

Criminal Appeal No. 89 OF 2024.

ORDER BELOW APPLICATION EXH. 26

[1] The present application has been filed by the respondent No. 1 i.e. original complainant and prayed for to permit him to produce certificate u/s. 65(B) of Evidence Act (Sec. 63(4)(C) of BSA).

[2] After filing the present application, this Court has heard learned advocates for the respective parties at length. Learned advocate for the respondent has raised objections against the present application.

[3] Read the application, perused the record of the case. I have Heard the learned advocates for the respective parties *in extenso*. Learned advocate for the respondent No. 1/ complainant has submitted that extract of ledger account was produced by him before the Ld. Trial Court and it was marked as Exh. 10 & 11. The same was not disputed by the appellant/ accused. It is also submitted that objection regarding certificate u/s 65 (B) of the Evidence Act was not raised by the appellant/ accused before the Ld. Trial Court. It is also submitted that the alleged account was certified by the accused and therefore, it is submitted that the certificate u/s. 65(B) of the Evidence Act is required to be produced before this court. It is therefore, submitted that u/s. 391 of Cr. P.C. the complainant should be permitted to file the necessary certificate and therefore it is submitted that this application should be allowed.

Learned advocate for the respondent/ complainant has cited and relied upon the following judgments.

1. Supreme Court of India, Cri. Appeal Nos. 288-289 of 1999, K.T. Tomas vs. India Securities Ltd.
2. Gujarat High Court, Cri. Appeal No. 19 of 1996, State of Guajrat vs. Patel Vishnubhai Chaturdas

3. Gujarat High Court, Cri. Mis. App. No. 17123 of 2008, Gautambhai Bababhai vs. State of Gujarat
4. Gujarat High Court, Cri. Mis. App; No. 901 of 2022, Arjanbhai Parbatbhai vs. Kamal Tanna
5. Karnataka High Court, Cri,. Revi. App. No. 1164 of 2019, R.V. Natahan vs. A.P. Mahesh
6. Madras High Court, Cri. R.C. No. 109 and 1099 of 2011, P. Thangavel vs. Venkatesan
7. Andhra Pradesh High Court, Cri. P. No. 2509 of 2010, Dasari Radha Krishna vs. State of A.P.

[3.1] *Per contra*, learned advocate for the respondent/complainant has submitted that this application has been filed only to protract the present proceeding. It is further submitted that the certificate ought to have been filed by the complainant before the Ld. Trial Court. It is also submitted that the present application is not maintainable because during the trial complainant missed to file requisite certificate u/s. 65(B) of the Evidence Act. It is also submitted that prosecution cannot be permitted to fill up the lacuna and therefore it is submitted that this application should be dismissed.

Learned Advocate for the appellant has placed reliance upon following judgments.

1. Cri. Appeal No. 88/24, Nimesh Agrawal vs. Shreeji Enterprise
2. Cri. Appeal No. 636 of 1995, Rambhau and ors. vs. State of Maharashtra
3. Cri. Appeal No. 446-449/2004, Zahira Habubulla H. Sheikh vs. State of Gujarat
4. Cri. Revi. No. 752 of 2013, Govind Chauhan vs. Sriram Sonboir
5. Civil Appeal No. 4226 of 2012, Anvar P.V. vs. P.K. Basheer

6. Civil Appeal No. 20825-20826/ 2017, Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and ors.

[4] It is pertinent to note that the present appellant has been held guilty by Learned Trial Court and being aggrieved and dissatisfied with the judgment and order passed by the learned Court below, this appeal has been filed. It is also transpired that this appeal has reached to the final stage of arguments and after hearing substantive arguments of both sides this application u/s. 391 of Cr.P.C. has been filed for the relief has mentioned herein above.

[5] The record and proceedings depicts that complainant filed complaint u/s. 138 of the Negotiable Instrument Act wherein the accused has been convicted and sentenced against which the appellant has filed appeal before this court. Furthermore, it is also transpired that the complainant has failed to produce requisite certificate u/s. 65(B) of the Evidence Act. It is pertinent to note that during the course of arguments before this court it was contended by the Ld. Advocate for the appellant/ accused that the complainant has not filed certificate u/s. 65(B) of the Evidence Act, the accused ought not to be punished by the Ld. Trial Court and therefore, it is contended that the accused should be acquitted and this appeal is required to be allowed. In order to counter the aforesaid arguments, Ld. Advocate for the respondent/ complainant has submitted that the complainant's case has been proved and therefore, appeal should be dismissed. Having regard to the aforesaid factual aspect of the case it is borne out that there was ample opportunity to the complainant to lead his evidence in accordance with law and he had been given opportunity to produce the certificate u/s. 65(B) of the Evidence Act but it was not submitted before the Ld. Trial Court. It is also required to be noted that it is not case of the complainant that though exercised due diligence the certificate could not be produced. Under the circumstance

the conduct on the part of the complainant shows that the complainant has tried to fill up the lacuna at the appellate stage which is not permissible in the eyes of law.

[6] Ld. Advocate for the complainant has placed reliance upon various judgments of the Hon'ble Gujarat High Court and Hon'ble Supreme Court. Considering the facts of the cited authority and the facts of the case in hand are quite distinguishable and therefore, they are not applicable to the facts of the present case. At this juncture the judgment of the **Hon'ble Supreme Court** in the case of **Ajitsinh Chehuji Rathod vs. State of Gujarat, 2024(4) SCC 453** wherein it is held as under.

“9. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391 CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non recording of such evidence may lead to failure of justice.”

[7] In the case of **Ajitsinh Chehuji Rathod vs. State of Gujarat** reported in 2023(0)JX (Guj.) 1388, **Hon'ble Gujarat High Court** has held as under :

“11. : In Beer Singh vs. State AIR 1978 SC 59, it has been observed that additional evidence cannot be taken to bridge the gape. The observation of the Hon'ble Apex Court is under, The power of appellate court to take additional evidence has to be exercised very sparingly. The additional evidence must be necessary not because it would be impossible to pronounce the judgment but because there would be failure of justice without it.”

[8] Applying the aforesaid ratio to the facts of the present case, when the complaint came to be filed in the year of 2018 and matter was decided by the Ld. Trial Court in 2024 and thereafter the present appeal was filed in the year of 2024, the complainant had ample opportunity to lead his evidence before the Ld. Trial Court. But the present application has been filed by the complainant at the fag end of the appeal especially when the arguments pertaining to the non-production of certificate u/s. 65(B) of the Evidence Act was raised by the Ld. Advocate for the appellant/ accused. Under the circumstances, this court is of the opinion that the present application is not maintainable.

[9] In view of the aforesaid dictum of law and considering the proved facts the relief claimed by the respondent/ complainant seems to be unsustainable and devoid of merits and therefor it is required to be declined. Hence, the final following order is passed :

:: ORDER ::

- This application is hereby dismissed.
- No order as to costs.

Pronounced and signed in the open Court on 4th day of February, 2026.

**Place : Ahmedabad
Date : 4.02.2026**

**(Sanjaykumar Chhaganbhai Makvana)
9th Add. Sessions Judge,
Ahmedabad (Rural)
Code No. GJ00920.**