

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 184 of 2017

Abdul Rafique Khan, S/o. Late Abdul Rasid Khan, Aged About 53 Years, R/o. Gitanjali Nagar, House No. 1/225, Raipur, Tahsil and District -Raipur, Chhattisgarh .

----Petitioner

Versus

State Of Chhattisgarh, Through : Station House Officer, Police Station -Anti Corruption Bureau, Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner : Mr. T.K. Tiwari, Advocate

For State/Respondent : Mr. M. Asha, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/03/2017

1. This petition is against the order of marking of a cassette which was produced during the examination in chief of one T.R. Kunjam on 25.01.2017, whereby the cassette has been marked as article.
2. Learned counsel for the petitioner would submit that though the order dated 25.01.2017 speaks that when the application under Section 65 B of the Evidence Act was filed, the reply was sought for by the State, instead without deciding the application, it was adjourned, whereas, the cassette was marked as article and application remains un-decided. Therefore, the trial Court may be directed to decide the application filed by the petitioner/applicant under Section 65 (B) of the Evidence Act.

3. Perused the order dated 25.01.2017 as also certified copy of the deposition sheet, which shows that at para 16 & 17 of deposition, cassette was marked as article A-12.
4. The legal position as has been held by the Supreme Court in case of **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another**¹, lays down that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence.
5. With respect to proof of the electronic evidence, the law is settled in case of **Anvar P.V. Vs. P.K. Basheer and Others**². The relevant paras are as under :-

“15. Under Section 65-B (4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement.

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act, and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

¹ (2003) 8 SCC 745

² (2014) 10 SCC 473

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc. pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.”

6. Therefore, the electronic evidence when is produced and the applicant has raised objection about the admissibility of the same, the same has to be decided in the touchstone of the law laid down supra. It is settled proposition that to prove the electronic record by virtue of Section 65 (B) of the Evidence Act by oral evidence is not admissible in absence of the compliance of Section 65 (B) of the Evidence Act.
7. Consequently, the trial Court is directed to decide the application filed under Section 65 (B) of the Evidence Act by the petitioner before recording further evidence.
8. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge