



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

927 CRIMINAL WRIT PETITION NO. 735 OF 2024

KISHOR S/O.PRABHAKAR WAGH
VERSUS
PAWAN DILIP SABU AND ANOTHER

...

Mr. Mahesh R. Sonawane, Advocate for the Petitioner
Mr. V. S. Nikalje, Advocate for Respondent No.1
Mr. V. M. Chate, APP for Respondent No.2 State

CORAM : Y. G. KHOBRAGADE, J.

Dated : 11th October, 2024

PER COURT :-

1. Heard the Mr. Mahesh Sonawane, the learned counsel for the Petitioner, Mr. V. S. Nikalje, the learned counsel for Respondent No.1 and Mr. V. M. Chate, the learned APP for the State.

2. By the present Petition, the Petitioner/original complainant, invoked jurisdiction of this Court under Article 226 and 227 of the Constitution of India, challenging the order dated 14.03.2024 passed below Exh. 46 in SCC No. 10433 of 2019 by the learned Judicial Magistrate First Class, Court No.10, Aurangabad, whereby Exh.46-an application for exhibition of postal track report is declined.

3. Needless to state that the learned Magistrate passed the impugned order by invoking the powers conferred under the provisions of the Criminal Procedure Code but there is no averment in the Petition, how the fundamental right of the Petitioner has been violated, therefore, the present Petition is not maintainable under Articles 226 and 227 of the Constitution of India and deserves to be dismissed forthwith on this count also.

4. Needless to say that the Petitioner/orig. complainant has filed a Complaint bearing SCC No. 10433 of 2019 for the offence punishable under Section 138 of the Negotiable Instrument Act alleging that a Cheque bearing No. 11975 dated 22.07.2019, issued by Respondent No.1/Accused to the tune of Rs.2,34,755/- drawn on Deogiri Nagari Sahakari Bank Ltd., Satara Parisar Branch, Aurangabad was dishonoured. The Petitioner filed evidence affidavit Exh.4C. Subsequently, on 26.06.2023, the Petitioner filed additional examination-in-chief and entered into witness box to record further examination-in-chief. During the course of further examination in chief, the learned trial court marked the Postal Track Report as an "Article". Thereafter, the complainant undergone cross examination conducted on behalf of the respondent Accused. Thereafter, on 01.02.2024, the

Petitioner/complainant filed Application Exh. 46, for grant of permission to file on record a certificate attested by him under Section 65-B of the Evidence Act alongwith postal track report and prayed for exhibition of the postal track report as proved document.

5. The complainant himself issued Certificate under Section 65-B of the Evidence Act, which reads as under:

"CERTIFICATE U/S 65-B OF INDIAN EVIDENCE ACT

That, the computer system is total core banking and it certified that,

1- The data is entered as any other operation are performed in the system only by me personally.

2- Adequate safeguards are adopted to protect and detect unauthorized change of data. The online track report of RPAD having consignment No RM 3995934151N dated: 28/08/2019 issued from Garkheda Post office. Aurangabad the said item is delivered to accused on 05/08/2019.

3- Safeguards are available to retrieve data that is lost due to System failure or any other reasons.

4- The data is transferred from the system to removable media like floppies/disks/cops or other electromagnetic data storage devices.

5- There is verification in order to ensure that data has been accurately transferred to the removable media as stated.

6- There is an identification of such data storage device.

7- There is an arrangement for the storage and custody of such System.

8- There are safeguards to prevent and detect any tampering in the system.

9- There are such systems which will vouch for the integrity and accuracy of the systems.

It is therefore, certified that, I Kishor Prabhakar Wagh, Age 46 Years, Occu: Money Lender & Business, R/o: Sai Samarth Residency Deolai Road, Aurangabad, do hereby declare that to the best of my knowledge and belief the computer system is operated properly at the material time and are provided with all the relevant data and the print out in question represents correctly and it is opportunity derived from the relevant data in respect of the following documents:

A- The online Track report of R.P.A.D. which show the item delivered on 05/08/2019 to the accused."

6. On 10.03.2024, the learned trial Court passed an impugned order below Exh. 46 and rejected the application on the ground that, the Petitioner/ complainant has downloaded the copy of postal track report online and himself issued certificate under Section 65-B of the Evidence Act. However, the said certificate under section 65-B of the Evidence Act not been issued by the Postal Authority or author of the document or the person who uses the computer or computer system regularly while filling the data, so also, the complainant is neither author nor responsible to maintain such data online, on which basis he has generated the postal track report.

7. The learned counsel for the Petitioner placed reliance on

the order dated 22.03.2024 passed by Single Bench of this Court in Criminal Writ Petition No. 50 of 2024. In cited judgment, the issue was about generation of message which was received on Email of the person, who downloaded and issued certificate under Section 65-B of the Evidence Act. Therefore, the cited order is not at all applicable to the facts and circumstances of the present case.

8. Nonetheless, the Postal Track Report which has been generated from the website of the Postal Authority by the complainant does not fall within the ambit of primary evidence under Section 62 of the Evidence Act. Further, the Postal Track Report which is generated by the complainant from the website of the Postal authority also does not fall within the ambit of secondary evidence as contemplated under Section 63 of the Evidence Act. Therefore, I do not find any illegality or perversity while passing the impugned order.

9. The Writ Petition is dismissed.

(Y. G. KHOBRAGADE, J.)