

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLREV No.997 of 2025**
CNR No. ODHC010876652025

In the matter of an application under Section 401 of
Cr.P.C.

....

Petitioner***-versus-***

1. State of Odisha
2. -

....

Opposite Parties***Amicus Curiae***

:

Mr. Debasis Sarangi,
Advocate

For Petitioners

:

Mr.A.K. Mohanty, Advocate

For Opposite Party

:

Mr. S. Panigrahi, ASC
Mrs. S. Biswal, Adv.(O.P.
No.2)

CORAM:**JUSTICE V. NARASINGH****DATE OF HEARING : 13.07.2026****DATE OF JUDGMENT : 19.09.2026**



V. Narasingh, J.

Heard learned counsel for

the Petitioner, learned counsel for the State and learned counsel for the Opposite Party No.2.

1. Being aggrieved by the order dated 02.11.2025 passed by the learned 1st Additional Sessions Judge, Cuttack in S.T. Case No.35 of 2022 arising out of Markat Nagar P.S. Case No.207 of 2021, the present CRLREV has been filed by the Informant.

2. In the said proceeding, Opposite Party No. 2, the accused, has been charge-sheeted for commission of the offences allegedly under Sections 354¹/354-A²/376(2)(n)³/294⁴/506⁵ of the IPC.

¹ **354. Assault or criminal force to woman with intent to outrage her modesty.**—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, ¹[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

² **354-A. Sexual harassment and punishment for sexual harassment.**—(1) A man committing any of the following acts—
(i) physical contact and advances involving unwelcome and explicit sexual overtures; or
(ii) a demand or request for sexual favours; or
(iii) showing pornography against the will of a woman; or



3. To drive home the charge, 21 charge-sheeted witnesses have been enlisted by the prosecution, out of whom admittedly five have already been examined.

Post receipt of summons, the Informant appeared and took time for engagement of

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

³ **376. Punishment for rape.**— (2) Whoever,—

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

⁴ **294. Obscene acts and songs.**—Whoever, to the annoyance of others,—

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

⁵ **506. Punishment for criminal intimidation.**—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

if threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or ⁴[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.



counsel and filed a petition dated 23.06.2025 for adducing evidence by introducing a pen drive stated to contain recordings of the Petitioner along with that of the accused, which, according to the Informant, has a direct bearing on the point at issue and non-consideration of the same would result in prejudice to her cause.

The same having been rejected by order dated 03.09.2025, the Informant approached this Court by filing CRLREV No.753 of 2025⁶. By order dated 16.10.2025, this Court, on consideration of the rival submissions of the learned counsel for the State and the accused and taking into account that an application under Section 65-B⁷ of the

⁶ *Shashmita Nayak v. State of Odisha*, CRLREV No. 753/2025, disposed of on 16.10.2025 (Orissa HC).

⁷ **65-B. Admissibility of electronic records.**—(1) Notwithstanding anything contained in this 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 (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.



(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

by a combination of computers operating over that period; or

by different computers operating in succession over that period; or

by different combinations of computers operating in succession over that period; or

in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(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,—

identifying the electronic record containing the statement and describing the manner in which it was produced;

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;

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.

(5) For the purposes of this section,—

information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or



6.In fact, according to the Court, recording the objection of Mr. Sahoo, learned ASC for the State and Ms. Biswal, learned counsel for opposite party No.2, the application is acceptable at the behest of the Informant but it has to be moved by the prosecution. The Court is of the further view that the learned court below should have directed the prosecution to move the application instead of rejecting the same on technical ground referring to Section 301 Cr.P.C. Furthermore, the Court is of the conclusion that an objection to the application as per Annexure-2 was received from opposite party No.2 but there has been no discussion thereon nor with regard to the plea of the petitioner, which is, hence, needs a fresh consideration by the learned court below by an order on merit.



7. Accordingly, it is ordered.

8. In the result, the revision petition stands disposed of with a direction to consider Annexure-1 series received from the Informant with the objection of opposite party No.2 at Annexure-2 by learned 1st Additional Sessions Judge, Cuttack and to dispose it of in accordance with law at the earliest preferably within a period of ten days from the date of receipt of a copy of this order. As a necessary corollary, the impugned order at Annexure-4 in S.T. Case No. 35 of 2022 is set aside.

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4. In response thereto, the learned Sessions Judge reconsidered the matter and, by the impugned order dated 21.11.2025, rejected the prayer of the Petitioner-Informant, assailing which the present Criminal Revision has been filed.

5. Learned counsel Mr. Mohanty submits that, in rejecting the prayer of the Informant for introducing the pen drive, the learned Trial Court has failed to appreciate the letter and spirit of the order of this Court remanding the matter back to



the learned Trial Court and, during the course of his submissions, he relied on the judgment of the Apex Court in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others**⁸, as well as the order of the Hon'ble High Court of Rajasthan in the case of **Shwetabh Singhal v. J.K. & Sons**⁹.

6. Considering the nature of the relief sought for, in the light of the reliance placed on the judgments referred to hereinabove, this Court sought the assistance of learned counsel Mr. D. Sarangi to act as Amicus Curiae, who graciously agreed.

7. In opposing the stand of the Petitioner, learned counsel for the State as well as the learned counsel for the accused relied on the self-same judgment in the case of **Arjun Panditrao**

⁸ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

⁹ *Shwetabh Singhal v. J.K. & Sons*, 2025 SCC OnLine Raj 487.



Khotkar (supra)⁸ and also the judgments in the cases of **Thakur Ram v. State of Bihar**¹⁰ and **Sidhartha Vashisht v. State (NCT of Delhi)**¹¹ as well as judgment of the High Court of Madhya Pradesh in the case of **Sunil v. the State of Madhya Pradesh**¹² and the judgment of the Bombay High Court in the case of **Bhagyashree Prashant Wasankar v. State of Maharashtra**¹³, relied upon by the Madhya Pradesh High Court in **Sunil (supra)**.

8. Admittedly, in the case at hand, the pen drive which is sought to be introduced now into evidence by the Informant does not form part of the materials collected during investigation. However, relying on the judgment cited on behalf of the Petitioner-the victim, it is stated that because of perfunctory investigation, the pen

¹⁰ *Thakur Ram v. State of Bihar*, AIR 1966 SC 911.

¹¹ *Sidhartha Vashisht v. State (NCT of Delhi)*, (2010) 6 SCC 1.

¹² *Sunil v. the State of Madhya Pradesh*, 2024:MPHC-IND:29173.

¹³ *Bhagyashree Prashant Wasankar v. State of Maharashtra*, 2021 SCC OnLine Bom 1064.



drive does not form part of the materials submitted before the learned Trial Court and that ought not to deter this Court from directing the same to be considered as a piece of evidence in the interest of justice, since non-consideration thereof prejudicially affects the cause of the victim.

9. Per contra, learned counsel for the State as well as the accused-Opposite Party No.2 oppose such prayer and submit that there is no scope in an ongoing trial for introduction of evidence at the behest of the victim. Hence, the prayer does not merit consideration.

10. The learned Amicus Curiae, Sri Debasis Sarangi, on an in-depth analysis of all the judgments on record, raises a fundamental question regarding maintainability of the revision in view of the schematic arrangement of the Code



of Criminal Procedure, 1973/ Bharatiya Nagarik Suraksha Sanhita, 2023.

11. It is his further submission that, while adjudicating the earlier application of the present Petitioner which culminated in an order of remand as noted hereinabove, the question of maintainability was not addressed and, according to him, the order being an interlocutory order, on the ground of maintainability alone, the revision petition is liable to be rejected.

It is his further submission that neither the Cr.P.C. nor the BNSS has any provision by virtue of which the prayer of the Petitioner to introduce materials to be considered in the midst of trial as evidence, can be entertained.

12. The rival submissions at the Bar have to be considered in the backdrop of the judgments cited.



13. The judgment cited in **Arjun Panditrao Khotkar (supra)**⁸ is the leading judgment on the question of admissibility in terms of Sub-section (4) of Section 65-B⁷ of the Indian Evidence Act, 1872 in the light of the Information Technology Act, 2000.

13-A. The order of the Hon'ble Rajasthan High Court in the case of **Shwetabh Singhal (supra)** is also on the aspect of the admissibility of evidence under Sub-section (4) of Section 65-B⁷ of the Indian Evidence Act, 1872 in the light of the judgment of the Apex Court in the case of **Arjun Panditrao Khotkar (supra)**⁸ referred to hereinabove.

14. It is apt to note here that none of the judgments cited by the learned counsel for the Petitioner answers the twin questions relating to the maintainability as well as the power of the Court to admit into evidence material which has



not been collected during investigation, at the behest of informant-victim in the midst of trial.

15. So far as criminal trial is concerned, the offence is considered to be an offence against the State that is the reason the State is represented by a Public Prosecutor so that he can assist the Court to come to a just conclusion without donning the cap of a persecutor.

16. The role ascribed to the State in a Criminal Trial has been succinctly stated in the judgment of the Apex Court in the case of ***Thakur Ram (supra)***¹⁰.

The relevant extract of the above judgment is culled out hereunder:-

“.....Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community as large and so it is for the State to take all the steps necessary for bringing the person who has acted against



the social interests of the community to book.”

17. In this context, the learned counsel for the accused also relied on the judgment of the Apex Court in the case of ***Shiv Kumar v. Hukam Chand***¹⁴.

The relevant paragraphs of the said judgment regarding the role played by a public prosecutor and a limited role of a counsel appearing for the victim are well outlined. For convenience of reference, the same is extracted hereunder;

14. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is

¹⁴ *Shiv Kumar v. Hukam Chand*, (1999) 7 SCC 467.



to act on behalf of the Public Prosecutor albeit the fact that he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter.

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18. In the very judgment on which much reliance has been placed by the learned counsel for the Petitioner, in the case of **Arjun Panditrao Khotkar (supra)**⁸, to fortify his submission that the pen drive is to be admitted into evidence, the rights of an accused has been stated in paragraphs-52 & 53 thereof, which are quoted hereunder:-

"52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473, this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We



may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Sub-section (4) of Section 65-B of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.

53. In a recent judgment, a Division Bench of this Court in *State of Karnataka v. M.R. Hiremath*, (2019) 7



SCC 515, after referring to Anvar P.V. held:

“16. The same view has been reiterated by a two-Judge Bench of this Court in Union of India v. Ravindra V. Desai, (2018) 16 SCC 273. The Court emphasised that non-production of a certificate under Section 65-B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu v. State of Haryana, (2017) 8 SCC 570, in which it was held:

‘32. ... The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the court could have given the prosecution an opportunity to rectify the deficiency.’

17. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate under Sub-section (4) of Section 65-B of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at



that stage that the necessity of the production of the certificate would arise.”

(Emphasis in original)

54. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the accused. Section 207 CrPC, which reads as follows, is mandatory. Therefore, the electronic evidence i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings therefore, is to supply to the accused all documents that the prosecution seeks to rely upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for the trial before its commencement.”

(Emphasized)



19. In the case at hand, a curious situation has arisen in as much as it is not the prosecution which is seeking to adduce additional material for consideration, but it is the victim who says that because of perfunctory investigation, material which will have a direct bearing on the merits of the matter is being excluded on the ground of alleged technicality.

20. Though it is trite that technicality ought not to defeat justice, at the same time, this Court cannot lose sight of the rights of an accused sanctified and circumscribed by the procedure as laid down in the Cr.P.C./BNSS.

21. Learned counsel for the Petitioner has not been able to place on record any material or reference to any provision in the Cr.P.C./BNSS which would enable the victim to place on record material which does not form part of the charge-sheet.



22. This Court, on a perspicuous analysis of the materials on record, is of the considered view that there is no infirmity in the order rejecting the prayer of the Petitioner-victim for introducing the pen drive in the midst of trial.

23. In the light of the discussions as above, the CRLREV, being devoid of merit, stands dismissed. The interim order stands vacated.

Question of maintainability is left open.

24. The learned Trial Court shall proceed with the matter with the expediency it deserves.

(V. Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 19th September, 2026/Ayesha
21.09.2026/Uploaded*