

SC No.: 28873/16
FIR No. 106/2016
PS. Maurice Nagar
State Vs. Naveen Uppal @ Sunny

29.08.2018

Present: Sh. Pawan Kumar. Ld. Addl. PP for the State.

Accused produced from J.C.

Sh. Mukesh Kalia and Sh. Shivender Kumar, Ld. Counsel
for accused.

IO/Inspector Sanjay Kumar in person.

PW17 Sanjay Kumar is present. He is partly examined-in-chief. Further examination-in-chief is deferred for want of case property.

An application has been moved on behalf of accused stating that PW Sanjay Kumar before coming to the witness box was refreshing his memory from police file. He has also filed judgment in support of his contention which is “***Sharad Namdeorao Shikbate Vs. State of Maharashtra***” 2006 Lawsuit (BOM) 1509. It is stated by Ld. Defence counsel that as a matter of rules and procedure, a witness before coming to the witness box cannot refresh his memory.

Arguments heard. Record perused.

At the outset, it is mentioned that as per Section 159 of Indian Evidence Act, there is a provision of refreshing the memory of a witness. This Section lays down that “a witness either during

his examination or before that, can refresh his memory.” In one of the judgment **“Vikram Jija Gite Vs. State of Maharashtra”** 2015 CrLJ 3100 (Bombay) B1, it has been held that refreshing memory by the witness cannot have any objection, however, such reading of a document for refreshing the memory has to be done in the presence of the court.

Section 159 of Indian Evidence Act further provides the liberty to the witness either called to depose or under examination, to refresh his memory by referring to any writing made by himself at the time of transaction concerning which he is questioned. Such witness may also referred to any such writing made by any other person and read by the witness within the time of transaction or soon afterwards concerning the matter, he is questioned.

In the present circumstances, the witness was yet to come to the witness box when he is alleged to have refresh his memory. Such procedure as laid down under Section 159 Evidence Act, if provide the liberty to a witness during his examination before the court, then in my considered opinion, there should not be any objection to any such witness, before his coming to the witness box that he may refresh his memory. Such refreshing, however, should

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not be in the form of tutoring or manipulations. It is not the objection of the defence counsel that the witness before coming to the witness box was being tutored or was being manipulative. Therefore, I am of the considered opinion that as per the substantive provision itself which grant the permission to refresh the memory during examination itself, there should not be, therefore, any objection if any such witness is allowed to refresh his memory of his own. It is to be made clear that these observations, however, does not infer that it has been admitted or denied that the witness was refreshing his memory before coming to the witness box. With these findings, the application filed on behalf of applicant / accused is dismissed and disposed off accordingly.

Put up for **PE** on the date already fixed i.e. **30.08.2018**.

(PRASHANT KUMAR)
ASJ/Delhi/29.08.2018