
(2015) 12 TP CK 0014
In the Tripura High Court
Case No : Criminal Petn. 22 of 2015

The State of Tripura

APPELLANT

Vs

Dipankar Majumder and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 59, 63, 65, 65 B, 65 B(4)

Citation : (2016) CriLJ 1310

Hon'ble Judges : Utpalendu Bikas Saha, J.

Bench : Single Bench

Advocate : A. Ghosh, PP, for the Appellant

Final Decision : Dismissed

Judgement

Utpalendu Bikas Saha, J.—The instant criminal petition is taken up for final disposal at the admission stage, as agreed to by Mr. A. Ghosh, learned Public Prosecutor.

2. The instant application is filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 10.03.2015 passed by the learned Additional Sessions Judge (Court No. 5) West Tripura, Agartala in S.T.(T-1) 100 of 2014 wherein the learned Additional Sessions Judge rejected the prayer to admit the Compact Disk (in short hereinafter referred to as CD) in the evidence on the ground that the I.O did not collect any certificate in respect of the CD, in question, as required under Section 65 B(4) of the Evidence Act, as laid down by the Hon'ble Supreme Court in Anvar P.V. Vs. P.K. Basheer, .

3. Mr. A. Ghosh, learned PP while urging for quashing the impugned order submits that the CD which was produced before the I.O was an unknown person. Thus, no certificate could be collected by the I.O. He further submits that the CD which was tendered is necessary for deciding the sessions trial being No. ST(T-1) 100 of 2014.

4. This Court has gone through the impugned order as well as the provisions of Section 65B(4) of the Evidence Act, which reads as follows :

"In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

5. In *Anvar P.V.*, supra, the Apex Court noted inter alia that

"The evidence relating to electronic record, as noted hereinbefore, 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. *Generalia specialibus non-derogant*, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B . To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in *Navjot Sandhu* case (supra) does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, Chip, etc., the same shall be accompanied by the certificate in terms of Section 65 B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is in-admissible".

6. The State admittedly has not produced any certificate in terms of Section 65 B of the Evidence Act in respect of the CD which it wants to take in evidence. Therefore, the same cannot be admitted in evidence and according to this Court the learned trial Court did not commit any wrong in rejecting the prayer of the learned Additional Public Prosecutor to admit the CD in evidence, as the said CD was placed before the Court without any certificate, as required under Section 65 B of the Evidence Act.

7. In view of the above, the instant criminal petition is rejected. Send down the LCRs forthwith.