

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

2026:PHHC:078077



170

CRM-M-43688-2019 (O&M)
Date of decision : 18.05.2026

Rajesh Goel**...Petitioner****Versus****Dinesh Kumar****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Hari Om Sharma, Advocate and
Mr. Jasvinder Singh Rao, Advocate
for the petitioner.

Mr. Vimal Kumar Gupta, Advocate
for the respondent.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 of the Code of Criminal Procedure, is for quashing of order dated 05.08.2019 passed by Learned Judicial Magistrate First Class, Yamuna Nagar, Jagadhri in criminal complaint No. NIA-678 of 2017, titled as ***Dinesh Kumar v. Rajesh Goyal***, filed under Section 138 of the Negotiable Instruments Act, 1881, whereby the petitioner has been directed to give voice sample to expert for comparison with conversation contained in Compact Disk (CD) Ex.C12A.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the complainant-respondent against the petitioner on the allegations that complainant had advanced a sum of Rs. 4,50,000/- to him on 19.09.2016 for

his personal use. On demand made by respondent/complainant, the accused, in order to discharge his legal liability, issued a cheque bearing No. 670601 dated 21.03.2017 in favour of the complainant. The said cheque was presented by the complainant before its banker and it was returned with remarks 'Payment stopped by drawer'. The complainant served legal notice dated 07.04.2017 upon the petitioner. He still failed to make payment of the amount of the cheque within prescribed period, thereby compelling the complainant to file the complaint.

3. As revealed from the record, the respondent complainant thereby filed an application under Sec 311 CrPC for adducing additional evidence and the same was allowed by learned JMIC, Jagadhri vide order dated 05.08.2019. The operative part of order dated 05.08.2019 reads as under:

“By virtue of present application, applicant-complainant has sought a direction to accused to give his voice sample for comparison with voice recording contained in CD, which constitutes part of the record of the present case file. The only objection which has been taken by the learned counsel for accused is that application has been filed with the intention of harassing the accused and to delay the proceedings of the case. It shall not be out of place to mention at this juncture that complainant Dinesh Kumar had denied the factum regarding conversation contained in CD Ex.C12A during his cross-examination. In supra mentioned circumstances, it has become necessary to ascertain the fact as to whether voice of person featuring in conversation contained in CD is that of accused or not. Said examination is necessary in order to go to the root of the matter. Besides, no prejudice shall be caused to accused in case

application in hand is allowed as accused will be provided with an proper opportunity to conduct cross-examination of expert sought to be examined by complainant in expert evidence.

However, this Court is of considered opinion that complainant must be directed to get compared the voice of accused with voice recording contained in CD Ex.C12A from some private agency and he shall be liable to bear the costs of the same. In light of afore-mentioned discussion, application in hand stands hereby allowed in afore-mentioned terms. Accused is directed to give his voice sample before expert to be arranged by the complainant for comparison with 4. 5. 6. 7. 8. conversation contained in CD Ex. C12A. Application stands disposed of in above stated terms. Now, case is adjourned to 23.08.2019, for expert evidence of complainant.”

4. Feeling aggrieved from the aforementioned order, the petitioner has filed the present petition. While issuing notice on motion, the operation of impugned order was stayed by this Court on 17.10.2019.

5. It is argued by learned counsel for the petitioner that the order passed by the learned trial Court allowing the application under Section 311 CrPC for giving voice sample is not sustainable in the eyes of law. It is argued that the said CD would not be considered to be admissible in evidence as the mandatory requirement of certification of electronic evidence has not been complied with as contemplated under Section-65B of the Indian Evidence Act (*for short ‘the Act’*). It is also admitted that petitioner would not have any objection if the said requirement be fulfilled. With these submissions, it has been urged that the petition deserves to be allowed and the impugned order is liable to be quashed.

6. On the other hand, learned counsel for the respondent complainant has argued that said averment has never been raised by petitioner prior to this petition and it is the first time the petitioner has raised this objection by way of this petition and hence it is not maintainable. It is further argued by the respondent complainant that he has moved an application seeking to file on record a certificate under Section-65B of IEA to support the said WhatsApp conversation contained in CD. Hence, it is urged that the present petition is liable to be dismissed.

7. This Court has heard the rival submissions.

8. Section 65B of Indian Evidence Act (*which corresponds to Sections 61 and 63 of Bharatiya Sakshya Adhiniyam, 2023*) refers to the admissibility of electronic evidence and since the petition pertains to mandatory requirement of certificate, therefore, it is appropriate to refer to Section 65B of the Indian Evidence Act, which reads as under:

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.

9. The issue before this court is whether the said CD produced by the complainant would be admissible under Section 65B of the Indian Evidence Act, given the fact that requirement of certification of electronic evidence has not been complied with? The Hon'ble Apex Court in ***Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal, (2020) 7 SCC 1*** has held that whenever electronic evidence is produced in the form of a copy, printout, CD, VCD, pen drive, hard disk, etc., a certificate under Section 65B(4) is a mandatory pre-condition for admissibility. Oral evidence or other provisions of Sections 63 and 65 cannot substitute the certificate requirement. The Court clarified that Sections 65A and 65B constitute a special law governing admissibility of electronic records, and therefore the general law relating to secondary evidence under Sections 63 and 65 does not apply to electronic evidence. Thus, the question is no longer res integra that certificate under Section 65B is a mandatory requirement.

10. Another issue which is relevant for purpose of this petition is whether this defect is curable if the certificate is placed subsequently on

record? The Hon'ble Apex court in **Arjun Panditrao Khotkar** (supra) has dealt with this issue and has held that the certificate under 65-B of the Act can be produced at any stage if the trial is not over. In view of the settled law, the certificate under Section 65B of the Act which as terms of general procedure should have been filed by the complainant. However, the non-filing of the certificate under Section 65B of the Act at the relevant stage is a curable defect which could be removed by allowing to place the said certificate subsequently on record. Needless to say, the filing of the certificate under Section 65B of the Act is a matter of procedure and by not allowing the same to be taken on record amounts to taking a hyper technical view which is against the settled preposition of law as cited above. Moreso, as per learned counsel for the petitioner, he has moved an application for filing the aforesaid certificate but the said application was not accepted by the learned trial Court only on the ground that the proceedings of the case were stayed by this Court. Though, there is nothing on record to show so, however, still in view of the observations made herein, it will now be open for the learned trial Court to accept such application for taking on record the required certificate.

11. In view of the discussion made above, this Court finds no reason to allow the present petition. Accordingly, the same is dismissed.

18.05.2026
Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No