IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 196 of 2012
Reserved on: 25.4.2025
Date of Decision: 15.5.2025

Mohan Singh alias Babu Ram ...Petitioner

Versus

State of H.P. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes.***

For the Appellant : Mr Rajneesh Maniktala, Senior Advocate, with M/s Dinkar Bhaskar and Naresh Kumar Verma, Advocates.

For the Respondent/State : Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present petition is directed against the judgment dated 22.8.2012, passed by learned Sessions Judge, Kangra at Dharamshala (learned Appellate Court), vide which the judgment of conviction dated 31.12.2005 and order of sentence dated 17.1.2006, passed by learned Judicial Magistrate First Class, Court No.2, Dehra, District Kangra, H.P. (learned Trial Court) were

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan against the accused for the commission of offences punishable under Sections 417, 420, 465, 468 and 471 of the Indian Penal Code (IPC). It was asserted that the informant Jagjit Singh (PW8) filed an application (Ex.PW8/A) before CBI, Dharamshala asserting that his uncle Babu Ram (accused) was serving on the certificate of some other person. Babu Ram had passed the matriculation examination in the year 1959 in the third division from Government High School Rakkar. He served in Khaddar Bhandar, where he stole the certificate of Mohan Singh (PW5). Mohan Singh had passed the matriculation examination in the second division. He got the record of High School, Rakkar stolen. The police registered the FIR (Ex.PW11/A) based on the complaint. SI Purshotam (PW16) conducted the investigation. He recorded the statements of witnesses as per their version. He obtained the matriculation certificate of the accused (Ex.PW12/A), the certificates of Mohan Singh (Ex.P2 and Ex.P3), the revenue record (Ex.PW9/A and Ex.PW9/B), the certificate from the

Panchayat Secretary (Ex.PW7/A), orders (Ex.PA and Ex.PB) from DEO, Dharamshala, the report (Mark-P1) and certificates (Ex.P3 to Ex.P8). He recorded the statements of the remaining witnesses as per their version. The challan was prepared and presented before the Court after the completion of the investigation.

3. Learned Trial Court charged the accused with the commission of offences punishable under Sections 416, 417, 420, 465 and 471 of IPC to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined sixteen witnesses to prove its case. Ami Chand (PW1) is the brother of the accused. Amarjeet (PW2) handed over the record of Mohan Singh. Leela Devi (PW3) is the sister-in-law of the accused. Kulwant Singh (PW4) produced a school leaving certificate. Mohan Singh (PW5) was working in Khaddar Bhandar, whose matriculation certificate was misplaced. Rakesh (PW6) produced the record. Naresh Kumar (PW7) searched for the date of birth of Babu Ram but could not trace it. Jagjit Singh (PW8) is the informant. Pritam Chand (PW7-A) produced the record of Mohan Singh. Satinder Kumar (PW9) produced Shajra Nasab. Narinder Kumar (PW10) produced the certificate and the record from DEO Office. Satwant

Singh (PW11) signed the FIR. Surinder Kumar (PW12) produced the school leaving certificate of the accused. Nathu Ram (PW13) prepared the challan. Ram Lal Shashtri (PW14) produced the record from the school. Ramesh Bhardwaj (PW15) issued the certificate regarding the date of birth of the accused. SI Purshottam (PW16) conducted the investigation.

5. The accused in his statement recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. He stated that the name of his father was Relu Ram alias Shankar Ram. He passed his matriculation examination from Government High School, Gandhar. He admitted that he had worked with Mohan Singh in Khaddar Bhandar. He stated that he underwent teacher training at Solan in 1973 based on his educational certificates. He passed the matriculation examination in 1973. The informant and his family members are inimical with him. Litigation is pending between the parties. A false case was made due to enmity between the parties.

6. Statement of Rakesh Kumar (DW1) and Balwant Singh (DW2) were recorded in defence.

7. Learned Trial Court held that the date of birth of Mohan Singh was shown as 1.5.1944. He appeared in the

matriculation examination in March 1963 and secured 432 marks. The date of birth of the accused was 12.12.1942. Therefore, it was proved that Mohan Singh and the accused were two different persons born on two different dates. The accused used the certificate of Mohan Singh to secure his job. He cheated the Government by falsely representing himself to be Mohan Singh. However, there was no evidence of any forgery. Consequently, the accused was held guilty of the commission of offences punishable under Sections 416, 417 and 420 of IPC and was sentenced as under-:-

Under Section 419 of IPC	To pay a fine of ₹1,000/- and in default of payment of the fine, to undergo simple imprisonment for three months.
Under Section 417 of IPC	To pay a fine of ₹500/- and in default of payment of the fine, to undergo simple imprisonment for one month.
Under Section 420 of IPC	To undergo simple imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of the fine, to undergo simple imprisonment for three months.

8. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by learned Sessions Judge, Kangra at Dharamshala (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had used the matriculation certificate of Mohan Singh to procure the job. A departmental inquiry was also conducted against him and he was found guilty. Therefore, the judgment and order passed by the learned Trial Court were upheld and the appeal preferred by the accused was dismissed.

9. Being aggrieved from the judgment and order passed by learned Courts below, the accused has filed the present appeal asserting that the learned Courts below had not appreciated material on record in proper perspective. There was a land dispute between the informant and the accused. The informant and his relatives deposed against the petitioner/accused due to the enmity. Mohan Singh did not support the prosecution case that the accused had stolen his certificate. The Investigating Officer admitted that character verification of the candidate is conducted at the time of entry into the Government service. The prosecution did not place on record the character verification

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report. The prosecution did not prove the certificates submitted by the petitioner during his employment and the very basis of the prosecution that the accused had procured the employment by producing the certificates of Mohan Singh was not proved. It was proved on record that the name of the petitioner was recorded as Mohan Singh son of Relu Ram which falsifies the prosecution version that Mohan Singh and Babu Ram are two different persons. The affidavit (Ex.PW9/B/Mark-X) was not considered by the learned Courts below. The prosecution relied upon the photocopies of the documents without proving the original. The photocopies were not admissible in evidence. The School Leaving Certificate of Mohan Singh was proved as per law. The Investigating Officer admitted that Relu Ram had executed an affidavit before Tehsildar disclosing his name as Relu Ram alias Shankar. The name of the petitioner was recorded as Babu Ram alias Mohan Singh in the Naksha Alaf prepared during the partition proceedings. These facts falsified the prosecution case that Mohan Singh and Babu Ram are two different persons. The accused was not granted the benefit of the Probation of Offenders Act, therefore, it was prayed that the present petition be allowed

and the judgments and order passed by the learned Trial Court be set aside.

10. I have heard Mr. Rajneesh Maniktala, learned Senior Counsel, assisted by M/s Dinkar Bhaskar and Naresh Kumar Verma, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

11. Mr. Rajneesh Maniktala, learned Senior Counsel for the petitioner/accused submitted that the prosecution did not produce the record of the employment of the accused to establish the prosecution case that he had produced the certificates of Mohan Singh. The record of character verification was also not produced to show that the accused had used the certificate of Mohan Singh. The original record was not produced and the prosecution relied upon the photocopies. No reason to withhold the original record was given. Reliance could not have been placed upon the photocopies. The benefit of the Probation of Offenders Act was not granted to the accused. Therefore, he prayed that the present petition be allowed and the judgments and order passed by learned Courts below be set aside. He relied upon the judgment of ***Taomaso Bruno Vs. State of U.P. (2015) 7 SCC***

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178, Ravinder Singh Gorkhi Vs. State of U.P. (2006) 5 SCC 584, Yashoda Vs. K. Shobha Rani (2007) 5 SCC 730, H. Siddiqui Vs. A. Ramalingam (2011) 4 SCC 240 and ***N.M. Parthasarathy Vs. State by SPE (1992) 2 SCC 198*** in support of his submission.

12. Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent-State submitted that no objection was raised at the time of exhibition of the photocopies and the objections that original documents were not produced cannot be taken for the first time during the revision. It was duly proved on record that the petitioner/accused had submitted the certificates of Mohan Singh and secured the jobs based on these certificates. The plea taken by him that he was known as Babu Ram alias Mohan Singh was not supported by the relevant record. There was a difference in the dates of birth of the petitioner and Mohan Singh and the learned Courts below had rightly held that Mohan Singh and Babu Ram were two different persons. The petitioner impersonated Mohan Singh and secured the job. Hence he was rightly held guilty by the learned Trial Court and the conviction and sentence were rightly affirmed by the learned Appellate Court. The petitioner had committed the offence after due deliberation. He secured public employment by impersonation.

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Such an offence is serious and a deterrent sentence has to be imposed. The benefit of the Probation of Offenders Act cannot be granted in such offences. Therefore, he prayed that the present petition be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

14. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court can only rectify the patent defect, errors of jurisdiction or the law. The revisional Court cannot dwell at length upon the facts and evidence to reverse those findings. It was observed on page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on

the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

15. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

> "**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularity of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:
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> > "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative.

> Each case would have to be determined on its own merits.
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> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under the CrPC."

16. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651* that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed on page 169:

> **"12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)
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> > "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order.

> In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14*. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do

> justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."
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> **14.** In the above case, also conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753]*** the order of conviction by substituting its own view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

17. The present revision is decided as per the parameters laid down by the Hon'ble Supreme Court.

18. It was submitted that the prosecution relied upon the photocopies of the documents and these are not admissible without filing an application for secondary evidence. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752** that an objection to the admissibility of the evidence should be taken when it is tendered and not subsequently. When secondary evidence is being led and no objection is raised, the same is

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deemed to be waived and cannot be taken during the appeal. It was observed:-

> **20.** The learned counsel for the defendant-respondent has relied on *Roman Catholic Mission* v. *State of Madras* [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to the admissibility of documents in evidence may be classified into two classes: (*i*) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (*ii*) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not

serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to a waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.

21. The Privy Council in ***Padman v. Hanwanta [AIR 1915 PC 111: 19 CWN 929]*** did not permit the appellant to take objection to the admissibility of a registered copy of a Will in appeal for the first time. It was held that this objection should have been taken in the trial court. It was observed: (AIR p. 112)

> "The defendants have now appealed to His Majesty-in-Council, and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the Will of 1898 was admitted in evidence without sufficient foundation being laid for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such an objection been made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied.

> Their Lordships think that there is no substance in the present contention."

22. Similar is the view expressed by this Court in ***P.C. Purushothama Reddiar v. S. Perumal [(1972) 1 SCC 9 : (1972) 2 SCR 646]***. In this case, the police reports were admitted in evidence without any objection and the objection was sought to be taken in appeal regarding the admissibility of the reports. Rejecting the contention it was observed: (SCC p. 15, para 19)

> "*19*. Before leaving this case it is necessary to refer to one of the contentions taken by Mr Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility — see *Bhagat Ram* v. *Khetu Ram* [AIR 1929 PC 110] ."

19. This judgment was followed in ***Dayamathi Bai v. K.M. Shaffi*, (2004) 7 SCC 107**, wherein it was observed:-

> "**13.** We do not find merit in this civil appeal. In the present case, the objection was not that the certified copy of Ext. P-1 is in itself inadmissible but the mode of proof was irregular and insufficient. The objection as to the mode of proof falls within procedural law. Therefore, such objections could be waived. They have to be taken before the document is marked as an exhibit and admitted to the record (see Order 13 Rule 3 of the Code of Civil Procedure). This aspect has been brought out succinctly in the judgment of this Court in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple [(2003) 8 SCC 752]*** to which one of us, Bhan, J., was a party vide para 20 : (SCC p. 764)
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> > "*20.* The learned counsel for the defendant-respondent has relied on *Roman Catholic*

Mission v. *State of Madras* [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to the admissibility of documents in evidence may be classified into two classes : (*i*) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (*ii*) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a

> prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to a waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."
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> (emphasis in original)

14. To the same effect is the judgment of the Privy Council in the case of ***Gopal Das v. Thakurji [AIR 1943 PC 83: 47 CWN 607]*** in which it has been held that when the objection to the mode of proof is not taken, the party cannot lie by until the case comes before a court of appeal and then complain for the first time of the mode of proof. When the objection to be taken is not that the document is in itself inadmissible but that the mode of proof was irregular, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. Similarly, in *Sarkar on Evidence*, 15th Edn., p. 1084, it has been stated that where copies of the documents are admitted without objection in the trial court, no objection to their admissibility can be taken afterwards in the court of appeal. When a party gives in evidence a certified copy, without proving the circumstances entitling him to give secondary evidence,

the objection must be taken at the time of admission and such objection will not be allowed at a later stage.

15. In the present case, when the plaintiff submitted a certified copy of the sale deed (Ext. P-1) in evidence and when the sale deed was taken on record and marked as an exhibit, the appellant did not raise any objection. Even execution of Ext. P-2 was not challenged. In the circumstances, it was not open to the appellant to object to the mode of proof before the lower appellate court. If the objection had been taken at the trial stage, the plaintiff could have met it by calling for the original sale deed which was on record in collateral proceedings. But as there was no objection from the appellant, the sale deed dated 14-11-1944 was marked as Ext. P-1 and it was admitted to the record without objection."

20. A similar view was taken in ***Lachhmi Narain Singh v. Sarjug Singh*, *(2022) 13 SCC 746***, wherein it was observed:-

"**21.** In such a scenario, where no protest was registered by the probate applicant against the production of a certified copy of the cancellation deed, he cannot later be allowed to take up the plea of non-production of the original cancellation deed in the course of the appellate proceeding. As already noted, the main contention of probate applicants was that the mode of proof of cancellation deed was inadequate. However, such was not the stand of the probate applicants before the trial court. The objection as to the admissibility of a registered document must be raised at the earliest stage before the trial court and the objection could not have been taken in appeal, for the first time. On this, we may draw support from observations made by Ameer Ali, J. in ***Padman v. Hanwanta [Padman v. Hanwanta, 1915 SCC OnLine PC 21]*** wherein the following was set out by the Privy Council : (SCC OnLine PC)

> "The defendants have now appealed to His Majesty-in-Council, and the case has been argued on their

> behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being laid for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such an objection been made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their Lordships think that there is no substance in the present contention."

22. A similar view was taken by George Rankin, J. in the decision of Privy Council in ***Gopal Das v. Sri Thakurji [Gopal Das v. Sri Thakurji, 1943 SCC OnLine PC 2]*** where it was held that objection as to the mode of proof must be taken when the document is tendered and before it is marked as an exhibit. It cannot be taken in appeal. The objection as to the mode of proof should be taken before a document is admitted and marked as an exhibit. In the present case, the probate applicant never raised any objection in regard to the mode of proof of cancellation deed before the trial court, as is evident from a perusal of records and this must be held against him.

23. In support of our above conclusion, we may usefully refer to the ratio in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752]*** where Ashok Bhan, J. while dealing with the aspect of disallowing objection as to mode of proof at appellate stage as a rule of fair play to avoid prejudice to the other side, said as follows : (SCC p. 764, para 20)

> "*20. ...* In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular

> cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to a waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence."

24. This Court in the opinion written by S.H. Kapadia, J. in ***Dayamathi Bai v. K.M. Shaffi [Dayamathi Bai v. K.M. Shaffi, (2004) 7 SCC 107]*** has similarly held that objection as to the mode of proof falls within procedural law. Therefore, such objections could be waived. Moreover, the objection is to be taken before the document is marked as an exhibit and admitted in Court.

> **25.** In view of the foregoing discussion, it is clear that a plea regarding the mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such an objection was raised before the trial court, then the party concerned could have cured the mode of proof by summoning the original copy of the document. But such an opportunity may not be available or possible at a later stage. Therefore, allowing such an objection to be raised during the appellate stage would put the party (who placed a certified copy on record instead of an original copy) in jeopardy and would seriously prejudice the interests of that party. It will also be inconsistent with the rule of fair play as propounded by Ashok Bhan, J. in ***R.V.E. Venkatachala [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752]***.

21. Heavy reliance was placed upon the judgment of ***Taomaso Bruno*** (supra), however, in the cited cases, the evidence was withheld. In the present case, the evidence has not been withheld but the original has not been produced. Therefore, this judgment will not help the petitioner/accused. In ***Yashoda*** (supra) the Court had refused to accept the secondary evidence and this was held to be proper. In the present case, the Court had admitted the secondary evidence without any objection and this judgment will not help the petitioner in ***H. Siddiqui*** (supra) the learned Trial Court admitted the photocopy because the signatures were not disputed and it was held to be improper.

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22. In the present case, the documents were proved by Kulwant. No objection was raised when Ex.P2 was put on the documents. Similarly, Mohan Singh (PW5) proved the character certificate (Ex.P1), matriculation certificate (Ex.P2) and Prabhakar Certificate (Ex.P3). No objection was raised regarding their exhibition. Roshan Lal (PW6) proved the photocopies (Ex.PW6/A to Ex.PW6/D) and brought the original to the Court. Again no objection was raised to their exhibition. The objection was raised to Mark-P1 to Mark-P8 during the examination of Narinder Kumar (PW10) but no objection was raised to Ex.PA and Ex.PB. Surinder (PW12) proved the matriculation certificate (Ex.PW12/A) and the endorsement (Ex.PW12/B). No objection was raised to their exhibition. Ram Lal Shastri (PW14) proved the certificates (PW2 and Ex.PW2/4-1), which were not objected to. Ramesh Bhardwaj (PW15) proved the date of birth record (Ex.PW15/A). No objection was raised to it.

23. Therefore, it is apparent that when the witness proved the secondary evidence of the documents, no objection was raised that the secondary evidence could not be led in the absence of the original. The documents were permitted to be exhibited. Had the objection been raised, the prosecution could

have summoned the original record and by not objecting, the prosecution was led to believe that there is no infirmity in the document's exhibition. The exhibition was related to the mode of proof and not the admissibility, hence, the same is deemed to have been waived and cannot be raised in the present proceedings. Therefore, the submission that the prosecution could not have relied upon the photographs and learned Courts below erred in reading those documents and passing their decision thereon cannot be accepted.

24. Balwant Singh (DW2), the brother of the accused, admitted in his cross-examination that the date of birth of the petitioner/accused is 12.12.1942. His sister Kalawati was born in 1944. No twins were born to his parents in 1944 and only Kalawati was born. He was put forward as a witness of the truth by the accused. Therefore, his testimony that the accused was born on 12.12.1942 has to be accepted as correct against the accused. The school leaving certificate (Ex.PW12/A) shows that the date of birth of Babu Ram son of Relu Ram was 12.12.1942 and he had studied in Government School, Rakkar till 31.3.1959. The school leaving certificate of Mohan Singh (Ex. PZ) show that Mohan Singh son of Shankaru Ram was born on 1.5.1944 and

studied at Government High School Gandhar till 1963. He appeared in the matriculation examination against Roll No. 171855 and obtained 432 marks. Since the date of birth of Babu Ram and Mohan Singh were recorded differently in these two documents, therefore, these documents clearly prove that Mohan Singh and Babu Ram are two different persons. The statement of Balwant Singh (DW2) clearly shows that Mohan Singh described in (Ex. PZ) cannot be Babu Ram because Babu Ram was born on 12.12.1942, whereas Mohan Singh was born on 1.5.1944.

25. It was submitted that these documents were not properly proved because the original register from which these documents were prepared was not produced before the Court. Reliance was placed upon the statement of Kulwant Singh (PW4), who admitted in his cross-examination that he had not brought the original register to the Court. Similarly, reliance was placed upon the statement of Surinder Kumar (PW12) who stated that the certificate (Ex.PW12/A) was prepared based on the school record. This submission is not acceptable. The original record was maintained by a public official in discharge of his official duties and secondary evidence of the record is permissible. No objection was raised when the documents were being admitted,

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therefore, the submission that the documents could not have been admitted without the original is not permissible.

26. A heavy reliance was placed upon ***Ravinder Singh*** (supra), however, in the cited cases, the Hon'ble Supreme Court held that there was no evidence whether any register was maintained in the school at all. In the present case, the witnesses categorically deposed about the maintenance of the register. Therefore, the cited judgment does not apply to the present case.

27. It was submitted that the original record from the office was not proved to show that the accused had submitted the documents of Mohan Singh in the office and secured the job based on the documents. This submission is also not correct. Pritam Chand (PW7-A) stated that he conducted the inquiry regarding the allegations levelled against the petitioner/accused Babu Ram. He concluded after the inquiry that Babu Ram and Mohan Singh were two different persons and he had secured the job based on the false certificate. It was nowhere suggested to him in the cross-examination that the accused had not represented himself to be Mohan Singh. The accused also did not claim in his statement recorded under Section 313 of Cr.P.C. that he represented himself as Babu Ram, rather his case is that he

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passed matriculation from Government High School Gandhar. He is known as Mohan Singh. The name of his father is Relu Ram alias Shankar. He even signed the statement under Section 313 of Cr.P.C. as Mohan Singh. His brother Balwant Singh (DW2) stated that the name of the accused is also Mohan Singh, therefore, the accused never disputed that he claimed himself to be Mohan Singh and failure to produce the record from the Education Department is not material. As per the defence of the accused, his name is Mohan Singh and therefore, the prosecution case that the accused represented himself to be Mohan Singh was never disputed and the plea that there is no evidence that the accused represented himself to be Mohan Singh is not acceptable. Moreover, the order (Ex.PB1) shows that an inquiry was conducted about the conduct of Mohan Singh Rana and his services were terminated. Hence, it was duly proved that Mohan Singh served in the department and his services were terminated.

28. A heavy reliance was placed upon the affidavit (Ex.DW1/A) executed by Amin Chand son of Relu Ram alias Shankar to submit that Ami Chand had also described himself as son of Relu Ram alias Shankar. This document will not help the petitioner. The words “alias Shankar” have been added

subsequently by putting a stroke. These words were not signed by the executant or Executive Magistrate who attested the affidavit. Therefore, it is not known whether these words existed in the affidavit before its execution or were added subsequently. Rakesh Kumar (DW1) who proved this document stated that he had not produced the carbon copies because they were destroyed. Therefore, there is no evidence to verify whether the words were added subsequently or they existed at the time of the execution. Hence, this document cannot be used to discard the prosecution case.

29. Reliance was also placed upon the affidavit (Mark-X), however, this document was not exhibited. The thumb impression of Relu Ram was not identified. Hence, this document cannot be used to hold that Relu Ram was also known as Shankar.

30. The other evidence on record shows that Babu Ram is the son of Relu Ram and Babu Ram was not described as Babu Ram alias Mohan Singh and Relu Ram was never described as Relu Ram alias Shankar. The copy of Misal Hakiyat (Ex.PW9/A) mentions the names of Babu Ram alias Mohan Singh and Relu Ram son of Lehnu. There is a presumption of correctness regarding the entries made in Misal Hakiyat. It was laid down in

Gurmel Singh v. Prem Kaur*, *1970 PLJ 173 that the entry appearing in Section 44 of the Punjab Land Revenue Act covers the relationship of the parties *inter se*. It was observed:-

> "**6.** The word "entry" as appearing in section 44 is not limited to the fact of devolution of a right, interest or liability only, but also covers in its ambit the other facts mentioned in the record-of-rights which will include the relationship of parties as stated in such records. The presumption about the devolution or transfer of an interest in land will be meaningless without reference to the parties in whose favour such devolution of the transfer has taken place. I am, therefore, of the view that it must be presumed under section 44 that a person shown in the record of rights as having a particular relationship with another person interested in the estate does possess that relationship unless the contrary is proved. The Courts below committed no illegality in raising the presumption that the plaintiffs were daughters of Uttami as shown in the revenue records and it was for the defendants to rebut that presumption which they failed to do."

31. Therefore, this document proves that Babu Ram was son of Relu Ram and it disproves that Relu Ram was known as Shankar. The pedigree table (Ex.PW9/B) shows that Relu Ram is the son of Lehnu Ram. He has four sons, Ami Chand, Babu Ram, Balwant Singh and Bhim Singh. This document also shows that Relu Ram was only known as Relu Ram and not Relu Ram alias Shankar and Babu Ram was not known as Babu Ram alias Mohan Singh.

32. Birth certificate (Ex.PW7/A) shows that Babu Ram is described as the son of Relu Ram. Therefore, there is sufficient material on record to disprove the plea taken by the accused that Babu Ram was known as Mohan Singh and Relu Ram was known as Shankar Ram.

33. It was submitted that the verification record of the accused was not produced. However, this will not make any difference. The Court has to see the evidence placed before it and is not bound by any verification made by a third person. Therefore, the verification record, even if produced, would not have made any difference.

34. Learned Courts below had also relied upon oral testimonies to hold that the accused was known as Babu Ram and not Mohan Singh. Amin Chand (PW1) stated that the name of his father is Relu Ram. He is the eldest son. Babu Ram was serving in Khaddar Bhandar and did some wrong acts and his services were terminated. Babu Ram served in the Education Department and his services were terminated. The accused had studied at Government High School, Rakkar. He was serving in the department as Mohan Singh son of Shankar Ram. Similarly, Leela Devi (PW3) stated that she is the sister-in-law of the accused.

The accused studied at Rakkar and served in the Government School Jaisinghpur. Jagjit Singh (PW8) stated that the accused Babu Ram is his uncle. He had passed the matriculation examination from Government High School, Rakkar and obtained job by proclaiming himself to be Mohan Singh.

35. These witnesses admitted the litigation with the accused. Mere litigation will not result in the rejection of the testimonies but will put the Court on guard while appreciating their testimonies. Therefore, even if their testimonies are seen with utmost care and caution, these are duly corroborated by the documents on record to show that Mohan Singh and Babu Ram are two different persons. Therefore, there is no perversity in the finding of facts recorded by learned Courts below.

36. The accused misrepresented himself to be Mohan Singh and served as a teacher. He led the State to employ him based on the representation that he was Mohan Singh. Therefore, he was rightly held guilty of the commission of an offence punishable under Sections 416, 417 and 420 of IPC.

37. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused. This submission is not acceptable. The petitioner/accused had used

the certificate of Mohan Singh to secure the employment. In this manner, he deprived a person of getting public employment and secured the employment which he would not have done but for the deception practiced by him. Hence, the offence was heinous and learned Courts below had rightly declined the benefit of the Probation of Offenders Act to the accused. It was laid down in ***Milan Paul v. State of Tripura, 2015 SCC OnLine Tri 353*** that the benefit of the Probation of Offenders Act cannot be granted to a person convicted of cheating. It was observed:

> 11. The next argument advanced by learned counsel, Mr. Roy Barman is that the accused is a woman and this is the first offence alleged to have committed by her and so she may be given the benefit of the Probation of Offenders Act.
>
> 11.1. The trial Court as I find considered this aspect as to whether the accused should be given the benefit or not and considering the facts and circumstances of the case the trial Court refused to give the benefit of Section 4 of the Probation of the Offenders Act.
>
> 11.2. Learned counsel, Mr. Roy Barman referring to the case of ***State of U.P. v. Ranjit Singh reported in (1999) 2 SCC 617*** has submitted that in that case the accused was found guilty of committing offence punishable under Sections 466 and 468 of IPC but the trial Court allowed the benefit of U.P. First Offenders Probation Act and considering the ratio of that decision in the present case also the learned counsel prayed for giving the benefit of probation to the accused-petitioner.
>
> 11.3. In that reported case, as I find, the benefit was given considering the peculiar circumstance of that case and considering the long pendency of the case. No such cir-

> cumstances is available in the facts of the present case. Further, the trial Court giving reason refused to give the benefit of Probation of Offenders Act though the offence is not of major punishment. In the present case, as I find, the accused-petitioner though is a woman fraudulently induced the complainant to give her loan and cheated the complainant deliberately. In her defence she has abruptly taken a stand of denying of the prosecution case and nothing else. Under the circumstances, while the accused could not come out with a reasonable stand I think she should not be dealt with leniently simply because she is a woman and that there is no evidence of previous punishment. In the given facts and circumstances of the case, in my considered opinion, for the offence alleged the accused-petitioner should suffer the sentence.

38. Therefore, no interference is required with the sentence imposed by the learned Courts below.

39. No other point was urged.

40. Therefore, the judgments and order passed by learned Courts below are sustainable. Hence, the present petition fails and the same is dismissed.

41. Records be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

15th May, 2025
(Chander)