

MHLA160006262024 	<u>Regular Criminal Case No.90/2024</u> <u>State Vs. Sudhir & Ors.</u>
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ORDER BELOW EXH.112

This is an application for permission to lead secondary evidence.

02. Learned APP Shri. Hashmi argued that, original documents i.e. Appointment Order and Training Order are not seized and may be in possession of absconded accused Rajratan Ramrao Suryawanshi. The informant Surekha had given copies of those documents. Those documents are necessary for fair trial. He prayed to allow secondary evidence in that regard.

03. Learned Advocate Shri. M.S. Nagrale and Shri. C.S. Mete for accused person have strongly opposed this application. According to them, nobody has seen original documents. Photocopies of documents are not admissible in evidence. The prosecution had not followed provision of law to adduce secondary evidence. They prayed to reject the application.

04. I have carefully gone through the entire record, application, say and argument. The accused persons are facing trial for offence punishable under Sections 420, 467, 468 and 471 r/w 34 of the IPC, alleging that the accused persons dishonestly inducing the informant and others to deposit money for getting Government job and made and used forged documents. An investigating officer has seized aforesaid photocopies. But original documents are not available on record. My learned predecessor directed the I.O. to produce original

documents. Learned I.O. submitted that, alleged documents may be in possession of absconded accused Rajratan Ramrao Suryawanshi, vide letter (Exh.62) dated 05/03/2025. Similarly, the accused Nos.1 and 2 have not disclosed different fact or possession of original documents. Investigating officer had not collected the original documents. Hence, there is no option other than leading secondary evidence.

05. The prosecution want to adduce evidence on the basis of other reason not arising from his own default or neglect and documents in possession of absconded accused and not in possession of accused Nos.1 and 2. This application came under Section-60 (c) of the BSA. The Section-64 of BSA is applicable in case of documents referred to in clause (a) of Section-60 of BSA. Therefore, the section-64 of BSA is not applicable and notice to accused or other person is not required. The accused admission in respect of existence of documents is not required to lead secondary evidence.

06. Similarly, learned APP relied on judgment between Karthik Gangadhar Bhat Vs. Nirmal Namdeo Wagh+1, Writ Petition No.11151/2017, decided on 3rd November 2017. The Hon'ble Bombay High Court held that *"Under Section-65(c), where the original is lost, the party seeking to adduce secondary evidence must depose that original is lost and must also depose to other condition set out in sub-clause, viz., that he is not guilty of default or neglect. The section itself says that in a case under Section-65(c), any evidence of the contents is admissible. Again there is simply no question of leave being required"*.

07. Aforesaid ratio is applicable in this case. Accordingly, the informant or Investigating Officer or the prosecution has no default or negligence in respect of alleged documents. Therefore, this is fit case to grant an opportunity to adduce secondary evidence in respect of alleged documents. It is necessary for proper adjudication and just decision of the case. At that event, the defence have ever chance to testify the witnesses. Therefore, it will not prejudice to the accused. Hence, this application deserved to be allowed. In result I pass following order -

-:: ORDER ::-

1. The application is allowed and prosecution is permitted to lead secondary evidence in respect of Appointment Order/Letter and Training Order in the interest of justice.
2. Order dictated on computer and pronounced in open Court.

Date : 08/09/2025.
Place :Deoni.

(S.A. Surjuse)
Judicial Magistrate First Class,
Deoni.