
(2005) 12 AP CK 0012

Andhra Pradesh High Court

Case No: C.R.P. No. 4696 of 2004

Tanala Satyanarayana

APPELLANT

Vs

Tanali Ramarao and
Others

RESPONDENT

Date of Decision: Dec. 23, 2005

Acts Referred:

- Evidence Act, 1872 - Section 137, 138, 154

Citation: (2006) 2 ALD 542 : (2006) 1 ALT 718 : (2006) 3 CivCC 279 : (2006) 4 RCR(Civil) 565

Hon'ble Judges: D.S.R. Varma, J

Bench: Single Bench

Advocate: S. Subba Reddy, for the Appellant; M.S.R. Subrahmanayam, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.S.R. Varma, J.

Heard both sides.

2. Defendant No. 3 is the petitioner herein.

3. The core issue involved in this revision is as to whether the witness examined on behalf of the plaintiff can be subjected to further cross-examination after the said witness was cross-examined by the plaintiff himself.

4. The facts in brief are as follows:

The plaintiff examined P.W.2 and on behalf of the defendants P.W.2 was cross-examined. During the said cross-examination, it appears that P.W.2 made certain statements contrary to the interest of the plaintiff himself. Thereupon, the plaintiff sought permission of the court to declare P.W.2 as hostile witness. The court, instead of

declaring the said witness as hostile, permitted the plaintiff to cross-examine his own witness i.e. P.W.2. Upon such cross-examination by the plaintiff, the petitioner herein sought permission of the court to cross-examine once again. The said request was rejected. Hence, the present revision.

5. In the light of the above controversy, it is essential to notice the relevant provisions under the Indian Evidence Act, 1872 (for brevity "the Act").

6. Section 137 deals with examination-in-chief. It is well known that earlier examination-in-chief used to be conducted in open court, but, by virtue of the amendment to C.P.C. which came into effect from 1-7-2002, the examination-in-chief is being made by way of filing affidavits recorded by a Commissioner appointed by the court. However, this aspect is not crucial fact in the present case. u/s 137 of the Act, the order of examination of witness is (i) examination-in-chief (ii) cross-examination (iii) re-examination. This is the order in normal course to examine the witness.

7. It appears that P.W.2, when he was being cross-examined, made certain adverse statements and consequently the plaintiff sought permission of the court to declare P.W.2 as a hostile witness. It is to be noted here that the term "hostile witness" is not defined anywhere nor there is any procedure prescribed. In normal parlance, witness who speaks something against the interest of the party who introduced him as witness, would be termed as "hostile witness."

8. Section 138 of the Act, deals with order of examinations of witnesses. It reads:-

138. Order of examinations: Witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination: The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

9. First part of Section 138 only postulates that witness shall be at the first instance examined in chief and be subjected to cross-examination, if so desired by the other side. Further if so desired by the party, who introduced him as witness, he can be re-examined.

10. The second part of Section 138 deals with types of questions that can be put to the witness, which is not relevant for the purpose of deciding the present case.

11. The third part of Section dealing with direction for re-examination further postulates that re-examination can be directed if certain matters, which were referred to in the cross examination, require clarification/explanation and also if new matter is introduced with the permission of the court, the other party may again be given an opportunity of further cross-examination of the witness.

12. Therefore, from the above, two aspects are obvious viz., (i) after the cross examination if any clarification/explanation is to be elicited, re-examination can be permitted by the court and such permission is totally within the realm of discretion of the Court, (ii) if any new matters are introduced in such re-examination, the adverse party may be given an opportunity to further cross-examine the witness.

13. The reason for providing such additional facility of cross-examination or the facility of re-examination for the second time either by the adverse party or the party calling the witness, as the case may be, to facilitate such party is only to bring certain facts on record in evidence, which were not covered by the examination-in-chief earlier or when the witness could not be questioned during his first opportunity of cross-examination on certain aspects. In other words, the very purpose or intention of the legislature is that on any aspect, which is spoken to newly by the witness - in addition to the facts stated in the examination-in-chief, shall be subjected to cross-examination in order to test the veracity of the statements made by the witness.

14. Nextly Section 154 deals with the questions that may be put by the party to his own witness.

15. The situation arises only when witness is declared as "hostile witness" by the court exercising its discretionary jurisdiction. As already noticed, "hostile witness" is only a concept, by necessary implication, without being defined under the Act.

16. Coming to the facts on hand, it is on record that P.W.2 was examined-in-chief by way of affidavit and cross-examined by the opposite party. When it was found by the plaintiff that P.W.2 spoke something adverse to his interest, plaintiff sought permission of the court to declare him as "hostile witness" and the court instead of declaring him as hostile and putting on record that the witness was declared as hostile, which is not available under law, permitted the plaintiff to cross-examine the witness and during such cross-examination certain new matters have been spoken to by the P.W.2. As already noticed, as per the provisions of Section 138 of the Act, when new matters have been introduced by the witness, the opposite party has got a right to cross-examine the witness notwithstanding the fact that the witness is declared as "hostile witness". In other words, it need not necessarily be cross-examination. Take for example, if the evidence of the witness is either contrary to the interest of the party who introduced him as witness or requires some clarification, he can be subjected to cross-examination by such person, who introduced him as witness. It need not necessarily be by way of cross-examination. That can be done by exercising the right of re-examination. That's what precisely

happened in the present case.

17. The court, while rejecting the request of the plaintiff to declare him as hostile witness, permitted the plaintiff to cross-examine the witness. Therefore, it need not necessarily be termed as "cross-examination". There can also be re-examination and during such re-examination, if new matters are introduced, the natural corollary as postulated u/s 138, is the opposite party should be afforded with an opportunity of cross-examination.

18. The entire thing depends upon the nature of contents of the oral evidence spoken to by the witness, either in examination-in-chief or cross-examination. If the nature of information given by a witness is totally hostile to the party introduced him as a witness, then, perhaps, the court shall have to exercise its discretionary jurisdiction and permit that party to put questions that can be put by the opposite party as contemplated u/s 154, and if the court comes to the conclusion that there need not be any cross-examination basing on the nature of answers/information given by the witness, can permit the party to examine his own witness. But, such examination would be in the nature of re-examination, but not cross-examination.

19. The learned Counsel appearing for the respondent submits that though the plaintiff sought permission of the court to declare P.W.2 as hostile, after completion of cross-examination of P.W.2 by the defendants the court granted permission to the plaintiff to cross-examine P.W.2, but during such cross examination no new matter has been introduced and, on the other hand, P.W.2 had again spoken the same as what was spoken to in examination-in-chief. Therefore, he contends that the question of introduction of new matter does not arise and consequently, the question of cross-examination also does not arise.

20. This submission cannot be countenanced. P.W.2 appears to have spoken, during the course of cross-examination by the defendant, contrary to the interest of the plaintiff to some extent. As the plaintiff was very much cautious that some statements were made by P.W.2 in cross-examination contrary to his interest, he sought permission of the court to cross-examine the witness. When permission was accorded to cross-examine, it is not in dispute that, P.W.2 again reiterated the same as has been stated by him in the examination-in-chief. That means there is a change in the version of the witness during the course of cross-examination made by the defendant and again there is another change in the version of the witness during the cross-examination done by the plaintiff himself. That shift in the stand of the witness (P.W.2), in my considered view, amounts to introduction of new material. In other words, something new, other than what had been stated in cross-examination made by D-3 was introduced in the cross-examination made on behalf of plaintiff.

21. The plaintiff can have advantage of examining the witness twice; firstly by way of examination-in-chief and secondly by way of cross-examination, but, the same cannot be denied to the defendant, particularly, when some new matter is introduced in the

re-examination. Therefore, a conjoint reading of Sections 137, 138 and 154 would make it abundantly clear that the question of according permission to a particular party to the suit, whether it be the plaintiff or the defendant, cross-examination or re-examination would very much depend upon the nature of examination and nature of answers given by the witness.

22. The plaintiff, in the instant case, initially thought that the witness was speaking adverse to his interest. Therefore he sought permission of the court to cross-examine P.W.2 and the witness during such cross-examination made by plaintiff promptly shifted the stand and supported the case of the plaintiff. In such a case, it should be understood that the nature of the cross-examination done by plaintiff had changed from cross-examination to that of re-examination. It should be remembered that certain information can be elicited from the witness both in the cross-examination u/s 154 or in re-examination u/s 138.

23. Having had the advantage of eliciting something in his favour in such an examination, the plaintiff cannot shift his stand and say that no permission need be granted to the defendants for further cross-examination of P.W.2. Obviously, this stand is taken by the plaintiff, because P.W.2 spoke in his favour in the cross-examination, made by the plaintiff himself and to his advantage. This cannot take away the right of the defendant to further cross-examine such witness, merely on the ground that there cannot be any cross-examination after cross-examination contrary to the order of examination enunciated in Section 137 of the Act.

24. If put in a different way, by examining P.W.2 second time, the plaintiff cannot term his examination of his witness as "cross-examination". In fact, it should be treated as re-examination because what he lost in the cross-examination by the defendant is regained in his so called "cross-examination".

25. Therefore, it is not the nature of the witness but it is the nature of the evidence that is more relevant for the purpose of according permission to the other side to cross-examine a particular witness.

26. For the foregoing reasons, I am of the firm view that the cross-examination of P.W.2 conducted by the plaintiff shall have to be treated only as re-examination but not as cross-examination and shall be followed by cross-examination by the defendant which is termed as "further cross-examination" in normal parlance. Consequently, the impugned order is liable to be set aside and is accordingly set aside.

27. Accordingly, the Civil Revision Petition is allowed. No order as to costs.