

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 26<sup>th</sup> OF APRIL, 2024**

**MISC. CRIMINAL CASE No. 5484 of 2024**

**BETWEEN:-**

**SHER KHAN S/O HUSSAIN KHAN, AGED ABOUT  
43 YEARS, OCCUPATION: BUSIENSS R/O 57  
PUROHIT JI KA WAS RATLAM (MADHYA  
PRADESH)**

**.....PETITIONER**

**(BY SHRI RAJEEV BHATJIWALE – ADVOCATE)**

**AND**

**1. JITENDRA S/O LATE RAMESH CHANDRA  
LALWANI, AGED ABOUT 48 YEARS,  
OCCUPATION: BUSINESS R/O NAJARBAGH  
BANK COLONY RATLAM (MADHYA  
PRADESH)**

**2. STATE OF M.P. THROUGH  
SUPERINTENDENT OF POLICE S.P. OFFICE  
RATLAM (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY MS. GEETANJALI CHAURASIA – G.A. FOR RESPONDENT  
NO.2/STATE)**

.....

*This petition coming on for admission this day, the court passed  
the following:*

**ORDER**

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner under Section 482 of Cr.P.C. against the order dated 21.12.2023 passed in Criminal Revision No.89/2023 by Sessions Judge, Ratlam whereby, the order passed by the Judicial Magistrate First Class in Criminal Case No.3053/2014 dated 29.11.2023, allowing the complainant to lead secondary evidence in respect of a photocopy of the agreement, has been affirmed.
- 3] In brief, the facts of the case are that the petitioner and the respondent No.1 Jitendra entered into an agreement on 01.10.2010, for sale of the land bearing Survey No.1059/1 ad-measuring 0.020 hectares for a consideration of Rs.11,64,000/-. According to this agreement, the sale deed was to be executed on or before 01.02.2011, and on 19.05.2011, i.e., after expiry of the period as provided in the aforesaid agreement, the petitioner executed a registered sale deed in favour of Nathulal and Bhagwatilal, which led the respondent No.1 Jitendra to file a private complaint, which was registered as Criminal Case No.RCT 3053/2014, in which, at the time of recording of evidence, the respondent No.1 by filing an application under Section 65 of the Indian Evidence Act tried to exhibit the photocopy of the agreement dated 01.10.2010 contending that the same may be accepted as secondary evidence of the original agreement as the original one is lost and since he had already given a photocopy of the same to the concerned police station, he has obtained the photocopy of the said agreement from the said police station under the Right to Information Act, 2005. The application was allowed by the learned

Judge of the Trial Court vide order dated 29.11.2023, and a criminal revision preferred against the aforesaid order, before the District Court, has also been rejected, affirming the aforesaid order. Hence, this petition.

4] Counsel for the petitioner has submitted that the learned Judge of the Trial Court has erred in holding that the document can be allowed to be exhibited under Section 65 of the Evidence Act. It is submitted that the complainant has deliberately not produced the original document, so as to avoid payment of stamp duty and its registration, which is compulsory under Section 17(f) as amended by the State of M.P. It is also submitted that even otherwise, in the application filed under Section 65 of the Evidence Act, the ingredients of Section 65 of the Evidence Act have also not been pleaded and merely because the agreement has been obtained from the Police Station under the RTI Act, it cannot be said that the said agreement would be admissible in evidence.

5] Counsel has submitted that both the Courts have erred in relying upon the decision rendered by Co-ordinate Bench of this Court in the case of *Narayan Singh Vs. Kallaram @ Kalluram Kushwaha and others* reported as *2015(2) M.P.L.J. 337* as the aforesaid case confines to public documents i.e. map of the house and building construction permission obtained from the Municipal Corporation, which are the public documents, whereas the present case purely refers to a private document between two parties.

6] Counsel for the petitioner has also relied upon the decision rendered by this Court in the case of *Narendra Kumar Vs. Deepchand*

*and Ors.* passed in *M.P. No.1971 of 2022* dated *06.09.2023*.

7] Counsel for the respondent/State, on the other hand, has submitted that the petitioner would have ample opportunity to lead evidence in this regard even if the document is allowed to be exhibited.

8] Respondent No.1 has not appeared despite service of notice. Thus, the submissions as advanced by the counsel for the petitioner have gone un rebutted.

9] Heard counsel for the parties and perused the record.

10] Be that as it may, taking into account the fact that in his application the complainant has not stated that the photocopy, which he has obtained from the Police Station, was prepared through mechanical process after comparing with the original, and what is stated is that he had given a copy of the agreement to the Police at the time of investigation and the same copy he has obtained under the Right to Information Act.

11] So far as the decision rendered in the case of *Narayan Singh (Supra)* is concerned, on which both the Courts have relied upon, the relevant paras of the same, read as under:-

“The singular question involved in this petition is whether the certified copy of documents obtained under Right to Information Act, 2005 (for brevity, the 'Act of 2005') can be admitted as secondary evidence ?

2. The defendant No.1 preferred an application under Section 65 of the Evidence Act before the Court below. It is contended in the said application that the petitioner/defendant No.1 has obtained certified copies of map of the house and building construction permission from the Nagar Nigam. These documents are obtained

under the Act of 2005 and, therefore, the same be accepted as secondary evidence.

XXXXXX

8. Clause (f) of Section 65 of Evidence Act makes it crystal clear that a certified copy permitted under the Evidence Act or by any other law in force can be treated as secondary evidence. Right to Information Act, in my view, falls within the ambit of “by any other law in force in India”. The definition of “right to information” makes it clear that certified copies of documents are given to the citizens under their right to obtain information. In my view, the Court below has rightly opined that the documents can be admitted as secondary evidence. I do not see any merit in the contention that the documents obtained under the Act of 2005 are either true copies or attested copies. The definition aforesaid shows that the same are certified copies. Even otherwise, it is interesting to note that in Black’s Dictionary, the meaning of “certified copy” is as under:-

“Certified copy” - a copy of a document or record, signed or certified as a *true copy* by the officer to whose custody original is entrusted.”

Since the documents are covered under section 65 of the Evidence Act, there was no need to compare the same with the originals.”

*(Emphasis Supplied)*

12] So far as the decision rendered in the case of *Narendra Kumar (Supra)* is concerned, relevant paras 8 and 9 of the same read as under:-

8. Heard, counsel for the parties and perused the record. So far as the admissibility of a photocopy as a secondary evidence is concerned, reference may be had to the decision rendered by the co-ordinate bench of this court in the case of **Dushyant Sharma (supra)**, the Relevant paragraphs 6, 7, 15 and 16 read as under :-

(6) Before dealing with the rival contentions of the parties, it is apt to quote the relevant provisions of the

Indian Evidence Act, 1872. Section 63(2) reads as under:

“63. *Secondary evidence.*— *Secondary evidence means and includes—*

(1) xxx xxx xxx

(2) Copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies.”

Section 63(a) and (b) (Illustrations) reads as under:

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original”

Section 65(c) reads as under:

65. *Cases in which secondary evidence relating to documents may be given.*— *Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:*

(a) XXX            XXX            XXX

(b) XXX            XXX            XXX

(7) The arguments of learned counsel for the parties are based on these provisions. Section 63(2) aforesaid makes it obligatory that the copies which are made from the original by mechanical process are required to be compared with such copies. Thus, there is no manner of doubt that two conditions are required to be fulfilled for applying Section 63(2) viz, (i) the copies are made from the original by mechanical process (ii) copies are compared with original copies.

Section 63(Illustration)(a) has no application, in my opinion, in the present matter because the said illustration deals with photographs. Illustration (b) talks about comparing a letter with the original. Thus, a conjoint reading of Section 63(2) with Section 63(Illustration)(c) makes it clear that aforesaid two conditions are necessary to bring a document within the ambit of “*secondary evidence*”.

Section 65(c) is an enabling provision where the original document is lost or destroyed and it is shown that the said event of loss or destroy of the document is not arising out of any default or neglect of the party

concerned, the document can be taken as secondary evidence.

**(15) On the basis of aforesaid analysis, in my opinion, the court below has not committed any error of law in rejecting the application of the petitioner. The necessary ingredients for treating the documents in question as secondary evidence were not available and application preferred under Section 65 of Evidence Act does not contain necessary averments and declaration on the strength of which the documents could have been treated as secondary evidence.**

(16) The last submission of Shri Raghvendra Dixit, learned counsel for the petitioner is based on the definition of “proved” is of no help to him at this stage. The question of treating a document or giving a finding about “proved” would arise provided the documents in question are taken into the evidence. At this stage, this argument is premature.

*(Emphasis supplied)*

9. On perusal of the aforesaid decision clearly reveals that when it comes to copying the original documents, the copies must be made by original from mechanical process, and copies are compared with original and cases in which secondary evidence relating to documents must be given which also reveals that original has been destroyed or lost or cannot be produced in the reasonable time. Thus, before a document can be produced in the Court, first of all it is required to be shown that the copies are made from mechanical process, and also that they are compared with the original. Thus, this requirement is sine qua non for a document to be produced in secondary evidence, and merely pleading that the original document is lost would not suffice.

*(Emphasis Supplied)*

13] A perusal of the aforesaid decision in the case of *Narayan Singh (Supra)* reveals that it has been rendered in a case where the documents were public documents, viz., the map of the house and construction permission from the Municipal Corporation, the original of which is always lodged with the Corporation only. Thus, the aforesaid documents are the public documents and if a certified copy

is obtained from the Municipal Corporation, that can certainly be produced as secondary evidence, as has been held by this Court in the aforesaid decision. However, the scope of the question framed by the co-ordinate Bench in the aforesaid case, i.e., “The singular question involved in this petition is whether the certified copy of documents obtained under Right to Information Act, 2005 (for brevity, the 'Act of 2005') can be admitted as secondary evidence ?” cannot be enlarged to cover each and every document obtained under the RTI Act and if it is allowed to be permitted, it might be misused by the unscrupulous litigant as it is possible that a person may approach the Police Station with a fake agreement/document and after submitting a copy of the same in the Police Station along with his complaint, he may obtain a copy of the aforesaid document under the RTI Act from the said Police Station, and then would contend that such copy of the agreement/document is admissible in evidence.

**14]** In view of the same, this Court has no hesitation to hold that the aforesaid document obtained under the RTI Act from a police station, which relates to private parties, cannot be allowed to be exhibited as secondary evidence.

**15]** Accordingly, the **petition stands allowed** and the **impugned orders dated 29.11.2023 and 21.12.2023 are hereby set aside**. The learned Judge of the Trial Court is requested to proceed further with the trial in accordance with law.

**16]** Petition stands *disposed of*.

**(SUBODH ABHYANKAR)**  
**JUDGE**