

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.6354, 6382 and 6409 of 2016

COMMON ORDER:

These three Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the petitioners challenging the Orders in I.A.Nos.237 of 2016, 483 of 2015 and 236 of 2016 in O.S.No.03 of 2012 passed by Additional District Judge, Narsapur, West Godavari District.

I.A.No.237 of 2016 is filed under Order 8 Rule 1 (A) (3) and Section 151 CPC to condone the delay in filing the mobile phone as document granting leave to file and receive the same to enable the petitioner to get it marked on his behalf and cross examine the witness.

I.A.Nos.236 of 2016 are filed under Sections 3 and 45 of Indian Evidence Act and Section 151 of CPC to grant permission to play the CD and the mobile phone to enable the witness to admit or to deny and if he denies, to send the voice of the witness along with the CD and mobile phone to FSL, for comparison and report.

I.A.No.483 of 2015 is filed under Order 8 Rule 1(A) (3) and Section 151 CPC to condone delay in filing the enclosed list document, granting leave to file them and receive the same to enable the petitioner to get them marked on his behalf.

The respondents therein denied in their counter about the right to introduce those documents as witness and in the absence of compliance of Section 65-B of the Indian Evidence Act, the documents cannot be received as evidence.

Upon hearing argument of both the counsel, the trial referring the judgment in *Shamsher Singh Verma v State of Haryana*¹, held that Section 65-B of the Evidence Act is not complied with and this petition is only to drag on the matter for some more time and dismissed the petitions.

Aggrieved by the impugned orders, these three revision petitions are filed on various grounds.

The first and foremost contention is that under Order 8 Rule 1(A) (3) proviso enable the petitioner to file the documents when they are intended to confront to the witness during cross examination and therefore, he is entitled to produce the documents to confront to the witness being examined before the trial Court, but the trial Court did not consider the same and decline to grant reliefs in all three petitions.

Whereas the counsel for the respondents contended that in the absence of any certification under Section 65-B of Indian Evidence Act, the documents are inadmissible and those documents cannot be admitted and marked in evidence as exhibits.

Admittedly, the documents produced before the Court are CDs and Cell phone and they are electronic records. An identical question came up before the Apex Court in *Anvar v. P.K.Basheer*² and the Apex Court, after elaborate consideration of various provisions of the Indian Evidence Act, overruling the earlier judgment held that a certificate under Section 65-B must be signed by a person occupying the responsible official position relates to operation of the relevant device and otherwise the documents cannot be admitted in evidence and overruled the judgment in *State (NCT of Delhi) v. Navjot*

¹ 2016(1) CCC 252

² AIR 2015 SC 180

Sandhu alias Afsan Guru³, and held in para No.22 of the judgment as follows:

“The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence Under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia special bus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in *Navjot Sandhu* case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements Under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible”.

In para No.24 of the judgment, the Apex Court held as follows:

“The situation would have been different had the Appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, 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 of the conditions in Section 65B of the Evidence Act”.

Here, no certification, as required under Section 65-B of the Evidence Act, was produced and the conversation was recorded in the Cell Phone and then uploaded to the computer and converted into CDs. Therefore, in the absence of any certification by applying the principle in *Annar P.V's* case, the documents itself is inadmissible in evidence. On these ground alone, the documents cannot be received.

³ 2005 11 SCC 600

One of the contentions of the petitioner is that in view of the proviso to Order 8 Rule 1(A) (3), the petitioner need not produce the documents when he intended to confront the document to the witness. Order 8 Rule 1(A) deals with production of documents sued upon and relied upon and Clause (3) enable the Court to grant leave subject to certain exceptions and the proviso thereto is an exception to Sub Rule 1 and Sub Rule 2 of Rule 1-A of Order 8. This exception is of no assistance to the petitioner to claim any relief in the petition.

The petitioner filed I.A.No.236 of 2016 under Section 45 of the Evidence Act, which deals with relevancy of opinion evidence. But, filing of such petition under Section 45 of the Evidence Act, is impermissible as there is a specific provision for appointment of an Advocate Commissioner for scientific investigation under Order 26 Rule 10-A CPC. However, the question of calling for expert opinion does not arise, in view of non compliance of Section 65-B of Indian Evidence Act. Hence, the CDs and Cell Phone cannot be referred to FSL. Hence, I find no ground to allow these three petitions setting aside the Orders passed by the trial Court, as the trial Court rightly dismissed the petition declining the relief claimed in the petitions.

Accordingly, these three Civil Revision Petitions are dismissed, but without costs.

As a sequel, miscellaneous petitions, if any, pending in these petitions, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 06-07-2017.
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