

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5227 of 2012

Date of decision: February 28, 2013

Karaj Singh

.. Petitioner

Vs.

Amarjit Kaur and others

.. Respondents

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. V.K. Shukla, Advocate for the petitioner.
Mr. L.S. Sidhu, Advocate for the respondent No.1.

A.N. Jindal, J

The precise question in this petition against the order dated 31.7.2012, passed by the trial court is, “whether the witness, summoned by the petitioner himself, who had refused to accept his signatures on the registered gift deed and the sale deed dated 22.5.2003, could be treated as hostile and suppressing the truth and whether such witness could be declared hostile enabling the petitioner to cross-examine him?”

Sense and reasons to contend that the witness was hostile, is the right of the party and to declare the witness as hostile is the satisfaction as well as discretion of the court. A witness is not necessarily hostile because in the process of unfolding the truth he happens to depose something against the party calling him as a witness. It is also a cardinal principle of law that the witness's primary allegiance is to the truth and not the party calling him. The courts should not casually brand a witness “hostile” or “unfavourable” and should act in their judgment to see whether there is any truth. It is also settled that a witness who, to the satisfaction of the court, is suppressing the truth, could be permitted to be cross examined even during the stage of cross examination. However, the proper stage for dealing with the witness under Section 144 of Evidence Act, for putting any question to him, which might be otherwise in cross examination of the adverse party, is either by that witness while examined-in-chief or re-examined.

Before proceeding further, it would be essential to reproduce certain facts of the present case.

“On 14.11.2011, when Sukhwinder Singh DW-11 was called by the defendants-petitioners to prove their gift deeds and sale deeds dated 22.5.2003, to whom the presumption of truth is attached. The witness denied the factum of execution of such documents. However, examination-in-chief of the witness was deferred and the petitioner requested the court to declare the witness as hostile, but the court refused to do so.”

Now the interesting question to be determined in this case is, “whether the court could exercise its discretion to declare him hostile and permit the petitioner for cross examination?”

The cardinal principle of law is that a witness cannot be asked the leading questions by the party examining him. In this regard Sections 142 and 143 of the Evidence Act reads as under :-

“142. When they must not be asked – Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re- examination, except with the permission of the court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have in its opinion, been already sufficiently proved.

143. When they may be asked – Leading questions may be asked in cross-examination.”

The Evidence Act further provided the situation where the leading questions could be asked. In this regard Section 145 of the Evidence Act needs to be reproduced. Section 145 of the Act reads as under :-

“145. Cross-examination as to previous statements in writing – A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be

called to those parts of it which are to be used for the purpose of contradicting him.”

Section 145 of the Act does not direct the party, who could be permitted to be cross examined qua the leading questions and it does not limit the right of the adverse party to cross examine the witness summoned by the other party. In the normal course, a witness can be cross-examined by the adverse party, but an exception has been made by Section 154 of the Act to permit the cross examination, to the party summoning him. Section 154 of the Act reads as under :-

“154. Question by party to his own witness - (1) *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.*

(2) *Nothing in this section shall dis-entitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.*

A witness cannot be declared as hostile as a matter of course, rather it depends upon the satisfaction and discretion of the court if it finds that there is some material to show that (i) the witness is suppressing and not speaking the truth; (ii) it has exhibited an element of hostility to the party for whom he is deposing; (iii) he is not willing to tell the truth and denying the undisputed facts; (iv) he is resiling from the previous statement; and (v) he is changing the sides and transferring his loyalty. Similar observations were made by the Apex Court in case ***Rabindra Kumar Dey vs. State of Orissa 1976 PLR 928*** wherein it was observed as under :-

“..... Thus it is clear that before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion allow the party concerned to cross-examine its own witnesses cannot be allowed. In other words a

witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the Court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth. In order to ascertain the intention of the witness or his conduct, the Judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he gave before the previous authorities. The Court must, however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.”

The Apex Court in ***Rabindra Kumar Dey's*** case (supra), further put the courts on caution that permission should be given only in special cases. It must scan and weigh the circumstances properly and should not exercise its discretion in a casual and routine manner.

While interpreting the discretion to be exercised by the court while permitting for cross examination, in case ***Sat Paul v. Delhi Administration, AIR 1976 SC 294***, the Apex Court laid down that the discretion is unqualified and untrammelled and is quite apart from any question of the hostility or otherwise of the witness. However, it is liberally exercised. The discretion must be judiciously and properly exercised in the interest of justice. The inference that the witness has turned hostile is to be inferred from the answers given by the witness.

As regards, declaring the witness as hostile in the cases of registered document, which the witness intentionally avoids to accept and it is proved that the witness was present at the spot when the document was executed, the witness could be contradicted by way of examination, it was observed in case ***Baikuntha Nath Chatteraj v. Prassannamoyi Debya, AIR 1922 PC 409***, wherein it was observed as under :-

“Where the purpose of the production of the document at the time of cross-examination of a witness seemed to have been

well understood by him and from the record of his deposition it was manifest that after being shown the document, he was directly asked whether it was not a fact that he was not at a particular place on the alleged date as was clear from the document and where on re-examination no attempt was made to elicit any explanation. Held, the witness was properly contradicted.”

It may further be observed that the distinction must be drawn between the true witness and the hostile witness. A mere fact that the witness has given some unfavourable evidence is not enough to declare him as a witness “adverse”. The sole test to declare the witness “adverse” is that the court should find out some material from the statement that he conceals the real sentiments and poses a hostile attitude, giving unfavourable evidence and making statement contrary to the facts known to him and if the court reaches the satisfaction that the conduct of the witness is such, could exercise the discretion that too a judicious discretion in terms of the judgment delivered in case ***Dadabuddappa Gouli vs. Kale Kanu Gouli & Ors. 2000 AIR (Karnataka) 158***, should declare him hostile.

The other factors to be examined by the court at the time of declaring him hostile are to examine his demeanour, temper, attitude, distinctly intoxicant feeling or hostile mind, in the witness box.

Hostility has become the order of the day for diversity of the reasons i.e. material gains, social bondages, fear, mercy, apprehension to face harassment, wastage of time and money or the party alliances. The documents which are apparently public or registered one's never condemned, criticised or commented otherwise or when the admitted facts are being ignored by the witness or the party intentionally in order to save the accused resiles from his earlier statement should be examined by the court from the view point of the party examining. Without any sufficient reasons, it is not essential to declare him hostile on flimsy, unsubstantiated or insufficient grounds. However, if the party having signed the previous statement having appeared before the Sub Registrar signing sale deeds, denying intentionally while hand in glove with the other party, then such witness apparently would be considered as not speaking the truth but

suppressing it. Either such 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.

In the instant case also, there are registered gift deeds and sale deed which the witness has denied without assigning any reason and without explaining as to how his signatures came on such documents. The court itself did not ask the question for making its own satisfaction before exercising the discretion, whether the witness was suppressing the truth, but outrightly ignore the sense, suspicion and belief of the petitioner that the witness was suppressing the truth and ignoring the patent facts.

Resultantly, this petition is accepted, impugned order is set aside and the trial court is directed to proceed in accordance with law.

February 28, 2013
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(A.N. Jindal)
Judge