

(2013) 1 RCR(Civil) 569

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4298 of 2012

Mohinder Singh Gill

APPELLANT

Vs

Jagdeep Singh and
Others

RESPONDENT

Date of Decision: Nov. 27, 2012

Citation: (2013) 1 RCR(Civil) 569

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: B.R. Mahajan, for the Appellant; Kuldeep Singh, Advocate for Respondent No. 1, Mr. G.S. Bhatia, Advocate for Respondent No. 2 and Ms. Sonia Sharma, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Jeyapaul, J.

The plaintiff aggrieved by the dismissal of the application filed by him to direct the second defendant to cross examine the

1st defendant first before ever he cross-examines the 1st defendant preferred the present revision. The plaintiff has contended in the application

that there is no conflict of interest inter se the defendants. Therefore, the second defendant has no right to cross-examine the first defendant. But in

case the second defendant has proposed to cross-examine the first defendant, let him do so first in order to avoid demolition of cross-examination

that would be conducted by the plaintiff.

2. The second defendant resisted the above plea of the plaintiff on the ground that the defendants had filed separate and non-identical written

statements. The first defendant has filed elaborate written statement raising issues concerning both the plaintiff as well as the second defendant.

Therefore, it is only the plaintiff who shall first cross-examine the first defendant before ever second defendant ventures to cross-examine the first

defendant.

3. The trial Court having relied upon the decision of the Karnataka High Court in Ennen Castings Pvt. Ltd. (In Liquidation) Vs. M.M. Sundaresh

and Others, held that the plaintiff shall cross-examine the first defendant. If there is a conflict of interest between the co-defendants, a defendant

would thereafter have an opportunity to cross examine the other defendant. Having thus held the trial Court directed the plaintiff to first cross-

examine the first defendant. In case any conflicting version comes out during the course of cross-examination as against the interest of the second

defendant, the second defendant would have the right to cross-examine the first defendant.

4. Learned counsel appearing for the revision petitioner/plaintiff would contend that the written statement filed by first and second defendants

would go to show that they had no conflicting interest inter se as regards the pleadings set up by the plaintiff in the plaint. Therefore, the second

defendant should first cross-examine the first defendant if at all he wants to cross-examine, of course, with the permission of the trial Court. The

purpose of cross-examination of the plaintiff would be defeated, if the second defendant who has no clashing interest with the first defendant is

permitted to wait till the cross-examination of the plaintiff is over and is thereafter permitted to cross-examine the first defendant.

5. Per contra, learned counsel appearing for the first and second defendants would submit that the first defendant should be cross-examined by

plaintiff first in point of time and in case any conflicting interest surfaces during the course of such cross-examination, then the second defendant

would have the right to cross-examine the first defendant. They also cited various decisions of this Court and the other High Courts in the country.

6. In the decision in *Rajani Dei Vs. Narottam Sahoo and Others*, the question whether the defendant has a right to cross examine a co-defendant

has arisen for consideration. Under such circumstances, the Orissa High Court has held that the right of a defendant to cross-examine a co-

defendant would arise only if a co-defendant takes a contrary stand on a relevant and material issue and he makes a statement prejudicial to the

interest of a defendant.

7. This Court in *Kartar Singh Vs. Thakur Singh and Others* held that a defendant has a right to cross-examine a co-defendant only to an extent of

clashing of interest pleaded, set up and deposed to by the co-defendant.

8. In *Smt. Saroj Bala Vs. Smt. Dhanpati Devi and Others*, the Delhi High Court while dealing with an issue whether a defendant has a right to

cross-examine the other defendant held that if the co-defendant had taken a contrary stand, the defendant has a right to cross-examine a co-

defendant.

9. In *Smt. Annapurna Devi Vs. Administrator General and Others*, the Hon'ble Division Bench of Allahabad High Court held that a defendant can

cross-examine a co-defendant only when the interest of a co-defendant is adverse to the interest of the defendant.

10. All the above decisions would have relevance only in a case where an issue arises as to whether a defendant has a right to cross-examine the

co-defendant. It has been categorically held in the above decisions that a defendant has a right to cross-examine a co-defendant if a co-defendant

has set up an adverse plea as against a defendant. In my considered view, the above decisions cited by learned counsel appearing for the

respondents will have no application to the question involved in the revision.

11. In the instant case, it is the admitted position that the first and second defendants sailed together and contested the case of the plaintiff. In other

words, there is no adverse interest inter se the defendants. If the second defendant finds that some adverse statement has been given by the first

defendant during the course of chief-examination affecting the interest of the second defendant, the second defendant has a right to cross-examine

the first defendant. If no adverse statement emerges from the chief-examination of the first defendant, no right accrues to the second defendant to

cross-examine the first defendant. If the second defendant is permitted to cross-examine the first defendant after the plaintiff cross-examined the

first defendant, there is every possibility for the second defendant to derail the fruits of cross-examination done by the plaintiff by putting leading

questions to the first defendant and inviting favourable answers.

12. In my considered view, a defendant who sails with a co-defendant shall first cross-examine the co-defendant in case the co-defendant has

come out with an adverse statement as against him. Thereafter, the plaintiff should be permitted to cross-examine such a defendant.

13. In Pritpal Singh Aurora Vs. Rajinder Singh Aurora and Others, this Court had an occasion to deal with the situation where a defendant

supported the case of the plaintiff. This Court held that such a defendant has a right to lead evidence, but in order to safeguard the interest of the

contesting co-defendant the evidence of the defendant shall be cross-examined first by the plaintiff and then by the contesting co-defendant. If such

a logic is applied to the case in hand, one can safely conclude that a co-defendant who supports the contention of a defendant shall first cross-

examine the said defendant before ever the plaintiff who has clash of interest with such a defendant subjects such a defendant to cross-examination.

14. Let me take up the decision of Ennen Castings Pvt. Ltd. (In Liquidation) Vs. M.M. Sundaresh and Others, (Kar) which was followed by the

trial Court to direct the plaintiff to cross-examine the first defendant first in point of time. That was a case where the question whether a defendant

can cross-examine a co-defendant who has given evidence against him has arisen for determination. Having raised such an issue, the Karnataka

High Court held that the defendant has a right to cross-examine a co-defendant if there is a conflict of interest between a defendant and a co-

defendant. But, if there is no conflict of interest, such an opportunity need not be given to a co-defendant.

15. In the instant case, if we go by the written statement separately filed by the first and second defendants, it is found that they virtually joined

together to attack the plea set up by the plaintiff. There is virtually no conflict of interest between the first and second defendant. As such, the

second defendant cannot have a right of cross-examination. But, in case, where an adverse statement has been given by the first defendant in his

examination-in-chief, the second defendant should be asked to cross-examine the first defendant, if he is so advised, first in time point of time and

only thereafter, shall the plaintiff be directed to cross-examine the first defendant in order to ward-off the prejudice that would be caused to any

plaintiff.

16. In view of the above, I set aside the impugned order passed by the trial Court and direct the trial Court to permit the second defendant to

cross-examine the first defendant if at all any adverse statement had been made in chief-examination. Thereafter, the plaintiff be permitted to cross-

examine the first defendant.

17. The above order passed by this Court will not have a bearing on the right of re-examination of the parties concerned. Revision petition is

allowed.