



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-6012-2018 (O&M)  
Reserved on: 20.03.2025  
Pronounced on : 16.05.2025

Balbir Singh

...Petitioner

V/s

Shiromani Panth Akali Budha Dal Panjwan Takhat  
and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Argued by: Mr. Vijay Sharma, Advocate, for the petitioner.

Mr. R.S. Bains, Senior Advocate with  
Mr. Anmoldeep Singh, Advocate, for the respondents.

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**VIKRAM AGGARWAL, J**

The present revision petition is directed against the order dated 21.07.2018 passed by the Court of learned Civil Judge (Jr. Divn.), Talwandi Sabo, vide which the application filed by petitioner-defendant for putting DVDs in the cross-examination of PW1 (Baba Dyal Singh) and other witnesses was rejected.

2. A suit (Annexure P-1) for declaration to the effect that respondent-plaintiff No.1 (Shiromani Panth Akali Budha Dal Panjwan Takhat) was the owner in possession of land situated in Village Talwandi Sabo, District Bathinda (fully described in the plaint) and that entries to the contrary in the revenue record by way of mutations and Will dated 11.06.2007 of Jathedar late Baba Santa Singh in favour of the petitioner-defendant were illegal, manipulated and forged documents, was filed. Written statement (Annexure P-2) was filed denying the averments made in the plaint.



3. The details of the averments made in the plaint, as also in the written statement are not of much relevance for the purpose of decision of the instant revision petition and are, therefore, not required to be referred to.

4. During the pendency of the suit, an application (Annexure P-4) was moved by the petitioner-defendant to put DVD (one disc) as regards recording of the gathering at Talwandi Sabo on 18.04.2007 for appointment of the petitioner-defendant proposed as Sarbrah Head of Budha Dal and successor of Baba Santa Singh and three DVDs as regards the gathering on 01.10.2007 which took place in the Sports Complex Budha Dal Public School, Patiala when petitioner-defendant was appointed as the 14<sup>th</sup> Head Jathedar of the Shrimonai Panth Akali Budha Dal Panjawan Takhat and resignation given by Baba Santa Singh to PW1 (Baba Dyal Singh) and other witnesses was moved.

5. It was averred in the application that PW1 (Baba Dyal Singh) had to be cross-examined and in his cross-examination he had admitted that on 15.02.2017, Major Singh Sarbara Nambardar had written the resolution of the proceedings on 18.04.2007 and had admitted his signatures on the original and photostat copy of the said proceedings/resolution. The said document had already been produced on record as Ex.D20. It was averred that on 18.04.2007, a movie had also been prepared and photographs had been taken. This fact had also been admitted by PW1 (Baba Dyal Singh) in his cross-examination and photographs etc. had been marked 'D30'. It had further been admitted in his cross-examination that on 01.10.2007, there was a large gathering at Patiala, wherein he himself was also present there and the joint *bhog* of Assa Singh, Bhai Jagdish Singh, Bhajan Singh and Kaka Karamjit Singh was performed. He admitted that on the said occasion as well, photographs were taken and a video was prepared. It was averred that in



view the categorical admissions, the DVDs containing the videos prepared on 18.04.2007 and 01.10.2007 were to be put to the said witness and he had to be confronted with the same. It was averred that the said exercise was essential for adjudication of the controversy between the parties.

6. The application was opposed by way of reply (Annexure P-5), wherein preliminary objections as regards the provisions of Section 65B and 45A of the Indian Evidence Act, 1872 (for short the “Evidence Act”) were taken while placing reliance upon the judgment of a coordinate Bench of this Court in the case of *Rakesh Jain vs. State of Haryana, 2016 (2) RCR (Crl.) 870*. It was averred that the video recordings could be tampered with at any point of time and that for the admissibility of the electronic record, the law as laid down by this Court had to be followed. Other averments were denied.

7. Vide the impugned order dated 21.07.2018 passed by the Court of learned Civil Judge (Jr. Divn.), Talwandi Sabo, the application was rejected leading to the filing of the present revision petition.

8. Learned counsel for the parties were heard.

9. Mr. Vijay Sharma, learned counsel representing the petitioner strenuously urged that the trial Court had erred in dismissing the application. It was submitted that PW1 (Baba Dyal Singh) had duly admitted about the events of 18.04.2007 and 01.10.2007 and, under the circumstances, there was no occasion for the trial Court to have insisted upon the production of the certificate under Section 65B of the Evidence Act. It was submitted that the said certificate could be produced at any stage and, no particular time had been fixed for the same. In support of his contentions, learned counsel placed reliance upon the following judgments:

1. *Nidhi Sunil Jain vs. Sangeeta Sushil Tiwari and others, SLP(C) No.25085-2024, decided on 22.10.2024;*



2. ***Smt. Sangeeta Sushil Tiwari vs. Smt. Nidhi Sunil Jain and others, (Misc. Petition No.4297-2024, decided on 23.09.2024 by the Single Bench of the Madhya Pradesh High Court);***
3. ***Sunil Kumar Gulati vs. State of Punjab and another (CRM-M-11141-2022, decided on 29.03.2022 by the Single Bench of this Court);***
4. ***Dubbaka Karunasree and another vs. Dubbaka Ravi and another (CRP No.2525-2022, decided on 14.02.2023 by the Single Bench of the Telangana High Court);***
5. ***Vincila vs. Simon Doss (CRP(MD) No.2552-2022, decided on 28.04.2023 by the Single Bench of the Madras High Court);***
6. ***Ram Kishan vs. M/s Emaar MGF Constructions Pvt. Ltd. (CM(M)-197-2019 & CM Appl-48567-2023, decided on 28.06.2024 by the Single Bench of the Delhi High Court);***
7. ***Raj Kumar vs. State of Punjab (CRR-2059-2022, decided on 29.09.2022 by the Single Bench of this Court);***
8. ***Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1;***
9. ***Sunil Kumar Gulati vs. State of Punjab and another, 2022(2) RCR (Crl.) 738;***
10. *Per contra*, Mr. R.S. Bains, learned Senior Counsel representing the respondents opposed the prayer made by learned counsel for the petitioner. It was submitted that in terms of the law settled by the Apex Court and by this Court, the DVDs could not be put to the witnesses without producing a certificate under Section 65B of the Evidence Act. Learned Senior Counsel submitted that any admission made during the course of the trial would not entitle the petitioner to put the DVDs without proper authentication. Reliance was made to Section 145 of the Evidence Act and it was submitted that since the petitioner intended to confront/contradict the witnesses, the certificate



under Section 65B of the Evidence Act was essential. In support of his contentions, he placed reliance upon the following judgments:

1. ***Vikram Singh @ Vicky Walia Vs. State of Punjab, (2017)8 SCC 518;***
2. ***Shafhi Mohammad vs. State of Himachal Pradesh, (2018) 2 SCC 801;***
3. ***State of Karnataka Lokayukta Police Station, Bengaluru vs. M.R. Hiremath, (2019) 7 SCC 515;***
4. ***Anvar P.V. vs. P.K. Basheer, (2014) 10 SCC 473;***
5. ***Harpal Singh @ Chhota vs. State of Punjab (2017) 1 SCC 734 and***
6. ***Rakesh Jain Vs. State of Haryana, 2016 2 RCR (Crl.) 870 of the Single Bench of this Court.***

11. I have considered the submissions made by learned counsel for the parties and have perused the paper-book.

12. Before advertng to the merits of the dispute, it would be apposite to briefly examine the statutory provisions and the law on the subject. Section 65B of the Evidence Act deals with admissibility of electronic records. Section 65B(4) deals with furnishing of a certificate when a statement in evidence by virtue of the provisions of Section 65B of the Evidence Act is to be given:-

***“65B. Admissibility of electronic records.***

xxx                      xxx                      xxx

***(4) 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 sub-section (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 sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*

Further, Section 45A provides as under:-

***“45A. Opinion of Examiner of Electronic Evidence.***

***When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79-A of the Information Technology Act 2000(21 of 2000) is a relevant fact.”***

Section 145 deals with cross-examination as to previous statements in writing.

***“145. Cross-examination as to previous statements in writing.***

***A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”***

13. The law on Section 65B of the Evidence Act was laid down by a three Judges Bench of the Supreme Court of India in ***Anvar P.V. vs. P.K. Basheer*** (supra). The principal issue arising before the Apex Court was as regards the nature and manner of admission of electronic records. The opening para of the judgment beautifully explained the issue arising before the Apex Court:-

***“Construction by Plaintiff, destruction by Defendant. Construction by pleadings, proof by evidence; proof only by relevant and admissible evidence, Genuineness, veracity or***



***reliability of the evidence is seen by the court only after the stage of relevancy and admissibility. These are some of the first principles of evidence. What is the nature and manner of admission of electronic records, is one of the principal issues arising for consideration in this appeal.”***

14. The dispute had arisen out of the General Election to the Kerala Legislative Assembly held on 13.04.2011. The respondent before the Supreme Court of India (P.K. Basheer) had been declared elected to Ernad Legislative Assembly Constituency. He was a candidate supported by the United Democratic Front. The appellant (Anvar P.V.) had contested the election as an independent candidate, allegedly supported by the Left Democratic Front. The sixth respondent before the Supreme Court of India was the Chief Election Agent of the first respondent. The appellant was second in terms of votes, whereas all others out of the total five candidates secured only marginal votes. Election of the first respondent was challenged by the appellant and he also sought a declaration in his favour. The High Court held that the election petition was not maintainable. The other contesting issues were as regards some documents/statements having been published and distributed in the Constituency on 12.04.2011 and as regards the character and conduct of the appellant. A number of issues in fact were raised. The High Court dismissed the election petition as a result of which the matter reached the Supreme Court.

15. Apart from the oral and documentary evidence which had been led before the High Court, there were electronic records also which became a subject matter of major controversy before the Apex Court.

16. The Hon'ble Supreme Court then went on to examine the provisions of the Information Technology Act, 2000 (hereinafter referred to as



the “IT Act”) and the Evidence Act. While referring to the Statement of Objects and Reasons, the Supreme Court of India held as under:-

***“13. 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 u/s 65B, Section 658 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, any 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 u/s 65B(2). Following are the specified conditions u/s 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.*

*14. u/s 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 identifies 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 u/s 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.*

*15. 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.*

*16. 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.*



***17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements u/s 65B of the Evidence Act are not complied with, as the law now stands in India.”***

17. The three Judges Bench of the Supreme Court of India was once again seized of a similar issue in the case of ***Arjun Panditrao Khotkar*** (supra), wherein the said position of law that a certificate was required as a condition precedent for the admissibility of electronic evidence was reiterated. It was held that the certificate would be unnecessary if the original document itself was produced. For example, if the owner of a laptop computer, computer tablet or mobile phone steps into the witness box and proves that the concerned device on which the original information was stored was owned and/or operated by him.

18. Thereafter, there are a number of judgments by this Court and other High Courts delivered in different specific circumstances.

19. This Court would proceed to examine the merits of the instant issue while keeping in mind the statutory provisions and the law laid down by the Apex Court while interpreting the said provisions.

20. In the instant case, the petitioner-defendant seeks to confront PW1 (Baba Dyal Singh) and other witnesses, who would be examined subsequently with the functions held on 18.04.2007 and 01.10.2007. It is not the case that the plaintiff is producing the said evidence from his side, wherein it could have been said that the certificate could have been furnished at any stage since no particular stage has been laid down and this very position has been noticed in various judgments. Here, the witness of the plaintiff is sought to be confronted with the videos. No doubt, in the cross-examination he admitted two such functions having been held on the dates referred to by the petitioner-defendant. However, in the considered opinion of this Court,



unless a certificate under Section 65B of the Evidence Act is produced, the authenticity and genuineness of the videos cannot be proved and under the circumstances, the plaintiff or his witnesses cannot be confronted with the videos of the said functions. If such a thing is permitted, it would be open for anybody and everybody to confront a witness with a doctored video and make an effort to derive undue advantage out of the same. There has to be distinction as regards the person by whom the electronic evidence is being produced and the stage at which it is being produced. This evidence has primarily to be produced by the petitioner-defendant and the witnesses of the plaintiff are only to be confronted with its contents even though they admit such functions to have been taken place. In the considered opinion of this Court, such videos cannot be permitted to be put to a witness without furnishing a certificate in accordance with the provisions of Section 65B of the Evidence Act.

21. I have gone through the judgments relied upon by the learned counsel for the petitioner. In the case of ***Smt. Sangeeta Sushil Tiwari (supra)***, a view was taken by a Single Bench of the Madhya Pradesh High Court that without the production of a certificate under Section 65B of the Evidence Act, transactions could not be produced. The operation of this order was stayed by the Hon'ble Apex Court vide order dated 22.10.2024 passed in SLP No.25085-2024. In the considered opinion of this Court, the issue arising in the said judgment was different and it was not a case where a witness had been confronted with some electronic record in the cross-examination. The Telangana High Court took a view that a certificate under Section 65B of the Evidence Act could be filed at any stage. There is again no dispute with the said ratio of law but it would not be so in a case where a witness is to be confronted with electronic records during cross-examination.



For the same reason, the judgment of the Madras High Court in *Vincila* (supra) would not be of any aid to the petitioner. A Single Bench of the Delhi High Court took a view in the case of *Ram Kishan* (supra) that filing of a certificate under Section 65B of the Evidence Act was a procedural requirement and its non-filing at the time of filing of the suit was a curable defect. This again would not apply to the facts of the present case and would, therefore, not be any aid to the petitioner. Even otherwise, the judgments of the coordinate Benches of other High Courts have only a persuasive value as has been held very recently by a Division Bench of this Court in the case of *Jashandeep Kaur and others vs. Union of India and others* (CWP-24261-2023, decided on 06.05.2025). As regards the judgment of a Single Bench of this Court in the case of *Sunil Kumar Gulati* (supra), the issue was of a voice sample and the recording was to be furnished and it was the Vigilance Bureau who had sought voice samples. An objection was raised by the accused, which was overruled and this order was upheld by a coordinate Bench of this Court holding that the requirement of a certificate under Section 65B of the Evidence Act would arise later when the recording was produced in evidence. This judgment would also not come to the aid of the petitioner as in this case no recovery was being produced in evidence and only voice samples were sought to be taken.

22. In view of the aforesaid facts and circumstances, the instant revision petition is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)  
JUDGE

**Pronounced on: 16.05.2025**

vchgarg	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No