

(2017) 04 KAR CK 0124
In the Karnataka High Court
Case No : 3202 of 2017

M.R.Hiremath, S/o Rachaiah

APPELLANT

Vs

The State by Karnataka Lokayukta Police Station Bengaluru
Represented by the Special Public Prosecutor, High Court of
Karnataka

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

[Evidence Act, 1872](#), [Section 65B](#), [Section 65B\(4\)](#), [Section 65B\(2\)](#) -
[Prevention of Corruption Act, 1988](#), [Section 8](#)-

Citation : (2017) 04 KAR CK 0124

Hon'ble Judges : Anand Byrareddy

Bench : SINGLE BENCH

Advocate : Shankar P.Hegde, Venkatesh.S.Arabatti

Final Decision : Allowed

Judgement

1. The facts of the case are as follows.

The petitioner is said to be serving as a Deputy Commissioner, in the Land Acquisition Section of the Bangalore Development Authority, Bangalore. The complainant, one Nagaraj, is said to be the owner of certain land which was subject matter of compulsory acquisition proceedings and which was said to have been the subject matter of challenge in proceedings before this court in its writ jurisdiction. And that there was a direction by this court for the said land to be dropped from the acquisition proceedings. In this regard, it is said that, the file pertaining to the case was resting with the office of the petitioner and awaiting his recommendation for the process of de-notifying the land to take effect.

In this regard the complainant is said to have discovered that the petitioner was amenable to be bribed, to perform official duties and hence had approached him through his agent, accused no. 2, an advocate by profession, which circumstance

the complainant is said to have deduced, on information received through a friend and upon contacting the car driver of the petitioner. It is claimed that accused no.2, when contacted, is said to have taken the complainant to the official chamber of the petitioner and that the petitioner is said to have demanded a bribe of Rs.20 lakh to process the file of the complainant.

The complainant having approached the Lokayuktha Police in the above background, after registration of an FIR in this regard, elaborate preparations are said to have been made by the Lokayuktha Police to initially arm the complainant with an electronic device to secretly record the incidence of the petitioner expressly making a demand for the illegal gratification. This is said to have been successfully achieved by means of video recording of a meeting of the complainant with the petitioner with the aid of accused no.2, by means of a miniature recording device called a "spy camera" supplied by the Lokayuktha police to the complainant, in the official chamber of the petitioner. The petitioner is said to have made a demand for a sum of Rs.20 lakh.

It then transpires that later, "trap proceedings " were arranged and that accused no.2 was apprehended while receiving an initial instalment of the bribe amount, on behalf of the petitioner. And it is in that background, the petitioner is also said to have been arrested and proceedings are said to have been initiated, to the knowledge of the petitioner. It is said that after further investigation, the Police had obtained sanction for prosecution of the petitioner from the competent authority and had filed a final report before the court below alleging that the petitioner had committed offences, punishable under Sections 7,8,10, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the "PC Act" for brevity).

The petitioner's application for discharge having been rejected the present petition is filed.

2. The primary contention on behalf of the petitioner is to the effect that apart from reliance placed on the recording of the alleged conversation between the petitioner and the agent, as regards the amount of bribe to be demanded, which is sought to be established on the basis of a compact disc on which such voice recording has been transferred from a spy camera and recording device, without any certification as required under Section 65-B of the Indian Evidence Act, 1872, and in the absence of any other direct evidence or incriminating material on record, it is contended that the criminal proceedings against the petitioner is an exercise in futility and hence ought to be quashed.

3. On the other hand, the learned Special Public Prosecutor would contend that even assuming that there was non-compliance with Section 65-B of the Indian Evidence Act, 1872, there is other direct evidence to bring home the charges against the petitioner and it is too premature to gauge the weight of such evidence and hence, it is contended that the prayer to quash the proceedings is not tenable.

4. In this admitted circumstance that there is non-compliance with Section 65-B of the Evidence Act, in the prosecution having failed to comply with a mandatory requirement as regards production of material, which would be the most significant direct evidence of the petitioner's involvement in the commission of the alleged crime, we are required to examine the scope and effect of non-compliance with the said provision of law, as interpreted by the Apex Court and other Courts, while also examining whether there is other material available on which the case of the prosecution could possibly be established, if not rebutted.

After having heard the rival contentions, at length, it is sufficient to refer to the decision of the Apex Court in *Anvar P.V. v. P.K. Basheer*, 2015 (1) SCC CrL 24, to answer the point of law. It is laid down as follows :

"Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B 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, and information contained in an electronic record which is printed on 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 or 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 65B(2). Following are the specified conditions under Section 65B(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 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. 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 the 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. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence.

The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India." The evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Thus, in the case of any electronic evidence, it shall be accompanied by a certificate in terms of Section 65-B obtained at the time of bringing the document on record, no secondary evidence is permissible in respect of the same.

Therefore, the electronic evidence in this case, as against the petitioner, is inadmissible in evidence. The prosecution is precluded from supplying any certification, at this point of time, as an after thought if none has been produced. In so far as the contention of the prosecution that there is other evidence available, independent of the electronic evidence, that could yet bring home the charges against the petitioner, is concerned, it is found that, on the face of it, it is not convincing.

It is accused no.2 who is the subject of the trap proceedings. He is not shown to have named the petitioner as being instrumental in the episode. There is no nexus established on the basis of any alleged voluntary statements of the said

accused.

Certain photocopied documents said to have been recovered from the car of accused no.2 or his office, apparently did not relate to the case of the complainant and cannot by itself create any presumption that there was a illegal working relationship between the petitioner and the said accused.

In the result, the petition is allowed in terms as prayed for.