

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2467 OF 2017

ORDER:

The present Criminal Petition is filed by accused Nos.1 and 2 questioning the order, dated 17.01.2017 in CrI.M.P. No.1195 of 2016 in C.C. No.575 of 2015 on the file of the III Additional Junior Civil Judge - cum - XXIV Metropolitan Magistrate, Kukatpally, Cyberabad at Miyapur.

2. The petitioners herein are arraigned as accused Nos.1 and 2 in the aforesaid Calendar Case. They alleged to have committed the offences punishable under Sections 406, 420, 497 and 506 read with 34 of the Indian Penal Code, 1860.

3. Heard Sri Kaluvala Venkata Vara Prasad, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana.

4. The state represented by Station House Officer, Sanathnagar Police Station, Hyderabad in a pending Calendar Case filed an application under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act'), to send the Compact Disc to Forensic Science Laboratory to get expert's opinion on the compact disc about any tampering in the video or morphing did happen. It appears, on behalf of the State, the concerned Assistant Public Prosecutor has submitted that the compact disc was compared by the *de facto* complainant with

the recordings made by the *de facto* complainant by using the phone conversation with accused No.1, who is petitioner No.1 herein. The said request was resisted by the petitioners herein by filing counter and relying on the decision of the Hon'ble Supreme Court in **Anvar P.V. v. P.K. Basheer**¹, wherein the Hon'ble Apex Court has opined that Certificate under Section 65B of the Act is essential without which document is held to be inadmissible. The learned Magistrate having placed reliance on the decision in **Preeti Jain v. Kunal Jain and another**² rendered by a learned Single Judge of High Court of Rajasthan, held that the certificate under Section 65B is not necessary when the clipping from the pinhole camera is recorded by the husband to prove the extra marital relationship as the said clipping would fall within the privileged communication between the wife and husband, thereby allowed the petition.

5. Aggrieved over the said order, the present petition is filed requesting to quash the order or set aside the aforesaid order.

6. The learned counsel for the petitioners placed reliance on the decision in **Anvar P.V.** (Supra 1). Whereas, the learned Additional Public Prosecutor places reliance on the observations of the Hon'ble Supreme Court made in paragraph No.11 in **Harpal Singh @ Chhota; Sukhmeet Singh @ Deputy v. State of Punjab**³ thus:

¹. AIR 2015 SC 180

². 2016 SCC OnLine Raj. 2838

³. 2016 AIR (SC) 5389

“11. Qua the admissibility of the call details, it is a matter of record that though PWs 24, 25, 26 and 27 have endeavoured to prove on the basis of the printed copy of the computer generated call details kept in usual ordinary course of business and stored in a hard disc of the company server, to co-relate the calls made from and to the cell phones involved including those, amongst others recovered from the accused persons, the prosecution has failed to adduce a certificate relatable thereto as required under [Section 65B\(4\)](#) of the Act. Though the High Court, in its impugned judgment, while dwelling on this aspect, has dismissed the plea of inadmissibility of such call details by observing that all the stipulations contained under [Section 65](#) of the Act had been complied with, in the teeth of the decision of this Court in *Anvar P.V.* (supra) ordaining an inflexible adherence to the enjoinders of [Sections 65B\(2\)](#) and (4) of the Act, we are unable to sustain this finding. As apparently the prosecution has relied upon the secondary evidence in the form of printed copy of the call details, even assuming that the mandate of [Section 65B\(2\)](#) had been complied with, in absence of a certificate under [Section 65B\(4\)](#), the same has to be held inadmissible in evidence.

This Court in *Anvar P.V.* (supra) has held in no uncertain terms that the evidence relating to electronic record being a special provision, the general law on secondary evidence under [Section 63](#) read with [Section 65](#) of the Act would have to yield thereto. It has been propounded that any electric record in the form of secondary evidence cannot be admitted in evidence unless the requirements of [Section 65B](#) are satisfied. This conclusion of ours is inevitable in view of the exposition of law pertaining to [Sections 65A](#) and [65B](#) of the Act as above.

12. Be that as it may, on an overall assessment of the entire gamut of evidence, we are of the comprehension that the charges against the accused persons including the appellants stand proved beyond reasonable doubt even sans the call details. To reiterate, the gravamen of the

imputations levelled against them is that of conspiracy and abduction of the victim pursuant thereto for ransom by detaining him under the threat to cause death or hurt and thereby to compel his father to meet their demand.”

7. The Hon’ble Supreme Court was dealing with the appeal preferred by the accused challenging the conviction recorded and sentences inflicted where they became unsuccessful before the High Court even. Neither the petitioners nor the prosecution is clear whether the trial is commenced or yet to be commenced. In such an event, more particularly, the compact disc, which is filed, is not yet marked and expert opinion is now sought before it is exhibited, the question of admissibility and the compliance of strict adherence to the enjoinders of Sections 65B (2) and (4) of the Act can be taken up when the prosecution intends to place the compact disc for marking it as an exhibit during trial. In such an event, certainly, the request to send the compact disc for the opinion of the expert cannot be rejected. The objection raised by the petitioners can be examined at the time of admitting the compact disc. The Special Court can examine the same by giving an opportunity to both sides once again and decide the said issue including the requirement of Section 65B (2) and (4) of the Act at the time of admitting the compact disc through the witness concerned.

Therefore, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.

A. SHANKAR NARAYANA, J

June 5, 2017.

Mgr

