



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

CRIMINAL APPLICATION (APL) NO.384 OF 2025

Manish S/o Gopal Deshmukh Vs. Anup S/o Niranjana Dodiya

WITH

CRIMINAL APPLICATION (APL) NO.163 OF 2025

Manish S/o Gopal Deshmukh Vs. Anup S/o Niranjana Dodiya

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

Court's or Judge's orders.

Shri S.D. Chopde, Advocate for applicant.

Shri M.N. Ali, Advocate for non-applicant.

CORAM : M.W. CHANDWANI, J.

DATE : 08.04.2025.

1. Since the issue in the both applications is one and the same and the arguments advanced by the respective counsels are also common, therefore, both the applications are being disposed of analogously.

2. The applications challenge the orders dated 04.12.2024 passed by the learned Additional Chief Judicial Magistrate, Akola in SCC No.2677/2015 (below Exh.181) and SCC No.2676/2015 (Exh.395) respectively against the applicant allowing the objection filed by the complainant for exhibiting the videos and transcription files on record by the accused when the applicant/accused was in the witness box.

3. The non-applicant filed a complaint under Section 138 of the Negotiable Instruments Act against the applicant wherein, the non-applicant examined himself and his

witness and thereafter, closed his side. The applicant produced a pendrive containing videos of the conversation between the applicant and the non-applicant which was allowed to be taken on record and thereafter the transcription of said conversation came to be filed which was directed to be verified from the videos contained in the pendrive. Accordingly, a report was submitted by the Superintendent to the Court. Thereafter, the applicant filed affidavit of evidence in his defence and tried to get those videos and transcription exhibited whereupon, the present objection came to be raised by Exh.375 which came to be allowed. Hence, these applications.

4. Mr. Chopde, learned counsel appearing on behalf of the applicant vehemently submitted that once the production is allowed, then there was no need for the learned Magistrate to allow the objection not to exhibit the videos and transcription. According to him, there may be some discrepancy in the transcription produced by the applicant. Perhaps, some words mentioned in the transcription may not match with the conversation in the videos produced by the applicant. The objection was also allowed on the ground that certificate filed under Section 65B of the Indian Evidence Act (fort short "Evidence Act") was not in proper format. According to him, it can be corrected in wake of the decision of Supreme Court in the case of *Arun Panditrao Khotkar Vs. Kailash Kushanrao*

Gorantyal and others ¹ as well as in other cases. Reliance is also placed on the decision of this Court in the case of *Ganesh Jaysingh Bachire Vs. State of Maharashtra* ².

5. The sum and substance of argument of the learned counsel for the applicant is that the learned Magistrate ought not to have allowed the objection of the non-applicant and should have exhibited the videos and the transcription.

6. Conversely, Mr. Ali, learned counsel for the non-applicant vehemently opposed the submission made by the learned counsel for the applicant on the ground that the earlier objection was at the time of production of the video which came to be rejected by the learned Magistrate on the ground that it is a premature objection and therefore, subsequent objection raised by the non-applicant was very well dealt with by the learned Magistrate. The learned Magistrate was right in holding that the transcription is not matching with the conversation contained in the videos. According to him, no question has been put by the applicant to the non-applicant while he was in the witness box inspite of lengthy cross-examination. According to him, serious prejudice will be caused to the non-applicant if the exhibition of the video and the transcription is allowed. He submitted that without complying with the mandatory provision contained under Section 65B of the Evidence Act, electronic record which is not a primary evidence cannot be

¹ (2020) 7 SCC 1

² Criminal Application (APL) No.93/2024 (dated 09.02.2024) (Nagpur Bench)

allowed to be taken on record. Therefore, the learned Magistrate was completely right in upholding the objection raised by the non-applicant. It is also submitted that the conversations which are being tried to be brought on record is an afterthought and therefore, the applications should be rejected.

7. Needless to mention that production of 65B certificate is mandatory for relying on secondary evidence of electronic record and the certificate must satisfy the requirement contained in Section 65B of the Evidence Act. Thus, I do not find any force in the argument of the learned counsel for the applicant that the learned Magistrate should have overruled the objection despite of the fact that the certificate does not comply with the conditions provided under Section 65B. So far as his submission regarding the fact that corrective measures can be taken by filing proper certificate is concerned, he submits that there is no prescribed limit for filing Section 65B certificate and this has been laid down in the cases of *Arun Khotkar* (supra) and *Ganesh Bachire* (supra). Since the issue with regard to filing of corrected certificate is not before this Court at present, it is for the learned Magistrate to decide the issue as and when crops-up or if fresh certificate is filed in the proceedings before him. At present, admittedly, the certificate filed by the applicant is not in proper format and therefore, the order cannot be said to be erroneous on this ground.

8. This takes me to the other grounds which are part of the order whereby, the transcription and video stored in pendrive have been refused to be admitted also on the ground that the transcription supplied by the applicant does not match with the conversation recorded in the pendrive as per report of the Superintendent of that Court. In my view, if there is discrepancy in transcription supplied by the applicant, the detailed observations are made by the Superintendent in his report those can be considered while appreciating evidence at the time of merit. Rather, transcription is not the material one, what is most important is whether the videos contained in pendrive are admissible in evidence and if the conversation recorded in the videos can be gone into, the reason of discrepancy in the conversation appeared in the transcription of videos is of no consequence. Therefore, this reason recorded by the trial Court does not sustain. However, the trial Court was completely justified in not admitting the electronic evidence in absence of certificate under Section 65B of the Evidence Act.

9. Needless to mention that, despite of the fact that the earlier objection was overruled by the learned Magistrate, the objection taken by the non-applicant is very well maintainable for two reasons. Firstly, the learned Magistrate had earlier opined that it is premature and secondly, the earlier objection was on the production of the video whereas, this subsequent objection raised by the non-

applicant is in respect of admissibility of videos in evidence. Therefore, the learned Magistrate was completely justified in ignoring the earlier objection raised by the non-applicant. Hence, I do not find any reason to set aside the order passed by the learned Magistrate. Therefore, the applications deserve to be dismissed and are **dismissed** accordingly.

10. At this stage, the learned counsel for the applicant submits that liberty may be granted to file corrective certificate under Section 65B of the Evidence Act before the learned Magistrate. The liberty is always with the applicant. It is for the Magistrate to appreciate his submission for accepting the corrective certificate, if any, filed by the applicant.

11. Needless to observe that if any application is filed by the applicant, the Magistrate shall decide the same on its own merit without getting influenced by the observations made in this order.

JUDGE

Wagh