

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Apr-13-2016

Judge : M. Venugopal

Appeal No. : O.A.No. 231 of 2016 in E.L.P.No. 1 of 2011

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. The Applicant/1st Respondent has preferred the instant Original Application praying for passing of an order by this Court to issue subpoena to Mr.Vignesh (then PRO), Department of Public Relation Officer, Corporation of Chennai, Rippon Building, Chennai to produce the records and give evidence pertaining to the Certification of documents in Ex.P.30 series marked in ELP.No.1 of 2011 which were published in Tamil News Daily Murasoli on the various dates mentioned in the affidavit.

2. According to the Applicant/1st Respondent, the Respondent (Election Petitioner) in ELP.No.1 of 2011 had marked Ex.P.30 series Xerox copies of the Tamil Newspapers 'Murasoli' (22 numbers) containing various dates beginning from 20.03.2011 to 12.04.2011. Further, P.W.1 (Election Petitioner) was cross

examined on 11.10.2013 and 08.11.2013 as regards the validity of certification made by the then Public Relation Officer of Corporation of Chennai in regard to Ex.P.30 series and its validity.

3. The plea taken on behalf of the Applicant is that P.W.1 (Election Petitioner) had not disclosed clearly in his evidence about the manner in which he obtained the certification and therefore, it is necessary for the Applicant to get permission from this Court to summon the said Public Relation Officer, Chennai Corporation to produce the relevant documents in respect of the Ex.P.30 series and to tender his evidence.

4. In response, it is the stand of the Respondent/Election Petitioner that the evidence on the side of the Petitioner in ELP.No.1 of 2011 was closed on 18.03.2016 and the matter was posted on 01.04.2016 for Respondent's side evidence and that the Applicant/1st Respondent is to adduce evidence and further that, he has not filed any List of Witnesses.

5. According to the Respondent/Election Petitioner, P.W.1 was already cross examined pertaining to Ex.P.30 series and therefore, there is no necessity to summon the Public Relation Officer. Also, Ex.P.30 series need not be looked into at all because the original of Ex.P.30 series was already marked as Ex.P.46 series.

6. The categorical plea taken on behalf of the Respondent/ Election Petitioner is that the Applicant/1st Respondent is to enter into the witness box and that he can produce the Tamil Daily i.e. 'Murasoli' because of the fact that the said Newspaper is a party organ of the DMK party.

7. That apart, it is projected on the side of the Respondent/ Election Petitioner that if the Applicant/1st Respondent wants to examine any witness on his side, he can do so only after examining himself as witness in terms of the ingredients of Order XVIII Rule 3(A) of the Civil Procedure Code. Therefore, he cannot seek for issuance of subpoena by this Court to summon the then Public Relation Officer Mr.P.Vignesh at this stage. Besides these, the ingredients of Order 16 Rule 14 C.P.C. do not apply.

8. Indisputably, Ex.P.30 series was marked on the side of the Respondent/Election Petitioner. As a matter of fact, the original of Tamil Murasoli Newspapers (in respect of Ex.P.30 series) were marked as Ex.P.46 series through P.W.1. At this stage, a perusal of the Ex.P.30 series, latently and patently, indicates that it was attested as 'True Copy' in Tamil by one Vignesh on 24.03.2013 as Public Relation Officer of Chennai Corporation.

9. The real grievance of the Applicant/1st Respondent is that P.W.1 (Election Petitioner), in his evidence, had not disclosed clearly about the manner in which he obtained the certification in Ex.P.30 series and therefore, it is just and necessary on the part of the Applicant/1st Respondent to obtain a permission from this Court to summon the said Public Relation Officer to produce the relevant documents in respect of Ex.P.30 series and to tender evidence.

10. In this connection, this Court aptly points out that the Respondent/Election Petitioner (as P.W.1) in his cross examination on 11.03.2013 had deposed that Ex.P.30 series Tamil Newspaper Clippings of Murasoli were attested by PRO and that he does not remember his name. Also, he had stated in his evidence that the entire News Dailies containing the news items in Ex.P.30 were shown to PRO before getting certification. Furthermore, he had also stated that in his evidence that he does not remember as to whether he had filed any application to the Gazetted Officer PRO for certifying the documents in Ex.P.30 series and went on to add that he had appointed a Personal Assistant for filing ELP.No.1 of 2011, who would only know about this and his name is Prem, who is not a Corporation Employee, but, he is his separate Personal Assistant. Also, he had stated in his evidence that he had not made any request over phone to PRO to certify the documents.

11. It is to be noted that as per Section 138 of the Indian Evidence Act, 1872, the object of examination of witness is to elicit from him all relevant material facts (facts in issue or relevant to the issue) within his personal knowledge and to prove that party's case. In an Adversary System of Jurisprudence, the procedure rights of both parties have to be dealt with, it is just and necessary to mark the boundaries of the use of the witness, to prove each party's case. In reality, the

Evidence Act, 1872 regulates the nature and examination of parties so that one may not go out of the track and bring evidence which will be of no use to the parties and will also not assist the Court in deciding the issues before it.

12. In this connection, it is not out of place for this Court to make a pertinent mention that the main object of Order 16 Rule 1 and 2 C.P.C. is to prevent litigants from manufacturing evidence pending trial to encounter an unforeseen situations/circumstances.

13. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Union of India V. M/s. Orient Engg. and Commercial Co. Ltd. and another, (1978) 1 Supreme Court Court at page 10, whereby and whereunder, it is observed that 'if grounds are made out for summoning a witness, he will be called and not if the demand is belated, vexatious or frivolous one'. Moreover, a party to the suit cannot be exempted from filing list of witnesses under Order 16 Rule 1 C.P.C., as per decision Banamali Tripathy V. Biswanath Pattanaik, AIR 1984 Orissa 145 at page 147.

14. In fact, in an Election Petition, the filing of 'List of Witnesses' with a short note of the relevance of their evidence is primarily intended not only to put the other side on notice about the evidence sought to be summoned but also to bind the litigant to the production of relevant evidence as mentioned in the list. Therefore, undoubtedly, the 'List of Witnesses' has a sanctity and assume significance, in the considered opinion of this Court.

15. In law, if a veracity of a witness is sought to be challenged with reference to a certain document, the same would not be disallowed. Further, nothing can be asked as to the conditions of a document without production of the same [vide Section 144 read with Section 91 of the Indian Evidence Act, 1872]. In reality, questions tending to corroborate evidence of relevant facts are admissible as per Section 159 of the Indian Evidence Act, 1872.

16. It is to be remembered that the discretion to be exercised under Order 16 Rule 14 C.P.C. is to be exercised judicially by a Court of Law. As a matter of fact, Order 16 Rule 14 C.P.C. applies only to persons who were not called as witness earlier,

in the considered opinion of this Court. Of course, a Court of Law can summon a witness, if it is subjectively satisfied as to the purpose and necessity of doing so, in this regard. Further, unless a witness enters the witness box, a Court of Law cannot decide whether the witness is competent to depose or otherwise.

17. It cannot be brushed aside that Section 87(1) proviso of the Representation of People Act, 1951 speaks of the Jurisdiction of the Court to decline to examine a witness. The discretion of the Court under that proviso is limited to refusal to examine witness on the basis that the evidence is vexatious or frivolous one or likely to procrastinate the proceedings.

18. In this connection, this Court aptly points out the decision in *Badan Singh Raghuvanshi V. B.Rajgopal Naidu and another*, AIR 2000 Madhya Pradesh 56, at special page 60, wherein at paragraph 32, it is observed as follows:

32. As has already been noticed hereinabove, the provisions contained in Section 87 of the Representation of the People Act, 1951, mandates that subject to the provisions of the said Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. The procedure provided under the aforesaid Code includes the manner regulating the presentation of a plaint, appeal etc., Section 4 of the said Code however saves any special form of procedure prescribed, by or under any other law for the time being in force. Obviously, therefore, the procedure prescribed under the Civil Procedure Code, 1908 regulating the presentation stands superseded by the special procedure provided by the High Court in the special rules relating to the manner of presentation which rules have been framed in the exercise of the jurisdiction envisaged under Article 225 of the Constitution of India.

19. It may not be out of place for this Court to significantly point out the decision in *Yerabalu Chennabasappa V. Official Receiver*, AIR (30) 1943 Madras 266 wherein it is observed and held as follows:

In deciding a case on the merits the Court is bound to hear all the evidence that a party chooses to adduce and cannot decide the matter on the evidence of some of

the witnesses selected by it on the ground that as any other witnesses examined would have said the same thing there was no object in examining them.

20. Furthermore, only under compelling circumstances, the Court can permit a party to examine himself after the evidence of other witness is recorded, as per decision N.C.Kaladharan V. Kamaleswaran and others, AIR 2000 Kerala 354.

21. On a careful consideration of respective contentions and in view of the stand taken on behalf of the Applicant/1st Respondent to the effect that P.W.1 had not disclosed clearly in his evidence in regard to the manner in which he obtained the certification in Ex.P.30 series etc., this Court, to prevent an aberration of Justice and to promote substantial cause of Justice, accords permission to the Applicant/1st Respondent to issue subpoena to Mr.Vignesh (then PRO), Department of Public Relation Officer, Corporation of Chennai, Rippon Building, Chennai to produce the records and give evidence relating to the Certification of documents in Ex.P.30 series marked in ELP.No.1 of 2011.

22. Accordingly, the Original Application is ordered. No costs. Registry is directed to issue subpoena to the aforesaid witness requiring him to attend before this Court on 20.04.2016 at 2.15 p.m. to tender evidence and to produce the records in question. The Applicant/1st Respondent is directed to take diligent steps for payment of emergent batta. Private Notice is permitted. The Applicant/1st Respondent is also directed to furnish the List of Witnesses about the evidence sought to be summoned before the Registry on or before 20.04.2016 by serving a copy to the other side.

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