

Ashwini Vs. C. Avinash

Ashwini Vs. C. Avinash

SooperKanoon Citation : sooperkanoon.com/1177512

Court : Karnataka

Decided On : Sep-01-2015

Judge : A.S. Bopanna

Appeal No. : Writ Petition No. 34919 of 2015 (GM-FC)

Appellant : Ashwini

Respondent : C. Avinash

Judgement :

1. The petitioner is before this Court assailing the order dated 9-7-2014 passed in G and WC No. 212 of 2011. By the said order, the Court below has overruled the objection taken by the learned Counsel for the petitioner herein who is the respondent in the said proceedings, for the marking of the documents which has been referred to in the course of the order. The petitioner therefore claiming to be aggrieved by the same is before this Court.

2. The objection as has been raised before the Court below has been put forth by the learned Counsel for the petitioner while assailing the order. Insofar as the call details, FSL report and the Compact Disc (CD) which have been produced and marked in evidence, it is contended that it does not satisfy the requirement of Section 65-B of the Indian Evidence Act, 1872, more particularly with regard to marking the electronic records.

3. It is the case on behalf of the petitioner that insofar as the call details, the document as secured from the police by making an application to them, cannot be considered as a valid document for the purpose of marking. It is also contended that in respect of the CD, it is stated that it has been secured from the criminal proceedings wherein it has been produced. The said CD is stated to have been produced by the respondent herein to the Police Authorities in the course of investigation and if that be the position, such marking and also the FSL report relating to the voice sample, would not be justified. The learned Counsel for the petitioner has therefore relied on the judgment of the Hon'ble Supreme Court in the case of Anvar P. V. v. P.K. Basheer and Others (2014 AIR SCW 5695) to contend that the issue relating to the marking of the secondary evidence relating to the electronic records has been considered and the said decision is also followed by a learned Judge of this Court in the case of Hosamanera Prakash and Others v. State of Karnataka (2015 (2) AKR 710 (sic)), Hence, it is contended that the Court below was not justified in overruling the objection.

4. The learned Counsel for the respondent would submit that apart from the fact that the Court below has adverted to the contentions in detail in respect of each of the documents, and has thereafter overruled the objection, would also refer to the earlier order passed by this Court on 22-4-2014 between the same parties as at Annexure-F to the petition to indicate that when the production of the documents had been objected to by the petitioner herein, this Court had taken note of the provisions contained in the Family Courts Act, 1984 and had thereafter permitted the production of the document.

5. The learned Counsel for the petitioner would however on this aspect, add that this Court though had permitted the production of the document, had reserved the right of the petitioner to object the document as and when the same is relied before the Court below for the purpose of marking.

6. The learned Counsel for the respondent would in that regard refer to Section 14 of the Family Courts Act to point out that even at the time of marking of the document, since the provisions of the Evidence Act is not strictly applicable to the proceedings before the Family Court, the Court below was justified.

7. In the light of the rival contentions that has been put forth, the perusal of the judgment of the Hon'ble Supreme Court referred to above and the decision wherein a learned Judge of this Court has relied upon the same are in a circumstance when the Court was considering the scope of the provisions contained in the Evidence Act relating to the electronic records, in the light of the Representation of the People Act, wherein the secondary evidence was to be produced.

8. The learned Single Judge of this Court while taking note of the said decision, was considering a situation in respect of the offences alleged under the Indian Penal Code, 1860. In that light, taking note of the provision contained in the Family Courts Act, even if the spirit of the Evidence Act is to be kept in view for the purpose of recording evidence, in respect of the documents which have now been permitted to be marked, though an objection has been raised by the petitioner that the said documents cannot now be considered as secondary evidence as provided under the Evidence Act, the fact that the documents have been secured through the source where it was available, is evident from the document. Even in respect of the call list though it is contended that it has not been obtained from the service provider but from the Police Authorities on making an application, the details and the correctness of the call details recorded therein is a matter which would arise for consideration when the evidence is analysed by the Court on the marked documents.

9. Therefore, even though this Court in the earlier petition had reserved the liberty for objecting to the marking if need arises and in that circumstance though the Court below has overruled the objections and marked the documents, the proof of the documents and as to whether the contents thereof has been proved against the petitioner would arise only at the stage when the evidence is analysed based on the relevance and validity of the document. If this aspect of the matter is kept in view and the order impugned is perused, the Court below has also taken note of this aspect and has taken care to see that the copies of the said documents are also made available to the petitioner which is for the purpose of ultimately finding out as to whether the documents which have been permitted to be marked could be considered as proper evidence for the purpose of analysing the contents

thereof, ultimately when the evidence is looked into keeping in view the contentions of both the parties.

10. Therefore, I see no reason to interfere with the order which is impugned herein. The liberty however is available to the petitioner to put forth the contention with regard to the proof of the said documents when the Court below looks into the evidence that has been recorded.

The petition stands disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com