



2025:CGHC:25040-DB

BABLU
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HIGH COURT OF CHHATTISGARH AT BILASPUR

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CRMP No. 1108 of 2022

Vijay Uraon S/o Harishankar Aged About 25 Years R/o Village Kenapali,
Jorapali, Police Station Kotraroad, District Raigarh Chhattisgarh.,
District : Raigarh, Chhattisgarh

--- **Petitioner****versus**

1 - State Of Chhattisgarh Through S.H.O. Police Station Chandrapur
District Janjgir Champa Chhattisgarh., District : Janjgir-Champa,
Chhattisgarh

2 – XYX (Complainant)

--- **Respondents**

For Petitioner : Mr.Ravindra Sharma, Advocate

For Respondent : Mr.Malay Jain, Panel Lawyer

No.1/State

For Respondent : Mr.Vivek Bhakta, Advocate

No.2

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

17/06/2025

1. Heard Mr.Ravindra Sharma, learned counsel for the petitioner as
well as Mr.Malay Jain, learned Panel Lawyer appearing for

respondent No.1/State and Mr.Vivek Bhakta, learned counsel appearing for respondent No.2.

2. By this petition under Section 482 of the CrPC, the petitioner has prayed for the following relief(s):

“It is therefore prayer that the Hon'ble court may kindly be pleased to allow the instant criminal miscellaneous petition and may kindly be pleased to quash the order dated 20.06.2022 to the extent of taking the photocopy of the document/agreement produced by the prosecutrix at the time of cross-examination and marking the same as Ex-P/19, and may kindly be please to direct the learned Trial Court that the evidence recorded in this regard at para-53 of cross-examination of prosecutrix may not be taken into consideration while passing the final judgment, in the interest of justice.”

3. Brief facts necessary for disposal of this case are that the complainant/respondent No.2 lodged a written complaint against the petitioner on 24.02.2022 stating that on the pretext of marriage the petitioner has committed sexual intercourse with her and presently he has refused to marry with her and cheated her, therefore she lodged the complaint against him. On the complaint of the victim, Police Station Chandrapur District Janjgir-Champa registered the case in Crime No. 26/2022 for offence punishable under Sections 376 and 417 of the IPC and arrested the petitioner on 26.02.2022.
4. During the investigation, the police of Police Station Chandrapur recorded the statement of the victim under Sections 161 & 164 of

the Criminal Procedure Code and after completion of investigation, the police filed the charge-sheet on 10.03.2022. After filing of charge sheet, learned trial Court framed the charges against the petitioner for offence punishable under Sections 376 & 417 of the IPC and fixed the case for evidence on 20.06.2022. During the course of cross-examination of the victim on 20.06.2022, the victim produced one agreement / Ikrarnama dated 29.08.2021 stating that the same has been executed by the petitioner and his signature is present in the said agreement on part 'A' to 'A'. Learned trial court accepted the said document and marked the same as Ex-P/19 at para-53 of cross-examination.

5. The victim/respondent No.2 has not filed any application for taking document on record regarding Ex-P/19 and during the course of investigation she has not made any statement that the petitioner/accused has executed an agreement in her favour and that at the time of recording of statement under Sections 161 & 164 of the Criminal Procedure Code she has not made any statement in this regard and has not presented the same before the investigating officer. Therefore, document (Ex-P/19) is not the part of charge-sheet, and that for the first time during the course of cross-examination she has made statement and produced the same before learned trial Court which has been accepted by the learned trial court without recording the objection of the petitioner/accused, which is illegal, improper and contrary to the law, and it will cause serious prejudice to the petitioner/accused, and it is

also against the principle of natural justice. Hence the criminal miscellaneous petition.

6. Learned counsel for the petitioner submits that during cross examination a photo-copy of the *Ikrarnama* was produced by the victim to show that it bears the signature of the petitioner and without any notice the photo-copy was accepted by the trial Court and exhibited as P-19. He further submits that acceptance of such document is gross violation of Section 66 of the Indian Evidence Act, 1872 as no notice was given to produce such document and directly it was produced before the concerned court by the victim saying that it bears the signature of the petitioner and original document is in possession of the petitioner. He also submits that acceptance of such document as exhibit would lead to miscarriage of justice. As such, the petition deserves to be allowed and the order dated 20.06.2022 passed by the trial Court to the extent of taking the photocopy of the document/agreement produced by the victim at the time of cross-examination and marking the same as Ex-P/19 deserves to be set aside.
7. On the other hand, learned counsel appearing for respondent No.2 supports the order passed by learned trial Court, but on a pointed query being made from learned counsel appearing for respondent No.2 whether she has the original document, then he denied the same and only stated that it is with the petitioner.

8. We have heard learned counsel for the parties, perused the impugned order and other documents appended with petition.
9. For proper appraisal of the matter in controversy, it would be appropriate to reproduce Sections 65 and 66 of the Indian Evidence Act which read as under :-

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce.-Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [or to his attorney or pleader] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) when the document to be proved is itself a notice;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.”

10. A perusal of Section 65 makes it clear that secondary evidence may be given with regard to existence, condition or the contents of a document when the original is shown or appears to be in possession or power against whom the document is sought to be produced, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after notice mentioned in Section 66 such person does not produce it.

11. It is a settled position of law that for secondary evidence to be admitted foundational evidence has to be given being the reasons as to why the original evidence has not been furnished.

12. The issue arising out of somewhat similar facts and circumstances has been considered by the Supreme Court in **Ashok Dulichand v. Madahavlal Dube and Anr., [1976] 1 SCR 246** and it was held as under :-

“According to Clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any

person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given.”

13.In the matter of **Rakesh Mohindra v. Anita Beri and Ors. (2016)**

16 SCC 483 the Supreme Court has observed as under:-

“15. The preconditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted.”

14.It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence.

15.In the case in hand, it is admitted position on record that the victim/respondent No.2 has not filed any application for taking document on record regarding Ex-P/19. Even during during the course of investigation, she has not made any statement that the

petitioner has executed the *Ikrarnama* in her favour and also at the time of recording her statement under Sections 161 & 164 of the Criminal Procedure Code, she has not made any statement in this regard and has not presented the same before the investigating officer. Therefore, document (Ex-P/19) is not the part of charge-sheet and for the first time during the course of cross-examination, she has made statement and produced the same before learned trial Court, which has been accepted by the learned trial court without recording the objection of the petitioner that original copy of the said document has not been produced by the victim / respondent No.2, which is *per se* illegal, improper and contrary to law laid down by the Supreme Court in above-stated judgments.

16. For the foregoing reasons, the petition is **allowed** and the order dated 20.06.2022 passed by the trial Court to the extent of taking the photocopy of the *Ikrarnama* produced by the victim at the time of cross-examination and marking the same as Ex-P/19 is hereby quashed. The trial Court is directed to expedite the trial and conclude the same expeditiously.

17. A copy of this order be sent to the concerned trial Court forthwith.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Unless, it is established that the original document is lost or destroyed or is being deliberately withheld by the party, secondary evidence in respect of that document cannot accepted.