

## Anvar.P.V vs P.K.Basheer Air 2015 Sc 180 That: on 24 March, 2022

:1:

IN THE COURT OF SH. SIDDHANT SIHAG,  
MM-01, SOUTH EAST DISTRICT,  
SAKET COURTS, NEW DELHI

Cross examination  
Electronic record  
must bear the  
Certificate

State v. Lakhindra Kumar  
Challan No.: DL 18622200128183701  
Vehicle No.: DL-1RM-1965  
Circle: GKC  
U/s: 199/177, 66(1)/192A MV Act

a)	Date of Institution	:	27.09.2021
b)	Date of commission of offence	:	28.01.2020
c)	Name of the accused & address	:	Lakhindra Kumar S/o Sh. Shadev Shah R/o 1603, Himmat Garh, Bazar Sita Ram, Delhi-110006.
d)	Offence complained of	:	Section 119/177, 66(1)/192A M.V. Act
e)	Plea of the accused	:	Pleaded not guilty
f)	Date when reserved for judgment	:	24.03.2022
g)	Date of judgment	:	24.03.2022

### JUDGEMENT

1. Accused Lakhindra Kumar S/o Sh. Sahdev Shah for the trial for commission of offences punishable u/s 119/177, 66(1)/192A MV Act. As per the case of prosecution, on Vehicle no. DL-1RM-1965, Circle-GKC page no. 1 of 11 28.01.2020 at 06.37 pm at Garhi Village Red Light, within the jurisdiction of traffic circle GKC, accused was driving a TSR bearing No. DL-1RM-1965 in violation of mandatory signs (one way, no right turn) and without having first aid box.

2. Vide order dated 07.10.2021, accused Lakhindra Kumar was served notice u/s. 251 Cr. PC for offences punishable u/s 119/177,66(1)/192A M.V. Act to which he pleaded not guilty and claimed for trial.

3. The matter was put to prosecution evidence. Prosecution examined two witnesses to prove its case against accused.

PW1 ZO/SI Lalu Singh, Circle GKC, New Delhi deposed that on 28.01.2020, he was posted as a SI/ZO. On that day, he along with Ct. Anjani stood at Garhi Red Light and at about 6.30 pm, one TSR bearing no. DL-1RM-1965 came from the side of Modi Mill to Garhi Red Light (where the left turn was not free). On checking, first aid box was not found beside the driver seat. Thereafter, he was challaned u/s 119/177 MV Act for "no left turn free", u/s 66(1)/192(A) of MV Act for driving vehicle "without first aid box" and same was exhibited as Ex. PW-1/A, bearing his signatures at point A. Thereafter, DL was impounded.

This witness was cross-examined by learned counsel for accused. In his cross-examination, witness admitted that challaning machine has capacity to take photographs of nearby things but he did not take photographs of the driver's seat where Vehicle no. DL-1RM-1965, Circle-GKC page no. 2 of 11 first aid box is usually installed. He also admitted that there was fire cylinder. Further, he also admitted that he did not take photographs of the violator near the board which stated that left turn is not free.

PW2 Ct. Anjani Kumar deposed that on 28.01.2020, he along with ZO Lalu Singh stopped a TSR which took a left turn which was not allowed. TSR was checked and it was found that first aid box was missing and accordingly challan was prepared Ex. PW-01/A. He was cross-examined. In his cross-examination, he told that "left turn not allowed" board was affixed at the police booth near the red light and 100-200 meters before the red light. He further told that photographs of no left turn board were taken by ZO at the spot. He further told that he has not seen the ZO taking photographs of first aid box in the TSR and also admitted that no photographs of the spot were placed on record with challan.

4. After prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. after putting all the incriminating evidence to him wherein accused refuted all the allegations against him and stated that he was being implicated falsely in the present challan for traffic violation. That he is an innocent person. He did not take left turn as alleged, however, the same was free. He had first aid box installed in his TSR at the time of challan. Accused opted to lead evidence in his defence Vehicle no. DL-1RM-1965, Circle-GKC page no. 3 of 11 and thereafter matter was fixed for defence evidence.

5. Sh. Lakhindra Kumar/Violator/accused examined himself as DW-1. He deposed that on 28.01.2020, he was coming from Sukhdev Vihar and going to New Delhi to drop one passenger at New Delhi Railway Station. At Neem Chowk, Garhi mor, every commuter was taking the route of Garhi due to heavy traffic jam at Lajpat Nagar as it was raining. He was stopped by traffic police and asked for a bribe. As he was not having any money to pay, he was challaned. He further deposed that traffic police officials did not check my vehicle and made false challan for not having first aid box and of taking left turn. The photograph of first aid box was exhibited as Ex. DW-1/A. There was no sign/board of "left turn not allowed" which was placed on the police booth. The photograph of the said booth is Ex. DW-1/B. DW-1 was cross-examined by Ld. APP for the state. He told that he clicked the abovementioned exhibited photographs on 06.12.2021 from his mobile phone make RedMe9 which he had purchased on 28.01.2022. He further admitted that he has not filed any certificate u/s 65B of Indian Evidence Act qua photographs which are Ex. DW-1/A and Ex. DW-1/B. He further

stated that Ex. DW-1/A does not bear any number and name to show it is taken from his TSR. He also stated that number and name are never written on any First Aid box. He further stated that he had not taken any photographs of the TSR at the spot in Vehicle no. DL-1RM-1965 , Circle-GKC page no. 4 of 11 presence of police officials.

6. Final argument heard. Perused the record.

7. Before discussing the merit of the case, it is essential to reproduce the relevant sections of the M.V. Act. Section 119 M.V. Act reads as under:

8. Section 119 in The Motor Vehicles Act, 1988

119. Duty to obey traffic signs.--

(1) Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by mandatory traffic sign and in conformity with the driving regulations made by the Central Government, and shall comply with all directions given to him by any police officer for the time being engaged in the regulation of traffic in any public place.

(2) In this section "mandatory traffic sign" means a traffic sign included in Part A of †[the First Schedule], or any traffic sign of similar form (that is to say, consisting of or including a circular disc displaying a device, word or figure and having a red ground or border) placed or erected for the purpose of regulating motor vehicle traffic under sub-section (1) of section 116.

9. Section 177 is the general provision for punishment of offences which provides that:

"Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees".

10. The crux of the prosecution story is that on 28.01.2020 at around 06.37 pm accused, in his TSR, came from the side of Modi Mill and took a left turn to Garhi Red Light which was not free, thereby committing an offence punishable u/s 119/117 Motor Vehicle no. DL-1RM-1965 , Circle-GKC page no. 5 of 11 Vehicles Act, 1988. Thereafter, on being checked by the ZO, TSR of the accused was found to be plying without first aid box thereby committing an offence punishable u/s 66(1)/192A MV Act.

11. PW1 and PW2 both deposed to the fact that the left turn which the TSR took was not free. In his cross-examination, PW1 states that the challaning machine has the capacity to take photographs however he did not take any photographs of the accused near the board which mandated that "left turn is not free". However PW2, in his cross examination, stated that photographs of the board

mandating "left turn not free" were taken by the PW1 at the spot. Ld. Counsel for the accused submits that the said contradiction is material in nature.

12. It has been held by the Hon'ble Supreme Court of India in case titled as "State of U.P. v. Naresh & Ors., CrI. Appeal No. 674 of 2006" that :

"in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition Vehicle no. DL-1RM-1965 , Circle-GKC page no. 6 of 11 inspires confidence."

13. In my opinion, the said contradiction is one which does not go to the root of the matter. It seems to be a minor contradiction which might have caused on account of passage of time. Further, nothing concrete has come up in the cross-examination of both the aforementioned witnesses to discredit their testimony qua the aspect of accused taking a left turn which was not free.

14. It is also argued by Ld. Counsel that the challan PW1/A mentions the offence as "Violation of Mandatory Signs (One way, No right turn)" whereas the entire prosecution story is that the TSR had taken 'left turn' when the same was not free. PW1 and PW2 have also testified that the TSR in question had taken a 'left turn'. Perusal of challan PW1/A makes it amply clear that the same pertains to violation of mandatory signs which lists entering one way, taking right turn when not free, as a few of the possible violations of mandatory signs. I do not find any merit in the argument of the Ld. Counsel that the mentioning of "One way, No right turn" on the said challan is not listed as possible ways of violations of Mandatory Signs but as a specific allegation against the accused in the instant matter.

15. PW1 and PW2 also testified that, on being checked, TSR of the accused was found to be plying without first aid box thereby committing an offence punishable u/s 66(1)/192A MV Act.

16. It is argued by Ld. APP that as per Rule 138 of Central Vehicle no. DL-1RM-1965 , Circle-GKC page no. 7 of 11 Motor Vehicles Rules, 1989, every commercial vehicle should be equipped with a first aid box. The violation of the aforementioned is punishable u/s 66(1)/192A MV Act. Per Contra, Ld counsel for the accused submits that no offence punishable u/s 66(1) read with section 192A of MV Act is made out if the accused was driving his TSR without first aid box. It is submitted by Ld. Counsel that Section 66(1)/192A MV Act can be invoked only when there is a violation of conditions

of a permit qua its route, area or purpose.

17. The aforementioned sections read as under:

"Section 66(1): No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used: Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage: Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

18. Section 192A MV Act is the penal provision for using vehicle without permit which provides that :

"Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or Vehicle no. DL-1RM-1965 , Circle-GKC page no. 8 of 11 the purpose for which the vehicle may be used, shall be punishable for the first offence with 2[imprisonment for a term which may extend to six months and] a fine 3[of ten thousand rupees] and for any subsequent offence with imprisonment which may extend to one year but shall not be less than 4[six months] or with fine 5[of ten thousand rupees] or with both:

Provided that the court may for reasons to be recorded, impose a lesser punishment".

19. Perusal of the aforementioned provisions reflects that Sec 66(1) MV Act mandates that a transport vehicle shall not be used save in accordance with the conditions of a permit. Any vehicle which is driven in contravention of Sec 66(1) MV Act is punishable u/s Section 192A MV Act. Accordingly, I do not find any merit to the contention of the Ld. Counsel that no offence punishable u/s 66(1) read with section 192A of MV Act is made out if the accused was driving his TSR without first aid box.

20. Accused, in his defence evidence, filed two photographs Ex. DW1/A and Ex. DW1/B to support his version. Before delving into the admissibility of the said photographs, it must be observed that it has been held by the Hon'ble Supreme Court in Anvar.P.V vs P.K.Basheer AIR 2015 SC 180 that:

"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 under Section 65B of the Evidence Act. Section 65B 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 Vehicle no. DL-1RM-1965 , Circle-GKC page no. 9 of 11 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 under Section 65B(2)."

21. It is further held in the aforementioned judgment that:

"14. Under Section 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 under Section 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.

22. Photographs Ex. DW1/A and Ex. DW1/B filed by the accused lack the details as to when they were clicked. They are not supported by a certificate under Sec. 65 B of Indian Evidence Act. Therefore, both the aforementioned photographs are not admissible and cannot be taken into consideration. Needless to say that mere exhibiting of the said documents shall have no relevance qua their admissibility. Reference in this regard may be made to Sait Tarajee Khimchand and Ors. Vs Yelamarti Vehicle no. DL-1RM-1965 , Circle-GKC page no. 10 of 11 Satyam (1972) 4 SCC 562.

23. Further in his examination in chief, accused stated that he had installed a first aid box in his TSR. He further stated that he was challaned as he refused to pay bribe to the traffic officials. However, barring the aforementioned bald assertion of the accused, there is nothing else on record to lend credence to his testimony and inspire confidence of the court.

24. In light of the aforementioned, the court is of the considered view that allegations against the accused regarding commission of offence punishable u/s 119/117 MV Act and Section 66(1)/192 A MV Act is proved beyond reasonable doubt. Accordingly, accused Lakhindra Kumar is convicted for offences punishable u/s 119/117 MV Act and Section 66(1)/192 A MV Act.

25. File be consigned to record room after due compliance.

Announced in open Court  
on 24 th March, 2022

SIDDHANT SIHAG  
SIHAG  
Date: 2022.03.24  
16:58:23 +0530  
(SIDDHANT SIHAG)  
MM-01(South-East):Saket Courts,  
New Delhi

Vehicle no. DL-1RM-1965 , Circle-GKC

page no. 11 of 11