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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TEST.CAS. 45/2001

MADAN MEHTA

..... Petitioner

Through

Mr. J. N. Aggarwal and Mr. Ritesh
Khatri, Advocates for P-2

versus

STATE AND ORS AB+

..... Respondents

Through

Ms. Madhumita Kothari, Advocate
for applicant Mr. Gobind Shahani

CORAM:

SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR

ORDER

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31.01.2017

IA No. 15372/2016 (under Order XIII Rule 10 CPC filed by applicant)

1. By way of this IA, the applicant seeks permission to summon the record of criminal complaint No. 1037/1/2014 (renumbered as CC 79/2/2014) and the record of Criminal Revision No. 20943/2016 pending in court of learned ASJ, Saket Courts.
2. The applicant filed the above mentioned criminal complaint before the court of learned MM, Delhi. In the said complaint, opinion of the handwriting expert Mr. Sayeed Sarfaraz Ahmed was filed and he was also examined in the pre summoning evidence. Learned MM dismissed the complaint. Applicant has filed revision which is now pending in the court of learned ASJ. The applicant also wanted to examine the handwriting expert in this matter. Certified copy of the statement of the handwriting expert before the court of



learned MM was placed on record of this case with certified copy of his opinion which were submitted in the court of learned MM. The handwriting expert appeared before this court as AW5 and he was examined on 26.10.2016. In his report, he opined that the disputed signature did not pertain to Mrs. D. A. Sahni. However, while deposing before this court, he stated that “ I opined that the signature Q1 and the admitted signatures A1 to A6 has been done by the same person”. This statement was contrary to his report. Learned counsel for the applicant requested for permission to cross examine her own witness (AW5) and the permission was granted under Section 154 of the Evidence Act. After answering some questions of learned counsel for the applicant, the witness stated that he wanted to see the original record. Therefore, applicant has moved this application.

3. IA is opposed by learned counsel for petitioner No. 2. It is stated that the record of the criminal case was not mentioned in the list of documents and the concerned clerk from the criminal court was also not cited in the list of witnesses. According to petitioner No.2, the applicant wants to summon the record only to delay the proceedings and to pressurize the witness.
4. Learned counsel for the applicant submitted that the record of the criminal case contains the original report of the handwriting expert with the negatives of the photographs which he took in the course of preparation of his report. Learned counsel for the applicant agreed that the original documents are not there in the criminal court and she submitted that this IA has been moved in view of the



statement made by the witness that he wanted to see the original record.

5. I have considered the submission made by learned counsel for the parties and I have perused the record. Opinion of the handwriting expert (AW5) is based on copies of the documents. The record of the criminal case also does not have the original documents which are mentioned in the report. This being the admitted position, it cannot be accepted that the applicant is trying to improve upon his case by summoning the record of the criminal case. AW5 is under cross examination by learned counsel for the applicant and he will also be cross examined by learned counsel for petitioner No.2. It would be fair to give an opportunity to the witness to see his original report with its annexures as filed in the criminal case, before he is made to answer questions in cross examination either by learned counsel for the applicant or by learned counsel for petitioner no. 2. Therefore, IA is allowed. The applicant will take steps for summoning the record from the criminal court by filing PF within a week. Diet money will be paid on spot.

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Adjourned to 22nd March, 2017 for AE. Applicant is directed to summon AW5 for the next date. Steps be taken within a week.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

JANUARY 31, 2017
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