

(2018) 01 GUJ CK 0011
In the Gujarat High Court
Case No : 6824 of 2017

BAHARTSINH VIJAYSINH PARMAR

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

[Constitution of India](#), [Article 227](#) -
Power of superintendence over all courts by the High Court

Citation : (2018) 01 GUJ CK 0011

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : ARPIT A KAPADIA, THAKKAR

Judgement

1. The respondents Nos.2 to 8-original accused, although served with the notice of rule issued by this Court, yet have chosen not to remain

present before this Court either in person or through an advocate and oppose this application.

2. By this application under Article 227 of the Constitution of India, the applicant-original first informant, has prayed for the following reliefs;

(A) Your Lordships may be pleased to admit and allow the petition;

(B) Your Lordships may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or

direction to quash and set aside the order dated 13.10.2016 rendered by the learned 10th additional Civil Judge and Judicial Magistrate First

Class, Surat below Exh.243 in Criminal Case No.7995 of 2011 and further be pleased to allow application Exh.243 in toto and be pleased to

permit the applicant to produce all the documents sought to be produced by the applicant vide Exh.252 and give them Exhibit number in Criminal

Case No.7995 of 2011 in the court of learned 10th Additional Civil Judge and Judicial Magistrate First Class, Surat.

(C) Your Lordships may be pleased to issue appropriate writ order or direction to overrule the objection of the defense counsel and permit the

learned APP to ask the question to the applicant with respect to document at Sr. No.104 and permit the applicant to tender his deposition on said

question vide Exh.257 in Criminal Case No.7995 of 2011 in the court of learned 10th Additional Civil Judge and Judicial Magistrate First Class,

Surat;

(D) Pending the admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the prosecution not to conclude its

evidence in Criminal Case No.7995 of 2011 in the court of learned 10th Additional Civil Judge and Judicial Magistrate First Class, Surat;

(E) Your Lordships may be pleased to grant such other and further relief/s that may be deemed fit and proper in the interest of justice.

3. It appears from the materials on record that the applicant is in the witness box and his evidence is being recorded by the Trial Court. In the

course of the deposition of the applicant herein, a list of documents was produced. The list is Exhibit- 252. The first informant seeks to rely upon

almost 351 documents in support of his case. These documents may not be a part of the charge-sheet, however, the applicant proposes to

produce these documents in the course of recording of his evidence.

4. I take notice of the fact that the Trial Court permitted the documents enlisted at Serial Nos.1,5, 6 to 9 and 334 to 342 to be produced and

taken on record after exhibiting the same. So far as the other documents are concerned, the Trial Court declined to exhibit the same and take them

on record on the ground of relevancy.

5. Being dissatisfied with such approach of the Trial Court, the applicant is here before this Court with this application under Article 227 of the

Constitution of India.

6. Any document filed by either party passes through three stages before it is held proved or disproved. There are:

First stage: when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record;

Second Stage: When the documents are tendered or produced in evidence by a

party and the Court admits the documents in evidence. A

document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence;

Third Stage: the documents which are held proved not proved or disproved when the Court is called upon to apply its judicial mind by reference to

Section 3 of the Evidence Act.

7. Even otherwise, the mere admission of a document in evidence does not amount to its proof.

8. When the Court is called upon to examine the admissibility of a document it concentrates only the document. When called upon to form a

judicial opinion whether a document has been proved, disproved or not proved the Court would not look at the document alone or only at the

statement of the witness standing in the box; it would take into consideration the probabilities of the case as emerging from the whole record. It

could not have been the intendment of any law, rule or practice or direction to expect the Court applying its judicial mind to the entire record of the

case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit.

9. The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the

purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness

when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would

cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was refering to which

deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be

postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an

exhibit.

10. The Supreme Court in the case of Bipin Shantila. Panchal v. State of Gujarat and Anr., reported in (2001) 3 SCC page 1.

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the

admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively

as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final

judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded

from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency

of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested

above can be followed..

11. In the result, this application succeeds and is hereby allowed. The application filed by the applicant herein, Exh.243 in the Criminal Case

No.7995 of 2011, is allowed in toto. The Trial Court shall permit the applicant to adduce necessary documentary evidence as sought to be

produced in accordance with the list which is at page-33 of this paper book, i.e., Exh.252. Rule is made absolute to the aforesaid extent. Direct

service is permitted.