

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 834 OF 2021

Dinesh Ganpat Kodape, Aged about 42
 years, Occ. Service, R/o Bamanwada
 Road, Snehadeep Nagar, Rajura,
 District : Chandrapur.

... PETITIONER

VERSUS

1. State of Maharashtra,
 Through P.S.O. Ramnagar,
 Chandrapur.
2. Priti Sunil Gaikwad, Aged about
 41 yrs, Occ : Service, R/o
 Shastri Nagar, Chandrapur.

... RESPONDENTS

Mrs. Shilpa P. Giratkar (Giripunje), Advocate for the petitioner.
 Shri S.M. Ukey, A.P.P. for respondent no. 1.
 Shri Alok Daga, Advocate for respondent no. 2.

CORAM : VINAY JOSHI, J.
DATED. : 10.08.2022.

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith. Heard finally

by consent of both the parties.

2. At the instance of report lodged by the respondent no.2-lady, Crime was registered for the offence punishable under Sections 354-A, 509 read with 34 of the Indian Penal Code, 66-A and 66-B of the Information Technology Act, 2000 and Section 3(1)(11) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. After framing of charge, the informant has laid evidence. During the course of her evidence, the prosecution has tendered a certificate issued by the informant in terms of Section 65-B(4) of the Evidence Act certifying about electronic evidence. The petitioner-accused resisted for production of certificate, however the objection was turned down vide impugned order dated 26.10.2021, and therefore, the petition.

4. Learned counsel for the petitioner would submit that the prosecution ought to have filed the certificate at the time of charge-sheet and it is not permissible to file it at later stage. Moreover, it is contended that no reasons are assigned by the prosecution for such late production, and therefore, acceptance of certificate is an error

committed by the Trial Court.

5. On the other hand, learned Counsel appearing for respondent no.2 as well as learned A.P.P. has supported the impugned order by stating that there is no bar for production of certificate, however it is a matter of trial to decide its admissibility at later stage. Legality of certificate can be decided when the electronic evidence would be tendered. Moreover, it is submitted that the other side would get an opportunity to cross-examine the informant as regards to the certificate.

6. Perused the record and impugned order. It reveals that certain evidence i.e. printouts of messages exchanged by the parties was a part of charge-sheet. However, at later stage, during the course of evidence of informant, certificate under Section 65-B(4) of the Evidence Act, has been tendered.

7. The Trial Court by relying on the decision of the Supreme Court in cases of *Anvar PV. Vs. P.K. Basheer and ors (Civil Appeal no. 4226 of 2012)* and *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal 2020 SCC OnLine 571*, wherein it is observed that production of late certificate is a curable defect and it can be filed at

the time of trial when the electronic record is sought to be produced. The learned Counsel for the petitioner also relied on the judgment of the Supreme Court in case of *Anvar (supra)*. It reveals that the Hon'ble Supreme Court ruled that electronic evidence cannot be admitted in absence of certificate issued under Section 65-B of the Evidence Act. However, the admissibility of the electronic evidence would depend on the certificate. There is no bar to produce the certificate at later stage. Yet, the informant is under cross-examination, therefore the petitioner would get an opportunity to cross-examine the informant on such evidence. The learned Trial Court has properly appreciated the issue and therefore, no interference is called.

8. In view of that petition stands dismissed. No order as to costs.

(VINAY JOSHI, J.)

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