

## A CRITICAL NOTE ON AFFIDAVIT EVIDENCE

By

—Justice Ch. S.R.K. PRASAD,  
(Former Judge of High Court of A.P.)

Affidavits can be filed under Order 18 Rule 4 of CPC towards chief-examination. The same can be treated as evidence as law permits the same. Forum of recording of chief-examination is changed but it has never changed or dispensed with the contents. The evidence that is being recorded during chief-examination towards proof of a fact previously can be filed in the form of affidavit. It is said that affidavits are filed mechanically copying contents of plaint and written statement can they be treated as affidavit evidence towards chief-examination. Obviously it is not sufficient compliance under the provisions of CPC and Evidence Act. Courts are receiving such affidavit evidence without scrutiny. It results in injustice to the party. I firmly believe that Courts has to scrutinize affidavits filed before it and treat the relevant portions as chief-examination and reject the irrelevant portion. It can demand a fresh affidavit. There are cases where legal formalities have to be complied with before commencing recording of evidence. For example recording of evidence of child witness oath cannot be administered unless some questions are put and answers are elicited. Affidavits of minors who are under disability cannot be acted upon. More than 19 instances can be quoted and it is better for the Courts to scrutinize the affidavit before accepting affidavit evidence in chief *in toto*.

The said instances are given below for better appreciation.

- (1) Child witness
- (2) Hostile witness
- (3) Illiterate and rustic witness affidavit filed not in his words spoken ordinarily by him.

- (4) Foreign witness
- (5) Pardhanashin lady witness
- (6) Witness under disability including deaf or dumb or both and affidavits do not make a mention how he understands its contents.
- (7) Party witness where demeanour is important and has to be taken note of
- (8) Vague affidavits of witness which do not contain particulars or details of facts
- (9) Denial of contents of affidavit by witnesses
- (10) Affidavits filed in matrimonial cases and special acts since hearing of witness is utmost important
- (11) Evidence to be recorded in camera proceedings and also by electronic media.
- (12) Affidavits filed mechanically copying contents of plaint and written statement.
- (13) Affidavits where oath is not administered under the Oaths Act, 1969 since uniformity of oath shall be there.
- (14) Affidavits filed in respect of sound and disposing state of mind not mentioning details
- (15) Affidavits filed mentioning only words fraud, coercion and undue influence *etc.*, without furnishing details
- (16) Affidavits of expert which do not contain reasons
- (17) Affidavits of party witness without tendering them for examination under Order 10 of CPC

- (18) Affidavits of persons who are bedridden due to extreme old age or sickness whose power of understanding is doubtful and effected by alzheimer's disease or forgetfulness or effected by partial paralysis *etc.*
- (19) Affidavit filed referring to part of the case and do not completely cover the case.

The above list is not exhaustive, Court shall not permit the filing of affidavits in other cases where *ex facie* Court doubts the voluntary nature of the contents and comes to conclusion that they are tutored one.

Unless such care and caution is exercised by scrutinizing with meticulous case, Court cannot judge the truth or otherwise of contents. Court has to peruse evidence and has to come to the conclusion that entire evidence is false or it is full of half truths *etc.* Unless strict scrutiny is made about affidavit evidence Court cannot come to the conclusion that it can be accepted and acted upon. It has to be kept in mind that witness giving false contents in the affidavit or in evidence is liable to be prosecuted for perjury. Before resorting to it Courts finding in the judgment is necessary. No fixed guidelines are there, there is no hard and fast rule. It is always left to the discretion of Court to accept or reject affidavit evidence, when irrelevant facts which are inadmissible are mentioned.

If there is no scrutiny at the earliest point of time regarding affidavit evidence, it may lead to injustice in particular who have no knowledge of legal principles and provisions and whose affidavits are ill drafted by the inexperienced legal experts. It is my experience that drafting of affidavits are sometimes entrusted to senior pleaders' clerks in mofussil areas, when system undergoes change due to modification of law problems are bound to occur. It is for the Courts to raise to the occasion to run the judicial system of recording of evidence in accordance with law. Court has got inherent powers under Section 151 of CPC to deal with the system and set right chief by affidavit while rejecting irrelevant facts which do not constitute chief-examination. This can be done till suitable amendments or safeguards are brought about to the said provisions of CPC and the Evidence Act. Originally this may not apply to the cases arising under Provincial Small Cause Courts Act since memorandum of substance alone has to be recorded as per Order 18 Rule 13. Order-L mentions the procedure that is applicable to the aforesaid cases. If scrutiny is done at the earliest point of time valuable time of Court can be saved and Courts can put amended provisions of chief affidavit to good use and it will render valuable help in expediting the process of recording evidence.

## TEST OF NARCO ANALYSIS AND ITS EVIDENTIARY VALUE

By

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In the present society, the increasing crime creates alarm in the public. Though, there has been a machinery for the detection of crime, arrest of suspected criminals, collections of evidence, determination of guilt or

innocence of the suspected person and imposition of proper punishment on the guilty person. The methods used by the police for extracting information from accused, through interrogation have vital significance in curbing