

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

Crl.R.C.No.1649 of 2016

Between:

TMS Prakash

.....Petitioner

and

The State of Andhra Pradesh rep. by its Special Public Prosecutor
for ACB

.....Respondent

Date of Judgment pronounced on : 15-03-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**Crl.R.C.No.1649 of 2016**

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.....Respondent

< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioner : Sri T. Pradyumna Kumar Reddy

^ Counsel for the respondent : Sri Udaya Bhaskar Rao, SC for ACB

? **Cases referred**

1. 2017 (1) SCC 734 (B)
2. 2014 (10) SCC 473



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CRIMINAL REVISION CASE No.1649 of 2016****ORDER:**

Heard learned counsel for the petitioner/accused officer and also the learned Standing Counsel-cum-Public Prosecutor for the ACB, State of Andhra Pradesh and perused the impugned order of the learned Special Judge dated 12.04.2016 in CrI.M.P.No.256 of 2016 in C.C.No.10 of 2011.

Undisputedly, as per the amended Section 65-B clause (4) of the Indian Evidence Act (for short 'the Act') for adducing any electronic evidence not in the form of original/primary evidence, the certificate contemplated is mandatory. The prosecution relied upon Ex.P2-CD that was exhibited through PW.1, however the compact disc is not shown as primary evidence, more particularly, from the prosecution version of the so called conversation is recorded in cell phone and the information is transmitted by retrieving the same into the compact disc. Once it is the copy to the original and for no such certificate filed to exhibit the secondary evidence covered by Ex.P2-compact disc even same is marked, it cannot be looked into much less to use by any party either by prosecution or by accused, more particularly, for the reason that there are no separate provisions in favour of the accused from the Evidence Act in relation to the adduce of evidence vide recent decision of the Apex Court in **Harpal Singh @ Chhota Vs. State of Punjab**¹ at Paras 56 & 57, no doubt same is relating to call data information, by placing

¹ 2017 (1) SCC 734 (B)

reliance upon the decision of the Apex Court in **Anvar P.V Vs. P.K.Basheer**².

However the fact remains that if certificate filed to comply the requirement contemplated by Section 65-B(4) of the Act, for the law is well settled that the certificate need not be filed with secondary evidence produced in Court, but can be later even, to validate and sanctify the secondary evidence vide **Paras Jain Vs. State of Rajasthan**³ of Rajasthan High Court and **Kundan Singh Vs. State**⁴ of Division Bench of Delhi High Court. Otherwise the Court is not powerless from the enabling provision under Section 165 of the Act, to direct the prosecution or the defacto complainant whoever in the custody of the original cell phone with memory card where the conversation is recorded to produce the said primary evidence therein, before the Court as per the law laid down in the three Judge Bench of the Apex Court in **Anvar supra** particularly in Para 24, either to play the contents if at all in the open Court or to direct any of the party to file the English contents of the translation and relevant photographs of the audio and video coverage for respective use with reference to original by confirming on displaying of the same if at all necessary.

Once that is the mode of adducing the primary evidence of the contents of the electronic record/document in favour of the prosecution or in favour of the accused by any one, there is nothing to find fault with the impugned order of the lower court, but for giving liberty to the petitioner to take any such available recourse from what is observed supra.

² 2014 (10) SCC 473

³ 2015 SCC Online 8331

⁴ 2015 SCC Online 13647

With the above observations, the revision case is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 15.03.2017

Note: L.R. copy to be marked

(B/o)

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