

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1787 of 2019

Anup Karmakar

Vs

Basudeb Karmakar & Ors.

For the Petitioner : Mr. Laxminath Bhattacharya.

For the Opposite Party No. 1 to 4 : None.

For the State : None.

Heard on : 18.01.2023

Judgment on : 13.02.2023

Shampa Dutt (Paul), J.:

The present revisional application has been preferred against an order dated 27.02.2019 passed by the Learned 1st Court of Additional District and Sessions Judge affirming the order dated 17.07.2018 passed by Learned 9th Court of Judicial Magistrate, Alipore.

The Petitioner's case is that he filed a complaint case being No. 841/2008 before the Learned 9th Court of Judicial Magistrate, Alipore praying for punishment against the accused persons who with mala fide intention of grabbing the property made false statements and declaration and also forged documents.

The said case proceeded and after completion of evidence on behalf of complainant and after examining the accused persons under Section 313 Cr. P.C. the Learned Court fixed date for argument of case on 18.06.2018.

On 18.06.2018 the accused filed an application along with copy of **Certified Copy of judgment of the Hon'ble Court** dated 18.01.2001 passed in S.A. 188/1982 with the prayer that the same be **kept in case record as piece of evidence**.

The Learned trial court by order dated 17.07.2018 marked the said document as exhibit without considering the objection/petition of the petitioner that they should be permitted to cross examination the

accused on the said document. On 17.07.2018 just after receiving the application the petitioner immediately filed an objection to the said application and only prayed for an opportunity to cross examine the Opposite Party/accused before marking the said document as Exhibit.

The Learned Trial Court even without giving the petitioner an opportunity to file his objection which was served upon the Opposite Parties' allowed the application.

Being aggrieved by and dissatisfied the petitioner preferred a criminal revision before the Learned Additional District Land and Sessions Judge, Fast Track 1st Court, Alipore being 350 of 2018.

The said matter after contested hearing was dismissed by order dated 27.02.2019 by the Learned Revisional Court on two grounds:- Firstly that the petitioner/complainant did not file any application for cross examination in the Learned Trial Court and Secondly that as per provisions of Section 74 and 77 of the Evidence Act no formal proof of document is required if the same is certified copy.

It is further submitted that the Learned Courts erred firstly that the objection of the petitioner was not taken on record by the Learned Trial Court, when the petitioner only wanted to question/cross examination the accused on the score of content of the certified copy and things related therewith and not on the authenticity or the genuinity of the certified copy.

That a partition Suit being Title No. 14/2007 was dismissed between the parties before the Learned 4th Court of Civil Judge (Senior Division), Alipore and in the said suit the Learned Court by order dated 12.08.2008 directed the plaintiff/accused to produce documents in support of his claim. The petition dated 19.04.2018 also included the certified copy of the judgment and decree dated 08.01.2001 passed in SA188/1982 by the Hon'ble High Court. The said order was never complied with by the accused and the revisional application filed by the plaintiff was also dismissed as in fructuous and as such the order of non-compliance reached finality. That the suit filed by the plaintiff was also dismissed by an order dated 30.04.2015 and the subsequent appeal being No. 96/2015 was also dismissed by the Learned District and Sessions Judge, Fast Track, 1st Court by order dated 31.05.2019 and as such the order of non-compliance of document has reached finality and not easily reversible. It is further submitted that thereafter the Opposite Party/accused relied on the said certified copy of the judgment after closure of evidence.

Mr. Laxminath Bhattacharya learned advocate for the petitioner has submitted that the orders impugned are otherwise bad in the eye of law. The Learned Trial Court erred in law in not taking on record the objection of the petitioner to the said application for evidence and the Learned revisional court also erred in law by not considering these aspect of the matter.

The Learned Court erred in dismissing the applications.

That the orders impugned are otherwise bad in the eye of law and thus liable to be set aside/quashed.

In spite of proper service there is no representation on behalf of the Opposite Party (Complaint case).

The relevant order of the Learned Magistrate is dated 17.07.2018 by which the certified copy of the judgment of the High Court was marked exhibit A Series.

In the revisional application being criminal motion 350 of 2018, the Additional District & Sessions Judge, Fast Track Court I, Alipore, South 24-Parganas on 27.02.2019 disposed of the case with the findings:-

“After consulting with the impugned order it appears that the Ld. J.M. vide order dated 17.07.2018 marked certified copy of the judgment of Calcutta High Court as exhibit A series and fixed 25.09.2018 for argument. In this respect it is necessary to mention here that Section 74 of Evidence Act defines public document and from which it appears that documents following the acts or records of the act of public officer, legislative, judicial and executive of any part of India or of commonwealth or of the foreign country is a public document. Section 77 of the Evidence Act deals with proof of documents by production of the certified copies.”

It is further submitted by the petitioner that the Learned Additional District & Sessions Judge overlooked the fact that the petitioner had filed a petition objecting to the document (certified copy of a judgment of the High Court) being marked as exhibit and also with a prayer for cross examination of the person tendering the said document **relating to the contents of the said document but not as to its genuinity**. The court accordingly dismissed the criminal motion.

Hence the revision.

Heard Mr. Bhattacharya in full. Perused the materials on record. Considered.

The main contention of the petitioner in the revisional application is that the petitioner only wanted to question/cross examine the accused on the score of content of the certified copy (judgment of High Court) and things related thereto and not on the authenticity or the genuinity of the certified copy.

Section 74 of the Indian Evidence Act, lays down:-

“74. Public documents.—The following documents are public documents :—

(1) Documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents.”

Section 77 of the Indian Evidence Act, lays down:-

“77. Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”

Section 80 of the Indian Evidence Act, lays down:-

“80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.”

The certified copy of a judgment of the High Court is a public document and is admissible in evidence as per Section 74 and 77 of the Evidence Act.

The Bench of Calcutta High Court presided over by **Justice A. Mookerjee, Roe in Habiram Das & Ors. vs Hem Nath Sarma & Ors,** on 13 May, 1915 (30 Ind Cas 690) held:-

“3. As regards the second ground, we observe that the Courts below have excluded from evidence a certified copy of Letters of Administration granted to two of the defendants, Gurudutt Katki and Chandradutt Katki, in respect of the estate of Kasinath Katki who had made a testamentary disposition of his property before his death. In our opinion, the evidence has been erroneously excluded. The certified copy produced is a copy of the order of the Probate Court to the effect that Letters of Administration be granted to the persons named, with a copy of the Will annexed of the deceased Kasinath Katki. The view may well be maintained that the document of which a certified copy has been produced, is a public document within the meaning of Section 74 of the Indian Evidence Act, for it is a document which forms the record of the act of a public Judicial Officer in British India, namely, the act of the Judge of the Probate Court. The certified copy is consequently admissible. This view does not conflict with the decision of Ponnammal v. Sundaram Pillai 23 M. 499 : 10 M.L.J. 310 where a copy was tendered of a record in a Ceylon Court, which was not even proved to have been certified as a correct copy. The view may also be maintained that the certified copy is admissible under Section 66, inasmuch as the Letter of Administration granted to the administrators was in the possession of some of the defendants who were interested to oppose the claim of the plaintiff. No doubt, the procedure was not strictly regularised as steps were not taken to call upon the persons in possession of the Letters of Administration to produce it in

Court. Hut such steps might be waived at the discretion of the Court, specially as no question of genuineness arises here. We are of opinion that the document should have been received in evidence. If it is received in evidence, there is no controversy that the share of the plaintiff is not one-sixth but one-twelfth, because the Will shows that there had been a testamentary disposition of the properties of Kasinath Katki and his share in the estate did not pass to the plaintiff.”

Admittedly in the present case (revisional application) the genuinity of the certified copy of the order of the High Court is not challenged by the petitioner.

The petitioner’s prayer is for **cross examination** of the accused **in respect of the contents of the said judgment**, which is clearly not permissible.

Accordingly the order and judgment of the Additional District & Sessions Judge, under revision is in accordance with law and the certified copy of the High Court Judgment has been duly marked as exhibit by the Learned Magistrate **as the objection of the petitioner was not on the point of genuinity of the document but it’s contents.**

If the contents of a judgment are objected to, the relief lies in a different forum.

Allowing the prayer of the petitioner would amount to clear abuse of the process of law/Court.

Thus the order of the Learned 1st Court of Additional District & Sessions Judge dated 27.02.2019 in criminal motion 350 of 2018 is affirmed.

CRR 1787 of 2019 stands dismissed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Let a copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)