

MHSN110006692012



ORDER BELOW EXHIBIT – 120
SUM. CRIMINAL CASE NO. 225/2012
(Nitin Pund Vs. Ajinath Gadve)

1] This is an application filed by accused under section 348 of B.N.S.S. Act (311 of Cr.PC.) to recall the complainant.

2] It is the contention of the complainant that, the complainant has filed documents below exhibit 58 I.e application filed by accused for his appointment, copy of resolution dated 05/03/2012, resolution in regard of powers given to chairmen and secretary for making true copies of resolution, copy of resolution for appointment of Advocate for conducting the present trial, proceeding book of Panch Committee and annual meeting book of the complainant Sanstha. These documents were inadvertently and by negligence were not referred to the witness at the time of recording examination in chief and accordingly they have not been exhibited. To adjudicate the matter on merits, these documents are just and necessary to exhibit. These documents will help to adjudicate the matter on merits. No prejudice will cause to the accused as accused will get an opportunity to cross examine the complainant on these documents. Hence, prayed to recall the complainant by allowing the application.

3] Accused have filed say below exhibit 121 and resisted the application. It is the contention of the accused that, the complaint is of the year 2012 and cross examination of the complainant is completed long back. The complainant has examined witnesses. The matter is posted for final arguments from long time. The application is filed by the complainant at belated stage and to fill up the lacuna in the evidence. The complainant is trying to exhibit the document' which were not exhibited at the time of examination in chief. Section 348 of B.N.S.S. cannot be used to fill the lacuna. In case the application is allowed it will affect on the defence which accused has taken in the cross examination. Hence, prayed to reject the application.

4] Heard both the Advocates. I have through the proceedings and the documents filed below exhibit 58. Section 348 of B.N.S.S is reproduce hereunder -:

Power to summons material witness, or examine person present

-: Any Court may, at any stage of any enquiry, trial or other proceedings under this Sanhita, summons any person as a witness, or examine any person in attendance, do not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summoned and examine or recall and re-examine any such person if his evidence appears

to it to be essential to the just decision of the case.

5] The logic behind this provision is that, the endeavor of the Court is to find the truth which would be essential for the just decision of the case.

6] Taking into consideration the legal provision in the facts in the present case, it is pertinent to note here that, the documents below exhibit 58 are filed on 17/11/2018. The examination in chief is filed on 10/03/2014. Further chief was recorded on 06/05/2016 and cross examination was conducted on 11/09/2017, 05/04/2018, 03/05/2018, 02/06/2018, 17/11/2018 and finally concluded on 02/02/2019. On perusal of cross examination the accused has asked some questions in regard of which documents are filed below exhibit 58. The witness (complainant) has answered in affirmative to file those documents in the present matter. It can be seen that, documents filed below exhibit 58 are those documents about which cross examination of accused is conducted and the complainant has filed it on record after part cross examination of the complainant.

7] The record further shows that, the accused has asked questions in regard of these documents to which the witness has given negative answers to the suggestions given by the accused. If the documents are brought on record by way of evidence,

certainly the accused will not be prejudiced on the other hand, the true picture will certainly will come on record. Moreover, the accused will get an opportunity again to cross examine the witness on the exhibited documents. It may be said that, the documents filed below exhibit 58 are answers to the questions raised by the accused in his cross examination. It will certainly not affect the defence, on the contrary, it will help the Court to adjudicate the matter on merits.

8] As stated above, the object of section 348 is to find the truth which would be essential for the just decision of the case. The section empowers to file the application at any stage. So, matter being for final arguments stage would certainly not barred the complainant to file the present application. Considering the nature of documents filed below exhibit 58 and the cross examination conducted by the accused, it will certainly not amount to filling up lacuna in the case. On the other hand, it may be said that the complainant has filling the documents for the just decision of the case.

9] No doubt, the application is moved by the complainant after very long time. The application ought to have filed immediately after completing cross examination of the complainant. The delay caused by the complainant will have to be compensated by imposing reasonable cost upon the complainant. Hence, considering the principle of natural justice

and fair trial it is just and necessary to recall the witness for cross examination which will certainly help the Court to adjudicate the matter on merits. Hence, I pass the following order.

ORDER

1. Application Exhibit 120 is allowed on cost of Rs. 1500/- out of which 1000/- be given to accused and remaining 500/- be deposited in Court on next date.
2. Complainant to remain present for evidence on next date.
3. Needless to state, failure to comply the order on next date, the order shall automatically stands cancelled.

Atpadi.
Date :06/06/2025

(**R.B. Kulkarni**)
Jt. Judicial Magistrate First
Class Atpadi.