

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.5679, 5680 and 5681 of 2013

COMMON ORDER:

Criminal Petition Nos.5681, 5680 and 5679 of 2013 are filed by the complainant aggrieved by the common order dated 26.03.2013 in CrI.R.P.Nos.111, 112 and 113 of 2012 respectively passed by learned Metropolitan Sessions Judge, at Hyderabad, allowing the CrI.R.Ps filed by accused and consequently, setting aside the orders dated 13.03.2012 in CrI.M.P.No.379/2012 in C.C.No.290/2011, CrI.M.P.No.374/2012 in C.C.No.288/2011 and CrI.M.P.No.377/2012 in C.C.No.289/2011 passed by the XII Special Magistrate, Secunderabad, allowing the petitions filed by complainant.

2) It should be noted that CrI.M.P.No.379/2012 in C.C.No.290/2011, CrI.M.P.No.374/2012 in C.C.No.288/2011 and CrI.M.P.No.377/2012 in C.C.No.289/2011 were filed by the accused under Section 65A of Indian Evidence Act, seeking to receive Xerox Copies of MOU and Lok Adalat award as secondary evidence and permit them to mark as exhibits in the case. The learned Magistrate allowed all those petitions.

3) Aggrieved, the accused preferred CrI.R.P.Nos.111, 112 and 113 of 2012 before the Metropolitan Sessions Judge, at Hyderabad, which were allowed by learned Judge by setting aside the orders passed by the Trial Court.

Hence the instant quash petitions by complainant.

4) Heard arguments of Sri C.B.Adarsh Kumar, learned counsel for petitioner; learned Additional Public Prosecutor for the State (Telangana) and Sri Venkateshaiah Srinivas, learned counsel for respondent No.2.

5) I gave my anxious consideration to the impugned common order passed by learned Metropolitan Sessions Judge, Hyderabad. The learned Judge while holding that the case of the respondent/complainant comes under Section 65 (c) of the Evidence Act (for short “the Act”) inasmuch as he has produced the endorsement of the Court stating that case records have been destroyed on 09.03.2009 pertaining to certified copy of order of Lok Adalat, however, held that the Photostat copies of the document of MOU entered into by the parties cannot be admitted as secondary evidence unless the accuracy of those documents is proved and unless they have been compared with the originals.

6) In my view, the common order of the learned Metropolitan Sessions Judge cannot be found fault as illegal or perverse. As can be seen from the facts, the case of the petitioner in fact, would come under Section 65(f) of the Act which reads thus:

“Section 65: Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) x x x x

(b) x x x x

(c) x x x x

(d) x x x x

(e) x x x x

(f) *when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence*

(g) x x xx”

The memo and other documents said to have been filed before the Lok Adalat and compromise recorded thereunder were all obviously public documents under Section 74(iii) of the Act. The certified copies of public documents can be issued under Section 76 of the Act. Therefore, the originals of the documents which are now sought to be produced by the complainant as secondary evidence, are public documents. In such a case, naturally the certified copies of those documents alone are required to be filed as secondary evidence because, the relevant portion of Section 65 of the Act lays down as follows:

“In case when the original is a public document within the meaning of section 74 and of which a certified copy is permitted by this Act or by any other law in force in India to be given in evidence, a certified copy of the document but no other kind of secondary evidence is admissible.”

7) In view of the above provision, generally certified copies of the documents sought to be produced alone can be treated as secondary evidence. However, since the complainant has come up with the submission that original documents were destroyed which statement is true in view of the endorsement made by the Court on the copy application, the case of the complainant therefore falls under Section 65 (c) of the Act to the effect that original has been destroyed and

therefore, he is entitled to produce the secondary evidence. However, that is not the end of the matter. As rightly observed by learned Metropolitan Sessions Judge, the Photostat copies cannot be accepted as secondary evidence unless the accuracy of those documents is proved particularly, when the accused contend that MOU was a fabricated document. When the copies sought to be produced are not established to be the replica of the originals, the same cannot be accepted as secondary evidence.

8) Hence, the Criminal Petitions would fail and accordingly dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 22.11.2018
Scs/Murthy

U.DURGA PRASAD RAO, J

