



2024:DHC:3613



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 06.05.2024

+ **CRL.REV.P. 571/2015**

STATE (NCT) OF DELHI

..... Petitioner

Through: Mr. Hemant Mehla, APP alongwith
W/SI Neeraj Mor P.S. ACB.

Versus

KARAN SINGH YADAV & ORS.

..... Respondents

Through: Mr. Bharat Sharma, Adv. for R-1, 2 &
14.
Mr. Shailesh Kumar and Mr. Happy
Chaubey, Advs. for R-3, 4, 5, 7, 9, 10,
11, 13, 15, 17, 20, 27, 29, & 30.
Mr. Rohit Yadav, Adv. for R-3, 4, 5,
6 & 20.
Mr. Ramesh Gupta, Sr. Adv. with Mr.
Bharat Sharma, Adv. for R-5, 16, 18,
21, 23, 25, 26 & 28.
Ms. Naina Kejriwal and Mr. Y. Goel
Advs. for R-12, 19 & 22.
Mr. Ajay K. Sharma and Ms. Rupali
Jha, Advs. for R-31.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed by the State against the impugned order dated 11.03.2015 passed by the Court of learned Special Judge (PC



Act)-05, (ACB), (Central), Tis Hazari Courts, Delhi whereby all the accused persons / respondents have been discharged for the offences under Section 7 and 13(1)(d) of the PC Act punishable under Section 13(2) of the PC read with Section 120 IPC.

2. The petition has been filed seeking the following relief:

“a) summon the Trial Court record for the purpose of revision of the impugned order dated 11.03.2015 passed by Shri Naottam Kaushal, Special Judge, (PC Act)-05, (Central), Tis Hazari Courts, Delhi discharging the Respondents herein in FIR No. 12/2005 PS Anti Corruption Branch U/s 7,12,13 POC Act, 1988 read with Section 120-B IPC, and

b) direct framing of charges against the Respondents herein for offences under Section 7 & 13(1)(d) of the PC Act punishable U/s 13(2) of the PC Act read with Section 120-B IPC.”

3. The facts leading to the present petition as borne out from the chargesheet are as under:

a. In a sting operation, correspondent and camera person of *Aaj Tak* channel conducted an audio video recording of the assessing authorities and other officials of Sales Tax Department, Delhi accepting bribes in order to deal with the files.

b. The sting operation was telecast on 08.03.2005 and 09.03.2005 on *Aaj Tak* channel in a programme titled as ‘GHOOS MEHAL’. The program identified and named 10 assessing authorities.

c. After the program had been telecasted, the Commissioner (Sales Tax), Delhi approved registration of FIR and accordingly, Vigilance Officer, Sales Tax lodged the present FIR. During investigation, two CDs of the aforesaid program as were telecasted



were handed over by Dheerender Pundir, correspondent of *Aaj Tak* and the same were seized. Accordingly, the CD and voice samples of the accused persons were also sent to CFSL, Chandigarh.

d. During the telecast of the program, it had been informed that 82 officers / officials of Sales Tax Department were seen in the sting operation demanding and accepting bribe. However, the CD handed over by correspondent of news channel did not contain the details of the aforementioned 82 officials. Thereafter, the correspondent handed over a video cassette of the sting operation to the IO on 12.09.2006 and 03 CDs were prepared of the same for the purpose of investigation. The aforesaid CD's which were copies of video cassette were sent to CFSL for opinion, which opined that the video recording is not 'Camera Original'. However, the same were similar to the CD's provided earlier for which a report had been submitted on 19.02.2007.

e. It is further the case of the prosecution that the statements of Dheerender Pundir and his camera person Jalaj were recorded by the IO. The statements of other witnesses identifying the accused persons in the video cassette were also recorded and finding sufficient material against the accused persons for having accepted money which was apparently not legal remuneration, charge-sheet was filed against 33 officers/officials who could be identified in the audio-video recording. Sanction for prosecution had also been sought. Two of the accused persons namely, Hem Raj Kapoor and B.K. Dhingra expired during investigation, accordingly charge was sought to be framed against the remaining 31 accused persons.



4. One of the grounds on which the impugned order of discharge is premised is that the CD and Video Cassette seized by the IO, with respect to the Program 'Ghoose Mehal' in which the accused persons in the sting operation were seen demanding and accepting bribe, were held to be totally inadmissible in evidence for the reason that the same were not accompanied by the certificate in terms of Section 65B of the Evidence Act (in short 'the Act'). Accordingly, the contents of the CD and Video Cassette and the transcript prepared on the basis of the said audio-video recording were also held to be totally inadmissible.

5. Apart from the CD and Video Cassette, the material which was available to the learned Trial Court as part of the charge sheet, were the oral statements of Dheerender Pundir and Jalaj, correspondent and camera person, respectively, who carried out the sting operation. The IO had not recorded the statement of any person, alleging demand of bribe by the persons captured in the videography. The Trial Court examined the statement of Dheerender Pundir and observed that he has made a bald declaration that officials of Sale Tax Department were openly and without any fear accepting illegal gratification and that he had taken a shoot of such Sale Tax Officials. However, Jalaj had not made a statement to that effect. The Trial Court also noticed that Dheerender Pundir nowhere revealed the names or identities of the persons accepting bribe nor did he state that there was demand of bribe by those persons. Thus, the Trial Court observed that in the absence of any evidence regarding demand of bribe, which is a *sine qua non*, the charge under Section 7 of the PC Act is not maintainable. Similarly, in the absence of any witness specifically naming and identifying the accused persons to have demanded and accepted bribe, it was held that



even the charge under Section 13 of the PC Act cannot be framed. The relevant part of the impugned judgment reads as under:

“5.3 A perusal of the first statement of Dheerender Pundhir reveals nothing more than a bald declaration that officials of Sale Tax Department were openly and without any fear accepting illegal gratification and that he had taken a shoot of such Sale Tax officials. However, Jalaj has not even so deposed. In my opinion, the statement of Dheerender Pundhir, which is merely, declaration about acceptance of bribe by officials of Sale Tax Department can not be sufficient evidence to put them to trial for offences punishable u/sec.-7 & 13 of the PC Act. Dheerender Pundhir has nowhere revealed the names or identities of the persons accepting bribe. He has not stated that there was any demand of bribe by those persons. He has also not revealed the identities of the bribe givers. IO has not recorded the statement of any person, alleging demand of bribe by the persons captured in videography. In the absence of any evidence regarding demand of bribe, which is sine qua non, the charge u/sec.-7 of the PC Act is not maintainable. Similarly, in the absence of any witness specifically naming and identifying the accused persons to have demanded & accepted bribe, charge u/sec.-13 of the PC Act also not be framed.”

6. Mr. Hemant Mehla, the learned APP appearing on behalf of the State submits that the decision in **Anvar P.V.** (supra) on which the reliance has been placed by the learned Trial Court, has subsequently been clarified by another three Judge Bench in **Arjun Panditrao Khotkar V. Kailash Kushanrao Gorantyal**, (2020) 7 SCC 1, wherein it has been held that in the criminal trials certificate in terms of Section 65-B of the Evidence Act could be produced before the commencement of trial. He submits that in the present case the certificate in terms of Section 65-B of the Evidence Act was



filed alongwith the supplementary chargesheet before the commencement of trial, therefore, the CD and Video Cassette cannot be held be inadmissible.

7. He further submits that once the CD and Video Cassette are admissible piece of evidence, the statements of the witnesses namely, Dheerender Pundir and Jalaj, correspondent and camera person, respectively, who carried out the sting operation, have to be appreciated in the light of the said CD and Video Cassette and if so appreciated, there is sufficient evidence which would give rise to grave suspicion against the respondents for framing charge against them.

8. In this backdrop, it is urged by the learned APP that the impugned judgment be set aside and a direction may be passed directing framing of charges against the Respondents herein for offences under Section 7 & 13(1)(d) of the PC Act punishable U/s 13(2) of the PC Act read with Section 120-B IPC.

9. *Per contra*, Mr. Ramesh Gupta, Sr. Adv., as well as, the learned counsel for the respective respondents have supported the impugned judgment. It is submitted that the electronic evidence in the form of CD and video cassette are inadmissible in evidence, inasmuch as they were not accompanied by a certificate under Section 65B of the Evidence Act. Further, filing of a certificate with the supplementary chargesheet after a delay of 10 years from the date of preparation of CD / video cassette cannot be read in evidence.

10. It is further submitted that the certificate under Section 65B of the Evidence Act ought to have been prepared at the time when the CD and Video Cassette were prepared and should have been filed alongwith the original chargesheet.



11. In respect of the certificate under Section 65-B of Evidence Act, 1872 filed by the IO alongwith the supplementary chargesheet it is submitted that the said certificate is defective and not in consonance with Section 65-B of the Act, inasmuch as the same is undated and is signed by a person, who is not competent to issue the said certificate. Elaborating on the argument, it is submitted that the said certificate has been issued by Mr. Puneet Jain who is head of Legal and Audit Department and it cannot be said that he had lawful control over the use of the computer.

12. *Arguendo*, it is submitted that even if the electronic record is held to be admissible in evidence, the same only shows acceptance of money by the respondents but it does not show any demand of bribe money on part of the respondents.

13. Lastly, it is submitted that the use of sting operation for investigation and collection of evidence is unacceptable and has been deprecated by the Hon'ble High Court of Delhi in ***Court on its own Motion vs. State & Ors., 151 (2008) DLT 695 (DB)***. Further, it is submitted that in any case, no statement of any person alleging demand of bribe by the respondents have been recorded by the Investigating Officer.

14. I have heard the learned APP for the State, as well as, learned counsel for the respondents and have perused the record.

15. The moot question which arise for consideration in the present case is with regard to the admissibility of certificate furnished in terms of Section 65-B of the Indian Evidence Act, therefore, profitable would it be to reproduce the same for ready reference:

“65B. Admissibility of electronic records. — (1) Notwithstanding anything contained in this Act, any information contained in an



*electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, **if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original**, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—



- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, **a certificate doing any of the following things**, that is to say, —

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and **purporting to be signed by a person occupying a responsible official position** in relation to the operation of the relevant device or **the management of the relevant activities** (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.



(5) *For the purposes of this section, —*

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. —For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

(emphasis supplied)

16. Section 65-B of the Act provides that the secondary evidence in the form of electronic record is admissible in evidence provided the requirements mentioned therein are fulfilled. The said provision, however, does not mention the stage at which the certificate in terms thereof is to be produced before the court.

17. A three Judge Bench of the Hon’ble Supreme Court in **Anvar P.V.** (supra) had held that in case of electronic record in the form of CD, VCD, chip etc. the same shall be accompanied by the certificate in terms of Section 65-B of the Act obtained at the time of taking the document, without



which, the secondary evidence pertaining to that electronic record, is inadmissible. The relevant part of the said decision reads thus:

“16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

xxxx

xxxx

xxxx

xxxx

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B



obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.”

18. The learned trial court placed reliance on the decision of the Hon’ble Supreme Court in **Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473**, as well as, two decisions of this Court in **Jagdeo Singh v. The State, 2015 SCC OnLine Del 7229** and **Ankur Chawla v. CBI, 2014 SCC OnLine Del 6461**, to return the finding that as the CD and Video Cassette were not accompanied by a certificate under Section 65-B of the Act, therefore the same were inadmissible in evidence. The relevant part of the impugned judgment reads as under:

“4.5 In view of the legal position regarding admissibility of electronic record as notice above, I have no hesitation in holding that the CD and Video Cassette seized by the IO in the present case, with respect to the Program 'Ghoose Mehel' are totally inadmissible. The contents, thereof, or the transcript prepared on the basis of said audio-video recording is totally inadmissible evidence on which no reliance can be placed.

Thus, the legal position emerges that the chip or the memory card which originally contains the recording is primary evidence and the CD of the same would only be the secondary evidence. In the present case primary evidence is not available & secondary evidence has been rejeceed, as discussed in para no.-4 above.”

19. The decision in **Anvar P.V.** (supra) has been clarified by a subsequent three Judge Bench of the Hon’ble Supreme Court in **Arjun Panditrao Khotkar** (supra) to the effect that a certificate in terms of Section 65-B of the Indian Evidence Act can be produced at any time before the commencement of trial. It is trite that the “trial” is the stage that commences



upon charges being framed.¹ It was also observed that even at a later stage during the trial, the Court after examining the application of the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act, may allow the filing of such certificate after being satisfied that the accused is not prejudiced by want of a fair trial. The relevant part of the decision in *Arjun Panditrao Khotkar* (supra) reads as under:

“52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V., this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.”

XXXX

XXXX

XXXX

XXXX

56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus,

¹ Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92



*the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. **Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time.** If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.*

XXXX

XXXX

XXXX

XXXX

61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V., and incorrectly “clarified” in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801]. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

(emphasis supplied)

20. While making the above observations, the Hon’ble Supreme Court in **Arjun Panditrao Khotkar** (supra) noted an earlier decision of a Division Bench of the Supreme Court in State of **Karnataka v. M.R. Hiremath**,



2019(7) SCC 515, wherein the Court after taking into account the judgment of **Anvar P.V.** (supra) held as under:

“16. The same view has been reiterated by a two Judge Bench of this Court in Union of India v. Ravindra V. Desai, (2018) 16 SCC 273. The Court emphasised that non-production of a certificate under Section 65-B on an earlier occasion is a curable defect. The Court 10 relied upon the earlier decision in Sonu v. State of Haryana, (2017) 8 SCC 570 in which it was held:

‘32. ... The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the court could have given the prosecution an opportunity to rectify the deficiency.’

17. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under Section 65-B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.

(emphasis in original)

21. In **Arjun Panditrao Khotkar** (supra) the Hon’ble Supreme Court further observed as under:

“59..... 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.”

22. Likewise, in a recent decision in **State of Karnataka v. T. Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi & Ors., 2023**



SCC OnLine SC 1447, the Hon'ble Supreme Court has held that the certificate under Section 65B can be produced during the stage of evidence for the sake of fair trial in a criminal case provided no irreversible prejudice is caused thereby to the accused. The relevant paragraphs of the judgment read as under:

“12. The courts below had gone on a wrong premise to opine that there was delay of six years in producing the certificate whereas there was none. The matter was still pending when the application to resummon M. Krishna (PW-189) and produce the certificate under Section 65-B of the Act was filed under Section 311 of the Cr.P.C.

XXXX

XXXX

XXXX

XXXX

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.”

23. The position which is emerging from the above decisions is that the certificate required under Section 65-B(4) of the Act is a condition precedent



to the admissibility of evidence in the form of electronic record. Oral evidence cannot substitute the mandatory requirement of such certificate. In criminal trials certificate in terms of Section 65-B of the Act is to be filed before commencement of the trial. However, the Trial Court, in its discretion, after examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence, may permit production of such certificate at any stage of the trial if no irreversible prejudice is caused to the accused. Similar application of the accused can also be considered by the Trial Court in accordance with law.

24. In the present case the certificate under Section 65B was filed by the prosecution along with the supplementary chargesheet on 16.01.2015 i.e. before arguments on charge were heard, or in other words, before the commencement of trial. Therefore, in the light of the legal position noted above, the finding of the learned Special Judge that the CD and Video Cassette seized by the IO were inadmissible only because the same were filed without the certificate under Section 65B of the Act and the said certificate could not have been filed along the supplementary chargesheet, is not sustainable.

25. A contention has also been raised on behalf of the respondents that the certificate under Section 65B of the Act is defective, inasmuch as the same is undated and has been prepared by Sh. Puneet Jain, Head of Legal and Audit Department and was not a person who was in lawful control of the computer, suffice it to note that Section 65B does not require the certificate to be dated, only the requirements mentioned in the Section needs to be fulfilled. Further, such certificate can be given by anyone out of the several persons who occupy a “*responsible official position*” in relation to the



operation of the relevant device, as well as, the person who may be in the “*management of relevant activities*” as mention is sub-section (4) of Section 65-B of the Act. Reference in this regard may be had to paragraph 60 of the decision in **Arjun Panditrao Khotkar** (supra), which reads as under:

“60. 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 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(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 65-B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time.”.

26. Needless to add that the question whether a person who has signed the certificate in the present case is a person who occupy a “*responsible official position*” in relation to the operation of the relevant device or is a person who may be in the “*management of relevant activities*”, is a question of fact which could be left to be decided during the trial.

27. As it has been held that a certificate under Section 65B of the Act filed subsequently with the supplementary charge sheet in support of the CD and the video cassette can be taken into account, therefore, the statements of the witnesses namely, Dheerender Pundir and Jalaj, correspondent and camera person, respectively, who carried out the sting operation, have to be appreciated in the light of the evidence in the form of CD and video cassette.



28. In view of the aforesaid discussion, the impugned judgment dated 11.03.2015 is set aside and the matter is remanded back to the learned Special Court to consider the question of framing of charges afresh in accordance with law.

29. The parties are directed to appear before the learned Special Judge (PC Act)-05, (ACB), (Central), Tis Hazari Courts, Delhi on 27.05.2024.

30. The petition is disposed of in the above terms.

31. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

MAY 06, 2024

N.S. ASWAL