**1st Workshop District Court, Amravati-2014-15 ,**

**10th January,2015**

**Summary of Subject- Civil**

Recording of Evidence

**and**

Admissibility of documents.

A Recording of Evidence

**Evidence**".-

means and includes-- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called **oral evidence**;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called **documentary evidence.**

**A. Oral Evidence** :

**1] Who is competent to testify** :-

S.118 - all persons shall be competent to testify unless considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender age, extreme old age, disease whether of body or mind, or any other cause of the same kind.

In Rameshwar/St. of Rajasthan AIR 1952 SC 54, it is held that every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by

reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the Court considers otherwise.

*... It is desirable that Judges and magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate....*

*the main purpose of administering of oath to render persons who give false evidence liable to prosecution and further to bring home to the witness the solemnity of the occasion and to impress upon him the duty of speaking the truth, further such matters only touch credibility and not admissibility.*

**Child Witness** :A **child witness** must be able to understand the sanctity of giving evidence on a oath and the import of the questions that were being put to him.

( **Himmat Sukhadeo/St.of Maharashtra AIR2009 SC 2292** ). The examination of child witnesses has once begun, the same shall be continued from day to day and court should not adjourn trial.

( **Mohan Lal Vs. State of Punjab AIR 2013 SC 2408**)

**A deaf and dumb person** : S. 119- The court has to exercise due caution and take care to ascertain before deaf and dumb person is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law required that there must be a record of signs and not the interpretation of signs

( **St.of Rajsthan/ Darshan Singh AIR 2012 SC 1973**)

**Tender of oath:**

U/s. 4 of the Oaths Act all witnesses have to take oaths or affirmation. Proviso says that section 4 & 5 of Oaths Act shall not apply to a child witness under 12 years of age. The competency of a person to testify as a witness is a condition precedent to administer to him of an oath or affirmation and is a question distinct from that of his credibility when he has been sworn or affirmed. In determining the question of competency, the court is at liberty to test the capacity of a witness to depose by putting proper questions. It has to be ascertained from the extent

of his intellectual capacity of understanding to determine whether he is able to give a rational account of what he has seen or heard or done or a particular occasional.

S.7 of the Oaths Act- The **omission** of administration of oath or affirmation **does not invalidate** any evidence.

It is open to a witness either to make an oath in the name of the God or to make a solemn affirmation. The court, cannot, therefore refuse to examine such a person as a witness on the sole ground that he has refused to take an oath.

Forms of Oath / affirmation . Para 506 to 515 of Chapter XXVI of Civil Manual

**Language of recording :137,138,139 C.P.C.**

**Para 250 to 260 Civil Manual**

As per G.R. Dt.27 July 1998 Marathi shall be the language of all subordinate courts. If the first appeal lies to the High Court true translation in English of the evidence in Marathi should be simultaneously recorded.

If both parties agree as per sec,137, evidence can be recorded only in English.

Para 260 provides that where a witness gives evidence in a language not understood by the court, the presiding Judge is authorized to employ a interpreter to interpret the evidence and pay him for his services any reasonable sum , the cost being borne by the party calling the witness in the first instance and being charged as cost in the suit. Oath must be given to the interpreter to translate the statements fully and truly.

**Rights of witnesses :**

S. 148 to 152 are intended to protect a witness against improper cross-examination, to prevent the unnecessary raking up of the past history of a witness, when it throws no light whatsoever on the questions at issue in a case. It protects a witness from the evils of a reckless and in justifiable cross-examination under the guise of impeaching his credit.

Questions should not be asked without reasonable grounds. S.151 forbids the putting of any question which is indecent or scandalous, unless it relates to facts in issue or is necessarily connected with them.

Witness Bhatta- As per R.101- [1] Rs.100 or [2] Rs.60 per day including journey period plus reasonable travelling expenses.

Bhatta of expert is as per Rule 103(5) and (6).

**2] Examination-in-chief :**

As per the language of Order XVIII Rule 4 (1) of CPC, in every case, the examination in chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. The above wording itself goes to show that , the evidence of the witness must be on affidavit.

Reading the provisions of order XVI and order XVIII together, it appears that Order XVIII, Rule 4(1) will necessarily apply to a case contemplated by Order XVI, Rule 1A, i.e. where any party to a suit, without applying for summoning under Rule 1 brings any witness to give evidence or produce any document. In such a case,

examination in chief is not to be recorded in Court but shall be in the form of affidavit. Right of cross-examination and re-examination not disturbed by insertion of Rule 4. In appropriate cases, Court can permit examination-in-chief to be recorded in Court. Proviso to sub-rule (2) of Rule 4 clearly suggests that Court has to apply its mind to facts of case, etc. whether witness to be examined in Court or by Commissioner appointed by it. There is no requirement in Order XVIII Rule 5 that in appellable cases, the witness must enter the witness box for production of his affidavit and formally prove the affidavit.

**Affidavit if contains irrelevant material**

(i) When question comes, can a Court order the deletion of that portions of the affidavit on the ground of irrelevancy, or admissibility or both .

It is held in the reported case **Rajendra Singh Kushwaha..Vrs..Jitendrasingh & Ors 2013(6) Mh.L.J.802** that-“ where evidence proposed to be led by a party was irrelevant, and not in support of the issues the party was bound to prove, that evidence must be excluded. The proceedings in Rajendrasingh's case were in the Testamentary and Intestate Jurisdiction of this Court. The evidence sought to be led related to the title to certain properties. In view of the well settled law that questions of title can not be decided in testamentary proceedings, the Court directed exclusion of certain portions of evidence affidavit as being ex facie irrelevant”.

(ii) In the reported case **Harish Loyalka..Vrs.. Dileep Nevatia 2014(4) ABR 545** it is held that -

[A] " Affidavit evidence contain material that fall in the following categories:(i) matters that are relevant and to his personal knowledge; (ii) matters that are possibly relevant but not to his personal knowledge; (iii) matters that are neither relevant nor to his personal knowledge; and (iv) statements in the nature of legal submissions, arguments and pleadings"

[B] " As regards items that are relevant and to his personal knowledge, this must , of course, be retained. These are his testimony and he will need to be cross-examined on these matters. The statements that are only possibly relevant, whether based on his personal knowledge or otherwise, are also matters that must be retained, for the issue of relevancy is always subject to final argument at the final hearing of the suit. But where material is completely extraneous and not to his personal knowledge, such material can not possibly be part of testimony".

[C] "Generally speaking, matters of relevancy can be deferred to the stage of arguments; indeed, they must be. It is not always possible to say at the stage of examination-in-chief whether a given statement is or is not relevant. Some statements may be exfacie entirely irrelevant; these might stand on a different footing. Therefore, unless the material is ex facie entirely and demonstrably irrelevant, the affidavit evidence must retain the material provided it is a deposition of some fact that is to the deponents knowledge. Matters of surmise, conjecture, arguments and in the nature of legal submission

or in the nature of pleadings attempting to controvert what is state in the plaint or the written statement are not evidence. They are, therefore, not examination-in-chief."

[D] In case of hearsay evidence, "it is the duty of a court to exclude hearsay evidence even if no objection is taken. The "evil consequence of admission of hearsay evidence is not merely that it prolongs litigation and increases its cost, but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance."

[E] " Consequently matters that are (i) argumentative or in the nature of submissions and pleadings etc; (ii) matters that are wholly irrelevant and also not to be personal knowledge of the deponent or witness; and (iii) matters that are demonstrably hearsay, must all be excluded. They can not form part of the examination-in-chief on affidavit required by CPC Order 18,Rule 4.

Where an evidence affidavit purports to contain such material, a court must endeavour to bring that affidavit into conformity with the provisions of the Order 18 and Order 19 of the CPC and of the Evidence Act. A non-conforming evidence affidavit is anathema to our system of law."

[F] " There is another reason for this approach. The evidence Act restricts what evidence may be led as examination-in-chief. The provisions of CPC Order 18 Rule 4 are procedural. The Evidence Act is substantive law.

Procedural law cannot expand the ambit and scope of or override substantive law. That could also never have been the legislative mandate of the 2002 amendments to Order 18 Rule 4 of the Code of Civil Procedure, 1908”

[G] “ How should a court approach such a non-conforming affidavit i.e. one that contains material that is clearly inadmissible or demonstrably irrelevant ? A party may , in a given case, be permitted to replace his affidavit with one that conforms.”

[H] “ Replacing such an affidavit must, surely, be in a Court's discretion. On the footing that a court's power to 'delete' any portion of an evidence affidavit(even portions that are inadmissible) is completely taken away, a court may still rule jon portions of the affidavit to which objections are taken and direct that those portions be excluded from consideration as testimony; i.e. that a cross-examiner will be at liberty to ignore those portions without fear of an adverse inference being drawn”

8] If the party failed to mention certain facts in Affidavit evidence it is observed in reported case **Rajesh Varma..VRs..M/s Aminex Holdings & Investments AIR 2008 NOC 1385 (Bom) -**

“Failure to mention details in affidavit does not preclude the plaintiff to enter the witness box to depose further nor does it preclude the Court from permitting plaintiff to lead further evidence of Examination-in-Chief before the Court in addition to affidavit in lieu of examination -in chief already placed on record”.

**Evidence after amendment and subsequent event**

It is a settled principle of law that the construction and interpretation of procedure law may normally be not controlled by the rule of strict construction if such application is likely to frustrate the very object of the procedural law. The procedural law like CPC is intended to control and regulate the procedure and judicial proceedings to achieve the ends of justice and expeditious disposal. The provisions of procedural law which do not provide for penal consequences in default of compliance normally would be construed as directory in nature and would receive liberal construction. In Salem Advocates Bar Association's case( AIR 2003 SC 189 & AIR 2005 SC 3353) it has been clarified that on deletion of Order XVIII Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e., 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order XVIII Rule 17-A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order XVIII Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order XVIII Rule 17-A does not dis-entitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.

**Documents admitted in evidence** :

In Hemendra R. Ghia 2009 (2) AIR Bom R 296 , the Full Bench of Hon'ble Court has dealt with the point as to when the question of admissibility of document can be raised. Inter alia, it has been observed that if the objection to the proof of document is not decided and the document is taken on record giving tentative exhibit, then the right of cross-examination is seriously prejudiced. It is held that once the document is used in cross-examination, then the document gets proved and can be read in evidence as held in the case of "Ram Janki Devi v. M/s. Juggilal " ( AIR 1971 SC 2551). The amendment brought about by the Code of Civil Procedure (Amendment) Act, 2002, clearly tries to reconcile the earlier position and vests a discretion in the Court of deciding the question of admissibility of documents before the case is sent to the Commissioner for recording the cross-examination.

In Mr. Hemendra Ghia case supra the Full Bench laid down following-principles:

> As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;
>
> (ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and

judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.

The Court trying the suit or proceedings as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove. As we have already added a word caution that while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The aim should always be to prevent miscarriage of justice and expedite trial, which is the dire need of the time.

2] The objection to the admissibility or relevancy of evidence contained in the affidavit of evidence filed under Order XVIII, Rule 4 of Civil Procedure Code can be admitted at any stage reserving its resolution until final judgment in the case as held in Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd. (supra).”

O.XIII R.4 CPC - “Endorsement on documents admitted in evidence” following particulars, namely :-

a) the number and title of the suit,

b) the name of the person producing the document,

c) the date on which it was produced, and,

d) a statement of its having been so admitted; and

the endorsement shall be signed or initialed by the Judge.

Order XIII Rule 6 deals with, endorsements on documents rejected as inadmissible in evidence. It is further expected that, where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) or rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialed by the Judge.

As per para 524 of Civil Manual, if a document included in the list is referred to in the proceedings before it is tendered in evidence and formally proved, it should be immediately marked for identification. When it is tendered in evidence, it should be detached from the list. **If rejected**, it should be endorsed as prescribed by O.XIII, Rule 6, CPC and returned. **If admitted**, the endorsement referred to in the above rule should be completed and sighed by the Judge ( O.XIII, R.4 CPC) and the document should be assigned the appropriate exhibit number and filed in the record and references to it in the depositions and judgment should bear that number. Every document should be further marked with the letter “P” or “D” according as it

is tendered by the plaintiff or the defendant. The number assigned to each document should be endorsed on the list of document mentioned above.

**3] Cross-examination :**

The right of cross-examination of witnesses is a valuable right . It is guaranteed by our Constitution, the Evidence Act and the procedural laws. The purpose of cross-examination is to test the veracity of the statement made by a witness in his examination-in-chief as also to impeach his credit. The object of the cross-examination is two-fold to weaken, qualify or destroy the case of the opponent, and to establish a party's own case by means of his opponent's witnesses.

S.137 of the Evidence Act says that the examination of a witness by the party who calls him shall be called his examination-in-chief; the examination of a witness by the adverse party shall be called his cross-examination and the examination of a witness, subsequent to the cross-examination by the party who calls him, shall be called his re-examination. Section 138 of the Evidence Act prescribes the order of examination and says that the witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined; then (if the party calling him so desires) re-examined. Section 138 further says that the examination and re-examination must relate to the relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Rule 4 of Order XVIII: The purpose and objective of Rule 4 of Order XVIII of the Code is speedy trial of the case and to save precious time of the court as the examination-in-chief of a witness is now mandated to be made on affidavit with a copy thereof to be supplied to the opposite party. The provision makes it clear that cross-examination and reexamination of witness shall be taken either by the court or by Commissioner appointed by it. The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

However, any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments. Proviso appended to Sub-rule (1) of Rule 4 of Order XVIII further clarifies that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with the affidavit shall be subject to the order of the court. In a case in which appeal is allowed, Rule 5 of Order XVIII provides that the evidence of each witness shall be taken down in writing by or in the presence and under the personal direction and superintendence of the Judge or from the dictation of the Judge directly on a typewriter or recorded mechanically in the presence of the Judge if the Judge so directs for reasons to be recorded in writing.

**Document refer in cross-examination** :

It is well established principle that the mere marking of an exhibit does not dispense with the proof of

the documents (Sait Tarajee Khimchand v. Velamarti Satyam Alias Satteyya AIR1971SC1865 & Sanjay Cotton Co. v. Omprakash Shioprakash and Anr. AIR1973Bom40). A consistent practice followed in the Courts in Maharashtra that when a document is referred to during the course of cross-examination of a witness, the said document is marked as an exhibit though it is not earlier marked as an exhibit. This is nothing but a practice of convenience. The practice of the marking a document referred to in the cross-examination is only the purposes of locating and identifying the said document. Marking a document as exhibit by such a process based on consistent practice followed in the Court of law does not dispense with the requirement of proof of the execution, contents and genuineness of the document in accordance with law of evidence unless the witness concerned admits the execution and genuineness of the document. Therefore, marking a document in cross-examination in this manner will not dispense with the proof of the document in accordance with law of evidence.( 2009CriLJ910, 2009(2)MhLj410)

**Refreshing of Memory** :

Order VII, Rule 18(2) permits the plaintiff to reserve the documents and Order XIII, Rule 2(2) permits both the parties to reserve the documents for the purposes stated in those rules, namely for the purposes of cross-examination and for refreshing the memory of the witness. Order XIII, Rule 2(1) provides that no documentary evidence in the possession or power of any party, which should have

been but has not been produced in accordance with the requirements of Rule 1, shall be received at any subsequent stage of the proceedings, unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing. Sub-rule (2) provides that nothing in sub-rule (1) shall apply to documents:

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory.

Section 145 of the Evidence Act, empowers the party to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. Resort to section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then section requires that his attention must be drawn to those parts which are to be used for contradiction.

**Re-examination, calling the witness again and again, notes below deposition:**

The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. It reads thus:

> Direction of re-examination. - The re-examination shall be directed to the explanation of matters referred to in

> cross- examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise.

**Order 18 Rule 17 CPC :** The power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but such power is to be invoked not to fill up the lacunae in the evidence of the witness which , has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter.

**How can it be proved that document is thirty years old**?

The date of execution shown on the face of the document is prima facie evidence of its age. If no date is given in the document, “it can be proved by extraneous evidence” that it is thirty years old. If there are circumstances in the case which show great doubt on the genuineness of a document more than thirty years old, even if it is produced from proper custody, the court may exercise its discretion by not admitting that document in evidence without formal proof. Where a document was not thirty years old when filed in the court but becomes so by the time that is considered by the court as part of the evidence, the presumption will apply.

A presumption regarding documents 30 years old does not apply to a Will. A Will has to be proved in terms of Section 63(c) of Indian Succession Act r/w Sec. 68 of the Evidence Act.[ Bharpur Singh -v- Samsher Singh, (2009)3 SCC 687]

Section 90A laid that where an electronic record purports to be or is proved to be five years old and is produced from the proper custody, the court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorized by him in this behalf.

6] <u>Proving contents in the Documents and out of documents :</u> Section 64 says that “Documents must be proved by primary evidence except in case hereinafter mentioned”. Thus, rule is to produce primary evidence and exception is to produce secondary evidence under certain circumstances. The primary evidence needs the original

document and its contents sought to be proved.

Mere production and marking of a document as an exhibit is not enough. Execution of a document is to be proved by admissible evidence. The admissible evidence is by way of:-

i] Admission by a signatory to the document of its execution( Section 58).

ii] Examination of a scriber (Section 67)

iii] Examination of an attesting witness (Section 67 & 68)

iv] By proof of signature and handwriting of a person, who is alleged to have signed or written the document produced (Section 67).

v] By proof of digital signature (Section 67-A)

vi] By opinion as to, or comparison of, signature, writing, or seal with other admitted or proved document( Sections 45, 47 or 73 ,Fakhruddin Vs. State of Madhya Pradesh 1967 Cr.L.J 1197,State Vs. Pali Ram AIR 1979 SC 14)

vii] Proof as to verification of digital signature (Section 73-A)

**Power of Attorney**

According to Section 1A of the Powers of Attorney Act 1882 a power of attorney includes any instruments empowering a specified person to act for and in the name of the person executing it.

Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power

granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined( Janki Wasudeo Bhojwani Vs. Indusind Bank reported in AIR 2005 SC 439).

10] **Tape Recorder and Video Recording**:

The process of tape recording offers an accurate method of storing and later reproducing sounds. The imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 7 of the Indian Evidence Act. The act of tendering tape recorded or Video recorded conversation before courts as evidence, particularly in cases arising under the Representation of People Act,Prevention of Corruption Act has almost become a common practice now. In civil cases parties may rely upon tape records of relevant conversation to support their version. In such cases the court has to face various questions regarding admissibility, nature and evidentiary value of such a tape-recorded conversation.

In India, the earliest case in which issue of

admissibility of tape-recorded conversation came for consideration is Rup Chand v. Mahabir Prashad and another MANU/PH/0066/1956:AIR 1956 Punjab 173. In this case, Hon'ble Punjab High Court held that the taped statement could be used for impeaching the credit of the witness under section 155(3), it held that the tape could not be used for purposes of section 145. The reason given was that the tape record cannot be equated as a statement in writing or reduced to writing. And Hon'ble Supreme Court accepted and approved the judgment of Hon'ble Justice Bhandari CJ in Rupchand v. Mahabir. AIR 1956 Punjab 173 in the case of Pratap Singh v. State, AIR 1964 SC 72 and in Rama Reddy v. V.V. Giri, 1970 (2) SCC 340.

**Conditions of Admissibility** :

The tape recorded conversation can be erased with easily by subsequent recording and insertion could be superimposed. However, this factor would have a bearing on the weight to be attached to the evidence and not on its admissibility. Ultimately, if in a particular case, there is a well grounded suspicion not even say proof, that the tape recording has been tampered with that would be a good ground for the court to discount wholly its evidentiary value. ( Pratap Singh v. State of Punjab, AIR 1964 SC 72).

In the case of Ram Singh v. Col. Ram Singh, AIR 1986 SC 3: MANU/SC/0176/1985 a case arising from an election petition the three Judges Bench of Hon'ble Apex Court examined the question of admissibility of tape recorded conversations under the relevant provisions of the Indian Evidence Act. And Hon'ble Apex Court lay down that

a tape recorded statement would be admissible in evidence subject to the following conditions:

> Thus, so far as this Court is concerned the conditions for admissibility of a tape- recorded statement may be stated as follows:
>
> (1) The voice of the speaker must be duly identified by the maker of the record or by other who recognise his voice. In other words, it manifestly follows as a logical corollary that in the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.
>
> (2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory-evidence-direct or circumstantial.
>
> (3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
>
> (4) The statement must be relevant according to the rules of Evidence Act.
>
> (5) The recorded cassette must be carefully sealed and kept in a safe or official custody.
>
> (6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

**Recent Ruling**:

In Anvar P.V. Vs. P.K.Bashkar reported in 2014(4)KLT104(SC), 2014(4)RCR(Civil)504, 2014(10) SCALE 660, the three Judge Bench of Hon'ble Apex Court observed that , “The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia special bus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so.

Submitted with due respect.