

CERT. U/S 65B CAN BE FILED AT ANY STAGE OF TRIAL

During trials, Judges are often asked to rule on the admissibility of electronic evidence and it substantially impacts the outcome of civil law suit or conviction/acquittal of the accused. The Court continue to grapple with this new electronic frontier as the unique nature of e-evidence, as well as the ease with which it can be manipulated or falsified, creates hurdle to admissibility not faced with the other evidence. The prosecution agency continue to resort to Section 63/65 EA Act to prove the secondary electronic evidence, the practice which gets its strength from the law laid down in the [State \(NCT of Delhi\) v. Navjot Sandhu alias Afsan Guru, \[\(2005\) 11 SCC 600\]](#). The investigating agency did not make any effort to preserve or seize the original media/evidence leading into a situation entrapping itself where it cannot comply with the Section 65B of Evidence Act. The recent judgment of the Apex Court in the matter of [Anvar P.V. v. P.K. Basheer And Ors., \[MANU/SC/0834/2014\]](#) requiring mandatory compliance leading to a Catch 22 situation for prosecution agency who cannot comply with Section 65B in the pending cases because of non-availability of original media and built up their cases revolving around digital evidence only.

Prior to the Judgment of Anvar P.V., the prosecution has not filed the certificate u/s 65B EA alongwith secondary copy of digital evidence and the result is the non-admissibility of the evidence resulting into acquittal of the cases. The judgment of [Paras Jain v. State of Rajasthan, \[MANU/RH/1150/2015\]](#) came to the rescue police and prosecution agency. The court has held that the certificate u/s 65B EA can be filed by the prosecution at any stage of trial.

In view of the judgment of Paras Jain wherein, the court has relied upon the reasoning which is the settle law, the prosecution agency can file certificate u/s 65B EA by way of supplementary charge sheet u/s 173(8) Cr.P.C. Thus, in all the cases where the police has not filed the certificate u/s 65B EA, the same can be filed by way of supplementary charge sheet u/s 173(8) Cr.P.C. and this in no way even stops the police to generate the same electronic record as fresh and file in the court by way of charge sheet u/s 173(8) Cr.P.C.

Where the police has not filed the certificate u/s 65B EA, the same can be filed by way of supplementary charge sheet u/s 173(8) Cr.P.C. and this in no way even stops the police to generate the same electronic record as fresh and file in the court by way of charge sheet u/s 173(8) Cr.P.C.

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Thanks & Regards

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