

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.36 of 2024

Arising Out of PS. Case No.-80 Year-2010 Thana- KHAGAUL District- Patna

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Jagdish Kumar, Son of Late Ganga Ray, R/O Badi Khagaul, Mulchhadi Tal,
P.S.- Khagaul, Dist.- Patna

... .. Petitioner/s

Versus

The State of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Advocate
For the Respondent/s : Mrs. Asha Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 16-04-2025 The issue relates to admitting an attested copy of injury report in evidence on the basis of an application filed by the prosecution on 29th September 2022 which was allowed by the trial judge. Challenging the said order, the accused has filed the instant revision.

2. Only ground, on the basis of which the instant revision is filed, is that the prosecution made the same prayer for exhibiting the photocopy of the injury report previously and the said application was rejected by the same court *vide* order dated 22nd November 2021. In view of previous rejection of the said application, the learned trial judge subsequently cannot allow the same. Prayer made by the prosecution *vide* order dated 05th October 2023. On perusal of the impugned order, I find that the learned trial judge allowed the application filed by the



prosecution on 29th September 2022 *vide* order dated 5th October 2023 on the ground that along with the said application, the prosecution filed attested copy of the injury report. In the previous application, which was rejected, the injury report was not attested. It is observed by the learned Magistrate that an attested copy is admissible as a Secondary evidence. So, it was marked as exhibit.

3. No counter submission has been made by the learned Advocate on behalf of the State of Bihar.

“Section 63 of the Indian Evidence Act defines Secondary evidence which means and includes –

(1) certified copies of the original documents;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.”

4. Section 65 of the Evidence Act deals with the cases/circumstances in which Secondary evidence relating to



documents may be given. Before marking an attested copy of the injury report, the trial court ought to have come to a decision that the original injury report was lost, or the missing, or, under the custody of the opposite party or it was destroyed and some other grounds which are not relevant for our purpose. Learned trial judge did not consider as to whether the attested copy of the injury report can be marked exhibit on the teeth of Section 65 of the Indian Evidence Act.

5. For the reasons stated above, this Court has no other alternative but to set aside the order dated 5th October 2023. The learned trial judge is directed to dispose of the application dated 29th September 2022 taking into account the provision relating to admissibility of Secondary evidence under Section 65 of the Indian Evidence Act as well as the judgment reported in ***H. Siddiqui v. A. Ramalingam***, reported in (2011) 4 SCC 240, wherein it has been held that it was the obligation of the court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. The relevant passage is reproduced below:

“12.The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. 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. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon”

6. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

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