

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.1075 of 2018**

1. Kishore Kumar Panigrahi S/o Late Shri Lupteshwar Panigrahi, Aged About 40 Years R/o Village Aasna, Tehsil Jagdalpur, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
2. Laukhan Yadav, S/o Shri Maalu Yadav, Aged About 35 Years R/o Village Lendra, Tehsil Jagdalpur, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
3. Pawan Yadav, S/o Shri Tukaram Aged About 32 Years R/o Haatkachora, Tehsil Jagdalpur, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioners**Versus**

1. Ramchandra Rath S/o Late Pandit Govind Rath, R/o Shiv Mandir Ward, Jagdalpur, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
2. State Of Chhattisgarh, Through District Magistrate Bastar, Jagdalpur, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents**PRESENT:-**

Shri Amrito Das, counsel for petitioner/s.

Shri Vikash Shrivastava, counsel for respondent No.1.

Ms. M. Asha, Panel Lawyer for State/respondent No.2.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****31/08/2018**

1. Heard on admission.
2. The order taking cognizance of offences against the petitioners is challenged mainly on the ground that the only basis for taking cognizance is the video recordings of the alleged incident, whereas the compact disc produced before the Magistrate by the complainant in support of his preliminary submission alleging commission of offence was not admissible without

compliance of mandatory requirement of Section 65-B(4), in view of the decision of the Supreme Court in the case of **Anvar P.V. Versus P. K. Basheer and others, (2014) 10 SCC 473.**

3. Learned counsel for the respondent brings to the notice of this Court regarding subsequent judgment of the Supreme Court in the case of **Shafi Mohammad vs. State of Himachal Pradesh, (2018) 2 SCC 801.**

4. Learned counsel for the petitioners argued that the manner, in which, the Court has allowed the compact disc to be admitted in evidence at the stage of taking cognizance is not permissible in law, even if, the complainant is not the person in control of the main device, from which, the compact disc is alleged to have been prepared.

5. In the case of **Shafi Mohammad** (supra), the Supreme Court held, as under :-

(29) “The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Section 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(4) is not always mandatory.

(30) Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.”

6. In view of above, particularly when the Court has only taking cognizance on the basis of preliminary statement and at this stage, the complainant is yet to

lead evidence as also on the basis of prima facie material, I am not inclined to interfere with the order. It is, however, made clear that at the stage when the complainant leads electronic evidence, it would be open for the petitioners to raise an issue of admissibility of secondary evidence, in view of the decision in the case of **Anwar** (supra) as explained and clarified in the subsequent decision in the case of **Shafi Mohammad** (supra).

7. In the result, the petition is dismissed.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E