course of his examination, the learned Public Prosecutor put certain questions regarding Exs.A3 to A35 documents by the police which the witness had admitted they were written by him. The Public Prosecutor tried to elicit the answers from the witness by asking him to compare handwriting in Exs.A3 to A35 with certain handwriting found in Exs.P.36 and P.37. That was objected to on the ground that the witness was not the author of the document. The learned Metropolitan Magistrate passed an order stating that the witness should be treated hostile before putting any more positive examination in this regard and disallowed the further questions regarding Exs.P.36 and P.37 which has led to the filing of the instant Criminal Revision.

3. Heard both the sides. It is useful to refer to Section 154 of the Evidence Act, which recites as under:-

S. 154 Question by party to his own witness - The Court may, in its discretion, permit the person who calls a witness to put any question to him

which might be put in cross-examination by the adverse party.

Section 154 of the Evidence Act confers a judicial discretion on the Court to permit cross-examine and does not contain any condition or principle

which may govern the exercise of such discretion. The discretion to be exercised depends upon the facts and circumstances of each case. The

question of treating a witness as hostile is left to the subjective satisfaction of the party who calls him. As to how far he is going to support his case,

it is for the party who calls him to find out whether there is exhibition of hostile animus in the mind of the witnesses as to not to support his case. It

should also be pointed out that a witness need not necessarily be hostile, if in

speaking the truth his testimony happens to go against the party calling him. The witness's interestedness his desire to suppress truth, his unwillingness to give answers to question demonstrated by his temper, bearing, demeanour, etc. and all other circumstances have to be taken into consideration in determining whether the witness is to be treated as hostile, if a request made by him or the party calling him.

4. In the instant case the learned Public Prosecutor submits that the petitioner had not made any request to the Court to treat the witness as hostile

witness. Further, close examination of evidence given by the witness shows that he had given answers to the question put by the Public Prosecutor

and when the learned Public Prosecutor tried to elicit answers regarding Exs.P.36 and 37, objection was raised by the defence counsel to the

effect that the witness was not the author of the documents. The learned Metropolitan Magistrate ought to have considered whether or not the

objection is sustainable. Instead, the learned Metropolitan Magistrate went wrong in holding that only after treating the approver as a hostile

witness, the prosecution should elicit the answers from him regarding the documents. In fact, the learned Metropolitan Magistrate has observed

hence, prosecution is not permitted to put any more positive questions with regard to the entries which find place in Exs.A.3 to A35 and that of

the entries in Ex.P.36 (wrongly stated instead of Ex.P.37) on comparative basis." There is no classification of question as positive question and

negative question. Questions may invite affirmative or negative answers. Probably, by positively, the learned Metropolitan Magistrate means

leading questions, it is settled law that leading questions cannot be put to any witness in his Chief examination regarding the disputed facts, whether

or not he is treated hostile. That being the case, if the learned Metropolitan Magistrate found that the questions were leading questions, he could

have disallowed them. But insistence that the witness should be treated as hostile appears to be erroneous. This Criminal Original Petition is

allowed. Consequently, Crl.M.P.No.9832 of 1999 is closed as unnecessary. The learned Metropolitan Magistrate is directed to proceed with the

examination of the witness. It is for the learned Metropolitan Magistrate to consider whether a question is leading question putting answer in the

mouth of the witness and if so, disallow the same. The Public Prosecutor has

expressed that the prosecution has no mind to have the witness treated as hostile.