

MHBU010013032018



**Sessions Trial No.48/2018**  
State Vs.Ganesh

**ORDER BELOW EXHIBIT NO.115**

(Passed on this 6<sup>th</sup> day of October 2023)

1] Instant application (Exh.115) has been filed by witness Anil Hande with request that he be allowed to produce the certificate as per Section 65-B of the Evidence Act.

2] Learned Counsel of accused has strongly opposed such application by raising objection that application (Exh.115) is not tenable in law. He contended that the evidence specifically examination-in-chief of Anil Maroti Hande is not completed and it is being partly recorded. In the examination-in-chief of Anil Hande, seizure of Pen drive has been filed along with certificate under Section 65-B of Evidence Act issued by Police Constable Vijay Namdeo Kite, B.No. 2072, the same application has been allowed by the Court and both these documents were filed along with the charge-sheet.

3] Accused further contended that he filed an application for not admitting the certificate produced under Section 65-B of Evidence Act at Exh.109. This application has been finally decided by the Court. It is further stated that for deciding this application, this Court has stayed examination-in-chief of Anil Hande. The Court finally came to the conclusion that the certificate issued by Police Constable Vijay Kale is not admissible according to the provisions laid down under Section 65-B sub-clause (4) of Evidence Act.

4] Accused further contended that the Pen Drive which has been seized for the purpose of proving CCTV footage dated 2.5.2018. As the Court not permitted/not admitted the same Pen Drive of the footage, therefore, considering this fact the prosecution at this juncture, filed one more certificate under Section 65-B of Evidence Act, issued by witness Anil Hande, after lapse of more than five years.

5] On the basis of above-mentioned grounds, lastly, accused requested to reject application (Exh.115).

6] I have heard learned APP Shri Khatri and the learned Counsel for the accused. On perusal of record, it will find that evidence of PW 14 Anil Maroti Hande has been recorded partly. His evidence reveals that he was running Gaurav Wine Bar. As per his evidence, on 2.5.2018, accused and deceased Pradip had been to his wine bar and quarrel took place between them. As per his evidence, in his wine bar, CCTV cameras were fixed and in those CCTV cameras, incident regarding quarrel which was taken place between deceased and accused was recorded. Prosecution wants to prove such event by producing Pen Drive in which material was taken from CCTV cameras. In such circumstances, prosecution feels that for proving relevant data of CCTV cameras through Pen Drive, certificate under Section 65B is necessary to be produced on record.

7] In above-referred circumstances, witness PW 14 Anil Hande deposed that he is having knowledge of handling CCTV cameras and he can operate also computer. He further testified that he is having knowledge of to get transferred the material from DVR regarding CCTV

footage in Pen Drive. In such circumstances, witness has moved application (Exh.115) for grant of permission to produce the certificate under Section 65B of Evidence Act.

8] According to learned Counsel of accused Shri S.M.Chopade, PW 14 Anil Hande has not produced certificate under Section 65B of Evidence Act, when during the course of investigation, CCTV material was collected from him by Investigating Officer. Therefore, at subsequent stage, witness cannot be allowed to produce certificate under Section 65B of Evidence Act.

9] In reply, learned APP Shri Khatri has relied on following judgments-

A] Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors, Civil Appeal Nos.20825-20826 of 2017, decided by Hon'ble Supreme Court on 14.7.2020. Relevant para 20 is re-produced as under-

*“ 20. As per Sec. 311 [Cr.P.C.](#), any Court may, at any stage of any trial under the Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Under this provision also wide discretion has been conferred upon the Court to exercise its power and paramount consideration is just decision of the case. In my opinion under this provision it is permissible for the Court even to order production of a document before it if it is essential for the just decision of the case.*

Relevant para 23 is re-produced as under-

*“23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if*

*in the opinion of the Court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required under [Section 65-B](#) of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured alongwith the electronic record and not produced in the Court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable. It is also pertinent to note that certificate was produced alongwith the charge-sheet but it was not in a proper form but during the course of hearing of these petitioners, it has been produced on the prescribed form.”*

*56. In Kundan Singh (supra), a Division Bench of the Delhi High Court held:*

*“50. Anwar P.V. (supra) partly overruled the earlier decision of the Supreme Court on the procedure to prove electronic record(s) in Navjot Sandhu (supra), holding that [Section 65B](#) is a specific provision relating to the admissibility of electronic record(s) and, therefore, production of a certificate under [Section 65B\(4\)](#) is mandatory. Anwar P.V. (supra) does not state or hold that the said certificate cannot be produced in exercise of powers of the trial court under [Section 311](#) Cr.P.C or, at the appellate stage under [Section 391](#) Cr.P.C. Evidence Act is a procedural law and in view of the pronouncement in Anwar P.V. (supra) partly overruling Navjot Sandhu (supra), the prosecution may be entitled to invoke the aforementioned provisions, when justified and required. Of course, it is open to the court/presiding officer at that time to ascertain and verify whether the responsible officer could issue the said certificate and meet the requirements of [Section 65B](#).”*

*57. Subject to the caveat laid down in paragraphs 50 and 54 above, the law laid down by these two High Courts has our concurrence.*

*So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.*

58. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a 'responsible official position' in relation to the operation of the relevant device, as also the person who may otherwise be in the 'management of relevant activities' spoken of in Sub-section (4) of [Section 65B](#). Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, [Section 65B\(4\)](#) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief" (Obviously, the word "and" between knowledge and belief in [Section 65B\(4\)](#) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time).

59. We may reiterate, therefore, that the certificate required under [Section 65B\(4\)](#) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.* (supra), and incorrectly "clarified" in *Shafhi Mohammed* (supra). Oral evidence in the place of such certificate cannot possibly suffice as [Section 65B\(4\)](#) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor* (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. [Section 65B\(4\)](#) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render [Section 65B\(4\)](#) otiose".

B] Shyam Sunder Prasad Vrs. Central Bureau of Investigation, Criminal Revision No. 588 of 2022, decided by Hon'ble Allahabad High Court on 6.6.2022.

C] Sanjay Singh Kachhwaha Vrs. State of Rajasthan, Criminal Misc (Pet.) No. 8014/2022, decided by Hon'ble Rajasthan High Court on 12.12.2022.

10] This is the matter of Section 302 of IPC for which accused

has been prosecuted. According to prosecution, quarrel took place between deceased Pradip and accused in the wine bar of PW 14 Anil Hande is relevant to their case and appears to be connecting link regarding murder of deceased Pradip. According to prosecution, important events have been captured in CCTV cameras regarding the quarrel took place between the parties. Therefore, prosecution intends to prove material lying in CCTV camera by producing Pen Drive in that regard. Witness PW 14 has produced certificate under Section 65B of Evidence Act for proving the contents of CCTV footage. As such, in above-described background of the case, it appears that PW 14 Anil Hande is competent witness to prove the contents appearing in CCTV footage through Pen Drive. Therefore, in such scenario, PW 14 needs to be permitted to produce certificate under Section 65B of Evidence Act on record as per requirement of law. Merely witness PW 14 has produced certificate at belated stage, that cannot be the ground for rejecting application (Exh.115).

11] No doubt, this Court had observed that Police Constable Vijay Kite was not competent to issue the certificate under Section 65B of Evidence Act and it was held that certificate produced under Section 65B of Evidence Act by Constable Vijay Kite was not admissible in law. Said observation was made while passing order below Exh.109 on 30.6.2023. In the same order, it was held that Anil Hande (PW 14) is competent person to issue the certificate under Section 65B of Evidence Act. Merely the certificate issued by Police Constable Vijay Kite was held to be not admissible, that cannot be the ground for rejecting application (Exh.115) which is based on totally different legal grounds.

12] For above-stated all reasons, application moved by witness for production of certificate under Section 65B of Evidence Act need to be allowed for being granted opportunity to the prosecution for proving their case. As such, I am inclined to allow application (Exh.115). In the result, following order is passed.

**ORDER**

- 1] Application (Exh.115) is allowed and permission is granted for production of certificate under Section 65B of Evidence Act as prayed.
- 2] Both the parties to note it.
- 3] Case to proceed further.

Buldana  
Date-6.10.2023

**(R.N. Mehare)**  
Addl.Sessions Judge,  
Buldana