

\$~36

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

%

Judgment delivered on: 06.05.2019

+ CRL.REV.P. 271/2016 & CrI.M.A.5484/2016 (stay)

SATYAM KUMAR SAH & ORS. Petitioners

versus

NARCOTIC CONTROL BUREAU (NCB) Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Anuj Kumar Ranjan, Advocate for petitioner No.2.

For the Respondent : Mr. Rajesh Manchanda, Advocate for NCB.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 16.03.2016, whereby, an application of the respondent Narcotic Control Bureau under Section 65 Indian Evidence Act, 1872, was allowed by the Trial Court.
2. Subject application was filed contending that some relevant files, which were required for the purposes of prosecution, have been misplaced and permission was sought to lead secondary evidence. Trial Court allowed the said application by the impugned judgment.
3. Aggrieved by the order allowing the applications, subject petition has been filed. It is contended that grave prejudice is going to

be caused to Petitioner by the impugned order.

4. In my view, the application filed by the respondent NCB was misplaced inasmuch as no application is required to be filed by a party seeking permission under Section 65 Indian Evidence Act to lead secondary evidence.

5. Section 61 of the Indian Evidence Act lays down that contents of a document may be proved by primary or secondary evidence. Section 63 defines Secondary Evidence. Section 64 provides that documents must be proved by primary evidence, except in cases thereafter mentioned i.e. in Section 65, Section 65 A and Section 65 B.

6. Section 65, Indian Evidence Act, permits secondary evidence to be led in the contingencies mentioned therein. Section 65 does not contemplate filing of any application or seeking prior permission of the court for leading secondary evidence.

7. A party producing secondary evidence before a court has to satisfy the conditions mentioned in Section 65 of the Indian Evidence Act and only when the conditions of Section 65, Indian Evidence Act are satisfied, secondary evidence would be admissible.

8. While adducing secondary evidence, a party shall have to lead evidence firstly to show the existence of the contingency or situation stipulated in section 65 and 65B, as the case may be and Secondly

lead evidence in proof of the said document.

9. Only after the evidence is led before the court, would the court be in a position to form an opinion as to whether circumstances/situation, as stipulated under section 65 Indian Evidence Act, making secondary evidence admissible, exist or not.

10. Thus, merely because an application under Section 65, Indian Evidence Act was filed and allowed, would not *ipso facto* make secondary evidence admissible, which is otherwise inadmissible.

11. Even the Trial Court in the impugned judgment has held that simply because the documents have been lost and the prosecution is permitted to lead evidence, would be no ground to prejudice the accused.

12. The impugned order is neither in favour of the respondent nor against the petitioner. It does not adjudicate any rights of the parties.

13. I find no merit in the petition. Petition is, accordingly, dismissed.

14. However, it is clarified that merely because the application under Section 65, Indian Evidence Act has been allowed by the impugned order, would not make admissible the secondary evidence sought to be led by the respondent NCB. The respondent NCB would have to lead evidence to show that the requirements of Section 65

Indian Evidence Act are satisfied, prior to the secondary evidence being admissible.

15. Learned counsel for the petitioner submits that the proceedings before the Trial Court have been delayed and pending since 2015.

16. Keeping in view the totality of facts and circumstances of the case, Trial Court is directed to expedite the recording of the prosecution evidence.

17. Petition is disposed of in the above terms.

18. Order *Dasti* under signatures of the Court Master.

MAY 06, 2019
st

SANJEEV SACHDEVA, J

भारतमेव जयते