

Common Order below Exh.95 & 115

1. The Ld. A.P.P. on behalf of prosecution has filed this application for seeking permission to lead secondary evidence.
2. The Ld. A.P.P. for State has submitted that, the disputed cheque and the agreement was filed in S.C.C.No.1159/2008, hence prosecution wants to lead secondary evidence by filing certified copy of the said documents on record.
3. The say of accused was called. He has objected the application by stating that, the application is not supported with the affidavit. The matter is old one and as per the directions of the Hon'ble Supreme Court, it needs to be disposed off speedily. Hence he prayed to reject the application. Moreover Ld. Counsel for the accused submitted that, the application is not supported with any documents, which can show that, the alleged documents were destroyed. Hence he prayed to reject the application.
4. Moreover, as per Section 64 of The Indian Evidence Act, documents must be proved by primary evidence except in case mentioned in Section 65 of The Indian Evidence Act. Section 65 provides the cases in which secondary evidence may be given. Therefore in order to lead secondary evidence, circumstances provided u/s.65 needs to be made out. ***The Hon'ble Bombay High Court in Writ Petition No.11151/2017 between Kartik Gangadhar Bhat v/s. Nirmala Namdev Wagh, Etc. 2 dated 03/11/2017*** has held that, there is no need of permission to lead secondary evidence and parties are at liberty to lead secondary evidence, if the circumstances provided u/s. 65 of The Indian Evidence Act are made out.

5. Perused record. On perusal, it reveals that, the present complaint is filed u/s.420 of The Indian Penal Code. It is duty of prosecution to prove it's case beyond reasonable doubts. In the evidence of PW1 the reference of the alleged cheque No.739873 drawn on K.D.C.C. Bank dated 30/11/2007 is made. The said original cheque and agreement is filed in S.C.C.No.1159/2008. Therefore the prosecution has filed certified copies of the same on record to support it's case. Therefore in order to prove guilt of accused and so as to decide the matter on merits, opportunity needs to be granted to the prosecution to lead secondary evidence. Hence I pass the following order.

ORDER

- 1) The applications at **Exh.95 and Exh.115** are hereby allowed.
- 2) The prosecution is hereby permitted to lead secondary evidence as to the documents alongwith list at **Exh.118/1 and 118/2.**

Date : 01/10/2019

(J. S. Gaikwad)
Judicial Magistrate F.C. (Jt. Court),
Peth-Vadgaon

Order below Exh.122

1. The Ld. A.P.P. on behalf of prosecution has filed this application for issuance of witness summons.
2. The Ld. A.P.P. for State has submitted that, the witnesses mentioned in the application are important witnesses and hence prosecution wants to examine those witnesses.
3. The say of accused was called. The Ld. Counsel for the accused submitted that, the matter is old one and as per the directions of the Hon'ble Supreme Court, it needs to be disposed off speedily. Hence he prayed to reject the application.
4. Read application and say. Heard. Perused record. On perusal, it reveals that, the present complaint is filed u/s.420 of The Indian Penal Code. It is duty of prosecution to prove it's case beyond reasonable doubts. Therefore in order to prove guilt of accused and so as to decide the matter on merits, opportunity needs to be granted to the prosecution to examine witnesses. Hence considering reasons and nature of offence, I pass the following order.

ORDER

- 1) The application is hereby allowed.
- 2) Issue witness summons to witness No.1 to 4 accordingly.

Date : 01/10/2019

(J.S.Gaikwad)
Judicial Magistrate F.C. (Jt. Court),
Peth-Vadgaon

I affirm that the contents of the P.D.F. file order are same,
word to word, as per the original order.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	J.S.Gaikwad, Civil Judge Junior Division, Peth-Vadgaon
Date of Dictation	01/10/2019
Order signed by the P.O. on	03/10/2019
Order uploaded on	03/10/2019

