

(3) No registering officer shall accept for registration any document involving transfer of property including contract for sale of immovable property belonging to or vested in the Government of Kerala or public sector undertakings operating in the State or local self-government institutions unless it is accompanied by a no objection certificate issued by an officer authorised by the State Government in this behalf.

Every Sub-Registrar refusing to register a document must make an order of refusal and record his reasons in his Book No. 2 and endorse the words "registration refused" on the document. Sub-Section (2) resolves the confusion, if any. No registering officer shall accept for registration a document so endorsed unless the document is directed to be registered.

The objections need not be confined to those arising out of the Registration Act; at least, the provision does not take such a narrow approach. Every objection against registering a document, save the one that concerns the property location, must be recorded. And it is common knowledge that most objections relate to the value of the property or the value of the stamp; sometimes they concern the nature of the document. Sub-Section (2) paves the way for representation by laying down that registration must be refused unless there is a direction to do so. But, visibly, Section 71 does not say that on representation, it must be impounded if, for instance, it relates to deficit stamp duty. So, Section 71 speaks about refusal to register and what should happen on representation. Representation, we may observe, presumes the return of the document, in the first place.

The conclusion of above analysis is that the presentation falls under Section 31 or Section 34 of the Stamp Act. Deficit stamp pointed out, if the presenter refuses to pay the due amount, the Sub Registrar shall refuse to register the instrument, record the reasons under Section 71 of the Registration Act, and return the document to the presenter.<sup>111</sup>

#### **4.12. Instruments not duly stamped and impounding**

Relevant Provisions of law from Indian Stamp Act, 1899:

##### ***Sec.33 Examination and impounding of instruments:***

(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose, every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that-

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111 *Dr. Abdul Rasheed @ Dr. A.R. Babu v. State of Kerala, Rep. by the Secretary to Government, Revenue Department* 2018 (3) KHC 460; 2018 (3) KLJ 535; 2018 (3) KLT 137; 2018 0 Supreme (Ker) 313;

## CHAPTER 3

### DOCUMENTS IN CRIMINAL CASES

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each one of the documents, whose disclosure is objected to, has been duly considered by the authority concerned. The affidavit should also indicate briefly within permissible limits the reason why it is apprehended that their disclosure would lead to injury to public interest.

When privilege is claimed in regard to documents of a commercial character having relation only to commercial activities of the State it is expedient and desirable that the affidavit should give some indication about the reasons why it is apprehended that public interest may be injured by their disclosure.<sup>62</sup>

### 3.17. Production and inspection of documents:

The general principle is that confidentiality of state documents should be protected. If a person is involved in litigation, the courts can order him to produce all the documents in his possession or control relating to the issues involved in the case. Even if they are confidential, the court can direct them to be produced when the party in possession does not produce them, for the other side to see or at any rate for the court to see. When the court directs production of those documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the party for whose purpose document is summoned by the court, cannot use them for any purpose other than the one relating to the case involved.<sup>63</sup>

The Supreme Court in *S.P. Gupta* has held in explicit words that the court has power to inspect the document for the purpose of deciding the question as to whether the document is a privileged document or not.<sup>64</sup> The principle holds the same in English law. It is important to note *Lord Simon LC* last quoted that a judge must accept as final a Minister's decision to exclude evidence was overruled in *Conway*<sup>65</sup> *Lord Blanesburgh* observed-<sup>66</sup>

"As the protection is claimed on the broad principle of State policy and public convenience, the papers protected as might have been expected, have usually been public official documents of a political or administrative character. Yet the rule is not limited to these documents. Its foundation is that the information cannot be disclosed without injury to the public interests and not that the documents are confidential or official which alone no reason for their non production is."

Section 162 makes it clear that this question is one for the court to decide and not the head of the department. The position therefore is that when the state or a public officer is summoned to produce a document in respect of which he desire to claim privilege on the ground that it relates to any affairs

62 *Sodhi Sukhdev Singh (Supra)*

63 *State of Bihar Etc v. Kripalu Shanker Etc* AIR 1987 SC 1554 : 1987 SCR (3)

64 *S.P. Gupta v. Union of India and others* AIR 1982 SC 149, 1981 Supp (1) SCC 87 : [1982] 2 SCR 365

65 *Conway v. Rimmer* [1968] AC 910

66 *Robinson v. State of South Australia* 1931-AC 704

aimed at providing certainty, security and continuity in business transactions. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it, despite there being deviation from the general presumptions of law and the procedure provided for the redressal of the grievances to the litigants. Presumption, therefore, as to consideration is the very ingredient of negotiability and in the case of negotiable instrument, presumption as to consideration has to be made.

### 13.2. Pleadings are the basis to raise Presumption:

Any presumption as to quantum of consideration, as distinguished from the mere existence of consideration, has to be drawn, not by virtue of Section 118, Negotiable Instruments Act or even under Section 114, Evidence Act, but only from the recitals, if any, that the instrument may contain. As to such recitals, it has long been established that being prima facie evidence against the parties to the instrument, they may operate to shift on to the party pleading the contrary, the burden of rebutting the inference raised by them. But the weight due to recitals may vary according to circumstances and, in particular circumstances, the burden of rebutting them may become very light, especially when the Court is not satisfied that the transaction was honest and bona fide.

### 13.3. 'Until the contrary is proved'—A note:

The expression "until the contrary is proved" in Section 118, Indian Negotiable Instruments Act, must also be read in this expanded sense, having regard to the definitions of the word "disproved" and of the expression "shall presume" in Section 3 and 4, Evidence Act. The difference between Section 114, Evidence Act, and Section 118, Negotiable Instruments Act, consists only in this: that under the first the court has a discretion to make the presumption or not, whereas under the second the Court is bound to start with the presumption; but once the presumption is made, there is no difference between the two cases, in the manner of displacing the presumption or disproving the "presumed" fact.

This question was considered by Madras High Court<sup>108</sup> where it is held thus:

"Until the contrary is proved, every negotiable instrument which is duly made or deemed to have been made should prima facie be held to be one supported by consideration. Presumption under Section 118 of the Negotiable Instruments Act shifts the burden of proof in the second sense, that is, the burden of establishing a case shifts to the defendant, the defendant may adduce direct evidence to prove that the promissory note was not supported consideration and if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on. It is therefore clear that the burden is ambulatory; at one time it is on the plaintiff, and according to the proof and circumstances, it shifts on to the shoulders of the defendant."

108 *Ramaswami Chettiar v. Sri Devi Talkies*, (1976) 1 M.L.J. 22

However, the court shall not examine the nature of the document at the stage of receiving it as secondary evidence. At that stage what all it has to consider is whether the party has satisfactorily proved the conditions laid down for receiving secondary evidence. Any objection as to sufficiency of stamp and requirement of registration are the questions that shall be considered by the court at the time of trial. Whether a document offered as secondary evidence attracts stamp duty, be it Xerox copy or carbon copy or certified copy made and compared with the original, is a question that has to be gone into by the court at a later point.<sup>47</sup> Certificate issued by Headmistress of a school, certifying the age of a student is not admissible under Sec.65 (e).<sup>48</sup>

**1.11. Allowing oral evidence of contents of document without producing document is not allowed:**

The Evidence Act has designed special procedure as to how the contents of a document shall be proved. It is by primary and secondary evidence. While admitting that the original document is available with his father, the defendant did not take any steps to get that document summoned and produced in court during course of evidence. He did not assign any reason also for his not taking steps in that direction of placing the document before the court. He shall not be allowed to prove the contents of that document by oral evidence.<sup>49</sup>

**2. PROOF OF FACT BY ELECTRONIC RECORDS**

*Relevant provisions from Evidence Act*

**Section 65A - Special provisions as to evidence relating to electronic record:**

The contents of electronic records may be proved in accordance with the provisions of section 65B (w.e.f. 17-10-2000)

**Section 65B - Admissibility of electronic records:**

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any

47 *M.S. Prakash Rao v. Baka Krishna* 2007 (5) ALD 641

48 *K. Laxman Rao v. State of Andhra Pradesh* 1999 (1) ALD 543

49 *Dr. D. Ashok Reddy v. K. Ramachandra Reddy and another* 2008 (1) ALD 708