

**Order below Exh. 207 in R. C. S. No. 88/2010.**

This is an application filed by the defendant No.1 for leading secondary evidence.

2. It is contention of the defendant No.2 that defendants No.1 and 3 in collection with each other made his false and hollow power of attorney. And on the basis of that power of attorney they have sold out suit property on 07/12/2010 to defendant No.13 by two different sale deed. According to the defendant No.2, he has never signed and impressed his thumb impression on the power of attorney dt.06/12/2010. On that date, defendant No.2 was present in his office at Vikroli, Mumbai. The police have seized original power of attorney in C.R No.10/2011 from defendant No.13. Further, the police have got handwriting report of expert, presency report of defendant No.2 etc and filed in R.C.C No.08/2015. The defendant No.2 had filed applications at Exh.171 and 172 in this suit for calling those documents. But, the court has rejected those applications on the ground that those documents are necessary in R.C.C No.08/2015 and observed that the defendant No.2 can file certified copies of those documents in the present suit. Therefore, the defendant No.2 is seeking to lead secondary evidence of the certified copy of charge sheet along with documents. Hence, prayed to allow this application.

3. Defendant No.3 has resisted this application by filing his say at Exh.209. According to him, this application is filed in collection with the plaintiff. Defendant No.2 has illegally filed this application after completion of cross examination of the plaintiff. The defendant No.2 has no right to produce the documents of criminal proceeding.

The proposed documents are not been proved in R.C.C No.8/2015.  
On these grounds, defendant No.3 prayed to reject this application.

4. Heard, the learned Adv. Shri. R.V. Raorane for defendant No.2 and the learned Adv. Shri.P.S. Ranade for defendant No.3 at length.

5. It needs to be seen whether the reason mentioned to adduce the secondary evidence is satisfactory or not.

**The section 65 of the Indian Evidence Act :-**

**Cases in which secondary evidence relating to documents may be given :**

*Secondary evidence may be given of the existence, condition, or contents of a documents 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 public document within the meaning of section*

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*(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] 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 document is admissible. In case (b), the written admission is admissible.*

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

6. As per Clause F of section 65 of the Evidence Act, certified copy of the document is allowed to lead secondary evidence. Here, one important aspect requires to mention that nowhere Section 65 of the Evidence Act provides permission of the Court for leading secondary evidence is a condition precedent. For adducing secondary evidence it is necessary for the party to prove existence and execution of the original document and that conditions laid down in section 65 must be fulfilled before the secondary evidence can be admitted. If the conditions are or are not proved, the secondary evidence cannot be admitted. It is always open to the party to lead secondary evidence without having to file such an application. Here, I take shelter of **Suman Vitthalrao Jaikar vs Gunabai Shivram Kamble dt 15.04.2019, 2019 SCC Online Bom 836**. The Hon'ble Bombay High

Court observed that “Insofar, as the remaining two petitions are concerned, challenge is to order by which the Petitioner has been deprived opportunity of leading secondary evidence. According to the decision of this Court in Karthik Gangadhar Bhat V/s. Smt. Nirmala Namdeo Wagh, in Civil Writ Petition No. 11151 of 2017, there is no necessity of filing any application to lead secondary evidence. Rather, it is for the witness/party to step into the witness box and to make out a case justifying to the production of secondary evidence.

7. Thus, in view of the above valuable authority, the present application is not maintainable. The defendant No.2 can lead secondary evidence subject to prove conditions mentioned in section 65 of the Evidence Act. In the result following order is passed.

### **ORDER**

1. The application at Exh.207 is rejected.
2. Defendant No.2 has opportunity to lead secondary evidence subject to prove conditions mentioned in Section. 65 of the Indian Evidence Act.
3. Costs in main cause.

Sd/-

Deogad

(B.R.Patil)

Date: 15/09/2021

Civil Judge, J.D., Deogad