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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 12, 2015

+ CRL.M.C. 5823/2014
MAHINDEER KAUR & ORS Petitioners
Through: Mr. M.S.Butalia, Advocate

versus

STATE (NCT DELHI) & ANR Respondents
Through: Ms. Manjeet Arya, Additional
Public Prosecutor for respondent-
State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Crl.M.A.No.19845/2014 (Restoration)

For the reasons stated in the application, application is allowed and petition is restored to its original number.

Crl.M.C.No.5823/2014

Petitioners are facing trial in FIR No.259/2005 registered at Police Station Vivek Vihar, Delhi for the offence of cheating etc. in which respondent-State's application for secondary evidence stands allowed vide impugned order of 17th October, 2014. Respondent-State has been permitted to lead secondary evidence in respect of original documents along with FSL report which was collected by Investigating Officer-SI

Rajinder Singh Special Branch (North) from FSL Chandigarh.

At the hearing, learned counsel for petitioners had relied upon decisions in *Surinder Kaur v. Sadar Mangal Singh & Ors.* 158 (2009) DLT 1, *Benga Behera & Anr. v. Braja Kishore Nanda & Ors.* VI (2007) SLT 252, *Smt. Sulochana Devi Bubna v. Gobinda Chandra Nag & Ors.* AIR 1986 Calcutta 430, *Mt. Atra Devi v. Ramswaroop Prasad Singh & Ors* AIR 1972 Patna 186, *Mohanlal San & Anr. v. Samal Ram Potdar & Ors* AIR 1961 Patna 300, *Smt. Bobba Suramma v. Smt. Peddireddi Chandramma* AIR 1959 Andhra Pradesh 568 and *Jaldu Ananta Rahuram Arya & Ors. v. Rajah Bommadevara Nagar Chayadevamma & Ors.* AIR 1958 Andhra Pradesh 418 to submit that secondary evidence can be allowed only when sincere efforts have been made to locate the documents and not otherwise. Learned counsel for petitioners had drawn the attention of this Court to application of 31st July, 2013 filed by the Investigating Officer to point out that in this application it is vaguely submitted by the Investigating Officer that he had handed over the FSL report and original documents either to *Naib Court* or to *Ahlmad* of the Court but they are not on record and had sought permission to lead secondary evidence in respect of FSL report and the original documents. According to learned counsel for petitioners, aforesaid averments do not satisfy the requirements of Section 65(c) of the *The Indian Evidence Act, 1872* and so impugned order allowing application for secondary evidence of respondent-State deserves to be quashed.

Upon hearing and on perusal of the impugned order, application filed, material on record and the decisions cited, I do find that such like applications are not to be routinely allowed and the factum of loss of

documents has to be established. No doubt, the Investigating Officer of this case is not sure as to whether he had given the FSL report to *Naib Court* or *Ahlmad* of the Court but one thing is certain that FSL report and original documents are not on trial court's record. The fact of FSL report and the original documents missing stands very much established and so the decisions relied upon by petitioners' counsel are of no avail.

Finding no substance in this petition, the petition is dismissed while not commenting upon evidentiary value of the documents in respect of which secondary evidence has been allowed.

(SUNIL GAUR)
JUDGE

AUGUST 12, 2015

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