

Hamid Binesa and Another Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Jul-14-1999

Reported in : 1999(4)ALD327; 1999(2)ALD(Cri)798; 1999(2)ALT(Cri)156

Judge : Vaman Rao, J.

Acts : [Evidence Act, 1872](#) - Sections 61, 62, 63, 63(2), 65 and 74; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340; [Indian Penal Code \(IPC\), 1860](#) - Sections 195

Appeal No. : Crl. P. No. 3304 of 1999

Appellant : Hamid Binesa and Another

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. C. Praveen Kumar, Adv.

Judgement :

ORDER

1. This petition has been filed questioning the order of the learned HIAdditional Metropolitan Sessions Judge, Hyderabad passed in Crl. MP. No.670 of 1999 in SC No.96 of 1996 permitting to mark a photo-stat copy of an agreement of sale which is said to be relevant for the purpose of the case.

2. It appears XXI Metropolitan Magistrate made a complaint under Section 340 of Cr.PC against the petitioners herein in respect of offence under Section 195 of IPC. It is alleged in that case that they have given false evidence in respect of an agreement of sale. While sending a copy of complaint, the learned Magistrate enclosed a photo-stat copy of the said agreement of sale with a further observation that the original will be sent as and when called for.

3. When the Sessions case came up for trial, on behalf of the prosecution a petition was filed seeking permission to lead secondary evidence and get the photostat copy of the agreement of sale in question admitted in evidence by marking it as an exhibit. On behalf of the petitioners herein, objection was raised that the photostat copy in question does not contain any authentication or any endorsement or certificate by any officer that it was a true copy and on that ground admitting that document and marking it as an exhibit was objected to.

4. The learned III Additional Metropolitan, Sessions Judge after hearing both sides passed the order in question observing that proof of document is different from admissibility of the document and held that marking the photostat copy cannot be objected to.

5. It is true that question of admissibility is distinct from the question of proof of the contents. The learned Counsel for the petitioner, however, points out that what was objected to in respect of marking of the photostat copy was that it was inadmissible in evidence on the ground that it was not a authenticated copy of the original.

6. On behalf of the learned Public Prosecutor, it is stated that no objection could be found for marking the document as such atleast for the purpose of identification subject to the objection as to its admissibility later.

7. This question may not arise inasmuch as the document has not been marked and before it is marked this petition has been filed here. The agreement of sale which is sought to be admitted in evidence on behalf of the prosecution in the Sessions case normally must be produced in original. As required under Section 61 of the Evidence Act, the contents of the document may be proved either by

primary or by secondary evidence. As found in Section 62 of the Evidence Act, 'primary evidence' means the document itself produced for the inspection of the Court. All the documents must have to be proved by the primary evidence, namely, production of the documents subject to exceptions provided for in the Evidence Act. Section 65(c) of the Evidence Act contemplates that when 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. However, clause (e) of Section 65 contemplates that when the original is a public document within the meaning of Section 74 of the Evidence Act secondary evidence can be given, Section 63(1) of the Evidence, which defines secondary evidence, provides that certified copies given under the provisions of the Evidence Act constitute secondary evidence which may be admitted. Similarly copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies may be admitted as Secondary Evidence under Section 63(2) of the Evidence Act. Similarly, sub-section (3) of Section 63 of the Evidence Act provides that copies made from or compared with the original may also be admitted as secondary evidence. Thus, there cannot be any embargo for admission of photostat copies of any document if such copies satisfy the requirement of Section 63 of the Evidence Act as stated above. But, for admission of such secondary evidence foundation must be laid as contemplated under Section 65(c) i.e., by showing that the original has been destroyed or lost, 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.

8. In this case, the pretext for producing the secondary evidence on the part of the prosecution is that the original has been missing. For this, to furnish a ground for producing secondary evidence, the prosecution must make out a case by adducing proper evidence that the original was available earlier and in fact it is missing. Thus, the order of the learned III Additional Metropolitan Sessions Judge, Hyderabad as of now cannot stand and the same is accordingly set aside. It is open to the prosecution to produce such evidence as it may deem it necessary for proving the requirement contemplated under Section 65(c) of the Evidence Act for rendering secondary evidence by way of photostat copy admissible. It goes

without saying that the secondary evidence produced must satisfy the Court as to its authenticity.

9. With these observations, the petition is disposed of.

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