

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

CRL.R.C.NO.1105 OF 2015

O R D E R

The Telugu Academy, Himayatnagar, Hyderabad, represented by its Director, is the revision petitioner.

The revision is maintained against the reversal acquittal judgment of the lower appellate court in CrI.A.No.16 of 2014 dated 6.3.2015 acquitting the sole accused / revision second respondent, for the offence punishable under Section 409 IPC, for which he was convicted to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- by the judgment of the trial court in C.C.No.20/2009 dated 04.02.2014.

The crucial aspect in this case is proof and relevancy of Ex.P-6 out of Exs.P-1 to P-12.

Among the trial court's judgment memo of evidence, on behalf of the prosecution P.Ws.1 to 9 were examined and exhibits ExsP-1 to P-12 were marked. No independence defence witness was examined and no defence document was marked but for tested by cross-examination of the prosecution witnesses with reference to the prosecution documents supra by the accused.

P.W.1, J.Prathap Reddy, earlier Director of Telugu Academy, during the relevant period from October, 2005 to November, 2009 and as on the date of his evidence in chief on 8.2.2011, working as Registrar of S.V. University, Tirupati, in his chief examination exhibited the Exs.P-1 to P-10. At the time of marking of the Exs.P-1 to P-10, there was no any objection raised by the

accused. It is not the case of either the accused, or his counsel present, that the evidence is hit by invalidity of Section 273 of Cr.P.C.

Once an objection is not raised to the marking of the document other than by primary evidence of original, as per the settled law, which is a procedural aspect, it is as good as original and subsequently, no objection is left open of the same is only a secondary evidence and cannot be looked into, particularly from the expression of the Apex Court in *RVEE GOUNTER vs. RVS TEMPLE*¹, reiterated by another expression of Apex Court in *DAYAMATHI BAI vs. K.M.SHAFFI*².

The learned counsel for the accused as revision second respondent supra, wanted to rely upon a short note of the Division Bench expression of the Calcutta High Court in *SMT. LABANYA PROVA MITRA v. PURNENDU KUMAR GHOSE*³ on the scope of Section 63 of the Indian Evidence Act. The short note reads that an attested copy cannot be received as secondary evidence unless person who has attested has come forward to prove the accuracy of contents of copy. It is no doubt in case of appreciation of a will required to be proved under Section 63 of the Indian Evidence Act, 1925, that question arose. In fact, it is not a complete expression and as such a head note or short note cannot be relied and leave it apart the short note of the judgment did not even show any reference of other provisions of the Indian Evidence Act among Sections 62 to 79, of which Sections 73 to 79 in particular. Section 72 speaks of an attested copy not required of law to be attested may be proved, as if it was unattested. Even in case of an attested

¹ (2003)8 SCC 752

² AIR 2004 SC 4082

³ AIR 2007 (NOC) 1164 (CAL.)(DB)

document, if it is a public document, as the Telugu Academy is a Government limb and the documents certified if any to be issued, are within the meaning of Section 78 of the Indian Evidence Act, a certified copy of such document to be issued under Section 76, for not a private document under Section 75, the person who issued the certified copy need not be examined or his signature and seal not required to be proved as per the specific provision Section 77. The Division Bench if ignored this legal aspect in that observation, it can be said as a *sub silentia* expression since running contrary to the specific provisions referred to supra and thereby cannot have any persuasive value, much less to consider as a correct proposition to rely.

Now coming back to the facts further, at the cost of repetition, P.W.1 examined in chief on 8.2.2011 and at the request of the accused, his cross-examination was deferred to 17.2.2011 and accused did not raise any objection for marking of Exs.P-1 to P-10 on 8.2.2011. Even from the cross-examination of P.W.1 dated 17.02.2011, made at length, also with reference to Exs.P-1 to P-10, there was no any suggestion even disputing the contents and genuineness and of non-production of original for comparison, much less by saying any of the certified copies are out of tampering originals. It is subsequent to the cross-examination dated 17.2.2011 of the chief examination dated 8.2.2011, on the recall application of accused and or prosecution respectively by order dated 27.2.2012 in CrI.M.P.No.223/2012 and by order in CrI.M.P.No.2176/2012 dated 21.6.2012, the witness P.W.1 was recalled for confronting with the original instead of attested copy in its place and there from among ExsP-2 to P-10, undisputedly the originals marked are Exs.P-1 to P-5, P-7 to P-10 but for Exs.P-6 of which Ex.P-1 is the

report of P.W.1 to the police on 6.6.2008 in registering Ex.P-11 FIR and Exs.P-12 is the proceedings of the police during investigation. Among other crucial documents Exs.P-2 to P-10, Ex.P-2 is the audit report of 2005-2006; Ex.P-3 - suspension order of accused dated 18.2.2008; Ex.P-4 - appointment letter of auditor; Ex.P-5 – internal committee report dated 5.2.2008; Ex.P-6 – verification report for the year 2005-2006; Ex.P-7 – the stock entry register pertaining to Tirupati; Ex.P-8 D.Ds. entry register; Ex.P-9 – acknowledgements from other centres and; Ex.P-10 – internal committee appointment order.

Thus, once a document exhibited is without objection, the question of considering whether it is a original or copy and if copy whether foundation laid to adduce secondary evidence or not does not arise for consideration. Apart from it even for a secondary evidence, coming to Ex.P-6, which is not an original document for raised no objection at the time of marking, it is as good as original, apart from it for a secondary evidence as a certified copy of public document, no foundation is required for proving the public document from a public office, unless it is specifically pointed out of any necessity to produce the original for comparison and cross-examination at the instance of the accused to dispute any of the contents of the document in question.

It is no doubt true that in the further chief examination of P.W.1 while confronting P.W.1 with the certified copy of verification report volume-I from 1.4.2005 to 3.9.2005 of Ex.P-6 with original by comparison, the counsel for the accused raised objection and the court endorsed that marking is subject to objection, to be decided at the time of arguments and it is also clearly

observed that volume-II of Ex.P-6 verification report from 1.10.2005 to 31.3.2006, original was confronted to P.W.1 for comparison. Thus apart from Ex.P-6 when marked on 8.2.2011, no objection raised for its marking and later as not original is not open to raise, even later when brought original and compared the EX.P-6 copy with original in presence of accused, any objection at that stage for the long back already marked Ex.P-6, such an objection is untenable. As discussed already, this objection has no even legs to stand, for not raised the objection for exhibiting the secondary evidence at the time of marking on 8.2.2011, leave about even on the date of elaborate cross-examination on 17.2.2011.

The lower appellate court in interfering with the conviction judgment of the trial court brushed aside this crucial aspect in acquitting the accused saying as if the originals not even seen light of the day, either before the court or to the reference of accused and as if there was an objection raised by the accused while marking and the same even not decided by the trial court at the time of pronouncement of judgment.

No doubt it is the settled law that any objection raised while marking other than for stamp duty and registration to decide instantaneously the marking will be subject to objection, to decide at the final stage in the pronouncement of judgment or before as per the expression of the Apex Court in *BIPIN SHANTILAL PANCHAL vs. STATE OF GUJARAT*⁴. However, from what are the facts discussed supra, the principle laid down in the above expression also has no application to the facts. As such the lower

⁴ AIR 2001 SC 1158

appellate court's judgment and the finding on its face value are unsustainable and are liable to be set aside.

No doubt Section 167 of Indian Evidence Act says any improper admission or rejection of evidence is even not a ground for retrial or re-enquiry, if there is other material. Here, it is not even improper rejection or admission of evidence, but as pointed out, it is only improper understanding of the scope of law by the lower appellate court without even referring to the documents.

No doubt the scope of revision under Section 397 Cr.P.C. is very limited, for even sub sections (1) and (2) of Section 401 says the High Court in its discretion, exercise any of the powers conferred on a court of appeal, but from the specific rider under sub section 3 of Section 401 of Cr.P.C. that in revision against acquittal, revision court cannot convict the accused. Thus, the only remedy available to this court is to remit back to the lower appellate court for fresh disposal by giving fresh hearing of the appeal with reference to the observations supra and touching other material and uninfluenced by the impugned lower appellate court's judgment not set aside. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

DR.B.SIVA SANKARA RAO,J

DATE:03—03—2017

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