

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

EL.PET. No. 9 of 2022

Oinam Nabakishore Singh.

...Petitioner

- Versus -

Konhoujam Govindas Singh & Anr.

...Respondents

**With
El.Recr.Pet. No. 9 of 2022
MC(El.Pet.) No. 58 of 2022**

**B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

ORDER

25-08-2023

Heard Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel appearing for the election petitioner and Mrs. Ayangleima, learned counsel appearing for respondent No. 1. None appeared for the other respondent.

The matters have been put up before this Court with a report of the appointed Commissioner stating inter alia that the cross-examination of PW1 was stopped after recording evidence from Question No. 12 to Question No. 30 due to objection raised by the learned counsel appearing for the election petitioner to the nature of the questions put to PW1 in cross-examination on the ground that some of the questions are irrelevant to the election petition. It has also been stated in the said report that the learned counsel for respondent No. 1 submitted that all the questions are relevant and accordingly, in such a situation, the Commissioner has no option except to place the matter before

this Court for necessary direction. By referring to the record of the cross-examination of PW1 from Question No. 1 to Question No. 30, it has been submitted by Mr. N. Ibotombi, learned senior counsel that some of the questions asked to PW1 are irrelevant to election petition and that such questions have been put to PW1 to protract the cross-examination of the said witnesses. On the other hand, Mrs. Ayangleima, learned counsel appearing for respondent No. 1 submitted that all the questions put to PW1 at the time of cross-examination are relevant to the election petition and that she asked the questions keeping in mind a strategy for final arguments at the time of hearing the election petition. On examination of Question Nos. 1 to 30 asked to PW1 at the time of his cross-examination, this Court has a tentative view that some of the questions are irrelevant. However, since the witness had answered those questions, this Court thinks that it will serve no purpose to decide the issue at this point of time and the relevancy of those questions can be decided at the time of hearing the election petition.

After hearing the submissions advanced by the learned counsel appearing for the parties, this Court is of the considered view that at the time of examination of witnesses certain objection may be raised by either of the counsel on the ground that those questions are irrelevant or otherwise and in such a situation, in my considered view, the appointed Commissioner is the best and appropriate person to decide such issue. Accordingly, in the event of raising such issue at the time of examination of witnesses, the appointed Commissioner should decide the same. However, at the time of deciding such issue, the following principles of law laid down by the Hon'ble Apex Court and the Bombay High Court should be kept in mind.

For ready reference, the relevant portions of the judgment are reproduced hereunder:–

(i) **Makhan Lal Bangal versus Manas Bhunia & Ors, (2001) 2 SCC 652** wherein

*“26. An election petition is not a dispute between the petitioner and respondent merely; the fate of the constituency is on trial. A Judge presiding over the trial of an election petition, and any trial for the matter of that, needs to effectively control examination, cross-examination and re-examination of the witnesses so as to exclude such questions being put to the witnesses which the law does not permit and to relieve the witnesses from the need of answering such questions which they are not bound to answer. Power to disallow questions should be effectively exercised by reference to Sections 146, 148, 150, 151 and 152 of the Evidence Act by excluding improper and impermissible questions. The examination of the witnesses should not be protracted and the witness should not feel harassed. The cross-examiner must not be allowed to bully or take unfair advantage of the witness. Though the trials in India are adversarial, the power vesting in the court to ask any question to a witness at any time in the interest of justice gives the trial a little touch of its being inquisitorial. Witnesses attend the court to discharge the sacred duty of rendering aid to justice. They are entitled to be treated with respect and it is the judge who has to see that they feel confident in the court. In **Ram Chander v. State of Haryana** this Court observed,*

".....to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest.....".

An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter

routes avoiding prolixity and expeditiously attaining the destination of just decision. The interest of the counsel for the parties in conducting the trial in such a way as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective — search for truth and delivering justice expeditiously — cannot be subdued. Howsoever sensitive the subject matter of trial may be; the courtroom is no place of play for passions, emotions and surcharged enthusiasm.”

- (ii) Judgment dated 15-09-2015 rendered by the Bombay High Court in Arbitration Petition No. 734 of 2010 **(Rajesh V. Choudhary versus Kshitij Rajiv Torka & Ors)**

*“16. It is experienced that sometimes, cross examination goes rambling way and assumes unnecessary length and is directed to harass, humiliate or oppress the witnesses. It is also experienced that the Courts often either due to timidity or the desire not to become unpopular or at times, not knowing its responsibilities and powers, allow the reckless, scandalous and irrelevant cross examinations of witnesses. In fact, in such situations, the court has the power to control the cross examination. The court has a duty to ensure that the cross examination is not made a means of harassment or causing humiliation to the witness. While allowing latitude in the cross examination, court has to see that the questions are directed towards the facts which are deposed in chief, the credibility of the witness, and the facts to which the witness was not to depose, but, to which the cross examiner thinks, is able to depose. It is also well-established that a witness cannot be contradicted on matters not relevant to the issue. He cannot be interrogated in the **irrelevant** matters merely for the purpose of contradicting him by other evidence. If it appears to the Judge that the **question** is vexatious and not relevant to any matter, he must disallow such a **question**. Even for the purpose of impeaching his credit by contradicting him, the witness cannot*

be put to an **irrelevant question** in the cross examination. However, if the question is relevant to the issue, the witness is bound to answer the same and cannot take an W.P.(Crl.) 225/2012 Page 9 of 16 excuse of such a question to be criminating. That being so, it can be said that a witness is always not compellable to answer all the questions in cross examination. The court has ample power to disallow such questions, which are not relevant to the issue or the witness had no opportunity to know and on which, he is not competent to speak. This is in consonance with the well-established norm that a witness must be put that much of a case as concerns that particular witness.

17. A protracted and irrelevant cross examination not only adds to the litigation, but wastes public time and creates disrespect of public in the system. The court is not to act a silent spectator when evidence is being recorded. Rather, it has the full power to prevent continuing irrelevancies and repetitions in cross examination and to prevent any abuse of the right of cross examination in any manner, appropriate to the circumstances of the case. The court could have such a power to control the cross examination apart from the Evidence Act as also the Code of Criminal Procedure. Section 146 though relaxes the ambit of cross examination and permits the putting of questions relating to the trustworthiness of the witness, but such questions also must be relevant for the purpose of impeaching the credit, though not to the issue. Under the garb of shaking credit, **irrelevant** or vexatious questions cannot be allowed, if they do not really impeach the credit of witness or do not challenge the evidence given in examination-in-chief relating the matter under enquiry. It is established proposition of law that if the **question** is directly relevant i.e. if it relates to the matters, which are points in issue, the witness is not protected to answer even it amounts W.P.(Crl.) 225/2012 Page 10 of 16 to criminating him but, if it is relevant only tending to impeach the witness's credit, the discretion lies with the Judge to decide whether witness shall be compelled to answer it

or not. Generally, he will not be allowed to be contradicted except in the cases under Section 153. In fact, Section 132, 146, 147 and 148 embrace whole range of questions, which can properly be addressed to witness and these should be read together.

18. Thus, it can be said that the relevancy of evidence is of a two-fold character; it may be directly relevant in the bearing on, elucidating, or disproving, the very merits of the points in issue. Secondly, it can be relevant in so far as it affects the credit of a witness. As regard the relevancy relating to a credit of a witness, the court has to decide the same under Section 148 whether the witness is to be compelled to answer or not or to be warned that he is not obliged to answer. The Judge has the option in such a case either to compel or excuse. The provisions of Section 148-153 are restricted to questions relating to facts which are relevant only in so far as they affect the credit of the witness by injuring his character; whereas some of the additional questions enumerated in Section 146 do not necessarily suggest any imputation on the witness's character. When we talk of the relevancy of the questions relating to character, unnecessarily provocative or merely harassing questions will not be entertained in this class of questions.

19. As per Section 151 and 152, the questions which are apparently indecent or scandalous or which appear to be intended to insult or W.P.(Crl.) 225/2012 Page 11 of 16 annoy or are offensive in form, are forbidden. Such questions may be put either to shake the credit of witness or as relating to the facts in issue. If they are put merely to shake the credit of the witness, the court has complete dominion over them and to forbid them even though they may have some bearing on the questions before the court. But, if they relate to the facts in issue or are necessary to determine the facts in issue existed, the court has no jurisdiction to forbid them. The court cannot forbid indecent or scandalous questions, if they relate to the facts in issue. It is because what is relevant cannot be scandalous.

*20. Having seen that though the ambit of cross examination of a witness goes beyond his examination-in-chief, but there has to be relevancy of the questions as regard to the facts or to the creditworthiness of a witness. The counsels must exercise their right of cross examination in a reasonable manner. They have their obligations no less than their privileges. They have no right of unlimited arguments or examination of witnesses, but only so much as would be relevant and reasonably necessary in the particular matter. When a Judge exercises his discretion and disallows a **question** being **irrelevant** on any count, the cross examiner should accept the court's rulings without any demur or display of temper. The court is entitled to expect such like acceptance of a ruling on the part of the counsel."*

With the above observations, let the record of these cases be placed before the appointed Commissioner on 30-08-2023 for further examination of PW1.

JUDGE

Victoria