

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 26th OF APRIL, 2024
MISC. CRIMINAL CASE No. 22099 of 2023**

BETWEEN:-

**MAHENDRA PAL SINGH (M.P. SINGH)
S/O LATE SHRI HARVANSH SINGH H.
SINGH, AGED ABOUT 70 YEARS,
OCCUPATION: AGRICULTURIST R/O
HOUSE NO 21 NEELKANTH COLONY
IDGAH HILLS BHOPAL DISTRICT
BHOPAL (MADHYA PRADESH)**

.....APPLICANT

***(BY SHRI MANISH DATT – SENIOR ADVOCATE WITH SHRI SHIVAM
MISHRA - ADVOCATE)***

AND

**SHIVLAL S/O SHRI NANDRAM, AGED
ABOUT 63 YEARS, R/O 83 SHIV NAGAR
ANAND NAGAR BHOPAL DISTRICT
BHOPAL (MADHYA PRADESH)**

.....RESPONDENT

(RESPONDENT IN PERSON)

.....

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

ORDER

A specific question was put to the respondent as to whether he would be in position to answer the legal arguments, which shall be raised by the counsel for the petitioner or not?

2. He submitted that he had engaged a lawyer, but after taking fee he is not appearing and accordingly he has already made a complaint before Bar Council against that lawyer.
3. Thereafter, this Court gave an option to the respondent that if he so desires, then this Court can provide the services of a lawyer on the State expenses but he insisted that he would argue the case on his own. Accordingly, it was once again clarified that once the argument starts, this Court will not adjourn the case. But he again and again submitted that he is in a position to answer the legal queries.
4. Accordingly, under these circumstances, this Court was left with no other option but to hear the arguments of the counsel for applicant.
5. This application under section 482 of CrPC has been filed seeking the following relief:-

"It is, therefore, prayed that this Hon'ble court be kind enough to allow this petition and quash the proceedings pending in the Court of Fifth Additional Sessions Judge, Bhopal, District-Bhopal (M.P.) vide S.T.No.1048/2018 and direct that the documents marked from Exhibit-P/15 to Exhibit-P/18 be omitted from the record of the case and they be not read, in the interest of justice."

6. By referring to the examination-in-chief of the respondent, it is submitted by counsel for applicant that the respondent produced 4 photocopies of 4 documents and tried to get them exhibited. It was objected by the counsel for the applicant that since those documents were not filed along with the chargesheet, therefore, in the light of section 294 of CrPC, he cannot be taken by surprise and further, the

respondent has not brought the original documents and he wants to get the photocopies exhibited without seeking permission to lead secondary evidence.

7. However, the trial court rejected the objection on the ground that merely by exhibiting the documents it would not mean that those documents are admissible in evidence and the accused persons shall have every opportunity to cross-examine the complainant and accordingly the permission to mark the documents as Ex.P.15 to P.18 was granted.

8. Challenging the order passed by the Court below, it is submitted by counsel for applicant that primary evidence has to be led and in case if the party is not in possession of primary evidence, then he can seek permission to lead secondary evidence by filing an application under section 65 of Evidence Act. In the present case, no application was filed. Even the ingredients of section 63 of Evidence Act were not satisfied. Except by saying that the original copy has been misplaced, no other verbal statement to satisfy the ingredients of section 63 of Evidence Act were made, therefore, the trial court should not have allowed the complainant to exhibit the documents.

9. Per contra, it is submitted by the respondent that his original documents are being stolen from the Court. However, he submitted that he is in possession of original documents of Ex.P.15 to P.18.

10. Heard the learned counsel for the applicant as well as the respondent.

11. The submission made by the respondent is contemptuous. On one hand he has stated that his original documents are being stolen from the Court and on other hand he stated that the original copies of the documents in question are in his possession. If the respondent is

in possession of the original documents, then how he can allege that the original documents are being stolen from the court record, or has been misplaced.

12. Accordingly, the attention of the respondent was drawn towards the statement made by him before the trial court to the effect that the original copy of Ex.P.15 to P.18 has been misplaced but he submitted that he is in possession of the original copies of the said documents.

13. Be that whatever it may be.

14. Whenever a person wants to lead secondary evidence, then he has to file an application under section 65 of Evidence Act. Therefore, first of all a party to the litigation has to satisfy that the document on which he wants to place reliance falls within the definition of secondary evidence, which has been defined under section 63 of Evidence Act, which reads as under :-

"63. Secondary evidence.-Secondary evidence means and includes-

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original:

(4) counter parts of documents as against them; the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it."

15. Section 63(2) of Evidence Act provides that "copies made from the original by the mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies. Section 63(3) of Evidence Act provides that "copies made from or compared with the original".

16. Therefore, the trial court before granting permission to lead secondary evidence has to ensure as to whether the document on which the party wants to place reliance, falls within the definition of secondary evidence or not? Merely by saying that the original copy has been misplaced, therefore, the complainant tried to get those documents exhibited. The trial court without considering the provisions of sections 63 and 65 of Evidence Act, permitted the complainant to exhibit the documents by saying that merely because a document has been exhibited, that does not mean that it has been admitted in law. What is forbidden under law should not be done. By adopting such a method, which has been adopted by the trial court, in fact the trial court has caused an irreparable loss to the complainant/respondent also. By exhibiting the documents, which cannot be read in evidence being violative of sections 63 and 65 of Evidence Act, the trial court has also taken away the opportunity from the complainant to rectify the mistake.

17. A photocopy of the document cannot be taken on record unless and until the same is proved to be a secondary evidence and permission is granted by the trial court.

18. Under these circumstances, this Court is of considered opinion that the trial court committed a material illegality by rejecting the

objection raised by the counsel for the applicant with regard to marking of Ex.P.15 to Ex.P.18 as exhibits. Accordingly, the objection overruled by the trial court in paragraph 15 of the deposition of the respondent is hereby **set aside**. The photocopies of Ex.P.15 to Ex.P.18 are directed to be removed from the record.

19. With aforesaid observations, the application is **allowed**.

(G.S.AHLUWALIA)
JUDGE

TG/-