



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 23rd OF JANUARY, 2026

CRIMINAL REVISION No. 6163 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni –
Advocate for the petitioner.*

Shri Rahul Solanki – G.A. for the respondent/State.

WITH

CRIMINAL REVISION No. 5922 of 2025

ABHAY RATHORE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri Vivek Dalal with Shri Manav Beniwal – Advocate for the
petitioner.*

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 5993 of 2025

ABHAY RATHORE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

*Shri Vivek Dalal with Shri Manav Beniwal – Advocate for the
petitioner.*

Shri Rahul Solanki – G.A. for the respondent/State.



CRIMINAL REVISION No. 5994 of 2025

ABHAY RATHORE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Vivek Dalal with Shri Manav Beniwal – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 5995 of 2025

ABHAY RATHORE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Vivek Dalal with Shri Manav Beniwal – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 5997 of 2025

ABHAY RATHORE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Vivek Dalal with Shri Manav Beniwal – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6014 of 2025

MOH.SAJID

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Neeraj Kumar Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.



CRIMINAL REVISION No. 6019 of 2025

MOH.SAJID

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Neeraj Kumar Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6020 of 2025

MOH.SAJID

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Neeraj Kumar Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6056 of 2025

ABHAY RATHORE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Vivek Dalal with Shri Manav Beniwal – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6107 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.



CRIMINAL REVISION No. 6117 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6118 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6120 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6144 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni – Advocate for the petitioner.



Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 6162 of 2025

MOHD. ZAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri L.N. Soni – learned Senior Advocate with Shri Anand Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

CRIMINAL REVISION No. 108 of 2026

MOH.SAJID

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Neeraj Kumar Soni – Advocate for the petitioner.

Shri Rahul Solanki – G.A. for the respondent/State.

ORDER

Regard being had to the similitude in the controversy involved in these criminal revisions, therefore, these criminal revisions have been analogously heard and are being disposed off by this common order.

2. These revision petitions have been filed being aggrieved by the orders dated 31.10.2025 in ST No.577/2024, 29.10.2025 in ST No.579/2024, 31.10.2025 in ST No.668/2024, 31.10.2025 in ST No.621/2024, 31.10.2025 in ST No.577/2024, 29.10.2025 in ST No.578/2024, 29.10.2025 in ST No.579/2024, 30.10.2025 in ST No.576/2024, 29.10.2025 in ST No.578/2024, 29.10.2025 in ST No.547/2024, 29.10.2025 in ST No.547/2024, 30.10.2025 in ST



No.576/2024, 29.10.2025 in ST No.578/2024, 29.10.2025 in ST No.579/2024, 30.10.2025 in ST No.621/2024, 31.10.2025 in ST No.668/2024 and 29.10.2025 in ST No.547/2024 passed by the learned Judges, whereby the applications filed in each case by the prosecution under Section 63 of the Evidence Act of 1872 (hereinafter referred to as the “Act of 1872”) for leading the secondary evidence have been allowed.

FOR THE SAKE OF CONVENIENCE, FACTS OF CRR NO.6163/2025 ARE TAKEN UP

3. In brief, the facts of the case are that the petitioner facing the trial in connection with Crime No.156/2024- (S.T.No.577/2024), for the offences punishable under Sections 420, 467, 468, 471, 474, 409, 120-B, 34 of IPC at Police Station M.G. Road, District Indore.

4. Admittedly, the aforesaid trial is at the stage of recording of the evidence, and on 31/7/2025, the prosecution filed an application under Section 63 of the Act of 1872, with a prayer that the photocopies of the documents mentioned under para 3 of the application may be taken on record as secondary evidence, on the ground, that the original documents have been lost from the possession of Indore Municipal Corporation (IMC), and despite best efforts to retrieve the same, the documents could not be found. The prayer was opposed by the petitioner, however, the learned judge has allowed the same vide order dated 31.10.2025 which is under challenge before this Court.

SUBMISSIONS OF PETITIONER’S COUNSEL

5. Learned counsel for the petitioner has submitted that the learned judge of the trial Court has allowed the photocopies of the



documents which have already been lost, to be received in evidence which would seriously prejudice the case of the petitioner as the prosecution has not filed the application narrating all the relevant factors for accepting the photocopies of the documents as secondary evidence.

6. Learned counsel for the petitioner has also submitted that for filing an application u/s.63 of the Act of 1872 the two requisite conditions are; (i) that the photocopies were made from mechanical process (ii) the copies were compared with the original, but both these conditions have not been complied with, in such circumstances, the impugned orders are liable to be quashed.

7. Counsel for the petitioner has also relied upon a decision rendered by this Court in the case of *Narendra Kumar Vs. Deepchand and others* reported in *LAWS (MPH) – 2023-9-135*, where the original documents were lost and an application was filed for producing the photocopies of the same in evidence, and this Court held that such documents cannot be taken into account as secondary evidence unless the conditions enumerated under section 63(2) of the Act of 1872 are fulfilled. Thus, it is submitted that the petitions may be allowed, and the aforesaid impugned orders be set aside.

SUBMISSION OF RESPONDENT'S COUNSEL

8. Counsel for the respondent/State on the other hand has opposed the prayer and it is submitted that looking to the huge amount involved, which runs into crores of rupees, no case for interference is made out. However, it could not be denied that the



ingredients of section 63(2) of the Act of 1872 are missing from the applications filed before the trial court.

APPRECIATION AND CONCLUSION

9. Heard counsel for the parties and perused the record, and on perusal of the applications filed by the prosecution u/s.63 of the Act of 1872, it is found that the details of various documents (photocopies of the original/relevant documents) on which the prosecution seeks to rely on have been given, and it is prayed in the applications that the documents may be admitted as secondary evidence. This Court is of the considered opinion that such an application filed either by the prosecution or the defence cannot be allowed only on its asking, as the learned judge of the trial Court is required to test the application on anvil of Section 63(2) of the Act of 1872.

10. This Court in the case of **Narendra Kumar (Supra)**, in para 8 and 9 has held that:-

“8. Heard, counsel for the parties and perused the record. So far as the admissibility of a photocopy as a secondary evidence is concerned, reference may be had to the decision rendered by the co-ordinate bench of this court in the case of Dushyant Sharma (supra), the Relevant paragraphs 6, 7, 15 and 16 read as under :-

(6) Before dealing with the rival contentions of the parties, it is apt to quote the relevant provisions of the Indian Evidence Act, 1872.

Section 63(2) reads as under:

“63. Secondary evidence.— Secondary evidence means and includes—

(1) xxx xxx xxx

(2) Copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies.”

Section 63(a) and (b) (Illustrations) reads as under:

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original”



Section 65(c) reads as under:

65. Cases in which secondary evidence relating to documents may be given.— Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:

(a) XXX XXX XXX

(b) XXX XXX XXX

(7) The arguments of learned counsel for the parties are based on these provisions. Section 63(2) aforesaid makes it obligatory that the copies which are made from the original by mechanical process are required to be compared with such copies. Thus, there is no manner of doubt that two conditions are required to be fulfilled for applying Section 63(2) viz, (i) the copies are made from the original by mechanical process (ii) copies are compared with original copies.

Section 63(Illustration)(a) has no application, in my opinion, in the present matter because the said illustration deals with photographs. Illustration (b) talks about comparing a letter with the original. Thus, a conjoint reading of Section 63(2) with Section 63(Illustration)(c) makes it clear that aforesaid two conditions are necessary to bring a document within the ambit of “secondary evidence”.

Section 65(c) is an enabling provision where the original document is lost or destroyed and it is shown that the said event of loss or destroy of the document is not arising out of any default or neglect of the party concerned, the document can be taken as secondary evidence.

(15) On the basis of aforesaid analysis, in my opinion, the court below has not committed any error of law in rejecting the application of the petitioner. The necessary ingredients for treating the documents in question as secondary evidence were not available and application preferred under Section 65 of Evidence Act does not contain necessary averments and declaration on the strength of which the documents could have been treated as secondary evidence.

(16) The last submission of Shri Raghvendra Dixit, learned counsel for the petitioner is based on the definition of “proved” is of no help to him at this stage. The question of treating a document or giving a finding about “proved” would arise provided the documents in question are taken into the evidence. At this stage, this argument is premature.

(Emphasis supplied)

9. On perusal of the aforesaid decision clearly reveals that when it comes to copying the original documents, the copies must be made by original from mechanical process, and copies are compared with original and cases in which secondary evidence relating to documents must be given which also reveals that original has been destroyed or lost or cannot be produced in the reasonable time. Thus, before a document can be produced in the Court, first of all it is required to be shown that the copies are made from mechanical process, and also that they are compared with the original. Thus, this requirement is sine qua non for a document to be produced in secondary evidence, and merely pleading that the original document is lost would not suffice.”

11. It is apparent that the case at hand would be squarely covered by the order passed by this Court in the case of **Narendra Kumar**



(supra) as admittedly in the application filed under Section 63 of the Act of 1872, none of the ingredients of section 63 of the Act of 1872 have been pleaded and simply the application has been filed with all the details of the documents to be accepted as the secondary evidence, which, in the considered opinion of this Court could not have been allowed by the trial Court, and accordingly, the impugned orders dated 31.10.2025 in ST No.577/2024 (CRR No.6163/25), 29.10.2025 in ST No.579/2024 (CRR No.5922/25), 31.10.2025 in ST No.668/2024 (CRR No.5993/25), 31.10.2025 in ST No.621/2024 (CRR No.5994/25), 31.10.2025 in ST No.577/2024 (CRR No.5995/25), 29.10.2025 in ST No.578/2024 (CRR No.5997/25), 29.10.2025 in ST No.579/2024 (CRR No.6014/25), 30.10.2025 in ST No.576/2024 (CRR No.6019/25), 29.10.2025 in ST No.578/2024 (CRR No.6020/25), 29.10.2025 in ST No.547/2024 (CRR No.6056/25), 29.10.2025 in ST No.547/2024 (CRR No.6107/25), 30.10.2025 in ST No.576/2024 (CRR No.6117/25), 29.10.2025 in ST No.578/2024 (CRR No.6118/25), 29.10.2025 in ST No.579/2024 (CRR No.6120/25), 30.10.2025 in ST No.621/2024 (CRR No.6144/25), 31.10.2025 in ST No.668/2024 (CRR No.6162/25) and 29.10.2025 in ST No.547/2024 (CRR No.108/26) cannot be sustainable in the eyes of law and are hereby ***set-aside***.

12. However, liberty is reserved to the respondent to file a fresh application with all the averments as required under Section 63(2) of the Act of 1872 as observed by this Court as aforesaid, and if, such an application is filed, the same shall be decided by the trial Court in accordance with law.



13. With the aforesaid observation, all the Criminal Revisions are ***allowed*** and ***disposed of***.

14. Pending interlocutory application in each, if any, also stand disposed of.

15. Let a signed copy of this order be retained in Criminal Revision No.6163 of 2025 and photocopy of the same be kept in the record of connected cases.

(GAJENDRA SINGH)
JUDGE

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