



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.93 OF 2024
Ganesh S/o Jaysingh Bachire Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.U. Bhuyar, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant/State.

CORAM : M.W. CHANDWANI, J.
DATE : FEBRUARY 9, 2024.

. Heard. **Admit.**

2. The application challenges the order dated 05.10.2022 below Exhibit-115 by the learned Additional Sessions Judge, Buldhana in Sessions Case No.48/2018, thereby allowing the application of Anil Hande (PW14) to produce certificate as per section 65B of the Indian Evidence Act (for short, 'the said Act').

The facts, which gives rise to the present application can be culled out as under:

3. The applicant is being tried for the offence punishable under section 302 read with section 201 of the Indian Penal Code (for short, 'IPC') by the learned Additional Sessions Judge, Buldhana arising out of the Crime No.158/2018 registered with Police Station, Deulgaonraja. The prosecution produced a pendrive containing CCTV footage and certificate issued under section 65B of the said Act by the police constable-Vijay Kite. The said application came to

be allowed by the learned Additional Sessions Judge by its order dated 05.12.2022. The applicant filed an application below Exh.109 for discarding the certificate filed by the prosecution as per section 65B of the said Act. The said application was allowed by the learned Additional Sessions Judge by observing that the certificate as per section 65B of the said Act was issued by the police constable Vijay Kite, who is not competent to issue such certificate and held that such certificate is not admissible. Anil Hande (PW14), the owner of the bar where the alleged CCTV cameras were installed, was being examined by the prosecution. In his evidence, the said witness produced the certificate as per section 65B of the said Act alongwith application for permission to produce document. The said application came to be allowed by holding that Anil Hande (PW14) is competent to issue certificate therefore said certificate was taken on record. Feeling aggrieved with the said order of learned Additional Sessions Judge, the present application came to be filed.

4. Heard learned counsel for the applicant as well as learned APP for non-applicant/State. I have gone through the impugned order.

5. It is contention of the learned counsel for the applicant that the Court had already discarded one certificate issued by the police constable Vijay Kite therefore, the second certificate prepared by Anil Hande (PW14) should not have been taken on record that too after more than four years of the alleged incident. According to the

learned counsel for the applicant, when first certificate issued by the police constable was discarded by the Court, the Court should not have allowed the production of such certificate issued at the hands of Anil Hande (PW14). According to him, a serious prejudice will be caused to the accused when he has already opened his defence.

6. Per contra, learned APP for the non-applicant/State vehemently submitted that the certificate under section 65B can be produced at any time during the trial. He submits that the prosecution has not come up with a new case. The case of prosecution is already there in the charge-sheet. The pendrive was taken on record by the learned Additional Sessions Judge by its order below Exhibit-85 dated 05.12.2022. According to him, the said order has not been challenged. Since, the earlier certificate issued as per section 65B of the said Act was defective, a new certificate prepared by the competent person was produced by the said witness and it has been rightly taken on record by the learned Additional Sessions Judge. He supports the order impugned and sought rejection of the application.

7. It is case of the prosecution that quarrel took place between the deceased and the accused in wine bar which is recorded in CCTV footage. The said incident is connected to murder of the deceased. Initially, the police constable Vijay Kate, who was not competent to produce the certificate which came to be discarded, later on Anil Hande, who is competent witness, issued the certificate under section 65B of the said Act.

8. The decision of Delhi High Court in the case of ***Kundan Singh Vs. State***¹ has bearing on the issue, wherein it was observed in para 50 as under:

“50. Anwar PV. (supra) partly overruled the earlier decision of the Supreme Court on the procedure to prove electronic record(s) in Navjot Sandhu (supra), holding that Section 65B is a specific provision relating to the admissibility of electronic record(s) and, therefore, production of a certificate under Section 65B(4) is mandatory. Anwar PV. (supra) does not state or hold that the said certificate cannot be produced in exercise of powers of the trial court under Section 311 Cr.PC or, at the appellate stage under Section 391 Cr.PC. Evidence Act is a procedural law and in view of the pronouncement in Anwar PV. (supra) partly overruling Navjot Sandhu (supra), the prosecution may be entitled to invoke the aforementioned provisions, when justified and required. Of course, it is open to the court/presiding officer at that time to ascertain and verify whether the responsible officer could issue the said certificate and meet the requirements of Section 65B.”

9. In another decision of Madras High Court in the case of ***K. Ramajyam v. Inspector of Police***², the Madras High Court in para 23 has observed as under:

“23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the Court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required under Section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured alongwith the electronic record and not produced in the Court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable. It is also pertinent to note that certificate was produced alongwith the charge-sheet but it was not in a proper form but during the course of hearing of these petitioners, it has been produced on the prescribed form.”

¹ 2015 SCC OnLine Del 13647

² (2016) Cri. LJ 1542

10. The decision of the Supreme Court in the case of ***Arun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others***¹ endorse the observation made in the decision *Kundan Sing* (supra) and *K. Ramajyam* (supra) and in para 59 has held as under:

“59. Subject to the caveat laid down in paragraphs 50 and 54 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.”

11. In another decision of ***State of Karnataka Vs. T. Naseer @ Nasir @ Thandiantavinda Naseer @ Umarhazi @ Hazi & Ors.***² the Supreme Court in para 15 held as under:

“15. Fair trial in a criminal case does not mean that it should be fair to one of the parties. Rather, the object is that no guilty should go scot-free and no innocent should be punished. A certificate under Section 65-B of the Act, which is sought to be produced by the prosecution is not an evidence which has been created now. It is meeting the requirement of law to prove a report on record. By permitting the prosecution to produce the certificate under Section 65B of the Act at this stage will not result in any irreversible prejudice to the accused. The accused will have full opportunity to rebut the evidence led by the prosecution. This is the purpose for which Section 311 of the Cr.P.C. is there. The object of the Code is to arrive at truth. However, the power under Section 311 of the Cr.P.C. can be exercised to subserve the cause of justice and public interest. In the case in hand, this exercise of power is required to uphold the truth, as no prejudice as such is going to be caused to the accused.”

¹ (2020) 7 SCC 1

² 2023 INSC 988

12. Thus, in view of the law enunciated in the aforesaid decisions, it is settled that certificate as required under section 65B of the said Act which could not be produced in the Court with the charge-sheet can be produced at any stage of the trial because the certificate issued under section 65B of the said Act is sought to be produced by the prosecution is not evidence that is created after the charge-sheet has been filed. It is to be noted that the applicant has challenged the production of the pendrive. Here only objection to filing of certificate has been raised. In wake of discarding the earlier certificate prepared by the police constable – Vijay Kate, subsequent certificate as per Section 65B of the said Act issued by the person competent has been filed. No prejudice will be caused to the applicant. In my view, it has been correctly dealt with by the learned Additional Sessions Judge by relying on the decision of Arjun Khotkar (supra). Since the Court has power under section 311 of the Cr.PC. and it can be exercised to subserve the cause of justice and public interest, no case is made out to interfere with the order of learned Additional Sessions Judge. The application is sans merit. Hence, the application stands rejected.

JUDGE

Wagh