

ORDER BELOW EXH. 92

1] This is an application by prosecution for getting permission to lead secondary evidence to prove the extract of OPD register of the hospital owned by prosecution witness No. 6 Dr. Shirishkumar Dharskar. The extract is dt. 23/02/2016 timing 11.30 a.m. As per this extract the accused no. 1 went to the hospital of this prosecution witness no. 6 Dr. Shirishkumar to treat his right hand injury. As per the evidence of Dr. Shirishkumar the original register though searched by him could not be located. Therefore, examination-in-chief of this witness was stopped in the half way when the Ld. APP submitted the application Exh. 92 for permitting to prove the extract of OPD register dt. 23/02/2016, through secondary evidence i.e. on the basis of xerox copy of that extract which is already on record as a part of charge-sheet. In the application Exh. 92 it is stated that hospital administration keeps only five years record and hence, the original register containing the entry of 23/02/2016 is not available and therefore, prosecution be permitted to lead secondary evidence.

2] The application is opposed by the defence by filing reply at Exh. 93, on the ground that no specific reason is made out in the application so as to permit the witness to prove said extract of his register dt. 23/02/2016 with the help of xerox copy.

3] Heard both sides. The Ld. APP tried to elaborate that only five years record is kept in the hospital and therefore, the original OPD register containing the entry dt. 23/02/2016 is not available.

The defence pointed out that a medicolegal case record cannot be destroyed and witness cannot lightly say that the hospital record including OPD register is maintained only upto five years and hence, there is no foundation for leading secondary evidence.

4] In my view, whether the original register is really not available with the witness or otherwise, whether the prosecution is suppressing the original and projecting this xerox deliberately cannot be decided at this stage. The witness Dr. Shirishikumar can be cross examined at length on all these aspects. But certainly the prayer of prosecution to permit it to lead secondary evidence cannot be nipped into bud and now it would be the matter of merit whether to accept such secondary evidence as a primary. With these observations I pass following order :

ORDER

- 1] Application is allowed.
- 2] Prosecution is permitted to prove the OPD register extract of the hospital of PW 6 Shirishkumar Dharaskar on the basis of xerox copy of said extract dt. 23/02/2016.

Pune.
Date :- 25th April 2023

Sd/xxx
(S.B. Hedao),
Additional Sessions Judge, Pune.

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	A. S. Shivapurkar Stenographer Grade I
Name of Court	Shri. S.B. Hedao, District Judge 5 and ASJ, Pune.
Date of Order	25.04.2023
Order signed by PO	27.04.2023
on	
Order uploaded on	27.04.2023