

3. Perused the papers. It appears that the petitioner-SEBI, at the time of filing the complaint had annexed documents relied upon by them, which included the original letter dated 20th March, 2002 addressed by the Director, Roofit Industries Ltd. to Mr. C.M. Mehra, the Executive Director. It appears that the said letter dated 20th March, 2002 received from Roofit Industries Limited alongwith other documents, were filed alongwith an application under Section 294 of the Cr.P.C. However, since the respondent/accused denied the said documents, including the said letter, the said documents were not exhibited.

4. Thereafter, it appears that CW-1 Mr. - Avinash Dhumal, Assistant General Manager, SEBI stepped into the witness box and produced the said letter dated 20th March, 2002, during the course of his examination-in-chief and as such, the learned Judge marked the said letter as 'Article-A'. Thereafter, Mr. Chandra Sekhar Rao Aitipamula, a Former SEBI Officer was examined as CW-2. The said letter dated 20th March, 2002 of Roofit Industries Limited was also shown to the said witness. The said witness acknowledged his endorsement on the said letter and the seal of SEBI. The learned Judge marked the very same letter which was earlier marked as 'Article-A', as 'Article-C', for reasons best known.

5. Pursuant thereto, the petitioner filed an application i.e. Exhibit-51 for exhibiting the said letter dated 20th March, 2002, as the said letter had the seal/inward stamp of SEBI and the initials of CW-2, which was identified by the said witness. It was the very same letter which was earlier marked as Article-A in C.W.-1's evidence and as 'Article-C' in CW-2's evidence.

6. During the course of the arguments before this Court, learned Counsel for the petitioner submitted that infact, the letter dated 20th March, 2002 was marked as 'Article-A' when CW-1 was examined, and hence the learned Judge could not have marked the very same letter when shown to CW-2 as 'Article-C' and given it a different article. She submits that since the said article i.e. the letter dated 20th March, 2002 was already marked as Article-A, the same should have been continued even when CW-2 was examined. She submits that at the end of para 2, of the evidence of CW-2, where the said letter dated 20th March, 2002 is marked as 'Article-C', the same be corrected and marked as 'Article-A'.

7. There appears to be some substance in the said submissions. Considering the fact, that the said letter dated 20th March, 2002 was already shown to CW-1 and was already marked as 'Article-A', the learned Judge

should not have given the same article, a different alphabet i.e. 'Article-C', when CW-2 - Chandra Sekhar Rao Aitipamula was examined. Accordingly, where it is mentioned in para 2 in the evidence of CW-2, as 'Article-C', the same be replaced by 'Article-A'. Learned Counsel for the respondent also does not seriously object to the same.

8. During the course of arguments, learned Counsel for the petitioner also submitted that the learned Judge ought to have marked the seal and the signature on the seal, affixed on the said letter as an exhibit i.e. the acknowledgment of receipt of the letter dated 20th March, 2002 by CW-2, since the said witness had identified the same.

9. A perusal of the evidence of CW-2 in particular para 2 of the said evidence reads thus:

"2. I am aware of the facts of this case. In the year 2002 in the month of March my immediate Superior Mr. C.M.Mehra received a letter from Roofit Industries Limited. Since I was dealing with the prosecution matters at that time, the said letter was forward to me, by my Manager. The summary of the letter was that the Company Roofit Industries Limited declared dividend to its shareholders, but could not pay the dividend. Through that letter said company requested to the SEBI to condone the delay in making the payment to the shareholders towards the dividend. Letter of Roofit Industries Limited dated 20/03/2002 now shown to me, is the same, there is my endorsement on it, I also identify the handwriting of my Manager on it, there is seal of SEBI. The said letter is marked

as Article-C.”

10. At this stage, learned Counsel for the petitioner states that the petitioner will file an appropriate application before the trial Court for recalling CW-2, only for the purpose of getting the said seal/endorsement and his signature on the same, exhibited.

11. Accordingly, learned Counsel for the petitioner is at liberty to file an appropriate application, for recalling CW-2 only for the purpose of exhibiting the said seal and the signature thereon. If such an application is filed, the learned Judge to consider the same forthwith on its own merits.

12. Needless to state that the respondent/accused will have an opportunity to cross-examine the said witness only on the said aspect i.e. the letter dated 20th March, 2002. Needless to also state, that in the event, only the said seal and the signature by CW-2 is exhibited, the same will not be proof of the contents of the letter. It is informed that the said witness is presently in Australia. Both the parties agree that if an application is filed by the prosecution for examining the said witness on Video Conferencing, the respondent will have no objection for the same.

13. Accordingly, no infirmity can be found in the impugned order refusing to mark 'Article-A' or 'Article-C' as an exhibit.

14. Petition is accordingly disposed of on the aforesaid terms.

15. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.