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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1463 OF 2018
WITH
CRIMINAL APPLICATION NO.3140 OF 2019
IN
CRIMINAL WRIT PETITION NO.1463 OF 2018**

Munawar Ahmed Naeem Ahmed,
Age: 42 years, Occu: Nil,
R/o. Plot No.40, New S.T. Colony,
Kat Kat Gate, Aurangabad

....PETITIONER

VERSUS

1. Dr. Abdul Gaffar Quadari
s/o Abdul Razzakh,
Age: 58 years, Occu: Medical Practitioner,
R/o. Seema Nursing Home,
Roshan Gate, Aurangabad
2. Smt. Siraj Siddiqui,
Age: 60 years, Occu: Service,
R/o. Zia-ul-Ulum Boys School,
Town Hall, Aurangabad
3. Mahesh Motilal Pandure,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, Aurangabad
4. Shaikh Sohel Shaikh Jalil,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, Aurangabad
5. Smt. Khan Humera,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, Aurangabad

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6. Smt. Siddiqui Farnaz Sultan,
D/o Mohammad Naim,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, Aurangabad
 7. Smt. Jamila Begum D/o. Abdul Khaliq,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, Aurangabad
 8. Smt. Sayeda Banu D/o. Ahemmad Alikhan,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, Aurangabad
-RESPONDENTS

WITH
CRIMINAL WRIT PETITION NO.1464 OF 2018

Munawar Ahmed Naeem Ahmed,
Age: 42 years, Occu: Nil,
R/o. Plot No.40, New S.T. Colony,
Kat Kat Gate, Aurangabad

....PETITIONER

VERSUS

1. Dr. Abdul Gaffar Quadari
s/o Abdul Razzakh,
Age: 58 years, Occu: Medical Practitioner,
R/o. Seema Nursing Home,
Roshan Gate, Aurangabad
2. Mohammad Mukhtaroddin,
Age: 60 years, Occu: Service,
R/o Patni Complex, Kabadipura,
Juna Bazar, Aurangabad
3. Nagare Dnyaneshwar Shriram,
Age: Major, Occu: Service,

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R/o. Everest Education Society,
Roshan Gate, Aurangabad

4. Nilofar Shakir,
Age: Major, Occu: Service,
R/o. Everest Education Society,
Roshan Gate, AurangabadRESPONDENTS

.....
Mr Z. H. Farooqui, Advocate h/f Mr N. V. Gaware, Advocate for
Petitioner in both petitions
Mr N. B. Khandare, Senior Advocate i/b Mr S. S. Kazi, Advocate for
Respondent No.1

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 08 DECEMBER 2025

PRONOUNCED ON : 24 DECEMBER 2025

JUDGMENT :-

1. By these respective petitions, the petitioner prays for quashing and setting aside the order dated 26/09/2018, passed by the learned Chief Judicial Magistrate, Aurangabad below application at Exhibit 198 in R.C.C. No.1937/2012, and below application at Exhibit 210 in R.C.C. No.1937/2012, thereby rejecting both the said applications filed for permitting him to lead secondary evidence of exhibited documents.

2. These matters are having long history. According to the petitioner, initially on 29/07/2010, petitioner who is original

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complainant had lodged complaints bearing R.C.C. No.193/2012 and R.C.C. No.1937/2012 before the learned Judicial Magistrate First Class, Aurangabad for offence punishable under Sections 467, 468, 471, 420 read with Section 34 of the Indian Penal Code against respondents/accused therein, alleging that respondent No.2 had issued false and bogus experience certificates in favour of respondent Nos.4 to 8 in Criminal Writ Petition No.1463/2018 and respondent No.2 had issued false and bogus experience certificates in favour of respondent Nos.3 and 4 in Criminal Writ Petition No.1464/2018 for having worked for five years, though they had no such experience. It was alleged that the said false experience certificates were signed by respondent No.1 in both the petitions and on the basis of same, those respondent came to be appointed as 'Lecturers in Dr. Zakir Husain College of Education, Khulatabad. The said college is being run by Everest Education Society and respondent No.1 is President of said society. Prior to filing of complaints, the petitioner had secured certain documents under Right to Information Act from the Deputy Education Officer, Aurangabad, which were in the nature of appointment orders, experience certificates, joining letters and other necessary documents and staff profile of the employees of the said Institution. It is alleged that the said documents were received by the concerned office and

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original documents were in the custody of present respondents/accused, as they were not submitted them in the office.

3. Learned Judicial Magistrate First Class, Aurangabad issued process against the respondents/accused in both the petitions. The said order was challenged before this Court in Criminal Application No.5851/2013 and in Criminal Application No.5850/2013. This Court vide order dated 01/12/2014, dismissed the said applications. Thereafter, respondents approached the Hon'ble Apex Court by filing Special Leave Petition (Crim.) No.433/2015 and 480/2015. However, vide the order dated 22/01/2015, the Hon'ble Apex Court permitted the respondents to withdraw the said petitions and no relief was granted in their favour. Consequently, learned Judicial Magistrate First Class proceeded with the matter and after framing charge proceeded with the trial and examined one complainant witness, namely Bhausahab Apparao Tupe, who was Deputy Education Officer, Zilla Parishad, Aurangabad at the relevant time, from whom petitioner had received certain documents at Exhibit 130 to 153 and at Exhibit 88 to 100 respectively (alleged false experience certificates), however, the said witness had deposed in his deposition that original documents are not in custody of accused persons and the said documents at exhibit 130 to 153 as well as exhibit 88 to 100 have been

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issued to the complainant/petitioner from their office. Though the said documents are the photocopies and signed as true copies, however, the same came to be exhibited in the evidence of said witness. According to the petitioner, being they are photocopies and true copies, the said documents are not primary evidence. Accordingly, petitioner took steps as per Section 66 of the Indian Evidence Act, by filing application at Exhibit 181 and application at Exhibit 190 under Section 66 of the Indian Evidence Act to call upon accused for producing original copies of original documents at Exhibit 130 to 155 and Exhibit 89 to 98, 99 collectively and Exhibit 100 collectively. In the said applications, it was specifically contended that the said documents are in possession of respondents/accused and in order to prove said documents, the original documents are necessary. Vide order below Exhibit 181 in R.C.C. No.1937/2012 and below Exhibit 190 in R.C.C. No.1936/2012 dated 07/09/2016, the learned Chief Judicial Magistrate, Ahmednagar rejected the said applications, by observing that the said documents appears to be not in possession of accused persons, as admitted by complainant witnesses at the time of recording their witnesses. The said order came to be assailed by the petitioner before this Court by filing Criminal Writ Petition No.1275/2016 and Criminal Writ Petition No.1248/2016. According to the petitioner, this Court

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had directed to issue notices to all the accused persons as per Section 66 of the Indian Evidence Act before moving the application for direction to produce the said documents. Accordingly, this Court disposed of the said petitions, thereby granting liberty to the petitioner to pursue the matter afresh by leading secondary evidence before the learned Trial Court. The petitioner also alleged to have issued notices to the concerned respondents for filing the original documents/all the exhibited documents. In view of liberty granted by the High Court in Criminal Writ Petition No.1275/2016 and Criminal Writ Petition No.1248/2016, the petitioner filed applications at Exhibit 198 and at Exhibit 210 under Section 65 and 63 (2) of Indian Evidence Act, seeking permission to lead secondary evidence for documents at Exhibits 130 to 153, 154 collectively and Exh.155 in R.C.C. No.1937/2002 and at Exhibits 89 to 93, 96 to 99 and 100 in R.C.C. No.1936/2012. The said applications at Exhibit 198 and Exhibit 210 came to be disposed of vide order dated 30/06/2017, by observing that the documents under question are already exhibited and therefore, said applications at Exhibit 198 and Exhibit 210 came to be disposed of accordingly. Being aggrieved by the said order dated 30/06/2017, the petitioner has approached to the High Court on 24/11/2017 by filing Criminal Writ Petition No.1630/2017 and Criminal Writ Petition

No.1631/2017. The said writ petitions came to be partly allowed by order dated 27/08/2018 by quashing the said order dated 30/06/2017 and relegating the matter to the Trial Court by observing that, if the originals are not produced by party in whose custody those documents are lying, then permission to lead secondary evidence is required to be granted. Thereafter, vide the impugned order dated 26/09/2018, learned Judicial Magistrate First Class, Aurangabad, rejected applications at Exhibit 198 in R.C.C. No.1937/2012 and application at Exhibit 210 in R.C.C. No.1936/2012. Therefore, the petitioner has approached this Court through the instant writ petitions for permission to lead secondary evidence of documents which are exhibited.

4. Heard learned Advocate Mr Farooqui, holding for Advocate Mr Gaware for the petitioner and learned Senior Advocate Mr Khandare instructed by Advocate Mr Kazi for respondent No.1.

5. Mr Farooqui, learned Advocate for petitioner submits that the impugned order passed by the learned Chief Judicial Magistrate, Aurangabad dated 26/09/2018 is illegal and he failed to appreciate provisions under Section 65 and 63(2) of the Indian Evidence Act. According to him, the documents sought to be proved by the petitioner are in the possession of respondents/accused, and therefore, it was

incumbent on the part of learned Trial Court to call for originals which are in custody of accused persons. According to him, the accused persons are possessing the original documents and therefore, power under Section 65 and 66 of the Indian Evidence Act have to be invoked by the learned Trial Court, however, the learned Trial Court has erred in denying opportunity to lead secondary evidence to the petitioner.

6. While relying upon the judgment in the matter of **Jagmail Singh and another Vs. Karamjit Singh and others, (2020) 5 Supreme Court Cases 178**, learned Advocate for petitioner submits that, mere admission in evidence and making exhibit of a document is not enough, as the same has to be proved in accordance with law, and therefore, factual foundational evidence must be adduced. Accordingly, Mr Farooqui submits that the instant petitions may be allowed and the petitioner may be permitted to lead secondary evidence.

7. Per contra, learned Senior Advocate Mr Khandare strenuously opposes the instant writ petitions. He submits that the learned Chief Judicial Magistrate, Aurangabad has rightly rejected application at Exh.198 in R.C.C. No.1937/2012 and application at Exh.210 in R.C.C. No.1936/2012. According to him, photocopy

prepared from photocopy of the private document, which is not compared with the original one, can not become secondary evidence. He submits that the petitioner has moved application for seeking permission to lead secondary evidence after complainant submitted evidence closed pursis and after the matters were proceeded for recording of statements of accused under Section 313 of the Code of Criminal Procedure, and therefore, the instant petitions filed by the petitioner for leading secondary evidence may not be entertained. He then submits that there is no foundation laid down either in complaint, verification or in evidence of complainant to adduce secondary evidence. He then submits that the petitioner/complainant has stated in his cross-examination that he has not seen the originals and he does not know in whose possession those original documents are lying. He submits that the petitioner has filed as many as 8 private criminal complaints and three criminal complaints of outraging modesty of his wife. He has also filed three criminal writ petitions before this Court and as well as one public interest litigation. In addition to this, he has also filed three cases before Charity authorities to become member of trust and he is trying to remove respondent No.1 and his team from the trust and wants to get appoint himself alongwith his companions as trustees. For the said motive, he had filed three civil writ petitions

before the High Court against respondent No.1. According to him, the petitioner is an unscrupulous litigant and having no case of merits. He further submits that in the instant matters, he filed application for leading secondary evidence after the statements of accused persons under Section 313 of the Code of Criminal Procedure came to be recorded, and therefore, he strongly opposes the instant petitions and submits that the petitioner is not entitled to grant any relief by this Court.

8. After going through the submissions advanced by the learned Advocates for the respective sides, it is clear that the petitioner has approached to the learned Judicial Magistrate First Class for permission to lead secondary evidence. As per the provisions of Section 63 of the Indian Evidence Act, secondary evidence includes four categories viz. (i) certified copies; (ii) certified copies made from the original by mechanical process; (iii) copies made from or compared with the original and (iv) counterparts of documents as against non-executing parties and oral accounts by person who have seen the original. All these four categories are essential for leading secondary evidence. However, in the present cases, if the copies of private documents obtained under the provisions of the Right to Information Act, which were never compared with the original sought

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to be lead as secondary evidence. In the applications at Exhibit 198 and Exhibit 210, in paragraph 5, complainant/petitioner himself has stated that the documents are true copies of original documents and while issuing the same, were not compared with the originals and therefore, secondary evidence cannot be adduced as the complainant and his witness never seen the originals. The complainant in his cross-examination has also admitted that he had not seen originals and does not know in whose possession those documents are lying. To lead secondary evidence, foundation has to be led in the plea. There is no whisper in the complaint as well as in the evidence given by complainant about in whose possession the said original documents are lying. Since there is no pleadings in the complaint as well as in the evidence of the parties, the petitioner cannot claim the permission for leading secondary evidence.

9. The Hon'ble Apex Court in the judgment of **Dhanpat Vs. Sheo Ram (deceased), thr. legal representatives and others, (2020) 16 SCC 209**, in its paragraph No.22 has observed thus :-

“22. There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading

of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.”

10. Bare perusal of aforesaid paragraph reveals that, if any party to the suit has led foundation of leading secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration and an application for permission to lead secondary evidence was not filed. Here, either in the plaint or evidence, no foundation has laid down either in the plaint or in the evidence.

11. In case of **Kumarpal N. Shah (since deceased) thr. L.Rs. Vs. Universal Mechanical Works Pvt. Ltd., Mumbai and others, 2020 (1) Mh.L.J. 422**, this Court, while considering scope of public documents or private document, had observed that under the Right to Information Act, usually the photostat copies of the documents which are certified as true copies, which cannot be equated with the certified copies mentioned in the Evidence Act. If the official under the Right to Information Act certifies and supplies private documents, it still remains a private document. However, public documents, which are prepared by the public servant in discharge of his public duty and said documents are filed in public office, the

certified copies of public documents can be admitted in judicial proceedings and are usually proved by the secondary evidence. The Court is bound to presume its genuineness from the duly certified secondary copies.

12. In the judgment of **Yashwant Rambhau Chondhe and others Vs. Vilas Bapurao Shinde, 2007 (5) Bom C.R. 335**, this Court was pleased to observe that secondary evidence can be allowed to be led only when there is a foundation laid by the party concerned for leading it.

13. As rightly pointed out by learned Advocate for respondent No.1 that the petitioner has not led the foundation to allow him to lead the secondary evidence, the case of the petitioner fails. The petitioner in throughout his pleadings, has no where stated that the documents of the said exhibited documents are with the respondents/accused. When he came to know about the said issue, he approached the Trial Court by filing application under Section 66 of the Indian Evidence Act, after recording statements under the provisions of Section 313 of the Code of Criminal Procedure. Therefore, in my view, since there is no foundation led by the petitioner to lead secondary evidence, **the both the petitions are rejected.** Needless to state, the interim order, if any,

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stands vacated. Trial Court is directed to proceed with the matters and complete the trial within six months.

14. Criminal Application No.3140/2019 also stands disposed of.

15. After pronouncement of this judgment, the learned Advocate for the petitioner requests for staying effect and operation of this judgment. However, this request strongly opposes by the learned learned APP.

16. In view of strong opposition by the learned APP and since this matter is pending since 2018 and it is now decided on merits, therefore, the said request is rejected.

[SUSHIL M. GHODESWAR, J.]

sjk