

HIGH COURT OF MADHYA PRADESH: BENCH AT

INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.565/2015

Mazar @ Majju

Vs.

State of M.P. and others

Shri Shakil Khan, learned counsel for the applicant.

Ms. Mamta Shandilya, learned P.L. for respondent
No.1/State.

ORDER

(Passed on 09/07/2015)

This criminal revision under section 397 Cr.P.C. is directed against the order passed by the 2nd Additional Sessions Judge, Shajapur in Sessions Trial No.74/2013 dated 07.05.2015 by which the learned Additional Sessions Judge dismissed the application filed under section 65-A and 65-B of Evidence Act.

2. The relevant facts for disposal of this criminal

revision are that the applicant and respondents No.2 to 6 are facing trial before the 2nd Additional Sessions Judge, Shajapur in Sessions Trial No.74/2013. In this case, one Harish Patel was listed as prosecution witness, however, this witness was not examined by the prosecution and subsequently, he was examined as defence witness by the applicant and respondents No.2 to 6. It is alleged by the applicant that Harish Patel was working under brother of the complainant Shivpal Singh. He recorded conversation with Shivpal Singh and preserved it on a compact disc. The applicant filed an application under section 65-A and 65-B of Evidence Act for taking the CD on record.

3. The learned Additional Sessions Judge dismissed the application on the premise that in this case the prosecution closed his evidence on 06.09.2014. The prosecution did not examine the witness Harish Patel who was examined as defence witness. He stated in his examination-in-chief that he received a phone call on the date of incident from Shivpal Singh who was brother of the complainant and he told him that the complainant met with an accident. He recorded the conversation in his mobile and then preserved

this on a compact disc. The counsel for the applicant argued before the learned Additional Sessions Judge that section 65-A and 65-B of Evidence Act provide for accepting the electronic evidence during the trial but no certificate as prescribed by the section is filed along with compact disc and also no question was asked during cross-examination of the complainant and his brother Shivpal Singh.

4. After going through the impugned order, I find that no irregularity was committed by the trial Judge. Firstly, a certificate is a mandatory provision and no such certificate was filed by the applicant and also unless it was admitted by brother of the complainant that he called Harish Patel after the incident such evidence cannot be accepted in defence. Because of these reasons, I find no ground for interfering in exercise of power conferred on the Court under section 397 Cr.P.C. I find that this revision devoid of force and liable to be dismissed and dismissed accordingly.

**(ALOK VERMA)
JUDGE**