

HIGH COURT OF MADHYA PRADESH: BENCH AT

INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.730/2015

Dilip Mali

Vs.

State of Madhya Pradesh

Shri V.S. Parihar, learned counsel for the applicant.

Ms. Mini Ravindran, learned Dy. Govt. Advocate for respondent/State.

Shri Virendra Sharma, learned counsel for the complainant.

ORDER

(Passed on 05/08/2015)

This criminal revision under section 397 r/w section 401 Cr.P.C. is directed against the order passed by the learned 9th Additional Sessions Judge, Ujjain in Sessions Trial No.304/2012 dated 18.06.2015 whereby the learned Additional Sessions Judge refused to admit the original cassettes and CD submitted by the accused as defence evidence on the ground that certificate of competent authority was not produced by the counsel. The learned Sessions Judge

also refused to issue a direction that the cassettes and CD be examined by an expert and submit his report to ensure that the CD and original cassettes were not tampered with and contains original recording.

2. Learned counsel for the applicant placed reliance on judgment of Hon'ble Apex Court in **Anvar P.V. vs. P.K. Basheer & Ors.; 2014 SAR (Civil) 1174 SC** in which the Hon'ble Apex Court held that under section 65B(2), the following conditions has to be fulfilled and also under section 65B(4), the following conditions are set aside:- :-

“(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not

affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.”

3. If the provisions of section 65 of Evidence Act is concerned under section 65B(2), in this respect the provisions of section 65B(4) may be reproduced here :-

“(B) Evidence Act, 1872 – Sec. 65B(4)
 – Electronic record – Admissibility in evidence
 – Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record – It is permissible provided the following conditions are satisfied :

(a) There must be a certificate which identified that electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant

device.”

4. It is apparent that certificate is to be issued by the person who is incharge of the device or the computer. In this case the video had taken by a video camera, its cassettes and its recording in the cassettes or CD was produced and, therefore, the person who was incharge of the video camera is the competent authority to issue a certificate and accordingly, when a certificate issued by photographer who did the photography, certificate and affidavit is competent under section 64B(4).

5. The second aspect of the matter is permission to get the cassettes and CD checked from an expert to ensure that no tampering was done and the recording in the cassettes and CD is original. For this purpose, the learned Additional Sessions Judge opined that this was responsibility of the defence that they get it checked from an expert. However, on this aspect also, the learned Additional Sessions Judge erred, the cassettes and CD should have been checked by the expert and same should be sent to him under the orders, seal and signature of the Court, then only its authenticity can be relied upon.

6. In this view of the matter, the impugned order is set aside. The learned Additional Sessions Judge is directed to send the CD to the expert after deposition of necessary fees by the defence and get it checked to ensure that no tampering was done in the cassettes and the CD and thereafter, the photographer and also the expert should be examined before the Court as defence witness. The Court should also ensure that the certificate issued by the operator of the camera should fulfill requirement of section 65B(2) & 65B(4) of Evidence Act.

7. With this observation and direction, the revision stands disposed of.

**(ALOK VERMA)
JUDGE**