

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on : 19.03.2025
Pronounced on: 03.04.2025**

CRM(M) No.230/2025

1. Suresh Kumar Rekhi, Age 59 years
S/o late Om Prakash Rekhi
resident of House No. 14
Saini Enclave, Sarore Samba
2. Kumud Rekhi
wife of Suresh Kumar Rekhi
resident of House No. 14,
Saini Enclave Sarore, Samba

..... Petitioner(s)

Through: Mr. Ayushman Kotwal, Advocate

Versus

Directorate of Enforcement Respondent(s)

Through: Mr. Vishal Sharma DSGI.

CORAM: HON'BLE MR JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, through the medium of present petition, has challenged order dated 20.02.2025, passed by the learned Principal Sessions Judge, Jammu (hereinafter referred to as the 'Special Judge') whereby the application of the petitioners seeking a direction not to invoke Section 294 of the CrPC during trial of the case pending before the Special Court, has been declined.

2. It appears that a complaint under Sections 44 and 45 of the Prevention of Money Laundering Act (hereinafter referred to as the 'PMLA') has been filed by the respondent against the petitioners, alleging the commission of offences under Section 3 and 4 of the said

Act and the said complaint is pending before the Court of Special Judge for PMPLA cases (Principal Sessions Judge, Jammu). It further appears that, at the stage of prosecution evidence, the learned Special Judge passed an order on 11.12.2024, calling upon the petitioners/accused to admit or deny the documents relied upon by the respondent/complainant by invoking powers under Section 294 of the CrPC. However, the petitioners moved an application before the Court of Special Judge, with a prayer not to invoke Section 294 of the Cr.PC. In the said application, it was pleaded by the petitioners/accused that before invoking the provisions contained in Section 294 of the Cr.PC, the prosecution has to include the documents sought to be admitted or denied in a list, in such form as may be prescribed by the State Government as required under Section 294(2) of the Cr.PC. It was contended before the learned Special Judge that no such form has been prescribed by the Government of Jammu and Kashmir as yet and, therefore, the provisions contained in Section 294 of the Cr.PC cannot be invoked.

3 The learned Special Judge, after hearing the parties, passed the impugned order, declining the prayer of the petitioners. In the impugned order, it has been observed by the learned Special Judge that the objection raised by the petitioners is not tenable, as the list of documents has already been placed on record by the complainant/respondent along with the complaint, wherein the particulars of the documents relied upon have been entered and soft copies thereof have already been provided to the petitioners. It has also been observed by the Special Judge that the defence can always seek

clarification in case of any difficulty in indentifying any document or understanding contents thereof.

4 The petitioners have challenged the impugned order on the ground that the Special Judge has not addressed the question as to whether the Government of Jammu and Kashmir has prescribed any form as contemplated under section 294 (2) of the CrPC and, as such, it has fallen into error by observing that the list of documents as contemplated under section 294(2) of the CrPC is the same as the list annexed with the charge sheet/complaint. It has also been contended that it was not open to the learned Special Judge to invoke the provisions contained in Section 294 of the CrPC *suo moto* without an application from the prosecution. According to the petitioners, the prescription of a form by the Government, in terms of subsection (2) of Section 294 of the CrPC is mandatory, and unless such a form is prescribed, the provisions contained in Section 294 of the CrPC cannot be invoked.

5 I have heard learned counsel for the parties and perused record of the case.

6 The controversy that this Court has been called upon to determine is as to whether the list of documents as contemplated under Section 294 of the CrPC is different from the list of documents as is annexed with the charge-sheet or complaint. The second issue, which is required to be determined is, as to whether, in the absence of any form prescribed by the Government of Jammu and Kashmir in terms of Section 294(2) of the CrPC, the provisions contained in Section 294 of the CrPC can be invoked.

7 In order to find an answer to the aforesaid two issues, it would be appropriate to notice the provisions contained in Section 294 of the CrPC, which read as under:

“294. No formal proof of certain documents:

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed :

Provided that the Court may, in its discretion, require such signature to be proved.

8 From a perusal of the aforesaid provision, it is clear that the Court can call upon to admit or deny genuineness of documents filed before it by the prosecution or by the accused, but such documents have to be included in a list providing for the particulars of each document. In terms of subsection (2) of Section 294 of the CrPC, the State Government has to prescribe a form of list in which the documents sought to be admitted or denied by the prosecution or the defence are entered, whereas, according to subsection (3) of Section 294 of the CrPC, where the genuineness of any document is not disputed, the same may be read in evidence in any inquiry, trial or other proceedings

without proof of the signature of the person to whom it purports to be signed.

9 There was no corresponding provision available in the Jammu and Kashmir Code of Criminal Procedure, and this provision has been introduced in the Central Cr.P.C for the first time. The said provision provides for a mechanism for admission and denial of documents, more or less on the same pattern as is prevailing in civil cases. It is intended to avoid wastage of time in proving a document whose genuineness is not disputed or denied by the accused where the document has been produced by the prosecution or by the prosecution when the document is filed by the accused and is admitted by the prosecution. It clearly follows from the provisions contained in Section 294 of the CrPC that formal proof of a document is not required once its genuineness is admitted by the adverse party. The provision is applicable to all documents filed either by the prosecution or the accused, irrespective of their nature and character.

10 The Supreme Court has, in the case of **Ashok Daga vs Directorate of Enforcement** (SLP(Crl) No. 8535, decided on 12.07.2024), which has been relied upon by the learned Special Judge, held that calling upon the accused to admit or deny the genuineness of a document produced by the prosecution cannot be stated to be prejudicial to the rights of the accused, nor does it violate the right of an accused guaranteed under Article 20(3) of the Constitution. So, the contention of the petitioners that the Special Judge could not have invoked the provisions contained in Section 294 of the CrPC *suo moto* without an

application from the prosecution is not tenable. It is well within the jurisdiction of the Special Judge to invoke the provisions contained in Section 294 of the CrPC, of course, after following the procedure prescribed therein. No formal application from either the prosecution or the defence in this regard is needed. The object of this provision is only to avoid unnecessary delay which is caused in proving even those documents which are otherwise admitted by the parties. This helps the trial Courts in expediting the trial. The trial Court is definitely within its powers to invoke the said provision and, in fact, it is incumbent upon the Courts holding criminal trials to make use of the provisions contained in Section 294 of the CrPC.

11 So far as the question as to the nature of form in which the documents sought to be admitted or denied are to be entered is concerned, it is to be noted that in subsection (1) of Section 294 of the CrPC, it is clearly indicated that every document sought to be put to admission or denial has to be included in a list and, particulars of every such document have to be mentioned. Subsection (2) of Section 294 of the CrPC mandates that the State Government has to prescribe the said form. The contention of the prosecution, which has been accepted by the Special Judge is, that the list of documents annexed with the charge-sheet/compliant, which provides particulars of the documents, can be a substitute for the list as contemplated in Section 294 of the CrPC. The same appears to be untenable because subsection (1) of Section 294 of the CrPC clearly mandates that the particulars of the document sought to be admitted or denied have to be included in a list. This means that the

list should contain particulars of only those documents that are sought to be put to the adverse party for admission or denial. This list can also be the list of documents filed by the defence which an accused seeks to put to the prosecution for admission or denial. So, the list mentioned in Section 294 (2) of the CrPC cannot be the same list which is annexed to the charge-sheet/complaint in the form of index.

12 It is quite possible that the prosecution or even the Court would not require every document or chit of paper annexed with the charge-sheet/complaint to be put to the accused for his admission or denial. There may be documents like copies of Court orders, remand orders and other immaterial documents annexed to a complaint/charge-sheet which may not be required to put for admission/denial of the accused. These documents generally find a mention in the index of the charge-sheet/complaint, but the same may not be required to be put to admission/denial of the accused. So it cannot be stated that the index annexed to the charge-sheet/complaint is the same as the list of documents contemplated under subsection (1) of Section 294 of the CrPC.

13 The aforesaid aspect of the matter was considered by a Division Bench of Bombay High Court in the case of **State of Maharashtra vs. Ajay Dayaram, 2014 SCC Online Bom 14**. The Division Bench after noticing the provisions contained in Section 294 of the CrPC observed as under:

“33 The aforesaid section was introduced by amendment after year 1970. [Section 294](#) Cr.P.C was enacted with a

view that the prosecution evidence may be shortened and the prosecution may not be required to prove the documents which are admitted by accused persons. The intention of the Legislature was not to bind the accused persons or force him to admit or deny the genuineness of the documents produced by the prosecution that is why the Court would not be justified in passing the order directing accused to admit or deny the documents, obviously since it would violate [Article 20 \(3\)](#) of the Constitution of India. Be that as it may, the question that arises for our consideration relates to the procedure, which must be followed while insisting for admission or denial of the genuineness of the documents. To our mind, [Section 294 \(1\)](#) in particular providing for insertion of the description of the document in the list to be prepared either by the prosecution or the accused for calling upon either party to admit or deny the genuineness of the documents must be held to be mandatory. In other words, for making use of or for asking for effective operation of [section 294 \(1\)](#), (2) or (3), the particulars of such documents must be included in the list. In other words, the documents which are not included in the list contemplated by [Section 294 \(1\)](#) cannot be put forth for admission or denial nor can be exhibited or read in evidence without proof as contemplated by [Section 294 \(3\)](#) of the Cr.P.C. This is to prevent either the prosecution or the accused to push a document for clandestinely exhibiting it by admission and then read in evidence. We, therefore, reiterate that under [section 294 \(1\)](#), (2) and (3), only the documents included in the list either by the prosecution or the accused and submitted for admission or denial can be processed for putting the sanctity as legal evidence contemplated by [Section 294 \(3\)](#) and not the documents which are not included in the list by either of the party”.

14 From the aforesaid analysis of law on the subject, it is clear that the list prescribed under Section 294(1) of the CrPC is different from the list of documents annexed with the charge-sheet/complaint. The inclusion of documents sought to be admitted or denied by an adverse party is necessary to give notice to that party, and providing a copy of the said list to the adverse party is

necessary to ensure that the said party is aware of the documents the said party has been called upon to admit or deny. In fact, the Supreme Court has, in the case of **Sonu alias Amar vs State of Haryana, (2017) 8 SCC 570**, observed that the documents have to be included in a list and the other side has to be given an opportunity to admit or deny the genuineness of each document. Thus, a separate list of documents, containing particulars thereof in conformity with the provisions contained in Section 294 (1) of the CrPC is required to be prepared and exchanged with the adverse party before calling upon the said party to admit or deny the documents contained in the said list.

15 The next issue that comes to the fore is as to whether, in the absence of a prescribed form in terms of sub-section (2) of Section 294 of the CrPC, the provisions contained therein can be invoked.

16. It is not clear as to whether that the Government of Jammu and Kashmir has prescribed any form in terms of sub-section (2) of Section 294 of the CrPC, but it has been brought to the notice of this Court by the learned counsel for the petitioners that the Government of Jammu and Kashmir, in exercise of its powers conferred under sub-section (2) of Section 330 of the Bharatiya Nagarik Suaksha Sanhita, 2023, which is *in pari meteria* with Section 294 of the CrPC, has issued Notification dated 17.02.2025 prescribing therein the "form of list of documents". The said notification reads as under:

**“Government of Jammu and Kashmir
Home Department
Civil Secretariat, J&K.**

Notification

Jammu, the 17th of February, 2025

S.O 40. In exercise of powers conferred under the sub-section (2) of section 330 of the Bharatiya Nagarik Suaksha Sanhita, 2023 read with S.O No. 2506 (E) dated 28.06.2024 of the Ministry of Home Affairs, Government of India, the Government of Jammu and Kashmir hereby declares that the list of documents as mentioned in the sub section (1) of Section 330 of the Act ibid. shall be prepared in the manner and format as under:

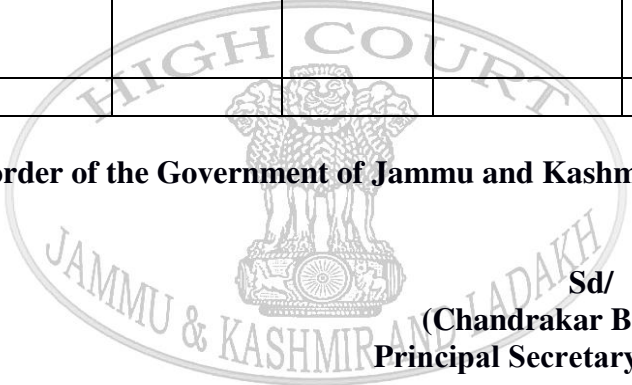
“FORM OF LIST OF DOCUMENTS’

In the court of _____District _____case FIR No. _____ of 20_____under section _____Police Station_____vs. _____(Accused)

List of documents produced on behalf of _____ on DD/MM/YYYY.

Sr. No.	Description of the document	Date of document, if any	Action taken on the document			
			Whether admitted by the defence/ Prosecution.	if admitted, the exhibit mark put on the document	Whether disputed by the defence/ prosecution	if Disputed, whether intended to be proved under normal procedure of Examination/ cross-examination of witness

By order of the Government of Jammu and Kashmir



Sd/
(Chandrakar Bharti) IAS
Principal Secretary to the Govt.”

17. With the issuance of the afore-quoted notification by the Government in terms of sub section (2) of Section 330 of the BNSS, there cannot be any doubt to the fact that list of documents contemplated under section 294 (1) of CrPC is different from the list of documents annexed with the charge sheet/ complaint. Since the prescription of a form relating to list of documents to be prepared by the prosecution and the accused for the purpose of admission/denial is a procedural aspect, therefore, the Form of list of documents notified by the Government

vide notification dated 17.02.2025 (supra) is required to be adhered to by the trial courts even while invoking the provisions of Section 294 of the CrPC, which is in pari materia with Section 330 of BNSS. Needless to mention that the said provision has been enacted with a view that the prosecution as well as the defence evidence may be shortened and those documents that are admitted by the parties are not required to be proved by calling the witnesses. It is, however, made clear that intention of the legislature is not to compel or bind the accused to admit or deny the genuineness of the documents produced by the prosecution, but the said provision only provides a mechanism for admission of certain documents in evidence without their formal proof.

18. In view of the above, the instant petition is **disposed** of with a request to the Special Judge to call upon the complainant to prepare a list of documents sought to be admitted/denied by the petitioners/accused in the format notified vide S.O 40 dated 17.02.2025 and exchange the same with the petitioners/accused before calling upon them to admit/deny the said documents, in terms of the provisions contained in Section 294 of the CrPC.

(Sanjay Dhar)
Judge

Jammu
03.04.2025
Karam Chand/Secy.

Whether order is reportable: Yes/No