

**IN THE COURT OF THE III ADDITIONAL CHIEF JUDICIAL
MAGISTRATE AT BENGALURU.**

**Present : Shreyansh Doddamani
III ADDL. C.M.M., BENGALURU.**

Dated this the 16th Day of July, 2024

CC No.9129/2008

**Complainant : State by Malleshwaram Police Station,
Bengaluru**

V/s

Accused : Sri.Rudregowda and Others

**ORDER ON APPLICATION UNDER SECTION 65(C) OF
INDIAN EVIDENCE ACT**

The complainant has filed application under section 65(C) of Indian Evidence Act, for seeking permission to mark the photo copies of documents as secondary evidence.

2. In support of application the complainant furnished his affidavit, wherein he stated that the accused persons were managing directors of M/s Girivajra Chits Pvt. Ltd having its office at Malleshwaram, Bengaluru. He was also subscriber of a chit group with the above said company in chit group serial No.SL2 for face value of Rs.2 lack for the period of 40 months under the agreement dated 18.12.2002. He had to pay a sum of Rs.5,000/- per month, dividend amount towards to chit as first bid of auction of the chit to be held on 13.11.2002. As per the terms and conditions dividend amount should be equally distributed all the chit members. He had paid monthly installment regularly up to 13.10.2006. He has not paid 38th

installment in the month of April 2006. He approached the accused for payment of installment but they have refused to receive. Last three installments were become due. The accused misused the cheque issued by complainant and filed PCR under section 138 of Negotiable Instruments Act and same was numbered as CC NO.19529/2007. This complainant filed this private complaint and during the taking of cognizance had produced all originals before this Court on 24.08.2008. At the time of leading defence evidence CC NO.19529/2007, he returned the documents from this Court and produced in the said case and they were marked as Ex.D-1 to Ex.D-37 in the said case. The said documents are installment receipts and statement of account and certified copies of statement. The said case was disposed of and he applied for documents but till today record was not traced out in the record room for the reason that the said case was disposed of on 08.0.2010. Therefore, he seeking permission to mark the photo copies of the receipt and other documents as secondary evidence. Along with the application he has produced certified copy of register of long pending cases, certified copy of order passed in CrI.P.No.825/2009 Hon'ble High Court of Karnataka and photo copy of the Judgment dated 08.0.2010 passed in CC No.19529/2007 and photo copy of Judgment dated 12.11.2010 passed in Criminal Application No.513/2010.

3. The advocate for accused submits no objections to the application under section 65© of Indian Evidence Act on 14.03.202.

4. Heard advocate for complainant.

5. The point that arises for the consideration of the court is as under;

Point No.1: Whether the application under section 65(C) of Indian Evidence Act filed by the complainant made out any grounds to allow?

Point No.2: What order?

6. My answer to the aforesaid points are as under:-

Point No.1:- In the Affirmative.

Point No.2:- As per the final order for the following.

REASONS

7. **Point No.1 :** The complainant contended that he has filed private complaint under section 200 of Cr.PC against the accused persons for the offences punishable under section 406, 418, 420, 425 and 120(B) of IPC on 04.01.2007. Same was registered in PCR No.165/2008. In the complaint he contended that at the time of bid and receiving the chit amount of the complainant the accused company had taken several blank signatures on printed format and also taken signature on blank on demand promissory note and consideration receipt and also signed blank cheque as security for the chit amount. The complainant due of Rs.14,800/- but the accused misused the cheque and filed false case for Rs.3,20,000/-. Therefore, he filed this complaint. During the filing of complaint he has produced xerox copy of agreement, legal notice, reply notice and payment made receipts.

8. In the present application he contended that he has produced original documents and they were marked before the cognizance. On perusal of the file in PCR No.165/2008 this complainant was examined as PW-1, he had given his sworn statement but no one documents had been marked. But he contended that the documents were marked in the sworn statement. If he returned the original documents after marking he would submitted certified copies. But in the present case no documents have been marked. Hence he has not submitted any certified copies at the time of returning the documents. On perusal of the order sheet, it reveals that the accused returned the some documents on 21.07.2009 but there is no details available which documents he returned and the then presiding officer has not ordered to produce the certified copies and the complainant also not produced the certified copies of the above documents at the time of received. Section 65 of Indian Evidence Act, deals with cases in which Secondary Evidence relating to documents may be given, wherein sub clause c deals with if documents lost or destroyed then the photo copies can be considered as secondary evidence subject to the proof of contents of the documents. For more clarification section 65 of Indian Evidence Act extract as under;

65. Cases in which secondary evidence relating to document may be given.

Secondary evidence may be given of the existence, condition or contents of a document in the following cases :

(a)When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b)When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c)When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d)When the original is of such a nature as not to be easily movable;

(e)When the original is a public document within the meaning of section 74;

(f)[When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] [[[Cf. the Bankers' Books Evidence Act, 1891 ([18 of 1891](#))], Section 4.]], to be given in evidence;

(g)When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible. In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

9. In view of the above provision as per section 65 (c) if original has been destroyed or lost or when party offering evidence its contents cannot conveniently be examined, but for any other reason arising from his own default or neglect, produce it in reasonable time. In the present case on hand the complainant has not at all produced original receipts before the court. Even beginning i.e., at the time of filing of the case he has produced photo copies. It is true that the accused returned some documents on 21.07.2009 but there is no detail available which documents he returned and the then presiding officer has not ordered to produce the certified copies and the complainant also not produced the certified copy of the above

documents. He has produced certified copy of LPR in CC No.513/2010, Sri.Rudregowda Vs M/s Girivajra Chits Pvt. Ltd., but there was no details about documents. He has also produced certified copy of Judgment in CC No.19529/2007, wherein he has produced 36 documents which were marked as Ex.D-1 to 37, wherein some documents are the installment receipts. But it is not mentioned the details of receipts. Only on the basis of said contention in the Judgment the Court cannot marked the xerox documents as secondary evidence. The Court has not issued the documents have been destroyed . If the Court issued endorsement as documents were destroyed then only the present photo copies of the receipt can be marked as secondary evidence. In the absence of endorsement of concerned Court this Court cannot considered as the said documents were destroyed. Hence, the application is not maintained the grounds to allow. Hence, I answer Point No.1 in the Negative.

10. **Point No.2:-** As discussed on Point No.1, I proceed to pass the following:-

ORDER

The application filed by the complainant under Section 65(C) of Indian Evidence Act is hereby rejected.

(Dictated to Stenographer, transcribed by him on computer, corrected and then pronounced by me in the open Court on this the 16th day of July, 2024).

III ACJM, Bengaluru.