Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

W.P. No.2163/2019

Muhammad Suleman

Versus

Muhammad Saad Naseem, etc.

Petitioner By	:	Mr. Qaiser Imam Ch., Advocate.
Respondents By	:	Mian Asad Hayat, Advocate for respondent No.1. Mr. Zohaib Hassan Gondal, State Counsel. Nasrullah, ASI.
Date of Hearing	:	07.06.2022.

AAMER FAROOQ, J. – On the complaint of Muhammad Saad Naseem (respondent No.1), FIR no. 193, dated 22.06.2016, under section 489-F PPC, Police Station Shalimar, Islamabad was registered in which Muhammad Suleman (the petitioner) was an accused. Report under section 173 Cr.PC was filed before the Court of competent jurisdiction and trial commenced. During the course of trial, respondent no.1 appeared as witness and produced certain original documents, copies whereof had been provided to the police during the course of investigation which were taken in possession by the police under memo of recovery. The petitioner objected to the referred documents being exhibited in evidence upon which learned Judicial Magistrate, vide order dated 13.03.2019, sustained the objection and discarded the documents which formed part of evidence as Ex-PC/1-7. Respondent no.1 filed criminal revision before the learned Additional Sessions Court, which was allowed vide order dated 26.04.2019. The referred order has been assailed in the instant writ petition.

2. Mr. Qaiser Imam Chaudhry, ASC, appearing for the petitioner, *inter alia,* contended that it was incumbent upon the police to take the original documents in custody and only the same could have been exhibited in evidence. It was submitted that since the needful was not done, respondent No.1, during the course of trial, could not have exhibited the said documents as there are chances of tempering.

3. Learned counsel for respondent No.1 alongwith State Counsel, *inter alia,* contended that since original documents are available and formed part of primary evidence, hence secondary evidence is not permissible. It was added that the proceedings in the criminal trial are not akin to the proceedings in civil trial, where the original document if is not in the list of documents relied upon or not filed with the suit cannot be adduced in evidence, subsequently.

4. Arguments advanced by learned counsel for the parties have been heard and documents placed on record examined with their able assistance.

5. The facts leading to filing of the instant writ petition have already been mentioned hereinabove, therefore, reproduction of the same is not mandated.

6. The sole controversy raised in the instant petition is, whether copies of the documents which were taken by the police and subsequently original of the same exhibited in evidence in the statement of respondent no.1 could have been done. Before embarking to resolve the controversy, it is pertinent to have a brief rundown of the relevant law. Under Article 72 of the Qanun-e-Shahdat Order 1984 ("**the Order**"), the contents of documents may be proved either by primary or by secondary evidence. Article 73 of the Order explains evidence to mean the document itself produced for the inspection of the Court, whereas under Article 74, secondary means and includes certified copies; copies made from the original by mechanical processes which in themselves ensure the accuracy of the copies; copies made from or compared with the original; counterparts of documents as

against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. Article 75 clearly and in unambiguous terms states that documents must be proved by primary evidence except in the circumstances as mentioned in the Order. The exceptional circumstances in which secondary evidence can be admissible are contained in Article 76 of the Order; there are eight (08) instances in which secondary evidence is admissible which are: 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; 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; 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; when due to the volume or bulk of the original, copies thereof have been made by means of microfilming or other modern device; when the original is of such a nature as not to be easily moveable; when original is a public document as provided in Article 85; when original is a document of which a certified copy is permitted by the Order or by any other law; when the original consists of numerous accounts or other documents which cannot conveniently be examined in Court, and when original document forming part of a judicial record is not available and only certified copy thereof is available. Article 77 *ibid,* states that secondary evidence of the contents of the documents as mentioned in Article 76 would 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 advocate 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.

7. Before commencement of the trial under section 265 Cr.PC, in all cases instituted upon the police report, copies of the following documents are to be provided to the accused free of cost not later than 07-days before the commencement of the trial namely FIR, the police report, statements of all the witnesses recorded under section 161 and section 164 Cr.PC and inspection note recorded by the Investigating Officer on his first visit to the place of occurrence and note recorded by him on recovery memo, if any. The referred provision pertains to the trial before the High Courts and Courts of Sessions and in case of trial before the Magistrate, as is the case in the present matter, under section 241-A Cr.PC, in all cases instituted upon police report except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statement of witnesses recorded under sections 161 and 164 Cr.PC as well as inspection note recorded by Investigating Officer on his first visit to the place of occurrence shall be supplied free of cost to the accused not later than 07-days before the commencement of trial.

8. Admittedly, section 241-A Cr.PC was complied and all relevant documents were handed over to the petitioner. The controversy arose when respondent No.1 in evidence produced original receipts of the bank deposit, which were marked as Ex.PC/1-7. On the objection of the petitioner, learned trial Court discarded the said exhibit. It is trite law that there is no concept of de-exhibition of any document, however, if there is any objection as to the admissibility or proof of the document, same is to be decided by learned trial Court in accordance with law while adjudicating the matter and choose not to rely on documentary evidence as exhibited for the reasons recorded by it. As noted above, the core controversy is regarding the original documents copies of which were seized by the police. In

somewhat similar circumstances, the Hon'ble Lahore High Court in *Muhammad Arif alias APPO versus The State (1998 P Cr. LJ 271)* observed that under Article 18 of the Order, the Court cannot refuse to admit the documents which are relevant for the decision of the case and objection of the defence is not well-founded as there is difference between civil and criminal proceedings and it contain different procedures on the documentary evidence. It was added that in view of the provision of the Order XIII Rules 1&2 CPC, parties are required to attach with plaint all the documents on which reliance is placed, whereas there is no corresponding provision in Criminal Procedure Code for placing any embargo on the powers of the Court to receive any document at belated stage provided it is relevant under Article 18 of the Qanun-e-Shahadat Order. The Hon'ble Lahore High Court also observed that the admissibility of documents cannot be disputed or questioned on the ground that they are fabricated; it is for the trial Court to determine at the time of decision, whether they are reliable and genuine documents. This Court in *Malik Riazullah versus Mst. Dilnasheen and others (2018 CLC 1569)* has already held while relying upon earlier judgments of the Hon'ble Supreme Court of Pakistan and judgments from the Indian jurisdiction that receiving a document in evidence and marking it as exhibit does not debar other party from questioning its admissibility later. Likewise, merely exhibiting a document does not dispense with the onus to prove the same. It was added that it is axiomatic that admitting a document in evidence does not determine its evidentiary value nor does its admissibility attain finality. It only becomes part of the record and is marked as exhibit.

9. It is also settled proposition of law that tendering document in evidence and marking it does not *per se* prove the document and same is to be proved in accordance with the provision of the Order as provided in the Order. In *Zakaullah Khan versus Muhammad Aslam and another (1991 SCMR 2126)*, the Hon'ble

Supreme Court of Pakistan observed that the degree of proof required in the civil and criminal cases is different viz. in the former, mere preponderance of probability is sufficient and benefit of reasonable doubt need not necessarily go to the defendant but in the latter the persuasion of guilt must amount to such a moral certainty as convinces the minds of the tribunal, as reasonable men beyond all reasonable doubt. This Court in *Waseem Haroon and 2 others versus The State and others (2017 MLD 1737)* reiterated the effect of Articles 73 and 75 of the Order. In *Khizar Hayat versus Judicial Magistrate and 2 others (2015 PCr.LJ 1566)*, the Hon'ble Lahore High Court observed that there is no bar to produce a document, especially when a particular question is asked by the defence counsel to witness regarding the production of the same before the police during investigation. It was added that one may visualize a situation in which valuable documents may have been omitted to be placed on record by Investigating Officer during the investigation and yet in the interest of justice they may be admitted during trial. It was further observed that mechanism of the Courts and procedure is only intended to advance the justice.

10. Summing up the position in light of the above, the police authorities ought to have taken the original bank receipts or at least respondent No.1 ought to have provided them during the course of investigation, however, even if the same was not done and subsequently during the course of trial the referred documents were produced in original in evidence, there is no impediment in law which bars the prosecution to adduce those documents in original. The procedure provided in the Code of Civil Procedure, 1908 is different from the procedure in the Code of Criminal Procedure, 1898. In CPC there is a method prescribed for adducing documents in evidence and if a document is not appended with the plaint under Order XIII Rules 1&2 CPC, subsequently, the party may not be able to adduce it in evidence; no such prohibition exists in criminal law and by virtue of

Article 18 of the Order, any evidence which proves the fact and issue is to be allowed by the Court and can be adduced. Moreover, as noted above, mere admissibility does not necessarily prove a document. The method to prove a document is altogether distinct from adducing it in evidence. It can always be because the document is part of the record yet not proven by the prosecution or any party in accordance with law.

11. In case in hand, Respondent no.1 merely produced the original receipts/documents and the trial Court could not have discarded the same but seen the effect of those receipts only after they were proved in accordance with law on the conclusion of the trial when the final judgment was being delivered. The learned revisional Court has rightly explained the position of law and no exception can be taken thereto, hence it does not suffer from any error of law or jurisdiction calling for interference.

12. For the above reasons, the instant petition is devoid of merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 18th day of August, 2022.

JUDGE

Approved for Reporting.

M.Shah/.