

**CRR No. 2364 of 2024**

In the matter of :        Madhura Roy Chowdhury ..... petitioner.

Mr. Subhamoy Bhattacharya  
Mr. Navanil De  
Mr. Rajeshwar Chakraborty  
MS. Monami Mukherjee                      ...for the petitioner.

Ms. Nilanjana Banerjee        ...for the opposite party.

Mr. Arijit Ganguly  
Ms. Sreemoyi Roy                      ...for the State.

The petitioner is aggrieved by the order dated May 20, 2024 passed by the learned Chief Judicial Magistrate, Calcutta in connection with GR Case No.2548 of 2016 turning down the prayer of the prosecution under Section 311 of the Code of Criminal Procedure for bringing into evidence the certificate under Section 65 B of the Indian Evidence Act.

Learned counsels for the petitioner and the State unanimously submit that the certificate under Section 65B of the Evidence Act is required to be brought in evidence before the learned trial Court in order to enable the learned trial Court to arrive at a just decision in the case.

Vehemently opposing the said prayer, learned counsel for the private opposite party submits that the

private opposite party shall be prejudiced if such prayer of the prosecution is allowed after commencement of trial.

It appears from the evidence of the petitioner/PW 1 recorded on 16<sup>th</sup> January, 2024 that whatsapp posts, screen shots as well as facebook account of the petitioner are part of the evidence. The certificate under Section 65B is issued by the petitioner for certifying the said electronic evidence. The prosecution has sought to recall PW 1 only for the purpose of production of the said certificate.

According to the prosecution, the said certificate was issued on 22<sup>nd</sup> December, 2016 was not tendered to PW 1 due to inadvertence.

At this juncture, it shall be pertinent to place reliance on the authority in Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & Ors. reported in (2020) 7 SCC 1 wherein the Hon'ble Supreme Court has observed that subject to the condition that the accused is not prejudiced by want of a fair trial and 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.

In the said backdrop, this Court is inclined to hold that the application made by the prosecution under Section 311 of the Code of Criminal Procedure is required

to be allowed and the certificate under Section 65B of the Evidence Act brought in evidence in the interest of justice and for fair trial.

However, if copies of such evidence have not been supplied to the opposite party under Section 207 of the Code of Criminal Procedure in the meantime, the same be supplied to him prior to producing the certificate in evidence.

The petition filed by the prosecution under Section 311 of the Code of Criminal Procedure before the learned trial Court is allowed.

The revisional application being CRR 2364 of 2024 is allowed.

The order impugned dated 20<sup>th</sup> May, 2024 passed by the learned Chief Judicial Magistrate, Calcutta in GR 2548 of 2016 be quashed/set aside.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

**( Suvra Ghosh, J. )**