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CRR-3444-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 1st OF AUGUST, 2025CRIMINAL REVISION No. 3444 of 2025*AASHU JATAV @ AKASH**Versus**THE STATE OF MADHYA PRADESH*

Appearance:

Shri Lokendra Sharma - Advocate for the petitioner.

Shri Yogesh Parashar - Public Prosecutor for respondent/State.

ORDER

The petitioner has preferred this criminal revision under Section 397 and 401 of CrPC against the impugned order dated 02.07.2025 passed by Second Additional Sessions Judge, Dabra, District Gwalior in Sessions Trial No.107/2023, whereby the Trial Court has allowed to take the Pen Drive filed by the petitioner on record but refused to take it as an evidence.

2. Brief facts of the case of the prosecution are that petitioner is facing trial for offence punishable under Sections 376(2)(n) and 506 of IPC. During cross-examination of the prosecutrix, petitioner filed a Pen Drive along with certificate under Section 65-B of Indian Evidence Act for taking on record and the Trial Court has allowed to take it on record but refused to take it as an evidence by the impugned order. Being aggrieved by the aforesaid order, petitioner has preferred this criminal revision.

3. Learned counsel for the petitioner contended that he has filed a Pen Drive containing relevant electronic evidence including mobile chats and video between the petitioner and prosecutrix, which has direct bearing on the defence plea that the



relationship between the petitioner and prosecutrix was consensual. Admissibility is to be decided at the stage of evidence as per the law laid down by Delhi High Court in the case of **Ram Kishan Vs. M/s Emaar MGF Constructions Pvt. Ltd.** decided on 28.06.2024 in CM(M) No.197/2019 & CM Appl. No.48567/2023, but the Trial Court has failed to appreciate that the petitioner has fundamental rights for a fair trial, which includes the right to present the relevant defence evidence, but the Trial Court has misconstrued the difference between taking the document on record and admitting it in evidence. Hence, he prays that the impugned order be set aside and the Pen Drive be taken on record.

4. Per contra, learned counsel for the respondent/State opposed the prayer and prayed for its rejection by supporting the impugned order passed by the Trial Court.

5. Both the parties heard at length and perused the record with due care.

6. From perusal of the record, it appears that the application for taking Pen Drive on record filed by the petitioner has been allowed by the Trial Court, but it is directed that admissibility of this Pen Drive shall be considered at the relevant time, therefore, the submission made by the petitioner that the Trial Court has refused to take Pen Drive on record is completely incorrect and erroneous, but certificate under Section 65-B of Indian Evidence Act has not been taken on record. Although the petitioner did not file certificate under Section 65-B of Indian Evidence Act prior to commencement of evidence of the prosecution,.

7. The Division Bench of Delhi High Court in case of **Union of India Vs. Ravindra V. Desai** reported in (2018) 16 SCC 273, has held as under:-

"16. The Hon'ble Supreme Court while referring to the case of **State of Karnataka vs. M.R. Hiremath**: (2019) 7 SCC 515 in the case



of **State of Karnataka vs. T. Naseer alias Nasir alias Thandiantavida**
Naseer alias Umarhazi alias Hazi & Others: 2023 SCC OnLine SC
1447 has further held:

"10. In **State of Karnataka v. M.R. Hiremath, 2019(7) SCC 515**, this Court after referring to the earlier judgment in **Anwar**" a 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:

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.

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."

8. Needless to say, filing of certificate under Section 65-B of Indian Evidence Act is a matter of procedure and by not allowing the same to be taken on record amounts to taking a hyper technical view, which is against the settled preposition of law as cited above.

9. Accordingly, the impugned order dated 02.07.2025 passed by Second Additional Sessions Judge, Dabra, District Gwalior in Sessions Trial No.107/2023, is set aside. The petitioner is permitted to place on record the certificate under Section 65-B of Indian Evidence Act with respect to the Statement of Accounts in accordance with law, subject to cost of Rs.2,000/- (**Rupees Two Thousand only**) to be paid to the respondent on the next date of hearing fixed before the learned Trial Court.

10. In view of the above, this criminal revision stands **allowed**.

11. Pending Interlocutory Applications are also disposed of accordingly.

(ANIL VERMA)
JUDGE

Abhi