



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 10 OF 2024

Shahid Patel S/o Nazir Patel,
Age - 24 years, Occ- Business,
R/o - Phulambri, Tq - Phulambri,
Dist - Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
Through Police Station
Jinsi, Tq. & Dist- Aurangabad.

2. XYZ.

... Respondents

.....

Mr. Jagdish V. Deshpande, Advocate for Applicant.

Mr. S. M. Ganachari, APP for Respondent - State.

Ms. Prajakta P. Deshmukh, Advocate for Respondent No.2 (Appointed)

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 DECEMBER 2024

PRONOUNCED ON : 07 JANUARY 2025

ORDER :

1. In instant revision, accused has taken exception to order passed by Special Judge (POCSO), on application (Exh.78) in Special Case (POCSO) No. 242 of 2022, by which prayers made by accused for summoning witnesses were turned down.

2. Revisionist is facing trial for offence punishable under sections 363, 366-A, 376(3), 376(2) and 506 of Indian Penal Code vide Special Case No. 242 of 2022 on the file of Special Judge

(POCSO), Aurangabad. After closure of evidence by prosecution and recording statement under section 313 Cr.P.C., Exh.78 was pressed into service. It is as follows:-

“The accused/applicant most humbly submits as under :

- 1) That the above matter is on today's board kept for defence evidence.*
- 2) That, the accused/applicant wants to examine the witness, who has issued the 65(B) certificate for transferring data from mobile of the accused in pen drive. He is the material witness.*
- 3) Therefore, the summons may kindly be issued to the witness by name Kathar in the interest of justice.*

HENCE IT IS PRAYED THAT

By allowing this application summons may kindly be issued to the witness and oblige.”

3. Thus, accused has after stepping in the witness box and getting certificate under section 65B exhibited, has again set up above application, but this time for summoning a witness, who alleged to have actually undertaken the process of downloading alleged conversation between victim girl and her mother. Admittedly, certificate under section 65B is already taken by the court on record. While getting it exhibited, he has deposed that he himself conducted the process of taking the conversation in pen drive. When it was so, how it is now again open for him to substitute himself from the process and subsequently give name of another person whose system was said to be used. Even if said person, namely Kathar, who is

intended to be examined as witness, is allowed to be examined, it only would be open for court only to take another 65B certificate and such further process would not be of any use to the accused because at his instance itself whatever he intended to bring has already come on record before the court. For said reasons, even this court is of the opinion that, no purpose would be served by summoning another witness to seek electronic certificate, which is already taken on record. Section 294(3) Cr.P.C. in the opinion of this court permits taking into account 65B certificate in evidence.

For above reasons, no fault can be found in the impugned order and there being no merits in the revision, the same is dismissed.

4. Fees of learned Advocate, who is appointed to represent cause of respondent no.2 is to be paid by the High Court Legal Services Sub - Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)