Reserved on : 12.07.2024
Pronounced on : 06.08.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.18372 OF 2024 (GM - RES)

BETWEEN:

SHRI SANTHOSH SHET
AGED ABOUT 37 YEARS,
S/O. SRINIVAS SHET. P,
RESIDENT OF DAGINIKATTE VILLAGE,
CHANNAGIRI TALUK,
DAVANAGERE DISTRICT – 577 213.

... PETITIONER

(BY SRI GIRIDHAR H., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY BASAVAPATNA POLICE STATION,
DAVANAGERE,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
BENGALURU – 560 001.

2 . SHRI. PATIL. G. S.
AGED ABOUT 44 YEARS,
S/O LATE G. SHANKARAPPA,
RESIDENT OF CHANNAGIRI TALUK,

DAVANAGERE – 577 213.

... RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R-1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, PRAYING TO A) QUASH ANNEXURE-H ALLOWING ON 09/01/2024 THE R1 TO SUBMIT ANNEXURE-D DTD 22.08.2023 ADDL. FINAL REPORT AS MATERIAL ON RECORD BY THE LEARNED ADDL. DISTRICT AND SESSIONS JUDGE AND FAST TRACK SPECIAL JUDGE AT DAVANAGERE DURING TRIAL IN SC 56/2021 AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court calling in question an order dated 09-01-2024 passed by the Additional District and Sessions Judge and Fast Track Special Judge, Davangere in S.C. No.56 of 2021 by which, additional material that was placed before the Court is permitted to be marked, as also recalling PW-3 for further cross-

examination in order to demonstrate contents of the compact disc that was marked on the said date. The petitioner would further challenge an order dated 11-06-2024 by which, the concerned Court permits recalling of PW-1 and PW-2 for further examination and consequently seeks quashment of entire trial.

2. *Sans* details, facts in brief, germane, are as follows:

The 2nd respondent is the complainant, cousin brother of the victim. The petitioner is accused No.1. It is the case of the prosecution that the petitioner is a tuition teacher and the victim is his student. When the student was studying in 8th standard, she used to visit the house of the teacher/petitioner for the purpose of tuitions. It is alleged that the teacher raped the student, records the said act in his mobile phone and threatens the victim not to reveal the same to anyone. Long after the incident was over, accused No.2 shares the video with the cousin brother of the victim, after which, the offence comes into life by which time six years have passed by. A crime then comes to be registered against the petitioner and several others in Crime No.102 of 2020 for offences

punishable under Sections 376 and 506 of the IPC, Sections 6 and 15 of the Protection of Children from Sexual Offences Act, 2012 and Section 66 of the Information Technology Act, 2008. The issue in the *lis* does not concern merit of the matter before the concerned Court.

3. The Police conduct investigation in the crime and file a charge sheet before the concerned Court. The complainant had transferred the video into a CD and had handed it over to the Investigating Officer. Notwithstanding the same, that fact was never made part of the charge sheet. Long after filing of the charge sheet, the prosecution seeks to get the CD marked in evidence through examination-in-chief of PW-3, the victim's mother. It was seriously objected to by the petitioner on the score that it did not accompany to it a certificate under Section 65-B of the Indian Evidence Act. The Police then file an additional charge sheet with Section 65-B certificate to which again the petitioner objected, on the score that it was not in a prescribed format and that there was no question of filing additional charge sheet after commencement of evidence. The Court allows the prosecution to play the video in the

CD and to be viewed by the mother of the victim. The mother identifies the daughter. The prosecution then files an application to recall the victim and the 2nd respondent/complainant PW-2 for further examination-in-chief. Since the CD was an important and material evidence, the petitioner and other accused objected to recall of PWs-1 and 2 on the score that the CD could not have been marked through PW-3 as it is filed after one year of commencement of evidence only to fill in lacunae with proper Section 65-B certificate. All the applications filed by the prosecution come to be allowed by order of the concerned Court. Aggrieved by the said order, the petitioner is before the Court in the subject petition.

4. Heard Sri H.Giridhar, learned counsel appearing for the petitioner and Sri P.Thejesh, learned High Court Government Pleader appearing for respondent No.1.

5. The learned counsel appearing for the petitioner would vehemently contend that once the charge sheet is fled, charges are framed and evidence would commence, the Court cannot permit filing of a supplementary charge sheet. It is filed to mark electronic

evidence initially. It did not contain a Section 65-B certificate. Later the certificate so issued which is appended was not by the Competent Authority. He would, therefore, contend that all the applications that are allowed are on the basis and for the purpose of examination or further examination on the strength of electronic evidence which by itself could not have been marked. Therefore, the learned counsel would submit that all the orders be quashed or even the trial in toto be quashed, as it is hit by gross delay in registering the crime.

6. Per contra, the learned High Court Government Pleader would vehemently refute the submissions to contend that non-filing of certificate under Section 65-B of the Indian Evidence Act to mark the electronic evidence is a curable defect. It is not that the document would not be entertainable at all, as at any time during the trail a certificate can be produced. He would contend that the petitioner has indulged in heinous act of sexual assault on the student, who was at that point in time 14 years old, being her teacher. Therefore, this Court on any ground should not interfere

with the orders that are passed by the concerned Court, which are in tune with law and not contrary to law.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. They are all a matter of record. The incident happens in the year 2013. The victim/daughter of PW-3 was a student of the petitioner/accused No.1. She used to go to the house of the petitioner for the purpose of tuitions, at which point in time, the petitioner is said to have sexually assaulted the victim. This was kept in the dark for a long time. One video surfaced or circulated by accused No.2. It is initially seen by the cousin brother of the victim somewhere in the year 2020 and the crime being registered against the petitioner who is said to have indulged in the act of sexual assault and the other accused who have circulated the video. This ends up becoming a crime in crime No.102 of 2020. The Police after investigation filed a charge sheet. At the time of investigation, it is the case of the

complainant that, the video was transferred into a compact disc and the compact disc was handed over to the Investigation Officer. The charge sheet did not contain the said material/electronic evidence of compact disc containing the video.

9. A charge sheet is filed on 06-02-2021 and the matter is pending as aforesaid. Evidence of PW-1, the victim; PW-2, the complainant and PW-3, the mother of the victim was recorded on 23-09-2022 and 23-02-2023. They were extensively cross-examined. During the examination-in-chief the witnesses revealed that a video that was transmitted into a compact disc was handed over to the Investigating Officer. It is then the prosecution realized that the compact disc was not marked in evidence. The video was then taken as evidence and played before PW-3, the mother. The mother sees the video and identifies her daughter. Later it was sought to be marked through PW-3. This is objected to by the petitioner in terms of his objections dated 21-04-2023. The objections read as follows:

"*OBJECTION U/S 65-B OF EVIDENCE ACT TO ADMIT THE C.D. AS EVIDENCE.*

Herein, the Advocate for the accused No.1 submits as under:-

That, the I.O. has submitted one C.D. by stating that the same was produced by the CW-1 under Mahazar Ex.P5. But, CW-1 (PW-2) has stated before this Hon'ble Court that he has produced one mobile and C.D. before the Dy.S.P. at Channagiri.

That mobile phone used to record the scene, and the original memory card have not seized and produced before this Hon'ble Court. The mobile phones used for forwarding scene of the video have not seized by the I.O. There is no certificate of person who download to the CD from the ram of mobile U/s 65B. of Evidence Act. Hence, the said C.D. is not admissible under the law.

The Hon'ble Supreme Court vide its order dated 4th May 2022 in Ravinder Singh @ Kaku v. State of Punjab has observed that a certificate under Section 65B(4) of the Indian Evidence Act, 1872 is mandatory to produce electronic evidence, and that submitting oral evidence in place of such certificate cannot possibly suffice.

The Hon'ble Supreme Court has observed that in all such cases, where the CD/DVD are being forwarded without a certificate U/s 65B Evidence Act, such CD/DVD are not admissible in evidence.

Therefore, the accused No.1 is objecting to play and mark/exhibit the C.D. in favour of prosecution as the said C.D. (Electronic Record) is not admissible. Hence, request of the prosecution may be rejected in the ends of justice.

Date: 21-04-2023 *Sd/-*
Advocate for Accused No.1"

(Emphasis added)

The objection is that the CD could not have been marked in evidence, as there is no certificate under Section 65-B of the Evidence Act and if there is no such certificate it does not become an evidence and, therefore, marking of compact disc should be rejected. In the light of the objection so made by the petitioner, the prosecution filed additional charge sheet and appended this video along with a certificate under Section 65-B of the Evidence Act citing it as additional material to be marked through PWs-1, 2 and 3. Here again the petitioner objects contending that the certificate under Section 65-B is not by the Competent Authority.

10. On 01-09-2023 the Public Prosecutor files an appropriate Section 65-B certificate along with further statement of the complainant. It is then the prosecution filed application under Section 311 of the Cr.P.C, to recall all the witnesses to be examined further in the light of the video being marked. Applications were objected to. Nevertheless, the concerned Court allows the applications. The order dated 11-06-2024, by which the application is allowed, is germane to be noticed. It reads as follows:

"ORDER ON APPLICATION FILED U/S. 311 OF Cr.P.C.

Learned Public Prosecutor filed this application U/s. 311 of Cr.P.C., seeking to recall PW-1 and 2 for further examination in chief, in the interest of justice. In the application it is stated that, the accused have been charge sheeted for the offences punishable U/s. 376, 506 of IPC and Section 6 and 15 of POCSO Act along with Section 66 of IT Act. The complainant –CW-1 and victim – CW-6 are examined as PW.2 and 1 respectively. The CD containing the scene of sexual assault by the accused No.1 on the victim is collected by the Investigating Officer. The said CD was not displayed and shown to CW-1 and victim while examining them. CD being an important piece of evidence, that should be shown to CW-1 and victim and further evidence is to be recorded. By oversight, CD was not shown to PW-1 and 2. For the just and complete trial of the case, further chief examination of PW-1 and 2 is necessary. They are the important witnesses to depose all the contents of CD. Hence, prayed to recall PW-1 and 2 for further chief-examination. It is further stated in the application that, no prejudice will be caused to the other side because they will be having an opportunity for cross-examination of the witnesses.

Learned counsel for the accused 1 and 3 has seriously contested this application by filing detailed objection by contending that, no grounds are made out to recall PW-1 and 2 for further chief examination. PW-1 and 2 are examined on 23-09-2022 and they are fully cross-examined. Now, in order to fill up the lacuna, this application is filed. Why Section 65(B) certificate is not submitted along with the charge sheet is not forthcoming. After examination of the witnesses without any order to fill up the lacuna, Section 65(B) certificate is created and produced. Hence, the CD cannot be considered at this stage. After a lapse of 17 months, this application is filed. Nothing is stated in the complaint or in the mahazar about the contents of CD. PW-2 has stated that, she has not down loaded the contents of CD. Hence, there is no question of showing the contents of CD to PW-1 and 2. Only to drag on the case, this application is filed. Hence, prayed to reject the application.

Heard arguments and perused the record.

Now the point for determination is as follows:

1) *Whether the prosecution has made out sufficient grounds to recall PW-1 and 2 for further examination in chief as prayed in the application filed U/s. 311 of the Cr.P.C.?*

On the basis of materials available on record, findings to the above point is in the affirmative for the following:

R E A S O N S

I have gone through the entire materials available on record. The allegations against the accused are punishable U/s. 376, 506 of IPC and Sec.5 and 15 of POCSO Act along with Sec.66 of I.T. Act. In her statement recorded U/s. 164 of Cr.P.C., the victim has stated before the Magistrate that, while she was studying in 8th Standard, she was going to the house of accused No.1 for tuition. During that time, the accused No.1 committed rape and videographed the same. He gave threat to her by stating that, if she revealed this matter to anybody, she will be killed. Subsequently also, by showing this video, two times he committed rape. So, she has stopped to go to tuition. Subsequently, she was not in his contact. But, recently about 15 days back, that video recorded by the accused No.1 is shared to her villagers. Her cousin brother saw the video and enquired her. During that time, she revealed the fact. Hence, her cousin brother has filed the complaint.

The contents of 164 Cr.P.C., statement reveals about the seriousness of the allegations. Under such circumstances, contents of CD are very much relevant to prove the allegations against the accused. Hence, in the interest of justice, PW-1 and 2 are to be recalled. Objections raised by the accused are not sustainable. There is no bar to submit Sec.65(B) certificate in the later stage. If that certificate is not submitted along with the charge sheet, it can be submitted before recording evidence. Under such circumstances, the argument of learned counsel for the accused No.1 is not acceptable one. Hence, those arguments are hereby rejected. Hence,

aforesaid point is answered in the affirmative and proceed to pass the following:

O R D E R

Application filed by the prosecution U/s. 311 of Cr.P.C., is hereby allowed as prayed for.

PW-1 and 2 are recalled for further chief-examination.

Issue summons to PW-1 and 2. Call on 12-07-2024.

Sd/- ADJ, FTSC-1 Davanagere."

(Emphasis added)

The aforesaid order of the concerned Court has driven the petitioner to this Court in the subject petition. The issue now would be, whether filing of electronic evidence without a certificate under Section 65-B of the Evidence Act would vitiate the evidence or the resultant proceedings. The issue need not detain this Court for long or delve deep into the matter.

11. The Apex Court, has considered this issue and held that non-filing of certificate under Section 65-B of the Evidence Act at the time of production of electronic evidence would not vitiate the

proceedings. It is a curable defect. The Apex Court in the case of ***SONU v. STATE OF HARYANA***[1] has held as follows:

> *"…. …. ….*
>
> ***32.*** *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.* ***It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."***
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> *(Emphasis supplied)*

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[1] *(2017) 8 SCC 570*

It is further clarified by a Three Judge Bench of the Apex Court subsequently in ***ARJUN PANDITRAO KHOTKAR v. KAILASH KUSHANRAO GORANTYAL***[2] wherein the Apex Court holds as follows:

> *"…. …. ….*
>
> ***56.*** *Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial.* ***Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law."***
>
> *(Emphasis supplied)*

A coordinate Bench of this Court had taken a different view that evidence could not have been let in without the certificate under

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[2] *(2020) 7 SCC 1*

Section 65-B of the Evidence Act appended to the electronic evidence at the time of its production. The said finding of the coordinate Bench is reversed by the Apex Court in ***STATE OF KARNATAKA v. T. NASEER***[3] wherein the Apex Court considers entire spectrum of law and lays down that it was a curable defect and it would not amount to the entire trial getting vitiated. The Apex Court holds as follows:

"…. …. ….

> ***7.*** *The facts of the case have been briefly noticed in the preceding paragraphs. Serial bomb blasts took place in Bangalore on 25.07.2008 which shocked not only the Bangalore city or the State but the entire country, as in such terror attacks it is only the innocents who suffer. The investigation had to be scientific. At the instance of the accused no. 3, electronic devices such as one Laptop, one external Hard Disc, 3 Pen Drives, 5 floppies, 13 CDs, 6 SIM cards, 3 mobile phones, one memory card and 2 digital cameras etc. were recovered and seized.* ***These were sent for examination to the CFSL, Hyderabad. Report was received on 29.11.2010. The same was submitted before the Trial Court on 16.10.2012 and sought to be proved at the time of recording of statement, M. Krishna, Assistant Government Examiner, Computer Forensic Division, CFSL, appeared as PW-189. The accused vide application dated 06.03.2017 objected to taking the report dated 29.11.2010 in evidence in the absence of a certificate under Section 65-B of the Act. Immediately, thereafter a certificate dated 27.04.2017 was got issued under Section 65-B of the Act and an application was filed under Section 311 of the Cr. P.C. seeking to recall M. Krishna (PW-189) and to produce the aforesaid certificate in evidence. The trial***

[3] *2023 SCC OnLine SC 1447*

was still pending. Learned Trial Court without appreciating the legal position in this regard had dismissed the application. The order was upheld by the High Court. It was primarily for the reason of delay in producing the certificate under Section 65B of the Act.

8. *This Court in Anwar's case (supra) has opined that a certificate under Section 65B of the Act is not required if electronic record is used as a primary evidence. Relevant paragraph thereof is quoted herein below:*

> ***"24.*** *The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied.* ***It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act****."*
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> *(Emphasis added)*

9. *The aforesaid issue was subsequently considered by this Court in Arjun Panditrao Khotkar's case (supra). It was opined that there is a difference between the original information contained in a computer itself and the copies made therefrom. The former is primary evidence and the latter is secondary one. The certificate under Section 65-B of the Act is unnecessary when the original document (i.e., primary evidence) itself is produced. Relevant paragraph '33' thereof is extracted below:*

> *"**33.** The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf — Sections 62 to 65 being irrelevant for this purpose.* ***However, Section 65-B(1) clearly differentiates between the "original" document — which would be the original "electronic record" contained in the "computer" in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65-B differentiates between the original information contained in the "computer" itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence****."*
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> *(Emphasis added)*

10. *In State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515, this Court after referring to the earlier judgment in Anwar's case (supra) held that the non-production of the Certificate under Section 65B of the Act is a curable defect. Relevant paragraph '16' thereof is extracted below:*

> *"16. The same view has been reiterated by a two-Judge Bench of this Court in Union of India v. Ravindra V. Desai, (2018) 16 SCC 273.* ***The Court emphasised that non-production of a certificate under Section 65-B on an earlier occasion is a curable defect****. The Court relied upon the earlier decision in Sonu v. State of Haryana, (2017) 8 SCC 570 in which it was held:*
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> *'32. … 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.'*
>
> *(Emphasis added)*

11. *Coming to the issue as to the stage of production of the certificate under Section 65-B of the Act is concerned, this Court in Arjun Panditrao Khotkar's case (supra) held that the*

certificate under 65-B of the Act can be produced at any stage if the trial is not over. Relevant paragraphs are extracted below:

> ***"56.*** *Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act.* ***Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.***
>
> *59. Subject to the caveat laid down in paras 52 and 56 above, the law laid down by these two High Courts has our concurrence.* ***So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted and relied upon in evidence****."*
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> *(Emphasis added)*

12. *The courts below had gone on a wrong premise to opine that there was delay of six years in producing the certificate whereas there was none. The matter was still pending when the application to resummon M. Krishna (PW-189) and produce the certificate under Section 65-B of the Act was filed under Section 311 of the Cr. P.C.*

13. *It was only vide order dated 07.04.2017 that the report prepared on the basis of electronic devices was refused to be taken on record by the Trial Court. The original electronic devices had already been produced in evidence and marked as MOs. It was during the examination in chief of M. Krishna (PW-*

189) that the report of CFSL dated 29.11.2010 was sought to be exhibited. However, the Trial Court vide order dated 07.04.2017 declined to take the same on record in the absence of a certificate under Section 65B of the Act. When the aforesaid witness was further examined in chief on 27.04.2017, the report under Section 65B was produced to which objection was raised by the counsel of the defence and vide order dated 20.06.2017 the Trial Court declined to take the certificate, issued under Section 65B of the Act, on record. It was thereafter that an application was filed under Section 311 of the Cr. P.C. for recalling M. Krishna (PW-189) and produce the certificate under Section 65-B of the Act on record. The same was rejected by the Trial Court vide order dated 18.01.2018.

14. *From the aforesaid facts, it cannot be inferred that there was delay of six years in producing the certificate. In fact, report received from CFSL, Hyderabad on the basis of the contents of electronic devices dated 29.11.2010 was already placed before the Trial Court on 16.10.2012. In fact, the stand of the prosecution was that when the original electronic devices were already produced and marked MOs, there was no need to produce the certificate under Section 65-B of the Act. Still, as a matter of abundant caution, the same was produced that too immediately after objection was raised by the accused against the production of CFSL report prepared on the basis of the electronic devices seized.*

15. Fair trial in a criminal case does not mean that it should be fair to one of the parties. Rather, the object is that no guilty should go scot-free and no innocent should be punished. A certificate under Section 65-B of the Act, which is sought to be produced by the prosecution is not an evidence which has been created now. It is meeting the requirement of law to prove a report on record. By permitting the prosecution to produce the certificate under Section 65B of the Act at this stage will not result in any irreversible prejudice to the accused. The accused will have full opportunity to rebut the evidence led by the prosecution. This is the purpose for which Section 311 of the Cr. P.C. is there. The object of the Code is to arrive at truth. However, the power under Section 311 of the Cr. P.C. can be exercised to subserve the cause of justice and public interest. In

the case in hand, this exercise of power is required to uphold the truth, as no prejudice as such is going to be caused to the accused.

16. For the aforesaid reasons, the appeal is allowed. The orders passed by the courts below are set aside. Resultantly, application filed by the prosecution under Section 311 of the Cr. P.C. is allowed. The Trial Court shall proceed with the matter further."

(Emphasis supplied)

The Apex Court, in the aforesaid judgments, would hold that electronic evidence can be marked at any time during the trial. The certificate under Section 65-B can be produced, which would neither vitiate the trial conducted on the basis of the electronic evidence nor enure to the benefit of the accused, to contend that no proceedings should be permitted to be proceeded further on the marking of the electronic evidence. The Apex Court in the case of ***T. NASEER*** *supra* has clearly held that Section 311 of the Cr.P.C., is in the statute only for this purpose, as it is a voyage towards discovery of truth. Under Section 311 of the Cr.P.C., marking of document, examination, re-examination, cross-examination and further cross-examination can take place. Therefore, the first glorified submission of the learned counsel for the petitioner

tumbles down, as the evidence that is let in being the compact disc, without attaching to it a certificate under Section 65-B of the Evidence Act, does not and did not vitiate the proceedings.

12. It appears that due to serious objection of the petitioner, the prosecution took recourse to another route of marking it by way of supplementary charge sheet. In fact what is produced is not a supplementary charge sheet after further investigation as is done in the normal parlance. It is termed as supplementary charge sheet, but what it appends to it is only the compact disc, with the certificate under Section 65-B. This cannot give a right in favour of the petitioner to contend that after the commencement of evidence there cannot be production of supplementary charge sheet. While there can be no quarrel about the contention of the petitioner that once evidence would commence after framing of charges, there cannot be a supplementary charge sheet, as that right ceases or freezes in favour of the prosecution, the day charges are framed. Alteration of charge can happen at any time during the trial under Section 216 of the Cr.P.C., but not an additional charge sheet. In the case at hand, it is not an additional charge sheet or a

supplementary charge sheet. Only the compact disc is marked along with the certificate, that too because the petitioner objected contending that the compact disc could not be marked without Section 65-B certificate. The submissions of the learned High Court Government Pleader overpowers what the learned counsel for the petitioner strenuously contended, as the submission of the learned counsel for the petitioner runs counter to what the Apex Court has held in the judgments *supra.*

13. The learned counsel for the petitioner seeks to place reliance upon a judgment rendered by this Court in the case of ***LOKESH S. v. STATE***[4]. The said judgment would not come to the aid of the petitioner, as the facts obtaining therein are entirely different from the facts obtaining in the case at hand.

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[4] *Criminal Petition No.284 of 2020 decided on 26-07-2022*

14. For the aforesaid reasons, finding no merit in the petition, the petition stands ***rejected***.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:MJ