IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL WRIT PETITION NO.990 OF 2022

SUBHASH LACHHMANNA ANMULWAR
VERSUS
THE STATE OF MAHARASHTRA

Mr. Narayan B. Narwade, Advocate for the petitioner
Mr. P. N. Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.
DATE : 22nd November, 2022

P. C.

1. This petition is against an order dated 14-06-2022 passed by the learned Judge, Special Court (ACB), Ahmednagar on an application below Exh.75 in Special (ACB) Case No.19/2015, moved by the prosecution praying to the trial court to direct the officer of the court to hear the tape recorded conversation from memory card and to compare the transcript with the same that is produced in the court. This application came to be allowed. The Superintendent (Muddemal) of the Court was directed to verify the transcript with the voice recording noted in the panchanama already exhibited at Exh.37 and 42 and submit a report.

2. The petitioner who is facing trial for the offences punishable under Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act and Section 201 of the Indian Penal Code against him, has the challenged order on the grounds firstly that transcription is already on record and the same is exhibited through witness. Second that now the evidence of the prosecution is practically over. At this stage the application is moved by the prosecution. Thirdly that the prosecution on its own has to prove the conversation/ transcription. Fourthly that prosecution has filed this application at belated stage only to fill-up the lacuna in the evidence. The court need not exercise its power for the purpose of getting something on record by way of evidence. This exercise will cause prejudice to the right of the accused etc.

3. Thus, it is the submission of the learned counsel for the petitioner that merely because power is vested in the court by virtue of Rule 24 of Chapter VI of the Criminal Manual the

same may not be invoked in such a manner. He submits that the criminal manual was prepared when there was no provision like 65-B of the Evidence Act. Now in view of Section 65-B the recorded conversation in any digital form needs to be proved only by adducing a certificate under section 65-B etc. The prosecution wants to prove something against accused without following process as required under the Evidence Act. He submits that the Superintendent of Court is not an expert to give his opinion on the voice of a person.

4. Learned counsel for the petitioner relied upon the judgment delivered by the Hon'ble Apex Court in the Civil Appeal No. 4226/2012 wherein the Hon'ble Apex Court has considered provision under sections 65-A & 65-B of the Evidence Act and the provisions of Information Technology Act. In respect of the statement of objects and reasons to the Information Technology Act, it is observed as below:

> *New communication systems and digital technology have made drastic changes in the way we live. A revolution is occurring in the way people transact business. In fact, there is a revolution in the*

way the evidence is produced before the court. Properly guided, it makes the systems function faster and more effective. The guidance relevant to the issue before us is reflected in the statutory provisions extracted above. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 56-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed oin a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof of production of the original. The very admissibility of such a document, i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act.

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 form which the information is derived was regularly fed into the computer in the ordinary course of the said activity.

5. He submits that since the prosecution is not in a position to comply with provision of Section 65-B of the Evidence Act, it has resorted to Rule 24 Chapter-VI of the Criminal Manual. He therefore, prays for quashing and setting aside the impugned order.

6. Heard the learned APP. Learned APP supports the impugned order. He submits that the application was rightly moved. The court has sufficient powers to deal with such application. He submits that Rule 24 Chapter VI is specifically framed to assist the court in coming to a proper conclusion when recorded conversation is produced before the court. Though the learned counsel for the petitioner has tried to submit on merits, by pointing out questions in the cross-

examination of the prosecution witness, it is thought proper not to go into the details, since it would be for the trial court to look into it at the appropriate stage.

7. Considering the submissions this court finds that the application was filed under the provision of Rule 24 of Chapter VI of the Criminal Manual, the court has power to pass such order. Further the petitioner could not point out exact prejudice that will cause to him. His submission that the Superintendent of Court is not technically expert to ascertain the voice of recorded conversation. Looking at the order what appears is that Superintendent of the court is directed only to verify & tally the transcription with the voice recording noted in the panchanama exh. 37 and 42. The Superintendent of the Court is not directed to recognize the voice or is not asked to record any other thing which is required to be done by a technical expert. Thus, the objection that the Superintendent of court is not expert needs no consideration. The other grounds of objection can be agitated during the course of trial and hearing of the case.

8. So far as the submission that at this stage this exercise is not warranted does not hold any water. The court has ample power to pass such order at any stage of the proceedings. The court is not expected to be a silent spectator. Merely because evidence is practically over is no reason for not exercising power by the court. Thus, this court does not find any merit in the application. The Criminal Writ petition is thus, dismissed and disposed off.

[KISHORE C. SANT, J.]

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