

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3716 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") questioning the order dated 11.03.2018 passed in M.C.No.66 of 2017 by the Judge, Family Court, L.B.Nagar, Ranga Reddy District, refusing to mark copies of income tax returns for the assessment years 2009 to 2015 as they were obtained by illegal means, and not accompanied by certificate required under Section 65-B of Indian Evidence Act.

The respondent No.1 herein filed a petition under Section 125 of Cr.P.C. before the Judge, Family Court, claiming maintenance for herself as she has no sufficient means to maintain herself, whereas the petitioner having sufficient means to maintain the respondent No.1 herein.

The petitioner herein set up a plea that the respondent No.1 is a practicing advocate and income tax assessee, therefore, the petitioner is not liable to pay any maintenance to the respondent No.1.

While the matters stood thus, various interlocutory applications were filed, wherein appropriate orders were passed. Finally, this Court Tr.Crl.P.No.309 of 2016 issued a direction to the Judge, Family Court, to dispose of the maintenance case within three months from the date of receipt of a copy of the order dated 28.12.2016. In view of the direction issued by this Court, enquiry in the maintenance case was commenced and during enquiry several documents were tendered and marked on behalf of the petitioner herein, but the income tax returns of the respondent No.1 were not

marked as exhibits in view of the objection raised by the respondent No.1 herein, who is appearing as party-in-person being a qualified advocate, on the ground that they were obtained by illegal means and they were created for the purpose of case to avoid payment of monthly maintenance to the respondent No.1 herein.

In view of the objection raised by the respondent No.1/wife, the Judge, Family Court declined to mark income tax returns.

Aggrieved by the said order, the present petition is filed under Section 482 of Cr.P.C. raising several contentions mainly on the ground that the order passed by the Judge, Family Court, refusing to mark the income tax returns of the respondent No.1 herein is illegal, and the Court ought not to have refused to mark the documents only based on the objection raised by the respondent No.1 herein, that apart the alleged objection that the documents were obtained by illegal means and not accompanied by certificate under Section 65-B of Indian Evidence Act, is not tenable. At best, the Court ought to have followed the principles laid down by the Apex Court in “**Bipin Shantilal Panchal v. State of Gujarat**¹” to mark the documents for numerical purpose tentatively while postponing the decision on the admissibility.

It is also contended that Section 14 of Family Courts Act permits the petitioner to file documents and the trial Court totally ignored the legal position and committed serious error, prayed to set aside the impugned order passed by the Judge, Family Court, Ranga Reddy District at L.B.Nagar.

At the time of admission, learned counsel for the petitioner contended that when documents were tendered in evidence, whether

¹ AIR 2001 SC 1158

they are obtained by legal means or illegal means, the Court cannot refuse to mark them and placed reliance on the judgment of Apex Court rendered in “**Umesh Kumar v. State of Andhra Pradesh**”², “**Pushpadevi M.Jatia v. M.L.Wadhavan, Additional Secretary, Government of India**”³.

Learned counsel for the petitioner further contended that the documents tendered in the cross-examination though not certified as required under Section 65-B of Evidence Act, they are bound to be received in view of the law declared by the Apex Court in “**Shafhi Mohammad v. The State of Himachal Pradesh**”⁴, High Court of Judicature at Bombay in “**Deepali Santosh Lokhande v. Mr.Santosh Vasantrao Lokhande**”⁵, High Court of Judicature for Rajasthan at Jaipur Bench in “**Preeti Jain v. Kunal Jain**”⁶. Therefore, refusal to mark documents as exhibits is a serious irregularity.

Yet another contention raised before this Court is that the respondent herself admitted about the genuineness of documents, the Court cannot decline to mark them as they are undisputed documents and requested to receive the documents set out in the list and mark them as exhibits on behalf of the petitioner in M.C.No.66 of 2017 enabling the petitioner to prove the income being earned by the respondent to disentitle her to claim maintenance under Section 125 of Cr.P.C.

The respondent No.1, as party-in-person, strongly opposed receipt of document Nos.36 and 37 filed by the petitioner herein, on

² 2014 (1) ALT (CrI.) 479 (SC)

³ AIR 1987 SC 1748

⁴ I(2018) CCR 135 (SC)

⁵ 2018 (1) JCC 628

⁶ AIR 2016 Raj 153

the ground that the petitioner created those documents by his expertise in Information Technology and those documents, unless supported by certification under Section 65-B of Evidence Act, cannot be received and looked into for the purpose of deciding real controversy regarding income of the respondent No.1, apart from that the maintenance case has to be decided within six months from the date of filing petition since it is a welfare legislation. Despite issuing a direction in Tr.Crl.P.No.309 of 2016 dated 28.12.2016, the petitioner went on filing petition one after another and successfully gaining time and he filed totally 99 miscellaneous petitions or interlocutory applications, successfully dragged the matter for considerable period.

Respondent No.1 further contended that the petitioner suppressed the direction issued by this Court in Tr.Crl.P.No.309 of 2016, filed another application for different reliefs preventing the Court from proceeding with the enquiry and dispose of the main petition and would draw the attention of this Court to the judgment of High Court of Punjab and Haryana at Chandigarh rendered in “**Vishal Saxena v. Swati Hatnagar**”⁷, wherein the Court highlighted the object of Section 125 of Cr.P.C., obligation of husband, which is on higher pedestal when question of maintenance of wife and children arises, and specific averment of wife with regard to capacity of husband to pay, onus shift upon husband to prove that he does not have sufficient means to pay maintenance and mere denial to earn anything is not a ground to deny maintenance. Therefore, the petitioner is not entitled to deny the claim of the respondent No.1 and he has to pay monthly maintenance having sufficient means when the respondent is expected to lead same

⁷ II (2016) DMC 794 (P&H)

standard of living, which the petitioner is leading and prayed to dismiss the present petition.

Considering rival contentions and perusing the material on record, the point that arises for consideration is:

Whether the refusal to mark document Nos.36 and 37 in the list of documents filed during evidence, by Judge, Family Court on the ground that a certificate under Section 65-B of Indian Evidence Act was not accompanied with the documents and the said documents were obtained by illegal means, is legal and valid?

P O I N T:

During trial, the petitioner filed certain documents and Judge, Family Court marked some of the documents while rejecting documents serial Nos.36 and 37, which are income tax returns of the respondent No.1 downloaded from the website.

The reason for refusal is the objection raised by the respondent No.1/party-in-person about its admissibility. In view of the objection raised by the respondent No.1, the Judge, Family Court declined to mark those documents as they are not accompanied by a certificate issued under Section 65-B of Indian Evidence Act.

Section 65-B of Indian Evidence Act reads as follows:

“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 :--

(a) 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;

(b) 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;

(c) 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 reform or the accuracy of its contents; and

(d) 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--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

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

(d) 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,--

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

(b) 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;

(c) 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,--

(a) 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 (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation :-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

As per Section 65-B of 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 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 and the copy downloaded from the website shall be accompanied with the certificate issued by the competent authority.

Even otherwise, learned counsel for the petitioner contended that though the document was not accompanied by a certificate as required under Section 65-B of Evidence Act, the Court can receive such documents and placed reliance on the judgment of Apex Court rendered in “**Shafhi Mohammad v. The State of Himachal Pradesh**” (referred supra), wherein the Apex Court considered various judgments and held as follows:

“Sections 65A and 65B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In “Anvar P.V. v. P.K.Basheer [(2014) 10 SCC 473]”, this Court in para 24 clarified that primary evidence of electronic record was not covered Under Sections 65A and 65B of the Evidence Act. Primary evidence is the document produced before Court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

The term "electronic record" is defined in Section 2(t) of the Information Technology Act, 2000 as follows:

Electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Expression "data" is defined in Section 2(o) of the Information Technology Act as follows.

"Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed-or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

The applicability of procedural requirement Under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the Court in absence of certificate Under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate Under Section 65B(h) is not always mandatory.

Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate Under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies."

In view of the law declared by the Apex Court in the judgment referred supra, certificate under Section 65-B of Indian Evidence Act is not always mandatory and clarified the legal position on the subject that admissibility of the electronic evidence, especially by a

party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate Under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.

Similarly, the High Court of Bombay in “**Deepali Santosh Lokhande v. Mr.Santosh Vasantrao Lokhande**” (referred supra) is of the view that “even if there is any electronic record for which certificate under Section 65B of the Evidence Act is necessary, it would not preclude the learned Judge of the Family Court to exhibit such documents and receive such documents in evidence, on forming an opinion as to whether the documents would assist the Court, to deal effectively with the dispute in hand. Such exercise has not been undertaken in passing the impugned order.”

Similarly, the High Court of Rajasthan at Jaipur Bench in “**Preeti Jain v. Kunal Jain**” (referred supra) held that “Section 14 of the Family Court Act, 1984 provides that a family court may receive any evidence, report, statement, documents, information or matter which in its opinion will facilitate the effective adjudication of the disputes before it, "whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872". The aforesaid section therefore makes it pellucid that the issues of relevance and admissibility of evidence which regulate a regular trial do not burden proceedings before the family courts. It is the discretion of the family court to receive or not to receive the evidence, report, statement, documents, information's etc. placed before it on the test whether it does or does not facilitate an effective adjudication of the disputes before it. Aside of the aforesaid, I am of the considered

view that Section 65B of the Act of 1872 only deals with the secondary evidence qua electronic records. It does not at all deal with the original electronic records, as in the instant case, where the pinhole camera, with a hard disk memory on which the recording was done has been submitted before the Family Court. The Apex Court in the case of “Anvar P.V. v. P.K. Basheer [(2014)10 SCC 473]” has held that if an electronic record is produced as a primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance with the conditions of Section 65B of the Act of 1872. That evidence would take the colour of primary evidence, subject no doubt to its credibility based on forensic examination and cross examination. Further, I am of the considered view that the privilege in respect of the husband and the wife's communication under section 122 of the Act of 1872 would also not attract, as Section 14 of the Family Court Act eclipses Section 122 of the Evidence Act in proceedings before the Family Court. Section 14 aforesaid is a "special law", so to say, as against the "general law", which Section 122 of the Act of 1872 encapsulates vis-à-vis privileged communications between husband and wife.”

In view of the law declared by various Courts consistently, the general rules of evidence contained in Indian Evidence Act can be dispensed with in the proceedings under Family Court Act in view of the Section 14 of Family Court Act if the Court finds that such evidence will assist the Court to arrive at just conclusion.

Learned counsel for the petitioner further contended that even if the admissibility of document is under challenge, to avoid unnecessary delay in disposal of the matter, the Court can mark the document for numerical purpose tentatively and postpone the

decision on admissibility of document till pronouncement of judgment and at the time of pronouncement of judgment, if the Court finds that the document is not admissible, the Court can refuse to consider the same. In support of his case, he placed reliance on a judgment of Apex Court rendered in “**Bipin Shantilal Panchal v. State of Gujarat**” (referred supra), wherein the Apex Court held as follows:

“Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided "at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration.”

The principle laid down by the Apex Court in the said judgment is squarely applicable to the present facts of the case and the Court below can follow the principles laid down in the said judgment, but instead of following such principle, the Court refused to mark the document and committed an error. Therefore, the order passed by the Court below refusing to mark the document at least tentatively for numerical purpose while postponing decision on admissibility till the date of final judgment, is an error on the face of the record, on this ground the order is liable to be set aside.

During hearing, respondent contended that the said documents were fabricated by the petitioner, who is software professional, taking advantage of his expertise in the field and they cannot be admitted in evidence and that apart, the said documents are obtained by illegal means, on this ground the documents cannot be admitted in evidence.

Refuting the said contention, learned counsel for the petitioner contended that even if the documents are obtained by illegal means, such documents can be received in evidence and placed reliance on the judgment of Apex Court rendered in “**Umesh Kumar v. State of Andhra Pradesh**”, “**Pushpadevi M.Jatia v. M.L.Wadhavan, Additional Secretary, Government of India**” (referred supra).

Thus, in view of the law declared by the Apex Court in the said judgments, even if the documents were obtained by illegal means and they are relevant for decision in the main case, the Court can not reject those documents. Hence, refusal to mark the documents on the ground that they are secured by illegal means is not sustainable under law.

The other contention regarding fabrication of documents holds no substance, as genuineness of the documents cannot be decided at the stage of admitting documents. Genuineness of documents can be decided only after completion of trial or enquiry. Therefore, the Judge, Family Court has to decide the genuineness of the documents on appreciation of both oral and documentary evidence at the end. Therefore, on this ground refusal to mark documents as exhibits is unsustainable.

On the other hand, in I.A.No.3 of 2018, the respondent No.1/party-in-person made a clear admission, which runs as follows:

“I humbly submit that the document which he has filed regarding to my Income Tax Return are confidential between me and I.T.Department. he has not taken the document u/S RTI Act by they are illegally taken and submit marking and myself and my husband living in same premises H.No.5-102 Dilsukhnagar. He might has receive my letter and notice himself and getting ex party orders. The document brought illegally. Hence, they cannot be mark as exhibits.”

Taking advantage of this sentence, learned counsel for the petitioner contended that filing of income tax returns are admitted by the respondent, but it is not an unequivocal admission as to the genuineness of the documents serial Nos.36 and 37. Therefore, on this ground, the Court cannot refuse to mark the documents in evidence.

The other contention raised by the respondent No.1 is that though a direction was issued by this Court to dispose of the maintenance case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of Order in Tr.Crl.P.No.309 of 2016, on account of filing successive applications by the petitioner herein, the main maintenance case was not disposed by the Judge, Family Court. Thus, the petitioner caused hindrance for disposal of the matter at early stage and by disobeying the direction issued by this Court filed 99 petitions as on the date of filing counter, which she narrated in the I.A.No.3 of 2018.

Filing of various applications and other proceedings will not come in the way of receiving documents in evidence, at best filing successive applications one after another may disclose the conduct of the petitioner in prosecuting the proceedings and as to how the petitioner preventing the Court from proceeding with the enquiry or trial of the case. Therefore, filing of many applications is not a ground to refuse to mark documents.

On overall consideration of entire material available on record, it is clear that the Judge, Family Court committed error in refusing to mark documents serial Nos. 36 and 37, which are downloaded income tax returns allegedly filed by the respondent No.1, is an

illegality. Hence, the Judge, Family Court, Ranga Reddy District, at L.B.Nagar is directed to mark documents serial Nos.36 and 37 tentatively for numerical purpose, reserving decision on admissibility to be decided at the end of trial/enquiry. If the documents are found inadmissible, the Judge, Family Court, may exclude them from consideration and pass appropriate orders following the principle laid down by the Apex Court in “**Bipin Shantilal Panchal v. State of Gujarat**” (referred supra).

In the result, the criminal petition is allowed. The order dated 11.03.2018 passed in M.C.No.66 of 2017 by the Judge, Family Court, L.B.Nagar, Ranga Reddy District is hereby quashed. The Judge, Family Court, Ranga Reddy District, at L.B.Nagar is directed to mark documents serial Nos.36 and 37 tentatively for numerical purpose reserving decision on admissibility to be decided at the end of trial/enquiry. The Judge, Family Court, L.B.Nagar, Ranga Reddy District is further directed to decide the maintenance case within a period of three months from the date of receipt of a copy of this order in accordance with law. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

13.06.2018
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