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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M-61821-2025

Gagandeep Singh Swani

. . . Petitioner(s)

Versus

Shyam Sunder @ Sons Thapar HUF and another

. . . Respondent(s)

1.	Date when Order was reserved	11.11.2025
2.	Pronouncement of Order	20.11.2025
3.	Date of uploading Order	20.11.2025
4.	Whether operative part or full Order is pronounced	Full
5.	Delay, if any, in pronouncing of full order, and reasons thereof	Not Applicable

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Manish Jain, Sr. Advocate with
Mr. Manan Jain, Advocate for the petitioner.

SANJAY VASHISTH, J.

1. Present petition has been filed under Section 528 of the BNSS, seeking quashing of the order dated 05.09.2025 passed in COMA #4340/2020 dated 20.03.2020 under Section 138 of the Negotiable Instruments Act, 1881, whereby the learned Judicial Magistrate First Class, Ludhiana, permitted the complainant to tender into evidence a document, without even filing an application under Section 311 Cr.P.C. (348 of BNSS) and without affording the accused an opportunity to cross-examine the witness.

Order dated 05.09.2025 (Annexure P-1) reads as under:

“ Present: Sh. Stevon Soni, Advocate for complainant.



Accused on bail with counsel Sh. Ashish Singla.

Ld. Counsel for complainant tendered into evidence documents Ex. C21 and further closed complainant evidence. Ld. Counsel for accused made an objection regarding exhibition of the document i.e. form 26 AS Annual Tax Statement under Section 203AA of IT Act 1961 as Ex.21. Ld. Counsel for the accused argued that complainant cannot tender document at this stage, because he got no opportunity to cross examine the complainant on the said document therefore this document cannot be exhibited. This court is of the view that mere marking of the document as exhibit and mere tendering the document in the statement of complainant does not dispense its proof exhibited/mark. Documents can also be considered legally admissible if they are proved in accordance with law. This court cannot order to de-exhibit the document as the admissibility of the document will be seen at the time of final arguments. Hence, the objection raised by id. Counsel for accused is left open and will decide at the time of final arguments. Now to come up on 16.09.2025 for recording statement of accused under Section 313 CrPC. Since it is an old case falling under the category of action plan case, it is made clear that no exemption of either party shall be entertained and no adjournment shall be granted, ”

2. Petitioner has challenged the said order on the ground that the document in question (Form 26AS – Annual Tax Statement under Section 203AA of the Income Tax Act, 1961) was allowed to be tendered and exhibited as Ex.21 without supplying a copy to the petitioner and without even affording an opportunity to cross-examine the complainant witness(s).

3. Learned Senior Counsel for the petitioner contends that the said document was neither mentioned in the complaint nor formed part of



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the statement of the complainant when he appeared as a witness. The document was exhibited even though no application under Section 311 Cr.P.C. (348 of BNSS) was filed. Mentioning the document as 'exhibited' without affording any opportunity of hearing to the accused, has caused serious prejudice to the defence. Consequently, the document cannot be treated as additional evidence. By exhibiting it, the Court has presumed its admissibility without affording the accused an opportunity to cross-examine the witness regarding the document, and it has caused clear violation of the principles of natural justice.

4. Learned Senior Counsel relies upon the following decisions:

i) *Sudhir Engineering Company vs. Nitco Roadways Ltd.*, 1995 (34) DRJ (Delhi High Court)

ii) *Narbada Devi Gupta vs. Birendra Kumar Jaiswal & another*, (2003) 8 SCC 745 (Hon'ble Supreme Court)

iii) *Sunil Mehta & another vs. State of Gujarat & another*, (2013) 9 SCC 209 (Hon'ble Supreme Court)

5. Heard learned Senior Counsel for the petitioner, perused the paper book along with the appended documents, and considered the cited judgments.

6. While reading the impugned order, this Court finds that learned trial Court has not yet formed any conclusive opinion on the tendered document (Ex.21). The impugned order states that documents can only be considered legally admissible, once proved in accordance



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with law, and the admissibility of the document will be determined at the time of final arguments.

It appears that the instant petition has been filed by the accused-petitioner prematurely, assuming that the document would automatically be treated as admissible evidence without affording him an opportunity to confront the complainant with the content of the said document.

7. For a proper understanding of the significance of marking or exhibiting a document on record, the Delhi High Court in *Sudhir Engineering Company vs. Nitco Roadways Ltd.* (supra) has observed as follows. The relevant paragraphs (Nos. 4, 5, 6, 8, 9, 10, 13, 14, and 15) read as under

“1.xx

2.xxx

3.xxx

4. I am told that in accordance with the practice of this Court :-
(i). The documents which are admitted by the opposite parties during the process of admission/denial of the documents conducted either in the Court or before the Joint Registrar, are marked as Ex.P- 1, P-2 or Ex. D-1 and D-2 and so on;
(ii) The documents which are tendered in evidence during the examination of any witness are marked as Ex.PW.1/1, Ex. PW1/2, PW.2/1 or Ex.DW.1/1, DW.1/2, DW.2/1 and so on; the carlier part denoting the number of the witness and the latter part denoting serial number of the documents which come to be tendered in evidence during the statement of that witness; that is to say a fresh serial number on the documents begins with the examination of every new witness;
(iii) Those documents which are insisted on being marked as Exhibit by one party but disputed by the other or when for any



reason it become necessary to mark any document for the purpose of identification it is marked as Ex.A and Ex.B and so on i.e. by using an alphabet and not a number.

5. I requested the learned members of the Bar to enlighten me on the source or foundation of this practice whether in any act or in any rules or practice directions. None has obliged me. I can presume that there is none.

6. *Let me now look at the law Any document filed by either party passes through three stages before it is held proved or disproved. These are :*

First stage: when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record;

Second stage: when the documents are tendered or produced in evidence by a party and the Court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence;

Third stage: the documents which are held 'proved, not proved or disproved' when the Court is called upon to apply its judicial mind by reference to Section 3 of the Evidence Act. Usually this stage arrives at the final hearing of the suit or proceeding.

7.xxx

8. *I am firmly of the opinion that mere admission of document in evidence does not amount to its proof.)*

8.1 *Admission in evidence of a party's document may in specified cases exclude the right of opposite party to challenge its admissibility. The most prominent examples are when secondary evidence of a document within the meaning of Sections 63-65 of the Evidence Act is adduced without laying foundation for its admissibility or where a document not properly stamped is admitted in evidence attracting applicability of Section 36 of Stamp Act.*

8.2 *But the right of a party disputing the document to argue that the document was not proved will not be taken away merely because it had not objected to the admissibility of the document.*



The most instructive example is of a Will. It is a document required by law to be attested and its execution has to be proved in the manner contemplated by Section 68 of the Evidence Act read with Section 63-ol the Succession Act. The party challenging the Will shall not be excluded from demonstrating at the final hearing that the execution of the Will, though exhibited, was not proved as statutorily required.

9. The law laid down by the Supreme Court in Sait Tarajit Khimchand Vs. Yelamarti Satyam (AIR 1971 SC 1865) is:

‘The mere marking of an exhibit does not dispense with the proof of documents.’

10. *Two Division Benches of Lahore High Court Ferozchin VS. Nawab Khan, AIR 1928 Lahore 4,32 and Hari Singh VS. Firm Karam Chand, AIR 1927 Lahore 115 have clearly hold that the admission of documents under Order 13 Rule 4 CPC does not bind the parties and unproved documents cannot be regarded as proved nor de they become evidence in the case without formal proof*

11.xxx

12.xxx

13. *Admission of a document in evidence is not to be confused with proof of a document.*

14. When the Court is called upon to camine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved or not proved the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilitics of the case as emerging from the whole record. It could not have been intendmont of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit.



15. The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.”

8. Similarly, in ***Narbada Devi Gupta (supra)***, Hon’ble Supreme Court held that mere production and marking of a document as an exhibit does not constitute proof of its contents. Execution and authenticity must be proved by admissible evidence. Relevant paragraph No. 16 is as under:

“16. Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd.³ The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue" ". The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the



plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as admitted documents.”

9. In **Sunil Mehta (supra)**, Apex Court observed that in criminal cases, the accused must be given the opportunity to cross-examine witnesses to defend against the evidence. Using a witness statement without allowing cross-examination amounts to condemning the accused unheard, violating principles of natural justice. Relevant paragraph No.18 reads as under:

“18. Secondly, because evidence under Chapter XI(B) has to be recorded in the presence of the accused and if a right of cross-examination was not available to him, he would be no more than an idle spectator in the entire process. The whole object underlying recording of evidence under Section 244 after the accused has appeared is to ensure that not only does the accused have the opportunity to hear the evidence adduced against him, but also to defend himself by cross-examining the witnesses with a view to showing that the witness is either unreliable or that a statement made by him does not have any evidentiary value or that it does not incriminate him. Section 245 of the Code, as noticed earlier, empowers the Magistrate to discharge the accused if, upon taking of all the evidence referred to in Section 244, he considers that no case against the accused has been made out which may warrant his conviction. Whether or not a case is made out against him, can be decided only when the accused is allowed to cross-examine the witnesses for otherwise he may not be in a position to demonstrate that no case is made out against him and thereby claim a discharge under Section 245 of the Code. It is elementary that the ultimate quest in any judicial determination is to arrive at the truth, which is not possible unless the deposition of witnesses goes through the fire of cross-examination. In a criminal case, using a statement of a witness at the trial, without



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affording to the accused an opportunity to cross-examine, is tantamount to condemning him unheard. Life and liberty of an individual recognised as the most valuable rights cannot be jeopardised leave alone taken away without conceding to the accused the right to question those deposing against him from the witness box.”

10. While perusing the impugned order and the three cited judgments, it is clear that mere marking and exhibiting of a document does not render it “admissible evidence.” as per Section 3 of the Indian Evidence Act. Therefore, at this stage, this Court would refrain itself from giving observation on the prematurely raised issued, because it is yet to be determined by the learned trial Court, whether the document Ex.21 is admissible or inadmissible evidence.

Accordingly, instant petition is disposed of, with the expectation that the learned trial Court will decide the issue raised by the petitioner, if necessary, in accordance with the law laid down by the Hon’ble Supreme Court and High Courts. Present petition is therefore disposed of without making any observation or comment on the issue raised through order dated 05.09.2025.

20.11.2025

(SANJAY VASHISTH)
JUDGE

Rashmi

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*