

**ORDER ON APPLICATION FILED BY
ACCUSED UNDER SECTION 91 OF CODE OF
CRIMINAL PROCEDURE.**

When the matter was set down for cross-examination of PW.1 to PW.3, the accused have filed this application on 05.06.2023 under section 91 of Cr.P.C seeking permission to produce one compact disc said to contain footage of CC camera regarding the incident in question.

2. In the application, it is stated by the accused that the complainant had registered the above case against them alleging that the incident taken place on 09.07.2019 around 3.00 p.m in front of old Show Off shop at Vijayapura main road and the said road is a busy road and every shop has got CC camera and the incident has been recorded on all the cameras. The investigating officer has not collected the said evidence and the accused No.3 is noway concerned to the said incident and he had collected CC camera footage at the shop by name Out Fit and recorded the same in his mobile and then transmitted the same to the CD, now sought to be produced and said CD clearly goes to show that the incident is false and the alleged eyewitnesses, who are shown in the charge sheet were not present and the incident as alleged in the complaint was between the complainant and some

other people in respect of traffic misbehavior and the said incident was witnessed by all the shop owners which is also evident in the said footage. The MO.1 worn by the complainant is also seen in the said footage, but a false story has been narrated in the complaint and also in the charge sheet. In order to bring out the truth, the verification of said footage is very much necessary and no prejudice would be caused to any of the parties if the compact disc containing the C.C camera footage is allowed to be the part of records.

3. The above application has been resisted by the learned Public Prosecutor by filing statement of objections by contending that at this stage, the accused have filed an application with a CD that said CD contains the real fact of whole incident and also reveals that he is nowhere concerned with said incident. The said CD is nothing but a secondary electronic record evidence, whose genuinity is to be proved to rely on said video in CD. Section 65-B of Indian Evidence Act deals with admissibility of electronic records as evidence such information or data or video or photos stored in any computer/phone/hard disk which is primary evidence and any such information/data/video/photos copied to CD, such CD will be treated as secondary evidence and such secondary evidence will have to be accompanied with certificate as mentioned under section 65-B (4) of Indian Evidence Act by identifying the electronic record containing the statement and describing the

manner in which it was produced. The accused who have produced said CD being secondary evidence is neither the owner of said CC camera from where said incident is copied to CD nor the person who operated it and without producing primary evidence or giving reason to produce CD as secondary evidence with certificate, it cannot be admissible as evidence. The CD produced by accused No.3 neither comes with the legal framework of electronic evidence nor it is supported with certificate by owner or its operator and if original hard disk of CC camera footage is produced, there is no need for production of certificate under section 65-B(4) of Indian Evidence Act and therefore sought for rejecting the application.

4. Heard both side and perused record.

5. The points that arise for consideration of this court are:-

POINTS

1. Whether the application filed by the accused under section 91 of Cr.P.C., deserves to be allowed?

2. What order?

6. My findings on the above points are as follows:

Point No.1 : In affirmative,

**Point No.2 : As per the final order
for the following:-**

REASONS

7. **Point No.1** : This court is conscious of the fact that at this stage, the court is not suppose to look into the merits or demerits of the case. Hence only for the purpose of deciding the present application, I proceed to discuss the facts of case.

8. In the case on hand, the accused have been charge sheeted for the offences punishable under sections 143, 144, 147, 148, 504, 307 and 506 of IPC r/w section 149 of IPC. During trial, when the matter was set down for cross-examination of PW.1 to PW.3, the accused have come up with this application under section 91 of Cr.P.C seeking production of a compact disc said to contain footage of CC camera installed in the shop around the place of occurrence, which has covered the happening of the incident in question. In the application, it is stated that said footage would throw light on the genesis and the true picture of the incident in question and it would also establish that the prosecution has come with a false story even though the accused are noway concerned with the same.

9. The said application has been resisted by the prosecution mainly on the ground that the compact disc sought to be produced by the accused is in the form of secondary evidence and as such the same is not admissible in evidence without production of original hard disc said to contain the alleged footage. In the case on hand, the accused has

sought for production of a compact disc said to contain the footage of CC camera which has captured the incident in question on the premise that the said footage was recorded in the CC camera installed in the shop by name Outfit and the had recorded the same in his mobile and then transmitted it to said compact disc.

10. It is true that when the original device said to contain the information is produced then there is no question of production of certificate under section 65-B(4) of Indian Evidence Act. As noted above, the accused is said to have recorded a footage of CC camera which has captured the incident in question in his mobile and then transmitted it to the compact disc sought to be produced. The learned Public Prosecutor has contended that the compact disc sought to be produced is not supported by the certificate of the owner or its operator and as such the same cannot be allowed to be produced.

11. It is to be noted that the need for production of said certificate would arise when the electronic record is sought to be produced in evidence at the trial. At this stage, the necessity of production of certificate as required under law would not arise. The admissibility and genuineness of the document sought to be produced by the accused is required to be considered during trial, when it is sought to be taken in evidence. In view of the same, this court finds no impediment to take the compact disc and the affidavit filed under section

65-B of Indian Evidence Act by the accused on record as it would show some light on the relevant facts in issue if brought as evidence by proper compliance of the provisions of law.

12. Further the provision envisaged in section 91 of Cr.P.C empowers the court to summon any document or thing, which the court considers necessary or desirable for the purpose of trial or other proceedings under the Code of Criminal Procedure. By applying the provision envisaged in Section 91 of Cr.P.C to the facts and circumstances of the case, this court is of the humble opinion that there is no impediment in taking the compact disc and the affidavit submitted by the accused on record. Accordingly, I answer point No.1 in affirmative.

13. **Point No.2:** In view of my above findings on point No.1, I proceed to pass the following:-

ORDER

The application filed under section 91 of Cr.P.C., by the accused is hereby allowed and thereby a compact disc and the affidavit filed under section 65-B of Indian Evidence Act by the accused are taken on record.

Sd/- 10/11/2023

(BHANUMATHI.B.C)

II Addl. District & Sessions Judge
Chikkamagaluru