

Rajesh Kumar Jain Vs. State of Orissa

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Court : Orissa

Decided On : Apr-09-2008

Reported in : 2008CriLJ4472

Judge : Pradip Mohanty, J.

Appellant : Rajesh Kumar Jain

Respondent : State of Orissa

Advocate for Pet/Ap. : Mr. Panda

Disposition : Petition dismissed

Judgement :

ORDER

Pradip Mohanty, J.

1. This criminal revision is directed against the order dated 15-3-2007 passed by the Additional Sessions Judge, Bhawanipatna in S. C. No. 73/57 of 2006 permitting the prosecution to examine P.W. 3 under Section 154 of the Evidence Act after his cross-examination by the defence counsel.

2. The petitioner is facing trial under Sections 302/304-B/498-A, IPC and Section 4 of the D. P. Act. After examination and cross-examination of P.W. 3, the P. P. filed a petition under Section 154 of the Evidence Act on 15-3-2007 with a prayer to re-

examine the said witness. The trial Court after considering the said petition under Section 154 of the Evidence Act declared P.W. 3 hostile. Thereafter, he was cross-examined by the prosecution and also by the defence.

3. Mr. Panda, learned Counsel for the petitioner submits that the petition under Section 154 of the Evidence Act, which was filed after cross-examination of P.W. 3, is not permissible, since the defence elicited some new facts from the mouth of the P.W. 3. He further submits that once a witness is examined in chief and cross-examined by the defence, he should not be permitted to be recalled. By permitting the prosecution to put leading question to a witness after his cross-examination was over, the very purpose of examination of the witness has been frustrated.

4. Mr. Behera, learned Additional Government Advocate vehemently contends that the trial Court has rightly allowed the prayer of the prosecution and no illegality has been committed by it by declaring P.W. 3 hostile under Section 154 of the Evidence Act and allowing the prosecution to put leading questions to the said witness. He also submits that no illegality has been committed by the trial Court in declaring P.W. 3 hostile to the prosecution, since during his examination-in-chief though he stuck to his statement made under Section 161, Cr. P.C. during cross-examination he introduced a new story in order to favour the adverse party. He also submitted that the petition under Section 154 of the Evidence Act was filed when P.W. 3 was still in the witness box. Therefore, it cannot be said that the trial Court went wrong in allowing such a petition.

5. Learned Counsel for the parties relied upon the decision in *Tahasildar Singh v. State of U.P.* : 1959 CriLJ1231 , *Dayabhai Chhaganbhai Thakkar v. State of Gujarat* : 1964 CriLJ472 , and *State of Bihar v. Lalu Prasad Yadav* : 2002 CriLJ3236 .

6. Perused the petition and the decisions cited by the parties. The main point to be considered is whether the Court can allow a petition under Section 154 of the Evidence Act filed by the prosecution after cross-examination of a witness by the defence when he supported the prosecution case in his chief. In *Tahasildar Singh's* case (*supra*) the Apex Court was dealing with the construction and interpretation of Section 162, Cr. P.C. and Section 145 of the Evidence Act. After

taking into consideration the ratio decided in Tahasildar Singh's case, the Apex Court has decided in Dayabhai's case (supra) that the Court can permit a person, who calls a witness, to put questions to him which might be put in cross-examination at any stage of examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief. Similar view has been taken in Lalu Prasad's case (supra).

Section 154 of the Evidence Act read as follows:

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 questions to him which might be put in cross-examination by the adverse party.

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

From a bare reading of the aforesaid provision, it is crystal clear that discretion lies with the Court to permit a person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Section 154 does not in terms, or by necessary implication, confine the exercise of the power by the Court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and discretion is entirely left to the Court to exercise the power when the circumstances demand. In the instant case, P.W. 3 was examined by the prosecution who in his examination-in-chief stuck to his earlier version made before the police. However, during his cross-examination by defence, he came out with a different story favouring the accused. Therefore, while the witness was still in the witness box, the prosecution filed the petition under Section 154 of Evidence Act which was allowed by the trial Court. Thereafter, the prosecution cross-examined the witness whereafter he was also cross-examined by the defence.

7. In view of the discussions made above, this Court is satisfied that no illegality has been committed by the trial Court in allowing the petition under Section 154 of the Evidence Act.

8. There is thus no merit in this revision which is accordingly dismissed.

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