



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.719/2025

(Sagar Raghunath Nimbole Vs. State of Maharashtra, through Police Station Officer, Police Station Khamgaon City, Buldhana)

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

Court's or Judge's orders

Mr. S.V. Sirpurkar, Advocate for the applicant.
Mr. U.R. Phasate, A.P.P. for the non-applicant/State.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE ORDER: 1.10.2025.
DATE OF PRONOUNCING THE ORDER: 6.10.2025.

The applicant has challenged the order passed by the learned Additional Sessions Court, Khamgaon in Sessions Case No.178/2019 below Exh.49.

2. The applicant/accused has moved the application for permission to allow him to confront electronic document i.e. screen shot and recording between the deceased and the accused during her lifetime recorded on his mobile phone, which is transmitted by him on the pen-drive. This electronic record is copied by the accused to a pen-drive. The accused has already deleted the said data from his mobile phone which is seized by the police.

3. The learned Advocate for the applicant has stated that it is necessary for the accused to confront the said electronic record to the witness. If permission is not granted, it may cause great prejudice to the accused.

The applicant has relied on the judgment of the Hon'ble Apex Court in case of *Bipin Shantilal Panchal V/s. State of Gujarat and*

another reported in (2001) 3 SCC 1 wherein the Hon'ble Apex Court has observed as under:-

When so recast, the practice which can be a better substitute is this:

".... Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course.

*.....
The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and considered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. This measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."*

Hence, prayed to allow the application.

4. The learned A.P.P. opposed the application stating that the applicant wants to produce on record the electronic evidence. Before producing the said document on record, he has to prove the certificate under Section 65B of the Indian Evidence Act and for that

purpose, he has to examine the witness. He has an opportunity to examine the person who has transmitted said data from his mobile to pen drive. It is not the primary evidence. Hence Section 65B certificate is necessary.

5. The learned A.P.P. has relied on the judgment of the Hon'ble Apex Court in case of *Arjun Panditrao Khotkar V/s. Kailash Kushanrao Gorantyal and others* reported in (2020) 7 SCC 1 wherein the Hon'ble Apex Court has observed that the requirement of certificate under Section 65-B(4) is unnecessary if the original document itself is produced and this can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. However, where the computer happens to be a part of a computer system or computer network and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4).

6. Heard both sides and perused the record.

7. By putting the question during cross-examination, the applicant wants to bring his defence on record. It is settled principle that nobody can restrain the accused to put any relevant question in cross-examination. The applicant has to produce an electronic record during cross-examination. It is the whatsapp conversation and video calls recording between deceased and accused. Complainant is father of deceased. He is not aware about the said communication between

both of them, however, the applicant wants to put some questions and bring an electronic evidence on record through cross-examination of said witness. Applicant can bring it on record but the same cannot be without authenticity. Source and authenticity are two key factors for an electronic evidence. Without proper source there is no authenticity. Here, the source is recording of mobile phone and accused has stated that after transferring it in pen-drive it is deleted from mobile which is seized during investigation. The applicant has remedy to prove it by examining the proper witness.

8. Section 138 of the Indian Evidence Act reads as follows:-

“138. Order of examinations. - Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

*The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.
....”*

9. It is important here to mention that cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief but it must be relevant. The conversation is between the accused and deceased. There is no relevancy that the complainant, who is father of the deceased, is required to know it as it is not within his knowledge. Therefore, only because in cross-examination anything can be put, the question which is not relevant and not within his knowledge, cannot be asked.

10. After going through the order passed by the Sessions Court, it appears that the Sessions Court has rightly considered the

admissibility of the electronic evidence. In this case, the accused himself has stated that the source of recording is mobile and after transferring said recording he has deleted it from his mobile, therefore, primary evidence is not available. The accused is the only person who can prove said document after stepping into witness box. The relevancy of said electronic evidence also needs to be considered as it is not within the knowledge of this witness. Therefore, at this stage, said recording cannot be brought on record through complainant. Interference in the impugned order at the hands of this Court is not required. Hence application is rejected.

(MRS.VRUSHALI V.JOSHI, J.)