

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.2548 OF 2018

ORDER:

This revision is arising out of order, dated 30.04.2018, passed in CrI.M.P.No.25 of 2017 in C.C.No.249 of 2013, by the III Addl. Chief Metropolitan Magistrate, Hyderabad.

2. The petition is filed under Section 65 (e) of the Indian Evidence Act seeking to receive the documents, dated 27.01.2012, 04.02.2012, 15.02.2012 and 24.02.2012 as secondary evidence and mark through P.W.1.

3. Originally, a case in Cr.No.333 of 2012 of Banjara Hills Police Station, was registered against the 2nd respondent for the offences punishable under Sections 406, 420 and 426 IPC on a private complaint filed by the petitioner. The case of the prosecution is that they have filed the above documents along with private complaint on 04.04.2012, but those documents are missing from the Court file. As per the instructions of the Court, the complainant addressed a letter to the S.H.O. of Banjara Hills P.S., questioning the above documents. The S.H.O. gave a reply that the documents are not in their possession and therefore, request to permit them to lead secondary evidence.

4. The respondent received the notice and opposed the said petition by filing their counter. They stated in the counter that without giving any reasons and without explaining the whereabouts of the original documents, the petition was filed and therefore, the Court cannot receive those documents. It is further stated that no original documents were received by the Court along with the private complaint and therefore, sought for dismissal of the petition.

5. The trial Court on consideration of the pleadings, allowed the petition partly. Aggrieved by the impugned order, the present revision is filed.

6. Heard the learned counsel for the petitioner and learned Public Prosecutor representing the State. Notice has been served on the 2nd respondent, but none appeared on behalf of the 2nd respondent.

7. The trial Court observed in para 7 of the order that the documents 2 and 3 are postal acknowledgments and receipts, which cannot be received unless the petitioner proves those documents that they were lost.

8. Learned counsel for the petitioner submits that the petitioner intends to prove those documents, which were lost, through secondary evidence. Therefore, the order passed by the trial Court in refusing to allow them to prove the documents through secondary evidence is not in accordance with law. Hence, the part of the order in rejecting the relief is set aside.

9. Accordingly, the Criminal Revision Case is allowed. The trial Court is directed to permit the petitioner to adduce evidence and receive the documents, which are sought to be marked by him. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 27-11-2018

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