# Shafhi Mohammad v. State of Himachal Pradesh

*Importance of Electronic Evidence*

**Date of Order:** January 30, 2018
**Case Law No:** GIB- SC-2018-02
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## CASE DESCRIPTION / SUMMARY

### Facts of the Case

The matter arose from a Special Leave Petition challenging a judgment of the High Court of Himachal Pradesh. During the hearing, an important legal question emerged regarding the admissibility of electronic evidence and the necessity of videography at crime scenes. The Court also considered whether the requirement of a certificate under Section 65B(4) of the Evidence Act is mandatory for admissibility of electronic records.

In earlier proceedings, the Court had recorded submissions from the Additional Solicitor General regarding the usefulness of videography in crime scene investigation. It was noted that videography and digital photography could enhance transparency and accuracy in investigation. The Union Government had also constituted a Committee of Experts to prepare a roadmap and Standard Operating Procedure for videography at crime scenes.

Simultaneously, a legal issue arose in connected matters concerning the interpretation of Sections 65A and 65B of the Evidence Act. The apprehension expressed was that if the requirement of a certificate under Section 65B(4) was treated as mandatory in all circumstances, electronic evidence produced by a person not in control of the device would be excluded, resulting in denial of justice.

The questions decided by the Court were:

1. Whether electronic evidence is admissible only in compliance with Section 65B of the Evidence Act.
2. Whether the certificate under Section 65B(4) is mandatory in all cases.
3. Whether procedural requirements under Section 65B can be relaxed in appropriate cases.

### Court Observations and Decision

The Court examined earlier decisions dealing with admissibility of electronic evidence. It noted that electronic evidence is admissible subject to safeguards regarding authenticity and reliability. The

Court observed that Sections 65A and 65B of the Evidence Act are procedural provisions intended to supplement the law on admissibility of electronic records.

The Court clarified that primary electronic evidence is admissible under Section 62 of the Evidence Act and is not governed by Section 65B. Section 65B applies to secondary electronic evidence.

Importantly, the Court held that the requirement of certificate under Section 65B(4) is not always mandatory. The requirement applies when electronic evidence is produced by a person who is in possession and control of the device from which the electronic record is generated and is capable of producing such certificate.

Where electronic evidence is produced by a person who is not in possession of the device, Sections 63 and 65 of the Evidence Act can be invoked. In such cases, insisting on a certificate under Section 65B(4) would result in denial of justice.

The Court clarified the legal position that the requirement of certificate under Section 65B(4) is procedural and can be relaxed by the Court in the interest of justice. Electronic evidence cannot be excluded merely on technical grounds if it is otherwise relevant and authentic.

**Case Referred**

1. Ram Singh and Others v. Col. Ram Singh, 1985 (Supp) SCC 611, Supreme Court of India.
2. R. v. Maqsud Ali, (1965) 2 All ER 464, Court of Criminal Appeal (UK).
3. R. v. Robson, (1972) 2 All ER 699, Court of Appeal (UK).
4. Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329, Supreme Court of India.
5. Tomaso Bruno v. State of Uttar Pradesh, (2015) 7 SCC 178, Supreme Court of India.
6. Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1, Supreme Court of India.
7. State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600, Supreme Court of India.
8. Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473, Supreme Court of India.

**ADDITIONAL FOOTNOTES**

**Final Order:**
The Court clarified the legal position regarding admissibility of electronic evidence and held that a party not in possession of the device from which the electronic record is produced cannot be required to produce a certificate under Section 65B(4). The matter was adjourned for further consideration of issues relating to videography of crime scenes and framing of a Standard Operating Procedure.

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