

ORDERS ON APPLICATION FILED
U/S. 242(2) of Cr.P.C BY THE
LEARNED APP

The learned APP filed the present application under section 242(2) of Cr.P.C seeking for permission of this Court to produce the CC camera footage along with CD and also sought permission to examine the owner of the building in which the CC camera is installed.

The learned APP in support of her application, has contended that the offenses alleged against the accused persons are punishable under sections 324, 504 and 506 read with section 34 of IPC. There is a CC camera near the place of incident and the alleged incident was clearly seen from the CC camera footage. The said footage was downloaded and recorded in CD and same was produced before the investigation officer. But the investigation officer due to oversight has not produced the same before the Court along with the charge sheet. Now, it is necessary to produce the said CD and also necessary to examine the owner of the building in which the CC camera is installed. Therefore, she has filed this application.

The learned advocate for the accused persons has filed his objection and contended that the application is not maintainable and further he has contended that in the entire charge sheet, the investigation officer has not asserted any thing about the CC camera footage and about CD. Moreover, there is no assertion about the handing over

the CC camera footage and CD by the first informant in his statement. Hence, he sought for dismissal of the application.

I have heard the learned APP and learned advocate for the accused persons.

I have perused the materials on record and the documents. The IO has filed the charge sheet against the accused persons for the offenses punishable under sections 324, 504 and 506 read with section 34 of IPC. In this case, the learned APP has argued that due to oversight, the IO has not produced the CC camera footage and related CD before the Court.

In this regard, it is proper and necessary to cite the following judgment. In Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal, reported in (2020)7 SCC 1, three Judges' bench of the Hon'ble Supreme Court of India has held as follows,

"34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a 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. In cases where "the computer", as defined, happens to be a part of a "computer system" or

“computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving 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). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as “... *if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...*”. This may more appropriately be read without the words “*under Section 62 of the Evidence Act, ...*”. With this minor clarification, the law stated in para 24 of *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited.”

So, certificate under section 65-B(4) is unnecessary if the original document itself is produced and if the owner of a laptop or a computer or 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.

Moreover, the first informant has produced the CC camera footage and related CD before the investigation officer. But the investigation officer has not produced the same before the Court along with the charge sheet. It is settled principle of law that due to mistake of investigation officer, the victim should not suffer and that should affect the prosecution case.

If this application is allowed, no prejudice will be caused to the accused persons. However, they will get opportunity to cross examine the witness and IO in this regard. With this observation, I proceed to pass the following order,

ORDER

Application filed under section 242(2) of Cr.P.C. filed by the learned APP is allowed.

Issue witness summons to the owner of the building as shown in the application and direct him to produce the CD containing CC camera footage.

Call on 19/07/2022.

Sd/-

**Prl. C.J. & JMFC,
Honnavar**