



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 120 OF 2015

BHARAT M. SHAH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Senior Advocate Shri Amit Desai a/w Adv. Vijay Garg a/w
Adv. Gopalkrishna Shenoy a/w Adv. Pooja Kothari a/w Adv.
Tejas Popat i/b Rashmikant and Partners for the Applicant.

Ms. Ameeta Kuttikrishnan for the Respondent-CBI.

Ms. S.D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 15, 2024

P.C. :

- 1.** Heard learned senior advocate Shri Desai And learned counsel for the respondents.
- 2.** The present application filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) challenges the order dated 05/01/2015 passed by the learned Special Judge (CBI) partly allowing the application made by the applicants i.e. accused Nos. 3 and 7 objecting to the exhibiting of documents. By the said order, the trial Court rejected the objection regarding exhibiting Exhibits 62, 63 and 78 as

without any merit.

3. The applicants have grievance regarding clause (2) of the operative order. It is clarified that so far as clause (3) of the operative order is concerned, the same is maintained. The applicant objected to the exhibiting of the aforesaid documents on the ground that PW-3 does not know in whose handwriting the documents were prepared. The trial Court for the following reasons had rejected the objection raised by the applicant-accused for exhibiting of the aforesaid documents.

“14. My Ld. Predecessor after taking into consideration the aforesaid position, exhibited the said certificate of deposit dt. 25.2.95 as Ex.62.

The applicants have objected exhibiting the document on the ground that PW 3 does not know in whose handwriting the document is.

In this respect, it cannot be overlooked that PW 3-Pranodkumar Jayantilal Bhagat has not only identified his signature over the document, but in the capacity of Manager of the Bank further stated that the document is correct. So as to verify the positions touching to the objection so raised, I have gone through the cross examination by PW 3 by the applicants' side. On going through the same, it reveals that there is nothing serious or otherwise position is forthcoming so far as documents Exhs.62,63 & 78 are concerned, it cannot be overlooked that PW 3 in the capacity of Manager had verified the details, and signed the document, further with certainty stated that the documents are correct. In such circumstances, in my mind, looking towards

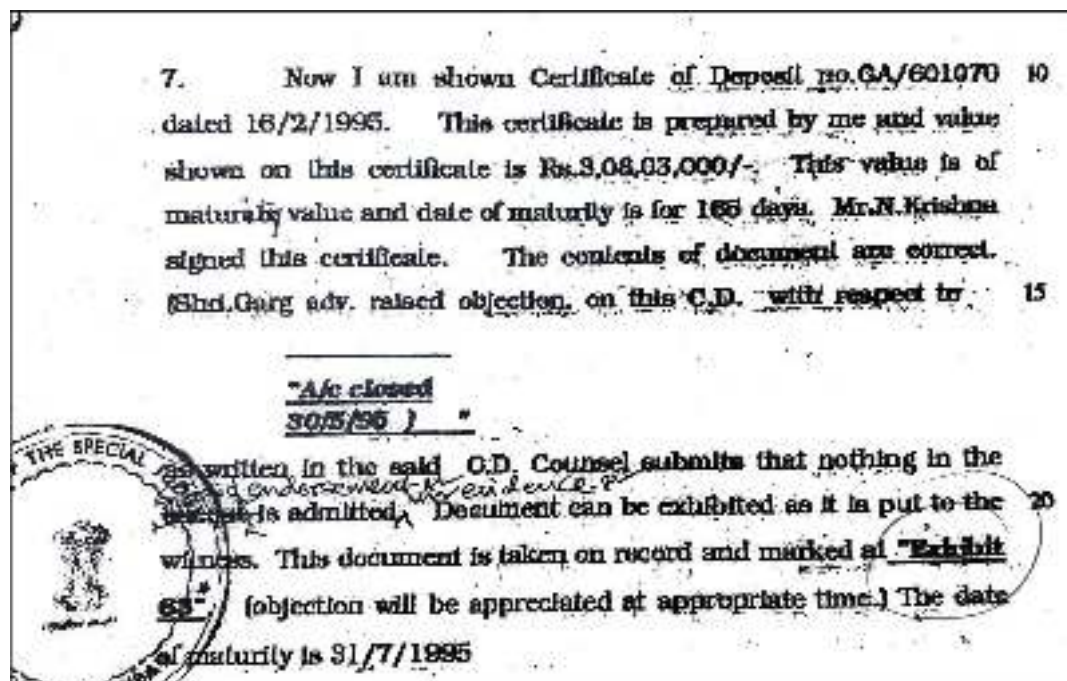
the law position discussed earlier and reveals from the provisions of S.67 r/w S.81 of the Indian Evidence Act, it can be safely observed that the document is Exhs. 62,63 & 78 exhibited by following the procedure prescribed under the law.”

4. Learned senior advocate Shri Desai submitted that the trial Court has committed factual error in proceeding on footing that PW-3 in his capacity as a Manager of the Bank has not only identified his signature but in such capacity has further stated that the documents are correct. It is submitted that even from the deposition of the PW-3 it is seen that the PW-3 was working as Centralized Cash Manager in Oriental Bank of Commerce. It is pointed out that it was Mr. Arun Bhargav who was the Chief Manager and the duties of the PW-3 was to pick up cash from the other branches and to deposit the same in the Dadar Branch.

5. My attention is invited to the evidence of the PW-3 where certain paragraphs are relevant pertaining to the marking of the signature. Reading of paragraph No.6 shows that so far as Exhibit 62 is concerned, PW-3 had stated that the document was signed by him and Mr. Arun Bhargav but

he does not know who prepared it. No doubt, he has stated that the document is correct. For convenience, the document was marked by the trial Court at Exhibit 62. It is also noted that learned counsel raised the objection regarding exhibiting the document since the witness does not know in whose handwriting the document is prepared and there is a remark that the objection will be appreciated at the appropriate stage.

6. Coming next to the document at Exhibit 63, paragraph No.7 of the deposition of the PW-3 reads thus:



7. On perusal of Exhibit 63, it can be seen that though

the certificate is prepared by PW-3 and signed by him, the endorsement 'A/c closed' appearing on the said certificate is not of PW-3.

8. The next document i.e. Exhibit 78 in the context of which paragraph No.14 of the deposition reads is thus:

"14. Now I am shown Pay order drawn on Oriental Bank of Commerce, Dadar Branch, dated 30/5/1995 for an amount of Rs.7,46,000/- favouring Jayco., This pay order is signed by Mr. Prakash Hosali. I have not prepared it. I identify the signature of Mr. Prakash Hosali. He is present in the Court Hall. (Witness has identified accused no.1.) I identify him. Contents of pay order is correct. The pay order is marked at "Exhibit 78" (subject to objection)"

9. It is seen that PW-3 has stated that the pay order is signed by Mr. Prakash Hosali and he identified the signature of Mr. Prakash Hosali. It is stated that he has not prepared it. It is further stated that the contents of the pay order are correct. It was observed that the document marked at Exhibit 78 is subject to objection.

10. Learned senior advocate Shri Desai submitted that the trial Court erred in exhibiting the documents applying the provisions of Section 67 read with Section 81 of the Indian Evidence Act, 1872 (hereafter referred to as "Evidence

Act"). The applicability of the provisions of Section 81 of the Evidence Act while exhibiting the documents having regard to the nature of documents to be exhibited ought to have been dealt with by the trial Court.

11. Learned counsel for the respondent-CBI supported the impugned order. I am informed that the trial is in progress and the witnesses are being examined.

12. The trial Court has relied upon the provisions of Section 67 read with Section 81 of the Evidence Act to observe that the exhibiting of Exhibits 62, 63 and 78 was done by following the appropriate procedure. I find that the objections raised by the applicant in the application objecting to the exhibiting of the documents have not been considered by the trial Court before forming an opinion that the documents are exhibited after following the procedure prescribed.

13. In this view of the matter, the operative part clause (2) of the impugned order is set aside. The application shall be considered afresh to the limited extent of objection to exhibiting Exhibits 62, 63 and 78 after hearing all

concerned, on its own merits and in accordance with law.

The application to be decided expeditiously. I may not be understood to have expressed any opinion on the merits of the contentions.

14. The application is disposed of in the above terms.

(M. S. KARNIK, J.)