CASE COMMENT: R.K. ANAND V. REGISTRAR, DELHI HIGH COURT (2009) 8 SCC 106

Trisha Menon, Shiv Nadar University, School of Law

When NDTV broadcast hidden-camera footage in May 2007 showing senior defence advocate R.K. Anand and Special Public Prosecutor I.U. Khan apparently negotiating with a witness in the BMW hit-and-run trial, the Delhi High Court took suo motu cognizance and convicted both for criminal contempt. The Supreme Court affirmed Anand's conviction while acquitting Khan. The result was defensible; the reasoning was not. This essay argues that the Court's decision to treat contempt jurisdiction as a sphere in which the Indian Evidence Act, 1872 simply does not operate, and to assess the authenticity of the sting recordings through conduct-based inference and natural justice rather than through the authentication regime of Section 65B[1], subordinates evidentiary rigour to judicial convenience, conflates the standard of proof with the manner of proof, and creates a precedent whose consequences the Court did not fully reckon with.

The Evidentiary Challenge and the Court's Foundational Move

The recordings before the Court were button-camera footage captured on microchips and reproduced on CDs. Anand's senior counsel argued that the High Court had founded the conviction on electronic evidence without having its authenticity properly proved. The original microchips had been left with NDTV, a private entity with an obvious institutional interest in the proceedings. Sunil Kulkarni, the primary witness in the proceedings and the individual being negotiated with in the recordings, was never produced for cross-examination.

Counsel further contended that since contempt is quasi-criminal, the standard of proof required was the criminal standard, which had not been met on unauthenticated electronic evidence.

The Court's response was a single sweeping proposition: that contempt jurisdiction is sui generis, and that "the provisions of the CrPC and the Evidence Act are not applicable to a proceeding of contempt"[2]. In their place, the Court substituted the principles of natural justice:

[1] Section 65 B of The Indian Evidence Act
[2] R.K. Anand v. Registrar (2009) 8 SCC 106

notice, access to transcripts, opportunity to respond, and open-court viewing of the footage. This foundational move is the source of the judgment's primary doctrinal difficulty. It does not engage with Sections 65A and 65 B of the Indian Evidence Act, 1872, which govern the admissibility of electronic records. Section 65B (4) [3] requires that secondary electronic evidence be accompanied by a certificate from a person in a responsible official position identifying the record, describing its production, and certifying that the statutory conditions are met. No such certificate was sought or required. The Court justified this by treating the Evidence Act as categorically inapplicable, a conclusion broader than the facts required and wider than the case needed to go.

Authentication by Conduct

Having set the Evidence Act aside, the Court assessed authenticity on its own terms. The court held that the "authenticity and integrity of the sting recordings was never disputed or doubted" by Anand, and therefore formal proof was unnecessary[4]. This rests on a close reading of Anand's own conduct, and it is here that the judgment makes its most significant evidentiary contribution.

The Court drew three conduct-based inferences. First, after the broadcast, Anand had sent NDTV a legal notice demanding compensation: a person who genuinely disputed the recording's authenticity would not have framed his notice presupposing its accuracy while attacking only its publication. Second, his affidavit in response to the show-cause notice offered explanations for his conduct visible in the recordings, characterising his conversations with Kulkarni as innocent attempts to secure truthful testimony, without once challenging the fidelity of what had been captured. His defence was premised on misinterpretation, not fabrication. Third, the Court applied the conditions identified in Ram Singh & Ors. v. Col. Ram Singh [5] for tape-recorded materials and found them either satisfied or not genuinely contested.

This approach, inferring authentication from the accused's own conduct, is analytically sound. It acknowledges that authentication need not always rest on formal certification; where a party's behaviour is inconsistent with a genuine belief that the evidence is fabricated, courts are entitled to draw that inference. The difficulty is that this is a fact-specific assessment, not a

[3] Section 65B (4) Indian Evidence Act 1872
[4] Ibid
[5] Ram Singh & Ors. v. Col. Ram Singh (1985 Supp SCC 611)

replicable legal standard. The Court gave no guidance on what conduct, short of sending a legal notice, would suffice to concede authenticity, or what degree of challenge would require formal proof under a structured framework.

Standard versus Manner of Proof

The most consequential passage in the judgment is the Court's distinction, between the standard of proof in contempt proceedings and the manner of proof [6]. The standard, the Court held, is no less rigorous than a criminal trial. The manner, however, is not governed by the Evidence Act. This distinction has surface plausibility but obscures a significant asymmetry.

The standard of proof governs how convincing evidence must be before a court convicts. The manner of proof governs the procedural mechanisms through which evidence is placed before the court in a legally reliable form. These are not parallel concerns operating on the same material. Manner of proof addresses the reliability of evidence as a matter of forensic fact; standard of proof addresses its sufficiency as a matter of legal judgment. By relaxing the former while retaining the latter, the Court creates a position where evidence that may be forensically unreliable is nonetheless treated as meeting a criminal standard. Natural justice, which guarantees notice and hearing, does not resolve whether a digital recording has been edited or spliced. The two frameworks protect fundamentally different interests and cannot substitute for one another.

The subsequent trajectory of Indian law sharpens this tension. In Anvar P.V. v. P.K. Basheer[7], the Supreme Court held that Sections 65A and 65B form a complete and exclusive code for secondary electronic evidence, and that the Section 65B (4) certificate[8] is a mandatory condition precedent to admissibility. This position was reaffirmed by a three-judge bench in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [9], which explicitly overruled the departures from Anvar[10] made in Shafhi Mohammad v. State of Himachal Pradesh[11]. Neither judgment addressed the carve-out created in R.K. Anand for contempt proceedings. An unresolved gap therefore exists in Indian law: the most stringent authentication requirements

---

[6] R.K. Anand v. Registrar (2009) 8 SCC 106
[7] Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473
[8] Section 65B (4) Indian Evidence Act 1872
[9] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1
[10] Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473
[11] Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801

apply in ordinary civil and criminal proceedings, while a proceeding carrying equivalent consequences, namely disbarment and imprisonment, may, on the authority of R.K. Anand, operate without them.

The Precedential Risk

The more doctrinally defensible path available to the Court would have proceeded in three steps. First, acknowledging explicitly that the Indian Evidence Act does not apply to contempt proceedings as a matter of statute, the sui generis character of contempt jurisdiction supports this and does not require qualification. Second, holding that the principles underlying Section 65B, authentication, integrity, and chain of custody, apply to contempt proceedings as an independent requirement of natural justice, on the ground that natural justice demands not merely procedural fairness but evidential reliability. Third, assessing whether those principles were satisfied on the specific facts through the conduct-based analysis the Court in fact performed. This reasoning would have reached the same result while providing future courts with a principled framework rather than leaving the matter to unguided judicial discretion.

The enactment of the Bharatiya Sakshya Adhiniyam has widened rather than closed this gap. Section 63[12], which replaces Section 65B[13], retains the certificate-based framework while introducing more detailed requirements, including provision for integrity verification such as hash values. Section 61[14] simultaneously permits proof of electronic records by "any permissible method," potentially affording courts a degree of flexibility unavailable under the stricter framework established in Anvar[15]. The implications for contempt proceedings are twofold. First, the authentication requirements bypassed in R.K. Anand v. Registrar are now more demanding, making that approach harder to justify. Second, Section 61 offers a possible statutory basis for applying authentication principles in contempt proceedings without full compliance with Section 63. This would avoid the doctrinal difficulty of asserting substantial compliance with a certification regime that post Anvar[16] jurisprudence treats as mandatory and exclusive.

In comparative perspective, neither the United States nor the United Kingdom recognise a

[12] Section 63 Bharatiya Sakshya Adhiniyam 2023
[13] Section 65 B Indian Evidence Act 1872
[14] Section 61 Bharatiya Sakshya Adhiniyam 2023
[15] Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473
[16] Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473

carve-out from authentication requirements for proceedings carrying consequences as grave as criminal conviction. Under the Federal Rules of Evidence, Rules 902(13) and (14), added with effect from December 2017, permit self-authentication of electronic records where accompanied by formal certification by a qualified person. Unlike Section 65B (4)[17] as interpreted in Anvar, these rules are not a mandatory exclusive code: authentication through other means remains available, making the post-Anvar Indian regime the stricter of the two. The absence of any equivalent contempt carve-out in either jurisdiction suggests that the sui generis rationale has no necessary logic beyond the specific doctrine of contempt and may not be capable of principled limitation even within it.

Conclusion

R.K. Anand v. Registrar[18], Delhi High Court is both landmark and cautionary tale. The judgment's contributions are genuine: its identification of conditions for the admissibility of sting recordings, its conduct-based approach to authentication, and its insistence on a criminal standard of proof in contempt proceedings are lasting doctrinal tools. The error lies not in the result but in the reasoning that produced it. Treating contempt jurisdiction as a sphere in which the Evidence Act simply does not operate creates a gap that neither Anvar nor Arjun Panditrao has closed. The pursuit of a manifestly correct outcome should not, where it can be avoided, produce legal principles that outlast the facts that justified them. The judgment would have been more complete had it required courts, in contempt proceedings involving electronic evidence, to satisfy themselves that the authentication principles underlying Section 65B[19], integrity, chain of custody, and reliable certification, have been met as a matter of natural justice.

[17] Section 65B (4) Indian Evidence Act 1872
[18] R.K. Anand v. Registrar (2009) 8 SCC 106
[19] Section 65B (4) Indian Evidence Act 1872