

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.928 of 2017

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1. Dev Raj Dev son of Ram Chandra Bhagat, resident of Shiksha Nagar,
Banmankhi, P.S. Banmankhi, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Pritam Choudhary, W/o- Dev Raj Dev, D/o- Dr. Pravin Kumar
Choudhary, R/o- Navratan Hata (Near the Residence of Sub- Divisional
Officer), P.S. K.Hat, District- Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha
Mr. Samrendra Kumar Jha

For the Respondent/s : Mr. Saket Tiwary

For the State : Mr. Sri Sanjay Kumar Pandey (APP)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 23-01-2018 The present revision petition is directed against the

order dated 04.08.2017 passed by the learned Sessions Judge,

Purnea in Cr. Rev. No. 16 of 2017, whereby the order passed by

the Trial Judge was set aside and the matter was remitted to the

Trial Court for writing out a fresh order in accordance with law.

The petitioner was married to opposite party no. 2
sometimes in the month of November, 2000 and two children were
also born out of the wedlock. However, because of the cordiality
between spouses missing, a complaint was lodged by opposite
party no. 2. A maintenance case also was preferred by opposite
party no. 2 against the petitioner. During the pendency of the
matrimonial suit, it was alleged against the petitioner, he had got



published an advertisement for his marriage on a marriage portal and there he had declared his marital status as “Marriage Annulled”. This led to filing of a criminal case against the petitioner for having solemnized marriage with one Soni Kumari of village and P.S. Chausa in the district of Madhepura for the offence under Section 494 of the Indian Penal Code.

On behalf of opposite party no.2, certain documents, which are in the nature of communication between the Collector, Madhepura and the Commissioner, Koshi Division, Saharsa, were asked to be marked as exhibit. Those communications were obtained by opposite party no. 2 through the mechanism of RTI and it was prayed before the trial court to mark them as exhibits under Section 35 of the Evidence Act so that the requirement of bringing the aforesaid functionaries of the State to the witness box is obviated.

The trial court, after discussing the provisions of Sections 35 and 74 of the Evidence Act came to the conclusion that the documents which were sought to be exhibited were not public documents and hence were not admissible. As against the aforesaid order of the Trial court, the opposite party no. 2 preferred a revision before the learned Sessions Judge, Purnea. The Revisional Court by order dated 04.08.2017 set aside the



order of the trial court refusing to exhibit the documents obtained through the RTI and remitted the case back to the trial court for writing out a fresh order in accordance with law. While doing so, the Revisional Court held the aforesaid communication to be public documents within the meaning of Section 35 of the Evidence Act.

Perused the records.

The documents which were sought to be exhibited by opposite party no. 2 are in fact, communications about an enquiry which was held with regard to the marriage of the petitioner with Soni Kumari, during the subsistence of his marriage with opposite party no. 2. Along with the communication of the Collector, Madhepura to the Commissioner, Koshi Division, Saharsa, the Annexures which were part of the report of the Officer In-Charge of the concerned P.S., which was part of the investigation papers, were also asked by the opposite party no. 2 to be exhibited.

Challenging the aforesaid order of the Revisional Court, Mr. Subodh Kumar Jha, learned Advocate for the petitioner has submitted that even if those letters between the two functionaries of the State are taken to be obtained through the mechanism of the RTI, they would not be clothed with the



character of public document as those letters are not maintained in any official book and no public record of the same is maintained.

Mr. Saket Tiwary, learned Advocate for the opposite party no. 2, on the other hand, has contended that the enquiry was not conducted at the instance of opposite party no. 2 and those are letters between two government officials, which have been obtained through RTI and hence, those are public documents. Those letters between the two functionaries of the State can always be relied upon by the parties in any proceeding before the court of law.

The documents which are sought to be exhibited are basically in the nature of communications between two functionaries of the State. The aforesaid communications have been provided by the District Information Officer-cum-Incharge Officer, Confidential Branch, Madhepura. As such, they would be covered under Section 74(i)(ii) of the Evidence act.

Section 74 of the Evidence Act reads as follows:-

“74. Public documents. – *The following documents are public documents:-*

- (1) Documents forming the acts, or records of the acts-*
 - (i) of the sovereign authority,*
 - (ii) of the official bodies and tribunals, and*
 - (iii) of public officers, legislative, judicial and executive, [of any part of*



India or of the Commonwealth], or of a foreign country;

(2) Public records kept [in any State] of private documents.”

Thus, the aforesaid documents sans the annexures (investigation papers) are public documents, which could be proved by secondary evidence.

Thus, the order passed by the trial court is set aside and the order passed by the Revisional Court is sustained. However, the trial court shall not be required to pass a fresh order as this Court directs that the documents (without the annexures) shall be marked and permitted to be exhibited.

This Court is but of the view that it was not necessary for the trial court to have entered into any discussion as to the admissibility of the aforesaid documents at that stage. The Supreme Court in case of ***Bipin Shantilal Panchal Vs. State of Gujarat & Another*** reported in (2001)3SCC has held that the archaic practice of deciding about the objections regarding admissibility of any material in evidence at the evidence collecting stage should be stopped and the trial court ought to proceed further by only recording the objections on behalf of the parties. The reason for the Supreme Court to say so is that the practice of not proceeding further without passing an order on the objection



regarding the admissibility of documents would render the trial to be unnecessarily delayed. There is another reasoning behind the aforesaid direction. In case, the Superior Court was to see the same objection and the opinion of the trial court is differed with, the matter would again be required to be sent to the trial court for writing out a fresh order. To avoid the aforesaid difficulties in the swifter progress of a trial proceedings, the Supreme Court thought of re-casting this practice and as a better substitute, suggested that whenever any objection is raised during the evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case with objection which shall be decided finally while delivering the final judgment in the case.

From the records, it further appears that the evidence in the case in hand has been closed.

It is thus directed that the trial court shall mark the documents and would hear the counsel for the petitioner on their objection about its admissibility and reliability, while finally deciding the case. It may be noted here that admissibility of a document is one thing and the probative value of the same, another. A document may be admissible in the eyes of law, but may have a nil probative value, which may have to be judged by the trial



court.

With the aforesaid observation, the present revision petition is disposed off.

Needless to say that the trial court shall take all possible steps to expeditiously conclude the trial, preferably within a period of six months from the communication/production of a copy of this order.

(Ashutosh Kumar, J.)

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