

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

Civil Revision Petition No.5088 of 2018

ORDER:

Aggrieved by the order, dated 16.08.2018, passed in O.P.No.1387/2014, by the Additional Family Court, Hyderabad, whereby the Learned Judge has refused to admit seventeen SMS messages, filed by the petitioner, in order to buttress his case that the talaq given to Mrs.S.Natasha, the respondent herein, is a legal one, Mr. S.Ameer Ahmed, the petitioner, has preferred this Civil Revision Petition.

Mr.Vedula Srinivas, the learned counsel for the petitioner, has pleaded that the learned Judge is unjustified in rejecting the application, ostensibly, on the ground that since the SIM is not working, the Court cannot confirm that the messages found in the mobile phone of the husband were received from a particular phone number, including the phone number of the wife. According to the learned counsel, the petitioner had claimed that once the messages were saved on the SIM, which were received by him from his wife, the same were transferred to the memory of the phone. Thus, even if the SIM was not working, the memory of the cell phone continues to work. Therefore, the conclusion drawn by the learned Judge is highly misplaced.

Secondly, the learned Judge is unjustified in claiming that the hard copies of the messages are secondary evidence.

In fact once the messages have been transcribed on the phone memory, and reproduced, they are to be treated as primary evidence as prescribed by Section 65B of the Evidence Act.

On the other hand, Mr.Sandip Kumar Chakravarthy, the learned counsel for the respondent, claims that the certificate, required under Section 65B of the Evidence Act, was not even produced by the petitioner. The only certificate which was produced under Section 65B of the Evidence Act was the one signed by the petitioner himself. Even a bare perusal of the certificate so furnished merely claims that “there is no distortion in the accuracy of the contents of the hard copies of the e-mail”. Therefore, according to the learned counsel for the respondent, the petitioner wanted to produce certain “e-mails” and not SMS messages. Thus, the petitioner is unjustified in claiming that he is intending to bring certain SMS text messages, exchanged between him and his wife, on record.

Secondly, a bare perusal of the text messages submitted by the petitioner before this Court clearly reveals that the text messages do not contain the cell phone number from which the messages are received. Therefore, the authenticity and veracity of these text messages are in doubt.

In rejoinder, Mr.Vedula Srinivas, the learned counsel for the petitioner, submits that for the purpose of Section 65B of the Evidence Act, it is sufficient if the certificate is issued by

the petitioner himself. Since the certificate was duly furnished, the contention raised by the learned counsel for the respondent should be rejected. In the alternative, if a certificate is required under Section 65B of the Evidence Act, ample opportunity should be given to the petitioner to submit the same before the learned Family Court.

Lastly, the learned Judge should have admitted the seventeen messages, and only subsequently, it should have adjudicated upon the evidentiary value of the same. Therefore, the learned counsel for the petitioner has questioned the legality of the impugned order.

It is trite to state that the messages received on a SIM can easily be transferred to the hard memory of the cell phone. Therefore, the learned Judge is unjustified in concluding that once the SIM is not working, it cannot be confirmed that the messages found in the mobile phone of the husband were received from a particular mobile phone number.

Moreover, what is required under Section 65B of the Evidence Act is that a certificate has to be issued not by the petitioner himself, but “by a responsible official, holding position in relation of the operation of the relevant device, or from the management of the relevant activities”. Thus, the learned Judge should have seen whether such a certificate is validly furnished or not? The non-furnishing of a valid certificate under Section 65B of the Evidence Act has escaped

the notice of the learned Judge. Instead, the learned Judge has gone off the mark and mis-understood the technicalities of the information technology in the cell phone.

The SMS messages which the petitioner is trying to bring on record would be admissible, provided that the requirements of Section 65B of the Evidence Act are fulfilled. However, prima-facie, so far those requirements have not been fulfilled. Therefore, although, the correct reasoning is not given by the learned Judge, the learned Judge is justified in dismissing the petition filed by the petitioner.

For the reasons stated above, this Court does not find any merit in the present Civil Revision Petition.

However, in case, the petitioner were able to fulfill the requirements of Section 65-B of the Evidence Act, he shall be free to move his second application requesting the learned Judge to take these seventeen SMS messages on record. The learned Judge is expected to hear both the sides, and proceed strictly in accordance with law. With these directions, the Civil Revision Petition stands disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAGHVENDRA SINGH CHAUHAN, J.

Date:30.11.2018.

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