

ORDER BELOW EXH.158 IN SESSIONS CASE NO.26/2013 :

(State of Maharashtra Vs Ramshish Yadav)

1) This is an application filed by the Learned Advocate for the accused for de-exhibiting the Exh.157, which is marked during the Examination of witness P.W.4 Namdeo Dattatraya Salunkhe, the brother of deceased. He has lodged the FIR and offence is registered.

2) Exh.157 is the FIR under Section 154 of the Cr.P.C., running into 5 pages, shown to the witness. He deposed that its contents are true and correct and it bears his signature on the last page. He identified his signature. Therefore it was exhibited. The Learned Defence Counsel had raised objection at that point of time and pointed that, part of the said FIR is in carbon copy, specially the statement portion in it is carbon copy. It was pointed that such document cannot be exhibited as primary evidence.

It is submitted that Exh.157, which is marked, can be de-exhibited. Learned DGP submitted that there is no provision for de-exhibiting a document, nor the Court of Sessions has power of revision. Learned Defence Counsel submitted that document is exhibited by mistakenly and if the same is brought to the notice of the Court, it should be de-exhibited. The carbon copy cannot be exhibited, unless permission to lead secondary

evidence is obtained. Learned DGP submitted that the said FIR is recorded by the PSO, who will be examined and then this application of Defence can be considered thereafter. It is submitted that, the Investigating Officer or PSO will explain why some contents in the FIR are in carbon copy, while the rest is in ink.

3) It is seen that, the witness has signed the FIR, he has reported the incident to the Police. He has deposed in the Court about the incident and the contents stated by him to the Police, due to which FIR is registered. The said FIR is recorded by the PSO. It is known fact that the Format of the FIR is available in the Police Station and Criminal Law is set in motion due to registration of Crime. It is also known that FIR is not substantive evidence. The marking of FIR as Exh.157 is based on the deposition of the complainant P.W.4. The objection of Defence was considered even at that time. Thereafter, FIR is marked as Exh.157. It is, therefore, clear that it is not marked mistakenly.

4) Learned Counsel for the Defence submitted that, complaint given by the complainant do not bear the signature, hence it is not exhibited. Therefore the prosecution has got the FIR marked and exhibited as Exh.157. It is submitted that if the document is de-exhibited, then Learned Defence Counsel will not be required to de-exhibit it during cross-examination.

5) The accused are tried for the offence under Sections 302, 143, 147, 148, 149 of IPC, Section 25 of the Arms Act and Section 135 of the Bombay Police Act.

The FIR Exh.157 is marked during the testimony of the complainant, who is also an eye-witness. The contents in it are stated to be true and correct. In the circumstances, it is fit and proper for the Defence to deal with this document in the cross-examination. In my view, the contents in the said document are important. The oral testimony of the witness in Examination-in-chief is recorded. Marking of Exh.157 do not cause any prejudice to the accused. Accused can deal with the said document during cross-examination of the witness.

Why part of Exh.157 is in carbon copy and part of it is in ink, will be explained by the PSO, who will be examined by the prosecution, is rightly submitted by Learned DGP. In the circumstances, I do not find fit to de-exhibit the document, marked as Exh.157. Hence, it is fit and proper to reject the application. Hence, the order :

ORDER

Application Exh.158 is rejected.

SATARA.
27th September, 2017.

[Priti Kumar (Ghule)]
Addl. Sessions Judge, SATARA.