

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8041 of 2024

Applicant :- Yashvardhan @ Saurabh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko And Another

Counsel for Applicant :- Desh Mitra Anand,Utkarsh,Utkarsh Anand

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard.

Present application has been filed for the following main relief:-

"(a) To quash the impugned charge sheet dated 07.06.2024 in FIR no. 183/2024 and cognizance & summoning order based thereupon dated 21.06.2024 along with the entire proceedings of the Case No. 23442/2024; State vs. Ashish Kashyap and others, U/s 395, 412 IPC, P.S. Sandila, distt. Hardoi, passed by pending in the Court of Additional Chief Judicial Magistrate, Court no. 2, Hardoi, contained in Annexure no. 1 & 2 in the interest of justice.

(b) To stay the operation and implementation of the impugned summoning order dated 21.06.2024, along entire proceedings of the Case No. 23442/2024; State vs. Ashish Kashyap and others, U/s 395, 412 IPC, P.S. Sandila, distt. Hardoi, passed by pending in the Court of Additional Chief Judicial Magistrate, Court no. 2, Hardoi, contained in Annexure no. 1 & 2 in the interest of justice."

For the purposes of seeking main relief, learned counsel for the applicant pressed only one ground related to Section 65-B of the Indian Evidence Act, 1872 (in short "Act of 1872"). Based upon this provision, it is stated that required certificate is not on record and despite this the Court has taken cognizance and is proceeding in the matter and as such interference of this Court is required.

Other grounds seeking main relief, quoted above, are factual and vague as would appear from the grounds indicated in the application which are extracted hereinunder:-

"(a) Because the applicant is innocent and is being harassed by the

complainant by initiating criminal case against him when it is evident from the records itself that no evidence regarding the alleged offences is available.

(b) Because from a mere perusal of the facts narrated above it is evident that prima facie no case is made out for putting the criminal law into motion.

(c) Because the learned Magistrate has not applied his mind to the facts of the case and the law applicable thereto and has passed the summoning order in a mechanical manner.

(d) Because the prosecution evidence is fraught with improvements and contradictions rendering the case against the applicant as false and frivolous.

(e) Because the case of the petitioner is squarely covered by the guidelines laid down by the Hon'ble Supreme Court in the case of State of Haryana and Ors Vs. CH. Bhajan Lal and Ors. (1992 AIR 604).

(f) Because no greater damage can be done to the reputation of a person than dragging him in a false criminal case.

(g) Because the summoning of a person in a criminal matter is a very serious matter and therefore one should not be summoned as a matter of course as it affects the liberty of a person."

The grounds based upon Section 65-B of the Act of 1872 at this stage of the proceedings has no force in so far as the main relief sought in the present application is concerned. It is in view of the observations made by the Hon'ble Apex Court in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal And Others, (2020) 7 SCC 1**. Paragraphs 52 to 59 of the said report being relevant are extracted hereinunder:-

"52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In *Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108]*, this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of

the CrPC.

53. In a recent judgment, a Division Bench of this Court in *State of Karnataka v. M.R. Hiremath* [*State of Karnataka v. M.R. Hiremath*, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , after referring to *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] held : (*M.R. Hiremath case* [*State of Karnataka v. M.R. Hiremath*, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , SCC p. 523, paras 16-17)

"16. The same view has been reiterated by a two-Judge Bench of this Court in *Union of India v. Ravindra V. Desai* [*Union of India v. Ravindra V. Desai*, (2018) 16 SCC 273 : (2020) 1 SCC (Cri) 669 : (2019) 1 SCC (L&S) 225] . The Court emphasised that non-production of a certificate under Section 65-B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in *Sonu v. State of Haryana* [*Sonu v. State of Haryana*, (2017) 8 SCC 570 : (2017) 3 SCC (Cri) 663] , in which it was held : (*Sonu case* [*Sonu v. State of Haryana*, (2017) 8 SCC 570 : (2017) 3 SCC (Cri) 663] , SCC p. 584, para 32)

'32. ... The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the court could have given the prosecution an opportunity to rectify the deficiency.'

17. Having regard to the above principle of law, the High Court [*M.R. Hiremath v. State*, 2017 SCC OnLine Kar 4970] erred in coming to the conclusion that the failure to produce a certificate under Section 65-B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise."

(emphasis in original)

54. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the accused. Section 207 CrPC, which reads ["207. Supply to the accused of copy of police report and other documents.—In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of costs, a copy of each of the following—(i) the police report;(ii) the first information report recorded under Section 154;(iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 173;(iv) the confessions and statements, if any, recorded under Section 164;(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173:Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the

reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in court."] as follows, is mandatory. Therefore, the electronic evidence i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings therefore, is to supply to the accused all documents that the prosecution seeks to rely upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for the trial before its commencement.

55. In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised its case against an accused before commencement of the trial. It is further settled law that the prosecution ought not to be allowed to fill up any lacunae during a trial. As recognised by this Court in *CBI v. R.S. Pai* [*CBI v. R.S. Pai*, (2002) 5 SCC 82 : 2002 SCC (Cri) 950] , the only exception to this general rule is if the prosecution had "mistakenly" not filed a document, the said document can be allowed to be placed on record. The Court held as follows : (SCC p. 85, para 7)

"7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court."

56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.

57. The High Court of Rajasthan in *Paras Jain v. State of Rajasthan* [*Paras Jain v. State of Rajasthan*, 2015 SCC OnLine Raj 8331] , decided a preliminary objection that was raised on the applicability of Section 65-B to the facts of the case.

57.1. The preliminary objection raised was framed as follows : (SCC OnLine Raj para 3)

"3. (i) Whether transcriptions of conversations and for that matter CDs of the same filed along with the charge-sheet are not admissible in evidence even at this stage of the proceedings as certificate as required under Section 65-B of the Evidence Act was not obtained at the time of procurement of said CDs from the service provider concerned and it was not produced along with charge-sheet in the prescribed form and such certificate cannot be filed subsequently."

57.2. After referring to Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , the High Court held : (Paras Jain case [Paras Jain v. State of Rajasthan, 2015 SCC OnLine Raj 8331] , SCC OnLine Raj paras 15-23)

"15. Although, it has been observed by the Hon'ble Supreme Court that the requisite certificate must accompany the electronic record pertaining to which a statement is sought to be given in evidence when the same is produced in evidence, but in my view it does not mean that it must be produced along with the charge-sheet and if it is not produced along with the charge-sheet, doors of the court are completely shut and it can not be produced subsequently in any circumstance. Section 65-B of the Evidence Act deals with admissibility of secondary evidence in the form of electronic record and the procedure to be followed and the requirements be fulfilled before such an evidence can be held to be admissible in evidence and not with the stage at which such a certificate is to be produced before the court. One of the principal issues arising for consideration in the above case before the Hon'ble Court was the nature and manner of admission of electronic records.

16. From the facts of the above case, it is revealed that the election of the respondent to the Legislative Assembly of the State of Kerala was challenged by the appellant Shri Anwar P.V. by way of an election petition before the High Court of Kerala and it was dismissed vide order dated 16-11-2011 by the High Court and that order was challenged by the appellant before the Hon'ble Supreme Court. It appears that the election was challenged on the ground of corrupt practices committed by the respondent and in support thereof some CDs were produced along with the election petition, but even during the course of trial certificate as required under Section 65-B of the Evidence Act was not produced and the question of admissibility of the CDs as secondary evidence in the form of electronic record in absence of requisite certificate was considered and it was held that such electronic record is not admissible in evidence in absence of the certificate. It is clear from the facts of the case that the question of stage at which such electronic record is to be produced was not before the Hon'ble Court.

17. It is to be noted that it has been clarified by the Hon'ble Court that observations made by it are in respect of secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act and if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance with the conditions in Section 65-B of the Evidence Act.

18. To consider the issue raised on behalf of the petitioners in a proper manner, I pose a question to me whether an evidence and more particularly evidence in the form of a document not produced along with the charge-sheet cannot be produced subsequently in any circumstances. My answer to the question is in negative and in my opinion such evidence can be produced subsequently also as it is well-settled legal position that the goal of a criminal trial is to discover the truth and to achieve that goal, the best possible evidence is to be brought on record.

19. Relevant portion of sub-section (1) of Section 91 CrPC provides that whenever any court considers that the production of any document is necessary or desirable for the purposes of any trial under the Code by or before such court, such court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons. Thus, a wide discretion has been conferred on the court enabling it during the course of trial to issue summons to a person in whose possession or power a document is believed to be requiring him to produce before it, if the court considers that the production of such document is necessary or desirable for the purposes of such trial. Such power can be exercised by the court at any stage of the proceedings before judgment is delivered and the court must exercise the power if the production of such document is necessary or desirable for the proper decision in the case. It cannot be disputed that such summons can also be issued to the complainant/informer/victim of the case on whose instance the FIR was registered. In my considered view, when under this provision court has been empowered to issue summons for the production of document, there can be no bar for the court to permit a document to be taken on record if it is already before it and the court finds that it is necessary for the proper disposal of the case irrespective of the fact that it was not filed along with the charge-sheet. I am of the further view that it is the duty of the court to take all steps necessary for the production of such a document before it.

20. As per Section 311 CrPC, any court may, at any stage of any trial under the Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Under this provision also wide discretion has been conferred upon the court to exercise its power and paramount consideration is just decision of the case. In my opinion, under this provision it is permissible for the court even to order production of a document before it if it is essential for the just decision of the case.

21. As per Section 173(8) CrPC carrying out a further investigation and collection of additional evidence even after filing of charge-sheet is a statutory right of the police and for that prior permission of the Magistrate is not required. If during the course of such further investigation additional evidence, either oral or documentary, is collected by the police, the same can be produced before the court in the form of supplementary charge-sheet. The prime consideration for further investigation and collection of additional evidence is to arrive at the truth and to do real and substantial justice. The material collected during further investigation cannot be rejected only because it has been filed at the stage of the trial.

22. As per Section 231 CrPC, the prosecution is entitled to produce any person as a witness even though such person is not named in the charge-sheet.

23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required under Section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured along with the electronic record and not produced in the court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable. It is also pertinent to note that certificate was produced along with the charge-sheet but it was not in a proper form but during the course of hearing of these petitioners, it has been produced on the prescribed form."

58. In Kundan Singh [Kundan Singh v. State, 2015 SCC OnLine Del 13647 : (2016) 1 DLT (Cri) 144] , a Division Bench of the Delhi High Court held : (SCC OnLine Del para 50)

"50. Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] partly overruled the earlier decision of the Supreme Court on the procedure to prove electronic record(s) in Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , holding that Section 65-B is a specific provision relating to the admissibility of electronic record(s) and, therefore, production of a certificate under Section 65-B(4) is mandatory. Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not state or hold that the said certificate cannot be produced in exercise of powers of the trial court under Section 311 CrPC or, at the appellate stage under Section 391 CrPC. Evidence Act is a procedural law and in view of the pronouncement in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] partly overruling Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , the prosecution may be entitled to invoke the aforementioned provisions, when justified and required. Of course, it is open to the court/presiding officer at that time to ascertain and verify whether the responsible officer could issue the said certificate and meet the requirements of Section 65-B."

59. Subject to the caveat laid down in paras 52 and 56 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence."

Considering the aforesaid as also that the evidence collected by the Investigating Officer (in short "I.O.") including the recovery of country made pistol(s), cartridges, Rs. 20,000/-, motor cycles from the accused persons and a gold chain from the possession of co-accused namely Anuj Pandey and the fact that all the accused persons were apprehended on 25.05.2024 and also the

contents of the FIR No. 0183 of 2024 dated 25.05.2024 lodged against Ashish Kashyap and three unknown persons, according to which, a gold chain and Rs. 47,000/- were snatched from the possession of the informant while he was in his car with his friend namely Vikas Shukla and also their statements, this Court is of the view that at this stage no interference is required in the matter on the grounds as taken by the applicant for the purposes of quashing the charge sheet as also entire criminal proceedings, which to the view of this Court, are completely vague.

Taking note of aforesaid, present application is liable to be dismissed. Accordingly, the application is ***dismissed***.

Order Date :- 10.9.2024

Vinay/-