



CRM-M-29406-2025

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **CRM-M-29406-2025**
Dhaneshwar Giri @ Bhim SinghPetitioner
- versus**
- State of Haryana and another** Respondents
2. **CRM-M-29551-2025**
Dhaneshwar Giri @ Bhim SinghPetitioner
- versus**
- State of Haryana and another** Respondents

Date of decision : 17.07.2025

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ganesh Chand Sharma, Advocate
for the petitioner (through V.C.).

RAJESH BHARDWAJ, J. (Oral)

1. By way of this common order, I intend to dismiss abovesaid two petitions as they have arisen out of the same FIR.
2. In **CRM-M-29406-2025**, prayer has been made for quashing of order dated 02.05.2025 passed by learned JMIC, Faridabad in case titled as 'State Vs. Dhaneshwar Giri @ Bhim Singh' arising out of FIR No.356 dated 16.10.2021, under Section 420 IPC, registered at Police Station Sector-31, District Faridabad. In **CRM-M-29551-2025**, prayer has been made for transfer of criminal trial of case titled as '**State Vs. Dhaneshwar Giri @ Bhim Singh**' to any other Sessions Division of Districts of State of Haryana.
2. In **CRM-M-29406-2025**, precise submissions made by learned counsel for the petitioner before this Court is that the petitioner is



aggrieved with the impugned order passed by the learned trial Court dated 02.05.2025. He submits that the petitioner was prosecuted in FIR No.356 of 2021 under Section 420 IPC. He submits that during trial both the sides i.e. prosecution and the defence had led their evidence and the case was fixed for final arguments. However, during the course of arguments, learned trial Judge, had put the Court question to the petitioner/accused under the garb under Section 165 of the Indian Evidence Act. It is submitted that the Court question amounts to infringements of the petitioner's fundamental right as enshrined under Article 20 Sub-clause (3) of the Constitution of India. It is submitted that the defence had raised its objections that the Court cannot put question to the petitioner as the same amounts to self-incrimination. He submit that despite raising the objections raised by counsel for the petitioner before the trial Court, the same were declined and thus, the Court has passed the impugned order, which is unsustainable in the eyes of law. He thus, submits that the impugned order being unsustainable in the eyes of law, deserves to be set aside.

3. In CRM-M-29551-2025, learned counsel for the petitioner submits that the conduct of the learned presiding officer is biased towards the petitioner and thus, the case be transferred from her Court to some other Judicial Officer.

4. This Court vide order dated 03.07.2025, had directed the learned District and Sessions Judge, Faridabad to submit its report and the same has been received.

5. This Court has heard learned counsel for the petitioner and has perused the record with his able assistance.



6. The precise issue raised by the counsel for the petitioner is that the Court question is violative of Article 20(3) of the Constitution of India. A perusal of the record would show that during arguments the Court put question to the petitioner which are as follows:-

'Court Question No.1: Whether you Dhaneshwar Giri Knew the deceased before filing of this case?

Answer 1: *The accused voluntarily replied 'Hanji main deceased ko janta tha kyunki kaafi ASI police vaale mere pass ate the. Yeh bhi aya that ise gale mein dard tha tab main sandhu sant ke sath vrindavan betha tha, maine ise ganga jal diya, jise peene ke baad ise arram aaya. Agli baar jab aaye toh mujhse ganga jal manga, maine usk badle main kaha 8000 kharcha lagega dedo main laa dia karunga'.*

7. For resolving the issue raised, the appreciation of Article 20 of Constitution of India and Section 165 of Indian Evidence Act, are relevant which are as follows:-

"Article 20 of Constitution

20. Protection in respect of conviction for offences

(1) *No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*

(2) *No person shall be prosecuted and punished for the same offence more than once.*

(3) *No person accused of any offence shall be compelled to be a witness against himself.*

"Section 165 of The Indian Evidence Act, 1872: Judge's power to put questions or order production.

The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant ; and may order the production of



any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any question:

Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved :

Provided also that this section shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.”

8. The Hon’ble Supreme Court has time and again discussed the scope of Section 165 of the Indian Evidence Act, in case of **‘Ram Chander Vs. State of Haryana, 1981 AIR Supreme Court 1036’** has held as under:-

*“2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. **If a criminal court is 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 by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past”**.*

"Every criminal trial is a voyage of discovery in which truth is the



quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may 'ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172 (2) of the Code of Criminal Procedure enables the Court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial (Sessions Judge, Nellore Vs. Intna Ramana Reddy, ILR (1972) Andh Pra 683)."

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5. *We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Sec. 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. **The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and old'.***

9. The Hon'ble Supreme Court in 'State of Rajasthan Vs. Ani @ Hanif and others, 1997(2) RCR (Criminal) 211', held as under:-

"11. We are unable to appreciate the above criticism. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant" in order



to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crossed into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words "relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question.

12. *Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. **Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised.***



A Similar view has been taken by the Hon'ble Supreme Court in a recent three Judge Bench decision passed in '**Anees Vs. The State of NCT, 2024(2) RCR (Criminal) 856**'.

10. The power of the Court to put question which is to elicit the truth cannot be curtailed on the premise of the contention that the same is in violative of Article 20(3). The Court question was put by the Court as it was well within its jurisdiction. The petitioner was given every opportunity to answer the question or decline the same. This Court do not find any illegality in the impugned orders dated 02.05.2025 and hence **CRM-M-29406-2025** is dismissed. However, the petitioner is at liberty to raise his pleas during the course of arguments before the Court, as available to him under the law.

10. So far as the second prayer regarding transfer of criminal case, is concerned, the Court has perused the report received from the District and Sessions Judge. On the perusal of the same, it is found that on the request of learned trial Judge, the learned Sessions Judge had already transferred the trial to some other Judicial Officer. Even otherwise the allegations made by the counsel for the petitioner against the Judicial Officers, are totally without any basis and are not substantiated and hence, **CRM-M-29551-2025**, has become infructuous and thus, the same is dismissed as such.

(**RAJESH BHARDWAJ**)
JUDGE

17.07.2025

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No