IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:24.02.2025

\+ **CRL.M.C. 4058/2019, CRL.M.A. 33694/2019, CRL.M.A. 9603/2022 & CRL.M.A. 19002/2024**

ASHOK JATIA ..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Akash Nagar, Ms. Akanksha Chauhan, Ms. Arpita Sharma & Mr. Harshit Ahir, Advs.

For the Respondent : Mr. Atul Guleria, SPP with Mr. Shubham Goyal, Mr. Aryan Rakesh &Mr.Pankaj Kumar, Advs.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order passed by the learned Chief Metropolitan Magistrate ('**CMM**'), Rouse Avenue Courts, New Delhi dated 30.07.2019 (hereafter **'impugned order'**) in Complaint Case No. 36/2019, pursuant to which three applications filed by the respondent were allowed.

Brief Facts

2. A detention order dated 13.12.1985 under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling

Activities Act, 1974 (hereafter '**COFEPOSA**') was passed against Sh. Mohan Lal Jatia, by the Ministry of Finance, Government of India.

3. The wife of the detenu, Smt. Pushpa Devi Jatia challenged the Detention Order dated 13.12.1985 in a Writ Petition which was dismissed by a Division Bench of the Hon'ble Bombay High Court.

4. On 06.05.1986, Smt. Pushpa Jatia filed a Special Leave Petition bearing No. 370/ 1986 before the Hon'ble Supreme Court, challenging the dismissal order passed by the Division Bench of the Hon'ble Bombay High Court, and another Writ Petition bearing No. 363/ 1986 challenging the validity of the Detention Order dated 13.12.1985. In the said WP No. 363/ 1986, it was contended that the detenu Sh. Mohan Lal Jatia had submitted a representation to the Secretariat of the President of India to revoke the Detention Order dated 13.12.1985 and that the same has not been considered by the detaining authority.

5. The Hon'ble Supreme Court *vide* order dated 01.05.1987 in WP No. 363/ 1986 and SLP No. 1370/1986, directed the CBI to investigate the matter and submit a report to the Ministry of Home Affairs, Government of India.

6. The investigation revealed that the accused persons including the petitioner, who is the nephew of the detune Sh. Mohan Lal Jatia, in conspiracy with the employees of the President's Secretariat, New Delhi, interpolated the entries in the official Dak Register of the Rashtrapati Bhawan in order to show false representation of the detune Sh. Mohan Lal Jatia, on 15.04.1986 and filed false affidavits in this behalf in the WP No. 363/ 1986 and SLP No. 1370/1986.

7. After the completion of investigation, the respondent submitted a report dated 31.01.1989 to the Joint Secretary (Vigilance), Department of Personnel and Training, New Delhi with request that the report may be submitted to the Ministry of Home Affairs, Government of India, for necessary action.

8. The said report dated 31.01.1989 was placed before the Hon'ble Supreme Court, whereafter the Hon'ble Court directed the Registrar General of the Hon'ble Supreme Court to file a complaint under Section 195 read with Section 340 of the Code of Criminal Procedure, 1973 ('**CrPC**') before a court of competent jurisdiction.

9. A complaint bearing No. 39/2001 was filed by the Registrar General before the learned Chief Metropolitan Magistrate, Tis Hazari Court, Delhi in terms of Section 195 read with Section 340 of the CrPC for offences under Section 120-B read with Sections 193, 199, 218, 466 and 471 of the Indian Penal Code, 1860 ('**IPC**')against the petitioner along with five other accused persons namely – Sh. Mohan Lal Jatia, Smt. Pushpa Jatia, Sh. Ashok Jain (employee of the son-in-law of Sh. Mohan Lal Jatia), Sh. Milap Chand Jagotra (staff ofPresident's Secretariat) and Sh. Gurcharan Singh (staff ofPresident's Secretariat).

10. The charges were framed by the learned Chief Metropolitan Magistrate, Tis Hazari Court, Delhi under Section 120-B read with Sections 193, 199, 218, 466 and 471 of the IPC on 02.07.2013, in pursuance of the order dated 13.02.2013 passed by this Court in W.P.

(Crl.) 232/2013 filed by the respondent to expedite the trial which was long pending at the stage of framing of charges.

11. The order framing charges dated 02.07.2013 was challenged before this Court in a revision petition filed by the petitioner along with other accused persons, which was dismissed as withdrawn on 09.05.2014. Thereafter the matter commenced with prosecution evidence before the learned CMM.

12. During the pendency of the Trial, the respondent moved three applications. The first application was filed on 08.03.2018 under Section 91 of the CrPC read with Section 165 and 65 of the Indian Evidence Act, 1872 (hereafter '**Evidence Act**') for filing additional documents which are the images of the specimen signatures of the accused persons and the admitted handwriting ('documents') of the accusedSh. Milap Chand Jagotra, since the original documents were not traceable.

13. The second application was filed along with the first application on 08.03.2018 under Section 311 of the CrPC read with Section 165 of the Evidence Act, for permission to call another prosecution witness namely– Sh. Deepak Handa, HOD, CFSL, New Delhi, in place of Sh. TN Nehra, Senior Scientific Officer (since deceased on 11.12.2007). It was further prayed in the application to examine one Sh. Rajiv Negi, SSA of CFSL, New Delhi, who prepared the images of the specimen signatures and admitted handwriting documents.

14. The third application was filed on 28.02.2019 under Section 311 read with Section 91 of the CrPC and Section 165 of the Evidence

Act, to bring on record originals of the specimen signatures and admitted handwriting of accused Milap Chand Jagotra, instead of the images of the said documents as prayed for in the first application, since the originals thereof were found after sincere efforts were made for search and inspection.

15. The learned CMM *vide* the impugnedorder dated 30.07.2019 allowed the applications on the ground that although the case was filed way back in the year 1994, almost 25 years back, it was to be noted that Central Bureau of Investigation ('**CBI**') is an institution and not an individual person, and that the overall case should not suffer due to the callous attitude on part of some of the previous officials of CBI. The learned CMM further observed that the delay in the proceedings was mainly caused due to the actions of the accused persons who filed various petitions during the pendency of the trial and they cannot be permitted to take advantage of their own wrong doings. It was noted that delay should not be a ground to prevent the truth from prevailing in a criminal trial.

16. The learned CMM held that in the present case, it is not necessary for leading primary evidence in order to lead such secondary evidence as prayed in the applications, as sufficient ground has been shown by the CBI satisfying the requirements under Section 65 of the Evidence Act. The learned CMM further held that no prejudice will be caused to the accused persons in allowing the said applications as they will get an opportunity to cross-examine the prosecution evidence and also to lead their own evidence in defence.

Submissions

17. The learned counsel for the petitioner submitted that the learned CMM ignored the settled provisions of the CrPC and the Evidence Act while passing the impugned order dated 30.07.2019.

18. He placed reliance on a set of judgements passed by the Hon'ble ApexCourt and this Court, to contendthat the first application of the respondent seeking to place on record the images of the alleged specimen signatures/ admitted handwriting of the accused persons (secondary evidence), has been filed without stating whether they have been lost or destroyed and without showing that the same is unavailable for reasons not arising from the respondent's own neglect. He stated that merely stating that the original documents are not traceable will not entitle the respondent to lead secondary evidence in terms of Section 65(c) of the Evidence Act. [Ref: ***H. Siddiqui v. A. Ramalingam*: (2011) 4 SCC 240**,]

19. He submitted that until the non-production of the original document is accounted for, secondary evidence relating to the contents of a document is inadmissible as the foundational evidence in terms of Section 65 of the Evidence Act have not been complied with. [Ref: ***U. Sree v. U. Srinivas*: (2013) 2 SCC 114**]

20. He submitted that the alleged specimen signatures/ admitted handwriting of the accused persons were not a part of the Relied Upon Documents filed along with the Chargesheet and even otherwise, neither any permission was granted to the respondent to collect the images of specimen handwriting of the accused persons from CFSL,

nor any witness has been cited by the respondent in whose presence such specimen signature was collected.

21. He submitted that whether the said specimen documents were deposited in the Malkhana is in itself doubtful, in as much as it has not been disclosed as to in whose custody were the documents deposited, neither any Diary Number of such deposit is revealed by the respondents nor any date of deposit in the Malkhana has been mentioned by them.

22. He submitted that the second application filed by the respondent intends to place on record such material which is inadmissible in law. He argues that a handwriting report can only be proved by its author as the questions with regard to such a document cannot be answered by other persons who have not been associated with the process of analysis of the signatures. It is stated that the substituted witness Sh. Deepak Handa can merely identify the signatures and not the basis of arriving at the conclusion thereof.

23. He submitted that neither the negative images of the specimen / admitted handwriting was ever relied upon by the prosecution nor was Sh. Rajiv Negiever mentioned as a prosecution witness, and that the same is a mere attempt to improve the case of the prosecution.

24. He submitted that the third application in regard to placing on record original specimen signature of accused Milap Chand Jagotra is an afterthought, as the same has been filed belatedly to cover the loopholes in the previous applications filed by the respondent.

25. *Per contra*, the learned counsel for the respondent submitted that the present case is a *locus classicus* and that the present petition has been filed with an objective to delay the proceedings which are long pending before the learned Trial Court.

26. He submitted that the CFSL report of the handwriting is already on record and that the documents and the witnesses for which the applications have been moved are necessary for the just and fair adjudication of the present case.

27. He submitted that during the course of investigation, the said documents were collected and sent to CFSL for opinion and comparison with the questioned handwriting, however since the matter is long pending, the same are not available and therefore positive images were developed from negatives, which are available with CFSL.

28. He relied upon the judgement passed by this Court in ***Prem Chandra Jain v. Ram*: 2009 SCC OnLine Del 3202** to state that law does not require a mini trial to prove the requirements for leading secondary evidence and that the party leading such evidence is supposed to lead the entire evidence. He stated that the learned Trial Court is empowered to decide whether the said party succeeded in proving the requirement, at the stage of final deposal of the case.

29. He submitted that Sh. Deepak Handa HOD, Documents, CFSL has been sought to be examined in place of Sh. T.N. Nehra Senior Scientific Officer, (Documents) CFSL, who expired during the pendency of the proceedings and that Sh. Deepak Handa, during the

discharge of his duties has seen Sh. T.N. Nehra writing and signing and therefore he can prove the same. He stated that it is relevant to examine Sh. Rajiv Negi, SSA, CFSL as he has prepared the positive images from the negatives available with CFSL.

30. In regard to placing on record the originaldocuments containing the admitted handwriting of Sh. Milap Chand Jagotra, he submitted that the reference of the same was already made in the CFSL Report.

31. He further submitted that the impugned order dated 30.07.2019 has already been challenged by the co-accused persons namely – Sh. Milap Chand Jagotra and Sh. Gurcharan Singh in Crl. Rev. Pet. No. 23/2019, which came to be dismissed *vide* order dated 17.08.2019 passed by the learned Special Judge, Rouse Avenue Court, New Delhi. He stated that since the said order dated 17.08.2019 has not been challenged, the matter attains finality.

32. This Court has heard the submissions made on behalf of the parties and perused the record.

Analysis

33. The prosecution filed the following three applications during trial, seeking production of certain documents and summoning witnesses to prove those documents:

33.1. Application under Section 91 of the CrPC read with Section 165 and 65 of the Evidence Act, for filing additional documents.

33.2. Application under Section 311 of the CrPC read with Section 165 of the Evidence Act, for permission to summon witnesses.

33.3. Application under Section 311 read with Section 91 of the CrPC and Section 165 of the Evidence Act, to bring on record the original documents since the same were traced.

34. These applications mainly involve the provisions of Section 91 and 311 of the CrPC and Section 165 of the Evidence Act. It is pertinent to reproduce the said provisions hereunder:

> ***"91. Summons to produce document or other thing.***
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> *(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.*
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> *xxxx xxxx xxxx*
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> ***311. Power to summon material witnesses, or examine person present.***
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> *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*
>
> *xxxx xxxx xxxx*
>
> ***165 Judge's power to put questions or order production.***

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question….."

35. An amalgamation of the above-mentioned provisions clearly demonstrates that the Courts should ensure that the most credible evidence is taken on record, whether in favor of the prosecution or the accused, to facilitate the delivery of complete justice. The Court has the authority to summon witnesses, compel the production of documents, and question any party or individual whose testimony or evidence is necessary for the fair and just determination of the case. This ensures that no crucial evidence is overlooked, allowing the Court to make an informed decision based on complete facts.

36. In regard to the first application seeking to place on record secondary evidence of the specimen signatures and admitted handwriting of the accused persons, the respondent has stated that at the time of investigation, specimen signatures and admitted handwriting of the accused persons were collected and handed over to CFSL for comparison with the questioned handwriting. It is stated therein that an effort was made to search for the original documents at Malkhana and the CFSL, however the same were not traceable as the case has been long pending and the Investigating Officer is now of old age and does not recall the whereabouts of the said documents. It is further stated that the CFSL report is already on record, however the

specimen signatures and admitted handwriting of the accused persons is sought to be placed on record.

37. The petitioner,in order to buttress his contention that merely stating that the original documents are not traceable will not entitle the respondent to lead secondary evidence in terms of Section 65(c) of the Evidence Act, has placed relied on the judgement passed by the Hon'ble Apex Court in ***U. Sree v. U. Srinivas*:(2013) 2 SCC 114,** wherein reliance is placed on ***Ashok Dulichand v. Madahavlal Dube*: (1975) 4 SCC 664, *J. Yashoda v. K. Shobha Rani* : (2007) 5 SCC 730**and ***H. Siddiqui*** *(supra).* The Hon'ble Apex Court in***U. Sree****(supra)***held as under:

> *"15. In J. Yashoda v. K. Shobha Rani [(2007) 5 SCC 730 : (2007) 3 SCC (Cri) 9] , after analysing the language employed in Sections 63 and 65(a), a two-Judge Bench held as follows: (SCC p. 733, para 9)*
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> > *"9. … **Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or the other of the cases provided for in the section."***
>
> *xxxx xxxx xxxx*
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> *17. Recently, in H. Siddiqui v. A. Ramalingam [(2011) 4 SCC 240 : (2011) 2 SCC (Civ) 209] , while dealing with Section 65 of the Evidence Act, this Court opined that though the said provision permits the parties to adduce secondary evidence, yet such a course is subject to a large number of limitations.*
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> > *"12. … **In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is***

> ***accounted for, so as to bring it within one or other of the cases provided for in the section.*** *The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original." (H. Siddiqui case [(2011) 4 SCC 240 : (2011) 2 SCC (Civ) 209] , SCC pp. 244-45, para 12)*
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> ***It has been further held that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.***
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> *18.* ***In the case at hand, the learned Family Judge has really not discussed anything relating to foundational evidence****. The High Court has only mentioned that when the letter was summoned and there was a denial, the secondary evidence is admissible.* ***In our considered opinion, such a view is neither legally sound nor in consonance with the pronouncements of this Court and, accordingly, we have no hesitation in dislodging the finding on that score."***
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> (emphasis supplied)

38. Section 61 of the Evidence Act states that contents of a document may be proved by primary or secondary evidence. Section 63 of the Evidence Act defines secondary evidence and Section 65 permits secondary evidence to be led in the contingencies as mentioned in the said section. The relevant portion of Section 65 of the Evidence Act is extracted hereunder:

> *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 :*
>
> *xxxx xxxx*
>
> *(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;*

39. Section 65(c) of the Evidence Act has two folds, the first requirement is for the party to show that the original document has

been ‘destroyed’ or ‘lost’, or when the party offering the evidence of its contents cannotproduce it in reasonable time. The second half of the provision requires the party to prove that the same is unavailablefor any other reason not arising from his own default or neglect’.

40. The words ‘lost’ and ‘destroyed’ have been interpreted in the judgment passed by this Court in ***Prem Chandra Jain v. Ram*** *(supra)*, wherein it was held as under:

> *6. As far as the reasoning given by the* ***Trial Court in the present case is concerned, the trial court has understood the word “lost” in Section 65 as “irretrievably lost” thus the plea of the petitioner of the document being “untraceable” has been held to be not a plea of “lost” and thus not covered by Section 65.***
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> *7. The meaning of lost in the Black's Law Dictionary 6th Edition is “An article is lost when the owner has lost the possession or custody of it, involuntarily and by any means, but more particularly by accident or his own negligence or forgetfulness, and when he is ignorant of its whereabouts or cannot recover it by an ordinarily diligent search”.*
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> *8.* ***This court in Laigan Begum v. Abdul Hamid, MANU/DE/0203/1979 held that “not traceable” or “lost”, both enable the invocation of secondary evidence under Section 65 of the Act. I am also of the opinion that for invocation of Section 65, it is not necessary to take a stand that the document is lost, so as never to be found. It is sufficient to prove that the document is not available at the relevant time and its whereabouts are unknown then.***
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> (emphasis supplied)

41. The second condition of the said provision mandates the party to show that the original document, image/ copy of which is sought to be brought on record, is unavailable, not owing to the default or neglect of the party seeking to lead such secondary evidence. In this

regard, the learned Trial Court rightly made the observation thatthe respondent– Central Bureau of Investigation is an institute and not an individual, and that the case should not suffer due to the callous attitude on part of some of the officials who were entrusted with the custody of such document. It was rightly noted that since the case was filed way back in the year 1994, it is obvious that the Investigating Officer is now of old age and does not recall the whereabouts of the said documents.

42. This Court is of the opinion that the factual foundation to justify leading secondary evidence in place of the original documents has been satisfied by the respondent. Whether the evidence has any relevance, would be tested during the course of trial. In ***U. Sree v. U. Srinivas*** *(supra)* it was held that mere admission of a document in evidence does not amount to its proof and that the same will be determined at the time of defense evidence. It was held as under:

> *"…..**More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value.***
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> *15. In State of Bihar v. Radha Krishna Singh [(1983) 3 SCC 118 : AIR 1983 SC 684] this Court considered the issue in respect of admissibility of documents or contents thereof and held as under : (SCC p. 138, para 40)*
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> > *"40. … **Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil**."*
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> > (emphasis supplied)

43. In the second application two main reliefs were sought as under–

(i) permission to call another prosecution witness namely– Sh. Deepak Handa, in place of Sh. TN Nehra, Senior Scientific Officer (since deceased on 11.12.2007);

(ii) to summon one Sh. Rajiv Negi for examination as he prepared the images of the specimen signatures and admitted handwriting documents.

44. It is stated that Sh. TN Nehra was cited as a prosecution witness in the case as he had issued a scientific report which could be now proved by Sh. Deepak Handa, since the former expired during the pendency of the trail. It is stated that Sh. Deepak Handa has worked with the former and is conversant with his writing and signature in ordinary course of duty.

45. Admittedly, the petitioner has not denied the death of Late Sh. TN Nehra. It is merely stated by the petitioner that Sh. Deepak Handa will not be in a position to give any reason for the conclusion arrived at in the report which was issued by Sh. TN Nehra. When the death of the witness is not in dispute, the prosecution cannot be precluded from producing another witness in order to prove its case.

46. The only prejudice contended to be caused to the petitioner, on allowing the prosecution to call Sh. Deepak Handa as a witness, would be that the reasoning given by him may not hold evidentiary value. It is pertinent to mention here that the relevancy of the evidence and its evidentiary value cannot be commented upon at this stage. Thus, the objection to call Sh. Deepak Handa as prosecution witness is without any merit.

47. It would be relevant to refer to the observation made in regard to secondary evidence in ***J. Yashoda v. K. Shobha Rani*** *(supra),*wherein it was held as under:

> *"9. The rule which is the most universal, namely, that the best evidence the nature of the case will admit shall be produced, decides this objection. That rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it….."*

48. Prayer (ii) of the said application seeks permission to examine Sh. Rajiv Negi, SSA of CFSL, New Delhi, who prepared the images of the specimen signatures and admitted handwriting documents. The petitioner contended that the images of the documents were never relied upon by the prosecution and that Sh. Rajiv Negi was never mentioned as a prosecution witness and therefore he cannot be allowed to be examined.

49. In the opinion of this Court, the contention of the petitioner does not hold any merit. It is observed that this application has been filed along with the first application on 08.03.2018 and that the prayer (ii) of this application is in aid to the prayer made in the first application seeking to place on record the images of the specimen signatures and admitted handwriting which have been prepared by Sh. Rajiv Negi and therefore he is an essential witness to prove the same.

50. The Hon'ble Apex Court in ***Ashok Dulichand v. Madahavlal Dube*** *(supra)* made an observation to the extent that in order to build factual foundation for leading secondary evidence, it is also imperative to explain the circumstances under which the copy was prepared. The Hon'ble Court held as under:

> *"7. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of Respondent 1. There was also no other material on the record to indicate that the original document was in the possession of Respondent 1.* ***The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent 1 in his affidavit denied being in possession of or having anything to do with such a document. The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.****"*
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> (emphasis supplied)

51. The third application has been filed seeking to bring on record the original documents pertaining to the admitted handwriting of accused Sh. Milap Chang Jagotra, since the same were obtained by the Investigating Officer during inspection. It is stated that at the time of investigation, specimen signatures and admitted handwriting of the accused persons were collected and handed over to CFSL for comparison with the questioned handwriting and the CFSL report in respect thereof is already on record.

52. The argument of the learned counsel for the petitioner that the application is an afterthought, as the same has been filed belatedly to cover the loopholes in the previous applications filed by the respondent, is meritless.

53. It is well settled that Court, while exercising power under Section 311 and 91 of the CrPC and 165 of the Evidence Act, shall not

use such power to fill up the lacuna left by the prosecution, however, the powers under the said provisions are wide. The Hon'ble Apex Court in ***Rajendra Prasad v. Narcotic Cell*** **: (1999) 6 SCC 110** held as under:

> *"7.* ***It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not "fill the lacuna in the prosecution case". A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses.The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.***
> *8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case,* ***but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.****"*
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> (emphasis supplied)

54. It is pertinent to note here that the entire case revolves around forgery/ interpolation of the Dak Register by the accused persons and in this regard, it cannot be said that the original admittedhandwriting,images of specimen handwritings and witnesses relating to the same, are not necessary for just adjudication of the case, especially when the evidence could not come on record because of passage of time.The evidentiary value and weight of the evidence led

by the petitioner as secondary evidence would have to be decided by the learnedTrial Court after the entire evidence was over.

55. The Hon'ble Apex Court in ***Varsha Garg v. State of M.P.*: 2022 SCC OnLine SC 986**, shed light on the provisions ofSections91 and 311 of the CrPC and held that the Court must exercise the powers under the said provisions, if the evidence appears essential to the just adjudication of the case. It was held that the applicationunder Section 91 and Section 311 of the CrPC was dismissed on extraneous reasons,as the powers conferred under the same, specifically allow the summons for such documents when deemed necessary for the just decision of the case.The relevant paragraphs are reproduced hereunder:

> *"31. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine Section 31 of CrPC. Section 311 provides that the Court "may":*
>
> *(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and*
>
> *(ii) Recall and re-examine any person who has already been examined.*
>
> *This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court "shall" summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.*
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> xxxx xxxx xxxx
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> *35. **Justice S Ratnavel Pandian, speaking for the two judge Bench, noted that the power is couched in the widest possible terms and calls for no limitation, either with regard to the stage at***

which it can be exercised or the manner of its exercise. It is only circumscribed by the principle that the "evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means." In that context the Court observed:

"18 …Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. *Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties."*

xxxx xxxx xxxx

37. ***The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest****.*

38. *Section 91 CrPC empowers inter alia any Court to issue summons to a person in whose possession or power a document or thing is believed to be, where it considers the production of the said document or thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the CrPC.*

xxxx xxxx xxxx

40. *In the present case,* ***the application of the prosecution for the production of the decoding registers is relatable to the provisions of Section 91 CrPC. The decoding registers are sought to be produced through the representatives of the cellular companies in***

> ***whose custody or possession they are found. The decoding registers are a relevant piece of evidence to establish the co-relationship between the location of the accused and the cell phone tower.*** *The reasons which weighed with the High Court and the Trial Court in dismissing the application are extraneous to the power which is conferred under Section 91 on the one hand and Section 311 on the other.* ***The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing "is necessary or desirable for the purpose of any investigation, trial or other proceeding" under the CrPC.*** *As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case."*
>
> (emphasis supplied)

56. Undisputedly, the applications have been filed when the matter was at the stage of prosecution evidence only and the learned CMM has rightly allowed the same. Even otherwise, the power is not limited by the stage of proceedings but must be used judicially, with caution, and not arbitrarily.

57. In view of the above, this Court is of the opinion that no prejudice will be caused to the petitioner, if the aforementioned applications are allowed and the witnesses and specimen signatures/ admitted handwritings of the accused persons are taken on record, in as much as the petitioner will be granted an opportunity to lead evidence and cross-examine the witnesses.

58. This Court finds no infirmity in the impugned order passed by the learned CMM.

59. It is observed that the trial has been pending since 1994. The same has been delayed due to multiplicity of litigations initiated at the instance of accused persons.

60. The learned CMM is requested to expedite the trial.

61. The present petition is dismissed in the aforesaid terms.

62. Pending application(s) stand disposed of.

AMIT MAHAJAN, J

FEBRUARY 24, 2025