

***THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

+CRIMINAL REVISION CASE NO.2632 OF 2018.

%13-12-2018

Jupudi Prakash

...Petitioner /4th
respondent

Vs.

\$ State of Andhra Pradesh, rep. by its
Public Prosecutor, High Court of Judicature,
Hyderabad.

....Respondent

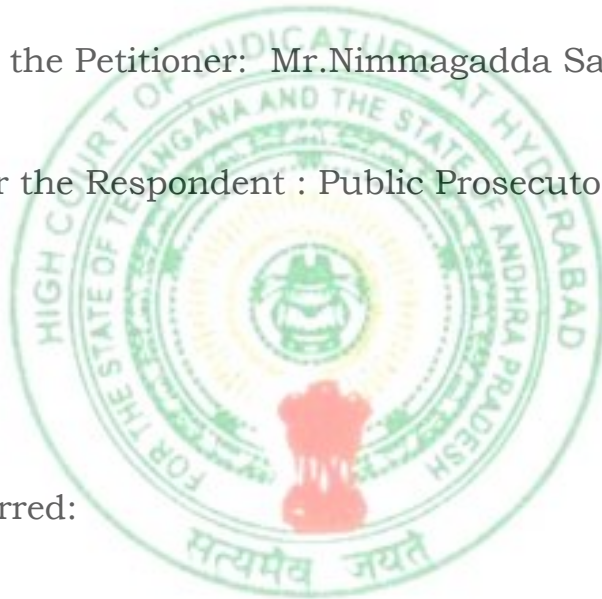
!Counsel for the Petitioner: Mr.Nimmagadda Satyanarayana

^Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL REVISION CASE NO.2632 OF 2018****ORDER:**

This revision is arising out of order, dated 07.08.2018 passed in CrI.M.P.No.4191 of 2018 in C.C.No.129 of 2010 by the I Additional Junior Civil Judge, Narsaraopet.

2. The petitioner is the 4th respondent in the above CrI.M.P.No.4191 of 2018, filed under Section 242 (2) Cr.P.C. seeking permission to receive the documents through P.W.1 in view of provision under Section 65 (c) of the Indian Evidence Act, 1872 (for short 'the Act').

3. The brief facts of the case are that when C.C.No.129 of 2010 was posted for trial, P.W.1 produced some documents before the Court stating that he handed over the original sale agreement to A1 to A3. The Station House Officer, Narasaraopet, filed a petition under Section 242 (2) Cr.P.C. stating that P.W.1 produced some documents before the Court, which are essential to prove the case of the prosecution. As per the investigation conducted, P.W.1 handed over the original agreement to A1 to A3 and in turn, they handed over the same to A4. A1 to A3 having colluded with A4, destroyed the same for wrongful gain. It is the further case of the prosecution that A4 executed sale agreement along with power of attorney in favour of his sister-A6 with regard to the same property on 10.06.2009. P.W.1, therefore submitted Xerox copies of those documents as originals were destroyed. Therefore, the Investigating Agency sought for permission to mark those documents through P.W.1 in view of the provision under Section 65 (c) of the Act. The documents sought to be marked are as follows:

1. Xerox copy of agreement of sale executed by L.W.16 in favour of P.W.1, L.W.2, A3 and A1.

2. Xerox copy of agreement of sale executed in favour of L.W.13, 14, A4.

3. Xerox copy of agreement of sale L.W.13, in favour of L.W.14, L.W.15.

4. Xerox copy of agreement of sale L.W.14, 15 in favour of L.W.16.

4. Accused Nos.4, 5 and 6 filed their counter stating that since the originals were destroyed, the question of leading secondary evidence under Section 65 of the Act does not arise and sought for dismissal of the petition.

5. The trial Court on consideration of material available on record, has allowed the petition for receiving the above list of documents subject to proof and relevancy of the documents.

6. Aggrieved by the impugned order passed by the trial Court, the petitioner is before this Court.

7. Learned counsel for the petitioner submits that when the originals were destroyed, there is no possibility to prove the documents through secondary evidence under Section 65 of the Act by producing Xerox copies of those documents.

8. The point for consideration in this revision is: 'Whether the documents can be received in evidence in view of provision under Section 65 (c) of the Act?'

9. Admittedly, the prosecution has filed a petition under Section 242 (2) Cr.P.C. seeking permission to receive the documents through P.W.1. Section 242 (2) Cr.P.C. reads thus:

“The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.”

10. In view of the above provision, the prosecution sought to mark the documents through P.W.1. The documents referred above, which are sought to be marked are Xerox copies, as the originals of those documents are said to be destroyed. In this regard, Section 65 of the Act clearly makes a provision with regard to cases in which secondary evidence relating to documents may be given. Section 65 (c) of the Act reads thus:

“When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.”

11. There is a clear provision under Section 65 (c) of the Act for receiving document when the original has been destroyed or lost. The case of the prosecution is that the originals were destroyed and therefore, they want to file Xerox copies of those documents. The trial Court on consideration of contentions of both sides, has passed appropriate order permitting the prosecution to file those documents, subject to proof and relevancy. Therefore, there is no prejudice caused to the accused by receiving the documents by the trial Court in view of the above provision.

12. Therefore, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 13-12-2018

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