

The High Court Of Madhya Pradesh

MCRC-29986-2019

(ANTAR SINGH Vs THE STATE OF MADHYA PRADESH)

Jabalpur, Dated : 13-08-2019

Shri Manish Datt, learned Senior Counsel with Shri Pawan Gujar, counsel for the applicant.

Shri Rakesh Singh, learned PL for the respondent/State.

This petition has been filed under Section 482 of Cr.P.C. for quashing of the order dated 14/05/2019 passed by First Additional Session Judge to the Court of Additional Judge, Khandwa, District-Khandwa (M.P.) in S.T.No.98/2018 whereby learned trial Court allowed the prosecution's application filed under Section 91 of Cr.P.C. and took the document i.e. certificate under Section 65-B of Indian Evidence Act on record produced by the prosecution.

Brief facts of the case which are relevant to the disposal of this petition are that applicant is facing trial in S.T. No.98/2018 which was pending before First Additional Session Judge to the Court of Additional Judge, Khandwa, District-Khandwa (M.P.) for the offence punishable under section 302/34 of IPC. During trial of the case on 14/5/2019 prosecution filed an application for taking certificate issued under Section 65-B of Indian Evidence Act on record. Learned trial Court allowed that application. Being aggrieved from that order, applicant filed this petition.

Learned counsel for the applicant submitted that the prosecution did not file the certificate under Section 65-B of Indian Evidence Act at the time of filing of charge-sheet while said certificate ought to have been filed along-with the charge-sheet. So prosecution is not entitled to file said certificate at the time of trial. Learned trial Court committed mistake in taking that certificate on record.

Learned counsel for the State opposed the prayer and submitted that the certificate under Section 65-B of Indian Evidence Act can be filed during the trial of the case. So learned trial Court did not commit any mistake in accepting prosecution's application and taking that application on record.

This court has gone through the record and arguments put forth by the learned counsel of the parties.

Hon'ble Apex court in the case of *Sonu Vs. State of Haryana, (2017) 8 SCC 570* held as under:-

"It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency."

Hon'ble Apex Court in the case of *Union of India v. Ravindra V. Desai, (2018) 16 SCC 273* also held "non-production of the certificate under Section 65-B of the Evidence Act, 1872 on an earlier occasion was a curable defect which stood cured."

In the light of above-mentioned Apex Court judgements it is clear that the non filing of the certificate of 65-B of Indian Evidence Act on an earlier occasion is a curable defect which can be cured by filing the certificate of 65-B of Indian Evidence Act at a later stage during trial. So, in the considered opinion of this court, learned trial court did not

commit any mistake in taking that certificate of Section 65-B of Indian Evidence Act on record.

Hence, petition has no force and is hereby **rejected**.

(RAJEEV KUMAR DUBEY)
JUDGE

VS

