

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Revision Case No.1630 of 2018

ORDER :

The petitioner – de facto-complainant aggrieved by the order dated 13-4-2018 in CrI.M.P. No.418 of 2018 in C.C. No.800 of 2010 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad, to the extent which is against him, preferred this revision.

2. The contention of the petitioner is that the trial Court failed to consider the difference between copy of the agreement of construction and also carbon copy of the agreement of construction dated 7.12.2000. In CrI.M.P. No.418 of 2018 in C.C. No.800 of 2018 carbon copy of the agreement of construction with original signatures of the parties and the witnesses was filed, which is admissible in evidence. It is further contended that the trial court erred in dismissing the application to the extent of the carbon copy of the agreement of construction dated 07.12.2000. Earlier, in CrI.M.P.No.3979 of 2013, the copy of the carbon copy of the agreement of construction dated 7.12.2000 was filed, hence which was not received in evidence. But the present application is the original carbon copy of the agreement of construction with original signatures of the parties and the witnesses, therefore, that can be received.

3. Whereas, the respondents contended that there are corrections in the carbon copy and the present copy filed in the court.

4. The said petition was filed by the prosecution under Section 242(2) Cr.P.C. contending that the contents of Ex.D5 are tampered by the accused and later P.W.1 noticed the same and the second copy with the signatures of P.W.9 and A1 is available with the owner of the property and so, P.W.1 is intending to file the agreement of construction to bring the truth before the court. P.W.9 is the builder and the construction amount was paid by P.W.1 and his father to P.W.9. The bank statement of the father of P.W.1 reflects the same and hence, the bank statement of the father of P.W.1 is filed for marking the same as exhibit. The trial court by its order dated 13.4.2018 observed that the document No.1 sought to be received i.e., owners copy of the construction agreement containing the alleged original signatures of P.W.9 and A1 dated 7.12.2000 was already filed as document No.9 in CrI.M.P.No.3979 of 2013 and that petition was dismissed in respect of other document on the ground that it was a xerox copy, so the petitioner now filed the present application to receive the same which is containing the signatures of both parties. The trial Court found that as rightly pointed out there is suppression of the material details pertaining to this document being filed earlier also and that the said CrI.M.P. being dismissed to the extent of receiving this document. Accordingly, found that no prejudice will be caused to the accused, if an opportunity is given to put-forth bank statement as accused can also cross-examine the witness regarding this document and the trial court partly allowed the petition to the extent of receiving the second document only i.e., certified copy of bank statement of

father of P.W.1 and dismissed in respect of receiving carbon copy of the agreement of construction, dated 7.12.2000.

5. In the case of *Prithi Chand Vs. State of H.P.* (AIR 1989 SC 702) the Apex court held that the Section 32 of the Evidence Act provides that when a statement, written or verbal, is made by a person in the discharge, of professional duty whose attendance cannot be, procured without an amount of delay, the same is relevant and admissible in evidence. Besides, since the carbon copy was made by one uniform process, the same was primary evidence within the meaning, of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate Ex.P-E was clearly, admissible in evidence. That apart, there is strong, reliable and dependable evidence of the prosecution witnesses which clearly proves that the prosecutrix was raped by the appellant.

6. Similarly, in the case of *Theresa Vs. Special Court under A.P. Land Grabbing Prohibition Act* (1998 (6) ALD 184 (DB)) this Court held that it is well known fact that documents are prepared through different processes, the most recognised of all such processes being the process of typing. Required number of copies can be obtained by placing carbon papers underneath the first sheet, on which the parties generally subscribe their signatures and upon which generally the parties base their claims/titles etc. The first paper receives the direct impression of the 'type' which when pressed falls on the ribbon with some force and the ultimate impression of the type

which is pressed is visible on the surface of the paper, whereas the papers kept underneath the first paper receive carbon impression because of the carbon papers kept underneath the first paper. Therefore, whatever is typed is visible both on the first document as well as on the documents placed underneath the first document. Except the change in the colour of the print, there will not be any change in the matter typed in these two types of papers. To say in one word, a carbon copy produced by the process of typing contains the very same matter which the first document contains. It is needless to state that in typing also, all documents, i.e., the document which is being used as original and the documents which are produced by placing carbon papers, are obtained at one and the same stroke by one uniform process of pressing the type keys. Therefore, for all purposes, a carbon copy produced by the process of typing is equivalent to the original sheet and they are, therefore, called 'primary evidence' within the meaning of Explanation 2 of Section 62.

7. In the case of *Gouranga Das and etc., Vs. The State of Tripura* (2010 CRI. L.J. 2125) the Gauhati High Court (Agartala Bench) held that carbon copy made by one uniform process was primary evidence within the meaning of explanation 2 to Section 62 of the Evidence Act.

8. From the above decisions, the settled law is that typed carbon copy which is prepared while typing the original document is equivalent to the original sheet and therefore can be called as primary

evidence as per explanation 2 of Section 62 of the Evidence Act, as they contain signatures of the parties and the witnesses and also the signature of the Sub-Registrar on the carbon copy when it was registered.

9. If there is any alteration, the accused can cross-examine the witness in respect of the document. Therefore, the document now filed, which is carbon copy containing signatures of both parties, can be received as primary evidence.

10. Accordingly, the Criminal Revision Case is allowed ordering to receive the carbon copy of the agreement of construction dated 7.12.2000, which contains original signatures of the parties and the witnesses, as primary evidence.

11. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

05th October, 2018

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