



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 50 OF 2024**

SANDEEP JUGALKISHOR KARWA

VERSUS

ABHIJEET G. BOTHARA

...

Mr. Rahul K. Kasat, Advocate for the Petitioner

Mr. Rahul P. Mote, Advocate for Respondents

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 22<sup>nd</sup> MARCH, 2024**

**PER COURT :**

1. This petition filed under Article 227 of the Constitution of India takes exception to the order dated 20/10/2023, passed by learned Additional Chief Judicial Magistrate, Court - 10, Aurangabad, below Exhibit-45 in S.C.C. No.9641/2018.

2. Petitioner has filed S.C.C. No.9641/2018 under Section 138 of the Negotiable Instruments Act, against respondent. In the trial when evidence of petitioner was being recorded, he filed additional affidavit of evidence to bring on record E-mails sent by respondent accused through his Email-id 'abhijeetbothare@gmail.com' on the Email-id of petitioner i.e. 'sandeep\_karwa@yahoo.com' on 16<sup>th</sup> March, 2018 and 18<sup>th</sup> July, 2018. Copy of said E-mail was produced before the Court. He prayed for marking it as Exhibit. Along with additional evidence affidavit, certificate under Section 65B of the Indian Evidence Act, is also filed

by petitioner. Respondent accused objected to the said application being not maintainable on the ground that applicant has not deposed contents of the certificate during evidence and the certificate is filed at later stage. He therefore, submitted that said certificate can be considered at subsequent stage of evidence. By the impugned order trial Court has held that, *"in case of printouts of e-mail the server of the company providing internet facility (service provider) is a device involved in the production of electronic record. Likewise, responsible official of the service providing company is the only person who is in operation of the server. In such circumstances, the printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signature of the certifying officer or otherwise speak of the facts based on his personal knowledge. However, the certificate produced by complainant is signed by himself and not by the responsible official of the service providing company. Therefore, the printouts of email cannot be marked with exhibits as prayed by complainant."* and hence, rejected the application.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the documents placed on record.

4. Learned advocate for petitioner by placing reliance on **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal**

***And Others, (2020) 7 SCC 1***, submits that certificate can be produced at a later stage and since petitioner/complainant is operating his Email account on which he has received Email from respondent accused, he is entitled to give certificate under Section 65B of the Indian Evidence Act, of the printout of the Email. Therefore, learned trial Court has erred in observing that official of service providing company needs to issue the certificate and he is required to be examined in support of the said certificate.

5. Learned advocate for respondent accused, on the other hand, supported the impugned order. He submits that certificate produced by petitioner under Section 65B before the trial Court is not in conformity with Section 65B. Necessary statements which are required to be made in the certificate under Section 65B, are absent and therefore, trial Court is justified in rejecting application and refusing to accept the said prayer.

6. This Court is of the opinion that since petitioner is operating his email-id and has received E-mail from respondent and print out of the said E-mail is taken out by petitioner from his own computer, petitioner is entitled to give certificate under Section 65B of the Indian Evidence Act. Observation of the trial Court that service providing company's official is proper person to issue certificate under Section 65B is unacceptable in the facts of the present case.

7. There appears merit in the contention of respondent that certificate issued by petitioner under Section 65B is not in conformity with the said Section. Considering these peculiar facts, this Court is of the view that opportunity needs to be given to petitioner to prove his case by leading best possible evidence.

7. In the result, writ petition is allowed. Impugned order dated 20/10/2023, passed by learned Additional Chief Judicial Magistrate, Court - 10, Aurangabad, below Exhibit-45 in S.C.C. No.9641/2018, is quashed and set aside.

8. Petitioner is permitted to produce certificate under Section 65B of the Indian Evidence Act, by making necessary compliance of the said Section.

**(NITIN B. SURYAWANSHI, J.)**