

**High Court of Madhya Pradesh: Bench at Indore**

**Single Bench: Hon'ble Shri Justice Ved Prakash Sharma**

**Cr.R. No.392/2015**

**Abhay Kumar Jain & 4 Ors.**

**Versus**

**Chhotu & Anr**

---

Shri Mangesh Bhachawat, learned counsel for the petitioners.

Shri Rahul Vijayawargiya, learned counsel for the respondent no.2/State.

---

**J U D G E M E N T**

**(Passed on 08.11.2016)**

This petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short "The Code") has been preferred against order dated 09/03/2015 passed by the Court of learned Additional Sessions Judge, Indore in S.T. No.774/2009, whereby the learned Court, overruling the objection raised by the petitioners has admitted exhibit-P/6 (photocopy of alleged partnership deed) and exhibit-P/7 (photocopy of alleged power of attorney) as secondary evidence.

**02.** Relevant facts, briefly stated, are that on the basis of private complaint preferred by Chhotu (Respondent No.1), the petitioners Abhay Kumar Jain, Manoj, Smt. Madhulika Jain, Dilip, Smt. Premlata are being tried before the Court of Additional Sessions Judge, Indore in S.T. No.774/2009 for charges under Section 467 and 474 of the Indian Penal Code, 1861 (for short "I.P.C"). Chhotu (Respondent no.1) preferred an application before the learned trial Court, under Section 65 of The Evidence Act, 1872(for short "The Act"), seeking leave of the Court to admit photo copy of disputed partnership deed and power of

attorney as secondary evidence on the ground that the original documents are in the power and possession of the petitioners and they have not produced the same before the Court. The learned trial Court, vide order dated 03/07/2012, allowed the prayer holding that, though the petitioners have stated that, they have original partnership deed and power of attorney, still they have not produced these documents before the Court. This order was challenged by the petitioners, before this Court, in Criminal Revision No.881/2012. This Court, vide order dated 03/09/2012, was pleased to uphold the aforesaid order and to dismiss the revision summarily with the following observations:

“ As per impugned order it is not in dispute that originals of those documents are with the applicants and, therefore, they can confront with the originals at the time of recording the evidence or they may file original documents at the time of evidence of the parties.”

After the dismissal of the revision by this Court, the prosecution, during examination of Chhotu (P.W.-1), prayed for marking as exhibits, the photocopies of the alleged partnership deed and power of attorney, which was objected upon by the petitioners. Learned trial Court vide the impugned order, overruling the objection raised by the petitioners, allowed the documents to be exhibited as Exhibits-P/6 and P/7.

**03.** Challenging the legality and correctness of the impugned order, it is contended by the learned counsel for the petitioners that Exhibits-P/6 and P/7, being the photocopies of the partnership deed and power of attorney are neither primary, nor secondary evidences, therefore, the same cannot be admitted as secondary evidences. Reliance is placed on decision of this Court in *Ramrao v. Natthu & Ors. 2011(III) MPJR 35; Ratanlal v. Kishanlal & Ors.2012(1) M.P.L.J; Ramesh Verma & Ors. v. Smt. Lajesh Saxena & Ors. AIR 1998 M.P. 46; Rashid Khan & Anr. v.*

*State of M.P. & Ors. 2011(3) M.P.L.J* and pronouncement of the apex Court in *Smt. J. Yashoda v. Smt. K. Shobha Rani AIR 2007 S.C. 1721*.

04. Per contra, learned counsel for the respondent no.2/State supporting the impugned order has submitted that apparently, the original partnership deed and power of attorney are in power and possession of the petitioners and they have not produced these documents before the Court, therefore, respondent no.1, was left with no other option except to seek leave of the trial Court to produce photocopy of these documents as secondary evidence, which was granted, and the revision preferred against the order granting such leave was dismissed by this Court, therefore, the petitioners cannot be permitted to re-agitated this issue.

05. Heard learned counsel for the parties and perused the record.

06. The issue with regard to admissibility of photocopies of the alleged partnership deed and power of attorney as secondary evidence has already been considered by learned trial Court vide order dated 03/07/2012 and by this Court vide order dated 03/09/2012 rendered in Cr.R. No.881/2012 therefore, the same cannot be allowed to be re-agitated by way of this revision petition.

07. The pronouncement of the apex Court in *Bipin Shantilal Panchal vs. State of Gujarat and another reported in 2001(3) SCC 1* can also be usefully referred here wherein Hon'ble the Supreme Court had laid down directives as to the procedure to be followed at the time when a document is sought to be produced in evidence and when one of the parties was objecting to the reception of the documents. The particular point of relevance is that whenever the trial is

sought to be stalled because of objection regarding admissibility of a document, the best procedure would be to admit the document subject to objection and direct the parties to address arguments on admissibility or otherwise of the document at the time of arguments. The only exception given to such a procedure is set out in paragraph 14 where the Supreme Court observed that if there was deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further.

**08.** The law laid down by the apex Court in *Bipin Shantilal Panchal's* case (*supra*) requires to be followed during trial so as to avoid unnecessary delay on account of objections regarding the admissibility of documents. The appropriate course to be followed in order to ensure expeditious trial is to see that whenever any objection is made on the admissibility of a document and it involves a complex question of law, it is desirable to mark the document subject to objection and then direct the parties to adduce argument on the admissibility of the document at the time of final stage of arguments. This is meant to ensure that trial is not delayed on account of objection regarding the admissibility of documents except when issue of payment of stamp duty is involved .

**09.** In view of the aforesaid, this revision petition, *sans merits*, deserves to be and accordingly, hereby, dismissed in *limine*.

Certified copy as per rules.

**(Ved Prakash Sharma)**  
**Judge**

