

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2140 of 2016

ORDER:

The present Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/complainant, aggrieved by the order dated 27.06.2016 passed in CrI.M.P.No.1718 of 2016 in C.C.No.180 of 2015 on the file of the Court of Special Judicial Magistrate of First Class for Prohibition and Excise Offences, Kadapa, Y.S.R. Kadapa District, wherein and whereunder, an application filed by the 2nd respondent/Accused, under Section 65 of Indian Evidence Act r/w. Section 247 Cr.P.C., for marking of documents filed by P.W.1, namely Photostat copy of the agreement dated 06.05.2013, as secondary evidence, was allowed.

Heard learned counsel for the petitioner/complainant as well as the learned Public Prosecutor appearing for the 1st respondent – State and perused the material available on record.

The short question that arise for consideration is, whether an application filed for marking of documents as secondary evidence is permissible under law or not?

A perusal of the order impugned and the material placed before this Court would show that the Photostat copy, which was sought to be marked, indicates that the

2nd respondent/Accused executed the agreement of work in favour of the petitioner/complainant and that the original agreement is in possession of the petitioner/complainant himself, which was denied. As the original agreement is said to be in possession of the petitioner/complainant, it is difficult for the 2nd respondent/Accused to produce the same before the Court.

As per Section 65(a) of the Indian Evidence Act, when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it, secondary evidence can be taken.

A reading of the above provision would clearly show that the opposite party can proceed with the secondary evidence, if the original is not available. Of course, secondary evidence can be looked into, subject to its admissibility and reliability and if it satisfies the requirements of law.

In the case of H. SIDDIQUI vs. A. RAMALINGAM^[1], the Hon'ble Apex Court, in para-12, observed as follows:

“12. The provisions of [Section 65](#) of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the

court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide: [The Roman Catholic Mission v. State of Madras](#), AIR 1966 SC 1457; [State of Rajasthan v. Khemraj](#), AIR 2000 SC 1759; [LIC v. Bisen](#), (2010) 4 SCC 491; and [M. Chandra v. M. Thangamuthu](#) – (2010) 9 SCC 712.

In view of the judgment of the Apex Court referred to above, I see no grounds to interfere with the order, but, however, the petitioner/complainant shall be given liberty to cross-examine the witnesses, through whom the said document is sought to be marked, and, in any event, marking of any such document shall always be subject to its admissibility and reliability.

Accordingly, this Criminal Revision Case is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.08.2016.

Msr

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[\[1\]](#) (2011) 4 SCC 240