

MHLA160006262024 	<u>Regular Criminal Case No.90/2024</u> <u>State Vs. Sudhir & Ors.</u>
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ORDER BELOW EXH.127

This is an application for permission to lead secondary evidence.

02. Learned APP Shri. Hashmi argued that, original documents i.e. Appointment Order, Training Order, Joining Letter were not seized and may be in possession of absconded accused Rajratan Ramrao Suryawanshi. The witness Vishnukant had given copies of those documents to Investigation Officer. Those documents are necessary for fair trial and just decision of case. He prayed to allow secondary evidence in that regard.

03. Learned Advocate Shri. M.S. Nagrale for accused has strongly opposed this application. According to him, the prosecution has not established custody of the documents. The accused have not admitted existence of documents. The copies of documents are immaterial in absence of original documents. The prosecution has not followed proper procedure. The prosecution trying to fill up lacuna. Learned Advocate Shri. C.S. Mete for accused No.2 failed to file say and opposed 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 photocopies of Appointment Letter, Training Order and Joining Letter. 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. Accordingly, investigating officer had not collected original documents. Hence, there is no option other than leading secondary evidence.

05. According to learned APP Section-60(c) of BSA is applicable. According to learned defence Advocate, that provision is not applicable and the prosecution has not followed Section-64 of BSA. For the purpose of this application, need to go through the said provision-

Section – 60 Secondary evidence may be given of the existence, condition, or contents of a document in the following cases namely -

a)

b)

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, produced it in reasonable time.

Explanation - *For the purpose of – (I) Clauses (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.*

06. 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.

07. 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"*.

08. Aforesaid ratio is applicable in this case. Accordingly, the witness/victim Vishnukant 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 alleged documents in the interest of justice.
2. Order dictated on computer and pronounced in open Court.

Date : 16/10/2025.
Place :Deoni.

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