

Jagdish Barela Vs. State of M.P.

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SooperKanoon Citation : sooperkanoon.com/512016

Court : Madhya Pradesh

Decided On : Feb-08-2002

Reported in : 2002(5)MPHT107

Judge : S.L. Kochar, J.

Acts : [Evidence Act, 1872](#) - Sections 145; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 162 and 162(1)

Appeal No. : Criminal Revision No. 93/2002

Appellant : Jagdish Barela

Respondent : State of M.P.

Advocate for Def. : Desai, Dy. Adv. General

Advocate for Pet/Ap. : Zelawat, Adv.

Disposition : Application allowed

Judgement :

ORDER

S.L. Kochar, J.

1. This revision is admitted for final hearing.

2. With the consent of the parties the same is heard finally.

3. This revision has been filed against the order dated 31-10-2001 passed by Second Addl. Sessions Judge, Khargone in S.T, No. 200/2001, State of M.P. v. Jagdish and four others rejecting the application filed by the Counsel for the applicant/accused persons for allowing him to contradict the witnesses Mangalia (P.W. 6) and Rola (P.W. 7) with their previous statements dated 13-8-99 recorded in S.T. No. 119/98 and 377/98. In that Sessions Trials for the same incident these two witnesses were examined by the prosecution and they had given different story about the incident than the story narrated before the Court against the present applicant in S.T. No. 200/2001. Therefore Counsel for the applicant submitted his prayer before the Trial Court for allowing him to contradict the witnesses from their statements and the same is permissible under Section 145 of Evidence Act. Trial Court after elaborate discussion in such a short point dismissed the application holding mainly that witnesses can be allowed to be contradicted only with their case diary statements, recorded during the course of investigation.

4. Section 145 of Evidence 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.'

This section is meant for cross-examination with previous statement. There is no prohibition imposed by this section for contradicting the witness from his previous statement recorded otherwise then during investigation under Section 162 of Cr.PC relevant with the fact of the concerned case. Section 145 is very clear on the point that witness can be contradicted from his previous statement. It has nowhere qualified that the witness can be contradicted with the statement recorded under Section 161 of Cr.PC during the course of investigation.

5. The Trial Court has failed to consider the real prospect and Interpretation of Section 145 of Evidence Act. There are catena of judgments on this point not only in criminal case but even in civil case, if the witness has been examined he can be contradicted in civil case with his statement recorded under Section 162 of Cr.PC.

6. Reference can safely be made of judgment passed by this Court in Ram Charan v. Harpa, Short Notes 174 (1964 J.L.J.) as well as Kallu v. State of M.P. (1987 MPLJ 475), this Court has held in the case of Ram Charan v. Harpa (supra) as under :-

'Section 145 of the Evidence Act is a general provision which enables a party to contradict a witness by his previous statement in order to show that the evidence of the witness is false. Section 162, Criminal Procedure Code lays an embargo on the use of a statement made to a police officer in the course of an investigation under Chapter XTV of that Code. But the only fetters which are attached to such a statement are that it cannot be used for any purpose (save as therein provided) of any enquiry or trial in respect of any offence under investigation at the time when such statement was made. The expressions used only prevent the statement to be used 'at any enquiry or trial....'. Undoubtedly these fetters are confined to a criminal enquiry or trial, otherwise there would have been a full stop after the parenthetic clause 'save as hereinafter provided in sub-section (1) of Section 162, Criminal Procedure Code'. The main section and the proviso, read together, prohibit such a statement to be used in a criminal enquiry or trial for any purpose, except by the accused and with the permission of the Court by the prosecution for the purposes of Section 145 of the Evidence Act. That section nowhere lays an impediment to the use of such statements in the trial of a civil suit.'

7. Looking to the aforesaid legal and factual position, the revision is allowed. The order of the Trial Court is set aside. Trial Court is directed to allow the Counsel for the applicant for contradicting the witnesses Mangalia (P.W. 6) and Rola (P.W. 7) from their previous statements recorded in Sessions Trial Nos. 119/98 and 377/98, decided on 9-5-2001.

C.C. within three days.

