

doctor from Lady Harding Medical College to prove the handwriting of one Dr. Satender Kumar.

2. It has been alleged in the petition that deceased Sarita wife of the petitioner was taken to Lady Harding Medical College and Sucheta Kriplani Hospital on 19th June, 2002 where she was referred to Department of Psychiatry and was examined on 19th, 20th and 21st January, 2002 by a doctor who recorded a note stating therein “Pt is married since last 3 mths & come back from her home to her in laws only 3 days back. She misses her parents & other siblings a lot. No H/o marital discord, but the Pt. Misses her home town. Pt does not want to disclose these to her in laws.”
3. The above note was brought to the notice of this court during the hearing of a bail application and was sent for verification. The Investigating Officer took the OPD Card and got it verified. On the application of the investigating officer, Dr. Satender made the following observations:-

“17.02.04

Mr. Hari Singh S./I Chanakyapuri P S had come to verify a photocopy slip of Pt Sarita 10/F CR No2575/02 as asked by the Magistrate.

I hereby verify that the photocopy slip (OPD) of pt Sarita 19/F 2575/02 belongs to the deptt of Psychiatry SSKH. I examined the patient on the date mentioned in the OPD slip (Photocopy).”

4. The statement of Dr. Satender was recorded u/s 161 of Cr.P.C. and supplementary report was filed in the court citing him as a witness. During trial, it transpired that Dr. Poonam and Dr. Satender, who were cited as prosecution witnesses had left the services of the hospital and therefore the trial court directed the Medical Superintendent to depute any other doctor, who may have worked with them in place of Dr. Satender. One Dr. Rakesh Goel was examined in place of Dr. Satender, but, he could not prove the endorsement made by Dr. Satender. It has been further stated that one Mahavir Prasad, who was to prove the casualty/OPD card was not examined one N.K. Rao was examined in his place but the OPD Card was not proved.
5. An application was filed by the petitioner with a prayer that Medical Superintendent of Lady Harding College be directed to send some doctor, who is conversant with the writing of Dr. Satender. The application having been dismissed, the impugned order has been assailed in this petition.
6. The prayer made in the petition is to direct the trial court to summon (1) the concerned Doctor Satender/ the doctor conversant

with the writing of Dr. Satender and (2) the proper witness to prove the casualty OPD Card of deceased Sarita and the endorsement of Dr. Satender made on the casualty card and also to summon Mahavir Prasad Yadav, official of medical record department of Lady Harding Medical College.

7. Admittedly, the case is at the stage of prosecution evidence. In view of the provisions of Section 231 of the Code of Criminal Procedure at this stage the trial Judge is required to examine only those witnesses whom the prosecution wants to produce. At the stage of prosecution evidence, the accused has no right to seek summoning of any particular witness even if such a witness has been cited as a prosecution witness. It is for the prosecution to decide which witness it wants to examine and which document it wants to prove. In the appropriate case, if any document relied upon by the prosecution is favourable to the accused but is not proved by the prosecution, it is always open to an accused to admit such a document if he does not dispute its genuineness. Therefore, even if the prosecution does not examine any witness to prove an OPD Card filed by it and the petitioner feels that the document is favourable to him and is otherwise a genuine document, nothing prevents him from admitting that document. Once the document is admitted by him, it will be read in evidence even if the prosecution

does not examine any witness to prove it. In fact there would be no need for the prosecution to prove a document which is admitted by the accused. But, the prosecution cannot be compelled to summon any particular witness or to prove a particular document nor can the court summon any witness, at this stage, on the request of the accused. In any case, nothing prevents the petitioner from summoning any witness and prove any document at the stage of leading defence evidence. But, at the stage of prosecution evidence he cannot seek any direction to summon any witness either to prove a document or to make an oral deposition. Of course, it is always open to the court to summon any person as a court witness, if the court feels his evidence to be essential for a just decision of the case. But, the scheme of Code of Criminal Procedure does not envisage summoning of a witness, at the request of the accused, to prove a document filed by the prosecution, at the stage of Prosecution Evidence.

8. For the reasons given in the preceding paragraphs, I find no merit in the petition and the same is hereby dismissed.

(V.K. JAIN)
JUDGE

November 20, 2009

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