



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1658 OF 2024

SUNIL RAMESH RUPWATE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Satyajeet Sanjay Dixit, Advocate for the Petitioner
Mr. V. M. Chate, APP for the Respondent No.1 – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.10.2024

PER COURT :-

1. Heard Mr. Dixit, the learned Advocate for the Petitioner and Mr. V. M. Chate, the learned APP for Respondent No.1.

2. The Petitioner invoked jurisdiction of this Court under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure and put forth prayer clauses (A) and (B), as under:-

“(A) By issuing appropriate writ or order or direction, the record and proceeding of Criminal Misc. Application No.21/2023 filed by respondent NO.2 and pending before Id. Additional Sessions Judge/District Judge-1, Sangamner,

Dist. Ahmednagar be called for and after examining the legality, validity and propriety thereof Criminal Misc. Application No.21/2023 filed by respondent NO.2 and pending before Ld. Additional Sessions Judge/District Judge-1, Sangamner, Dist. Ahmednagar be quashed and set-aside.

(B) By issuing appropriate writ or order or direction, the record and proceeding of impugned order dated 24.05.2024 passed below Exhibit-17 filed in Criminal Misc. Application No.21/2023 by Ld. Additional Sessions Judge/District Judge-1, Sangamner, Dist. Ahmednagar be called for and after examining the legality, validity and propriety thereof impugned order dated 24.05.2024 passed below Exhibit-17 filed in Criminal Misc. Application No.21/2023 by Ld. Additional Sessions Judge/District Sangamner, Dist. Ahmednagar be quashed and set-aside and reject the application filed by respondent NO.2 at Exhibit-17.”

3. It is a matter of record that, on 16.09.2018 Crime No.309 of 2018 registered with Sangamner City Police Station, against the petitioner for the offences punishable under Sections 376, 323, 504, 506 of the Indian Penal Code. On 11.03.2019, the Petitioner came to be released on bail on certain terms and conditions. However, subsequently, the Respondent No.2/victim filed an application for cancellation of bail on grounds set out therein. On 05.04.2021, the learned Additional Sessions Judge, Sangamner, passed the impugned orders below Exhs. 24, 30, 48 and 84, in Sessions Case No. 54 of 2018 and cancelled bail which was granted to the present Petitioner.

4. Being aggrieved by said order, the Petitioner was approached before this Court in Criminal Application No.962 of 2021. On 16.09.2021, this Court (Coram: V. G. Bisht, J.) passed an order and set aside the order dated 04.05.2021 passed by the learned Additional Sessions Judge below Exhs.24, 30, 48 and 84 and order of grant of bail came to be confirmed. Being aggrieved by said order, the present Respondent No.2/victim filed Special Leave Appeal (Criminal) No.8555 of 2021 before the Hon'ble Supreme Court, however, said S.L.P. came to be dismissed on 15.11.2021.

5. Thereafter, the present Respondent No.2 / victim, again filed Criminal Application No.21 of 2023 for cancellation of bail granted to the present Petitioner. The Respondent no. 2 / victim alleged that, under the false promise of marriage and by blackmailing as well under life threat, the Petitioner/accused committed sexual intercourse with her. So also, in past, she entered into a compromise with the petitioner under the pressure of the relatives but the Petitioner/accused did not keep his promise. So also, the petitioner/accused was released on bail on conditions that, he would not indulge in crime and he would not issue threat to the witness and informant, but the accused pressuring the informant as well other

witness. Therefore, the Respondent/victim prayed for cancellation bail granted to the petitioner, which is pending before the trial Court. The petitioner/ accused yet not filed reply to the said application. Since, the Petitioner/accused having right to resist said application by filing reply and no order has been passed by the learned trial Court, therefore, present petition is pre-mature and no cause of action arose to file this petition.

6. It is well settled principle of law that, the victim having every right to file an application for cancellation of bail of the accused, in case if it is found about breach of bail conditions. The powers confirmed upon this Court under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, cannot be invoked for quashing of application for cancellation of bail. Therefore, the present Petition in respect of prayer clause (A) cannot be entertained and it is liable to be dismissed.

7. In regard to the prayer clause (B), the Petitioner prayed for quashment of order dated 24.05.2024, passed by the learned Sessions Judge, Sangamner, below Exh.17 in Criminal M. A. No.21 of

2023, whereby, the electronic document i.e. pen-drive, which has been produced by Respondent No.2 victim, referred for chemical examination to testify genuineness and truthfulness of the contents of the electronic documents.

8. The learned Counsel for the Petitioner canvassed that as per the provisions of Section 54(B), unless the genuineness of the electronic document in question is the subject of challenge and the necessary certificate under Section 65-B, is produced. The said cannot be referred to the chemical examination.

9. In support of this submission, the learned Counsel for the Petitioner placed reliance on the case of **Anvar P V. Vs. P K. Basheer, (2014) 10 SCC 473**, wherein the Hon'ble Apex Court has held thus:

“Electronic record produced for the inspection of the court is documentary evidence under Section 3 of the Evidence Act, 1872 (the Evidence Act). Any documentary evidence by way of an electronic record under the Evidence Act, in view of Section 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B of the Evidence Act. The purpose of these provisions is to sanctify secondary evidence in electronic form generated by a computer. The very admissibility of electronic record which is called as “computer output”, depends on the satisfaction of the four conditions prescribed under Section 65-3(2) of the Evidence Act.”

10. Per contra, the learned APP canvassed that the present Petitioner charge-sheeted for the offence punishable under Sections 376, 323, 504, 506 of the Indian Penal Code and during the course of trial, the victim, Respondent No.2 produced audio recording of the phone calls between her and the Petitioner/accused, which was recorded in victim's mobile and transferred the data to the electronic gadget Pen-drive. Therefore, truthfulness of contents of electronic document i.e. pen-drive required to be examined by the forensic expert. The prosecution filed Exh.70 an application and prayed for referring the electronic document pen-drive for examination to the forensic expert.

11. Needless to say that, the learned Sessions Court considered the scope of Section 65-B of the Evidence Act as well as electronic document and referred it for chemical examination, which does not appear illegal, bad in law and no interference is called for at the hands of this Court. Therefore, prayed for dismissal of this Petition.

12. In support of this submissions, the learned APP places reliance on the case of *Arjun Panditrao Khotkar Vs. Kailash Kushanrao*

Gorantyal and others, AIR 2020 SC 4908. The Hon'ble Supreme Court held in para 58 and 59 of the said judgment, read thus:-

“58. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a ‘responsible official position’ in relation to the operation of the relevant device, as also the person who may otherwise be in the ‘management of relevant activities’ spoken of in Sub-section (4) of Section 65B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief” (Obviously, the word “and” between knowledge and belief in Section 65B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time).

59. We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly “clarified” in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.”

13. Needless to say that in the case of **Anvar** (supra), the Hon'ble Supreme Court framed the guidelines that if the witness of

the prosecution desires to give statement pertaining to any proceeding to the electronic record, there must be a certificate which should identify the electronic record containing the statement; the said certificate is required to be produced as prescribed, said certificate must furnish the particular of the device involved in the production and said certificate must be signed by a person occupying a reasonable official position in relating to the operation of the relevant device.

14. In the case in hand, the Respondent/victim, specifically made a statement that she recorded phone calls between her and the accused in her mobile. She transferred the data from her mobile to the “Pen-Drive” and produced before the trial Court. So also, the Respondent No.2 issued a certificate under Section 65-B of the Evidence Act. Therefore, there appears to be compliance of Section 65-B. Therefore, to test genuineness of the electronic record under the impugned order, the learned trial Court referred for examination to the expert as per Section 45A of the Evidence Act. Therefore, to my mind, the right of the present Petitioner/accused not been prejudiced. However, the accused will have every right to cross examine the witness in respect of issuance of certificate under Section

65-B as well as the genuineness of the contents of electronic document i.e. pen-drive. Therefore, I do not find any substance in the present Petition. Therefore, **the present Writ Petition is dismissed.**

[Y. G. KHOBRADE, J.]

SMS