

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1148 OF 2022

Mangala Sukhdev Jadhav
Age - 58 years, Occu.: Housewife,
R/o. N-11, Navnath Nagar, HUDCO,
Aurangabad. ... Petitioner

Versus

Sangita Sudhakar Jadhav
Age - 53 years, Occu.: Housewife,
R/o. C/o. Suresh Wagh,
N-11, H-18, House No.8,
Navnath Nagar, HUDCO,
Aurangabad. ... Respondent.

....
Mr. M.V. Ghatge, Advocate h/f Mr. R.V. Gore, Advocate for the
Petitioner

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 30 AUGUST, 2022

PER COURT:-

. The petitioner by invoking the writ jurisdiction has challenged the order passed below exhibit 119 in S.C.C. No.771 of 2015 by the learned Judicial Magistrate, First Class (Court No.9), Aurangabad dated 29.04.2022.

2. Heard Mr. M.V. Ghatge holding for Mr. R.V. Gore, learned counsel for the petitioner.

3. Mr. Ghatge holding for Mr. R.V. Gore, learned counsel for the petitioner invited my attention to the impugned order, more particularly, paragraph Nos. 4 and 5. He submitted that the photocopy of the agreement to sell and the photocopy copy of the notice have been exhibited by the learned Magistrate without adhering to the provisions of Section 65 of the Evidence Act. He submitted that the photocopies are secondary evidence under Section 65 of the Evidence Act. The learned Magistrate has completely overlooked the aspect of Section 65, which relates to the secondary evidence and passed the erroneous order. The impugned order is bad in law and liable to be quashed and set aside.

4. Mr. Ghatge, learned counsel for the petitioner has referred the citation in case of *U.Sree Vs. U. srinivas* reported in *(2013) 2 SCC 114* on the point of leading secondary evidence and the requirement thereof. He has also referred another citation in case of *Karthik Gangadhar Bhat Vs.Nirmala Namdeo Wage* reported in *2018 (1) Mh.L.J. 726*, which relates to secondary evidence in respect of the gift deed. On the same point, he has also referred citation in case of *Prakash Gurudas Timblo and others Vs. Hemlatabai*

Ravikant Darne and others reported in *2016 (5) M.H. L.J. 320* regarding secondary evidence.

5. By taking the help of the above referred three citations, learned counsel submitted that the impugned order is bad in law and liable to be quashed and set aside.

6. I have considered the submissions of Mr. Ghatge, learned counsel for the petitioner. I have also gone through the impugned order passed by the learned Magistrate dated 29.04.2022. On going through the impugned order, more particularly para Nos. 3 and 4, it is evident that at the stage of evidence the documents, which are the photocopies of agreement to sell vide exhibit 39/1 and the notice vide exhibit 44/1 were referred to the witness in witness box. Certain questions put to the complainant by way of cross-examination regarding contents of those documents. Those two photocopies are exhibited by the learned Magistrate in view of the application given by the accused.

7. On going through the citations referred by the learned counsel for the petitioner, it would reveal that all these three citations are pertaining to leading secondary evidence. The facts of the present case and the facts of the cited cases are

quite distinguishable. In the present case, by way of cross-examination of the witness/complainant photocopy of the agreement to sell and photocopy of the notice were referred. Certain questions were put to the petitioner regarding contents of documents by way of cross-examination. By considering all these aspects, learned Magistrate has exhibited those documents by passing the impugned order.

8. It is well settled law that it is the administrative duty of the judicial officer to mark exhibit. Mere exhibiting the document does not dispense with proof of the contents of it. The contents are required to be proved as per the Evidence Act. In the present case, the documents which are the photocopies of agreement to sell and notice are simply exhibited since those were referred in the cross-examination. I do not see any error in the impugned order passed by the learned Magistrate while exhibiting the documents. The main object of the cross-examination is to bring out the falsity and to find out the truth and further to weaken qualify or destroy the case of Opponent and to establish the own case through Opponents' witness. Thus objects are to impeach the accuracy, credibility and general value of the evidence given in-chief, to sift the facts already stated by the witness, to

detect and expose discrepancies or to illicit suppressed act, which will support the case of cross-examining party. The exercise of this right is regarded and one of the most efficacious for recovery of truth. Provisions of Section 137 of the Indian Evidence Act, 1872 empowers and Section 146 to 150, regulates cross examination of witness. Confronting witness, with a document is permissible to test veracity of witness; under Section 146 of the Evidence Act.

9. Moreover, it appears from the impugned order that when those two documents/photocopies were put to the witness, objection was not taken before the trial court. Under these circumstances, no interference is called for.

ORDER

- (i) The criminal writ petition stands dismissed.
- (ii) Learned counsel for the petitioner seeks stay to the impugned order passed by this Court. I do not find any extraordinary circumstances to grant state. Prayer refused.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane