

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE NO.1128 of 2013

ORDER:

Impugning the dismissal order dated 16.04.2013, in CrI.M.P.No.43 of 2013 in S.C.No.653 of 2011 passed by the learned II Additional Sessions Judge, Nalgonda at Suryapet, on the application of the prosecution to receive photostat copy of panchanama of the scene of offence along with rough sketch, dated 13.10.2007 in Crime No.81 of 2007 of Noothankal Police Station, saying that the original panchanama was lost and to receive photostat copy of the same as secondary evidence as the original is not available, the revision is maintained.

2. It is the submission of the learned Public Prosecutor, representing the revision petitioner-State, that the impugned dismissal order is unsustainable and when original lost, secondary evidence can be admitted from whatever the copy of it available as a foundation that can be accepted to the lost original, hence to set aside the dismissal order by allowing the revision, permitting receiving of photostat copy of the scene of offence panchanama along with rough sketch.

3. Sri Lakshma Reddy, learned counsel for the respondents-Accused is supporting the dismissal order of the lower Court. The learned counsel relied upon three expressions in support of it viz., (a) the Division Bench Judgment of this Court in **Badrunnisa Begum v. Mohamooda Begum**¹, held that copy of a copy is not sustainable as secondary evidence, unless it is shown that the first copy is compared with the original, and thereby when same cannot be

¹ 2001 (3) ALT 243 (D.B)

admitted, any admission of such document as secondary evidence gives no sanctity and decree passed based on such copy of document is unsustainable.

(b) In **Dangu @ Kadamenda Yellah (died) by LRs. and others v. Ch.Sridhar Reddy and another**², it was held that, when original unregistered sale deed presented before the Revenue Divisional Officer for impounding, before the document was impounded, lost in the year 2000, but the office of RDO, kept a photo copy of the original and on an application filed by petitioner therein, he issued a certified copy of the document available with him, held when original not impounded is inadmissible, equally a copy of it.

(c) In **Bachu Laxmpathi v. Bachu Kistaiah and others**³, in relation to production of secondary evidence, filing and receiving the document at a belated stage is held impermissible. There, the observation was that when there is a contest of the document as fabricated, besides without payment of stamp duty and impounding an insufficient stamped document, the question of considering the same for a collateral purpose does not arise and under the Stamp Act same is since unknown, but for any unregistered document, if at all duly stamped by impounding to consider for collateral purpose and thus dismissal of the application by the lower Court with that observation no way requires interference by sitting in revision.

4. Heard both sides and perused the material on record.

5. So far as the judgment of the Division Bench of this Court in **Badrunnisa Begum's** case (1 supra) is concerned, what was held is once a copy shown compared with the original then only a copy to its

² 2012 (6) ALD 747

³ 2015 (4) ALD 586

copy compared with original is admissible. Here, the evidence to be adduced is not a copy to the copy and thereby the expression cannot be said to be relevant for the purpose of deciding the case.

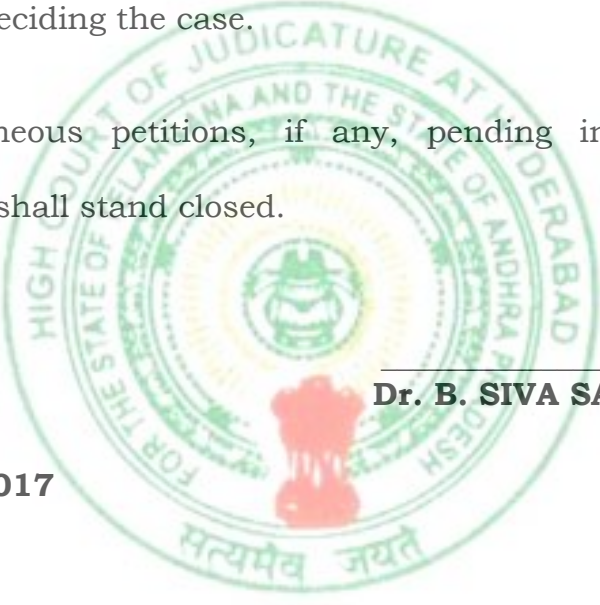
6. Coming to the other judgment in **Dangu's** case (2 supra), it was rightly held, so also in other judgment in **Badrunnisa Begum's** case (1 supra), for the original document was not duly stamped and not registered, without impounding the document by payment of deficit stamp duty, it cannot be admitted for collateral purpose, for the Stamp Act it is unknown, even an unregistered document can be considered for collateral purpose if duly stamped. Thus, the original shown lost and a copy shown available produced for original not impounded is not admissible, the question of impounding a copy does not arise and thereby receiving a copy does not also arise as secondary evidence. Said expressions thus have no application to the facts herein.

7. Here, it is not a case with reference to Section 65 (c) of the Indian Evidence Act. There is a mention of where the original is lost, secondary evidence has to be filed within a reasonable time. What is 'reasonable time' depends upon the facts and circumstances of each case. The responsible police officer, who investigated the case and prepared the scene of offence with rough sketch, which forms part of the case, Part I diary, has to be very cautious and shall make efforts to trace the original where it is misplaced. If at all not traced despite due efforts made and having explained the reasons when it is filed, it can be said well within a reasonable time for the purpose of proof of the document untraced from the date of the document lost to the date of filing, which all show depends upon the explanation and reasons shown with reference to the attending circumstances.

8. Having regard to the above, the impugned order dismissing the application no way sustains on facts and under law and the same is liable to be set aside and accordingly set aside. Needless to say that any objection while marking the document as secondary evidence is left open as laid by the expression of the Apex Court in **Bipin Santilal Panchal v. State of Gujarat**⁴.

9. Accordingly, the Criminal Revision Case is allowed. The objection of the respondents-Accused is left open to be raised for marking the document subject to such objection, so to decide ultimately in deciding the case.

10. Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.



Dr. B. SIVA SANKARA RAO, J

MARCH 23, 2017
YVL

⁴ AIR 2000 SC 1158

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO



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Date: 23.03.2017