

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 20825-20826 OF 2017

ARJUN PANDITRAO KHOTKARAPPELLANT(S)

VERSUS

KAILASH KUSHANRAO GORANTYAL
AND OTHERS ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(s). 2407 OF 2018

VIJAYAPPELLANT(S)

VERSUS

ARJUN AND OTHERS ...RESPONDENT(S)

CIVIL APPEAL NO(s). 3696 OF 2018

KAILASH KUSHANRAO GORANTYALAPPELLANT(S)

VERSUS

ARJUN PANDITRAO KHOTKAR ...RESPONDENT(S)

ORDER

In *Anvar P.V. vs. P.K. Basheer and others*, (2014) 10

SCC 473, a three Judges Bench of this Court held: _

“16. 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.

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20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

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22. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B 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 inadmissible.”

2. In ***Shafhi Mohammad vs. State of Himachal Pradesh***, (2018) 2 SCC 801, a two Judges Bench decision, it has been held:

“20. An apprehension was expressed on the question of applicability of conditions under Section

65-B(4) of the Evidence Act to the effect that if a statement was given in evidence, a certificate was required in terms of the said provision from a person occupying a responsible position in relation to operation of the relevant device or the management of relevant activities. It was submitted that if the electronic evidence was relevant and produced by a person who was not in custody of the device from which the electronic document was generated, requirement of such certificate could not be mandatory. It was submitted that Section 65-B of the Evidence Act was a procedural provision to prove relevant admissible evidence and was intended to supplement the law on the point by declaring that any information in an electronic record, covered by the said provision, was to be deemed to be a document and admissible in any proceedings without further proof of the original. This provision could not be read in derogation of the existing law on admissibility of electronic evidence.

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24. We may, however, also refer to the judgment of this Court in *Anvar P.V. v. P.K. Basheer*, delivered by a three-Judge Bench. In the said judgment in para 24 it was observed that electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act to which procedure of Section 65-B of the Evidence Act was not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act was required to be followed and a contrary view taken in *Naujot Sandhu* that secondary evidence of electronic record could be covered under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65-B of the Evidence Act.

25. Though in view of the three-Judge Bench judgments in *Tomaso Bruno* and *Ram Singh*, it can

be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).

26. Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In *Anwar P.V.*, this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the Court and the expression “document” is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

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29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the

absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory.”

3. We are of the considered opinion that in view of **Anvar P.V.** (*supra*), the pronouncement of this Court in **Shafhi Mohammad** (*supra*) needs reconsideration. With the passage of time, reliance on electronic records during investigation is bound to increase. The law therefore needs to be laid down in this regard with certainty. We, therefore, consider it appropriate to refer this matter to a larger Bench. Needless to say that there is an element of urgency in the matter.
4. Let the records be laid by the Registry before Hon'ble the Chief Justice of India for appropriate directions.

.....**J.**
[ASHOK BHUSHAN]

.....**J.**
[NAVIN SINHA]

NEW DELHI
JULY 26, 2019.

ITEM NO.58

COURT NO.11

SECTION III

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s).20825-20826/2017

ARJUN PANDITRAO KHOTKAR

Appellant(s)

VERSUS

KAILASH KUSHANRAO GORANTYAL & ORS.

Respondent(s)

(IA No. 19047/2018 - VACATING STAY)

WITH

C.A. No. 2407/2018 (III)

C.A. No. 3696/2018 (III)

Date : 26-07-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE NAVIN SINHA

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Ms. Pradnya S. Adgaonkar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Hon'ble Mr. Justice Ashok Bhushan and Hon'ble Mr. Justice Navin Sinha pronounced the order referring the matter to a larger Bench in terms of the signed order.

(ARJUN BISHT)

COURT MASTER (SH)

(RENU KAPOOR)

BRANCH OFFICER

(signed order is placed on the file)

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