

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2019

CORAM
THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.No.4603 of 2017

Prakruthi Sailaja

.. Petitioner/1st Respondent

Vs

1.A.M.Hari krishna

.. 1st Respondent/Petitioner

2.D.N.Murthy

..2nd Respondent/2nd Respondent

Civil Revision Petition filed under Article 227 of the Indian Constitution to allow the above Civil Revision Petition by dismissing the Petition under Section 45A of the Indian Evidence Act read with Section 79A of Information Technology Act to direct the Cyber Police to retrieve the details requested by the Respondent and thereby setting aside the Order and Decreetal order dated 04.09.2017 passed in I.A.No.2935 of 2016 in O.P.No.4026 of 2015 on the file of the III Additional Principal Judge, Family Court at Chennai.

For Petitioner : Mr.R.Chandrasekar

For R1 : Mr.A.Palaniappan

For R2 : No appearance

O R D E R

The above Civil Revision Petition is filed challenging the order passed by the learned III Additional Principal Judge, Family Court, Chennai, in I.A.No. 2935 of 2016 in O.P.No.4026 of 2015, in and by which, the learned Family Judge has allowed the application filed by the petitioner/respondent, seeking a direction to the Cyber Police to retrieve certain details, which has been mentioned in paragraph 14 of the petition. The entire thrust of this application was on account of the fact that the 1st respondent/husband has filed the petition for divorce, on the ground of the adultery and the adulterer has been named as the second respondent.

2 The main contention of the 1st respondent/husband was that the revision petitioner/wife was in constant contact with the second respondent through E-Mail, Whatsapp, SMS and Facebook, and if these details are retrieved, it would go a long way in establishing the 1st respondent's case. The revision petitioner/wife, apart from raising the usual denial, has not

put forward a very serious contest as to the legality of the application in question.

3 Ultimately, the learned Family Judge after hearing both parties had proceeded to allow the application and pass the following order:

"1.that, this petition is allowed and the Assistant Commissioner of Police, Cyber Crime Cell Office of the Commissioner of Police, Vepery, Chennai - 600 007 to retrieve details mentioned below from the following numbers details (i) 9848594888 (ii) 7396988479 (iii) 9951110798 (iv) Examine the SIM relating to 9092460979 till February 14th 2015 (v) Two other SIMs of the 1st respondent (vi) E mails registered with the above numbers and (i) Name & number of persons in her contact List including changes made to it (ii) Called Number (including date, time & location ID) (iii) Calling number (including date, time & location ID) (iv) Voice messages (v) Messages sent (vi) Messages Received (vii) Forwarded Messages (viii) Missed Calls (ix) Received calls (x) Recharged details (xi) E mail Registered (xii) Face book messages (xiii) Linked in Messages (xiv) What's Up messages (xv) Delete Messages."

Challenging the said order, the revision petitioner is before this Court.

4 Mr.R.Chandrasekar, learned counsel appearing on behalf of the petitioner would submit that the provisions of Section 45A of the Indian Evidence Act, 1872 and Section 79A of the Information Technology Act, 2000, have been given a total go by, since the learned Judge has permitted the report to be admitted as a secondary evidence.

5 Per contra, Mr.A.Palaniappan, learned counsel appearing on behalf of the 1st respondent would submit that Section 14 of the Family Courts Act clearly lay down that the strict contours of the Indian Evidence Act is not applicable for disputes, which are pending before the Family Court. He would also rely upon the Judgment of the of the Division Bench of this Court reported in 2018 6 CTC 130 [R.Sridharan Vs. R.Suganya].

6 Heard parties and perused the documents of the citation.

7 A reading of Section 14 of the Family Courts Act would indicate that a family Court has wide powers to receive as evidence in report, statement, documents, information etc., which are necessary to effectively deal with the dispute on hand, whether the same may be reliable or admissible under the Indian Evidence Act. This section has been dealt with by the

Hon'ble Division Bench of this Court in the Judgment cited above. The Division Bench was called upon to consider the evidentiary value of the electronic media while holding the fact that the Family Court is not bound within the strict technicalities of the Indian Evidence Act. The Bench has held as follows:

"It is clear from Section 14 of the Family Court Act that the technicalities of Indian Evidence Act relating to admissibility or relevancy of evidence are not strictly applicable in relation to a proceedings under the Family Court Act touching the Matrimonial disputes. Section 20 of the Family Court Act has an overriding effect over all other law for the time being in force. Thus, the Family Court is empowered and vested with a wide discretion to take note of the evidence in any form such as report, statement, documents, information or matter that may be required to effectively deal with the real controversy in dispute. Thus, Section 14 of the Family Court Act provides a discretion to the Family Court to receive evidence irrespective of rigours of Evidence Act."

8 The Division Bench relied upon two judgments viz., The Judgment of the Bombay High Court reported in 2013 AIR CC 1156 (Bom) [Shivanand Damodar Shanbhag Vs. Sujata Shivanand Shanbhag] and another decision of the Division Bench of the Karnataka High Court reported in AIR 2010 Gau 75 [Narayan Roy Vs. Jamuna Dev (Roy)].

9 Applying the ratio laid in this instant case, I find no infirmity in the order passed by the learned Judge, Family Court, Chennai, in allowing I.A.No.2935 of 2016 in O.P.No.4026 of 2015. The learned III Additional Principal Judge, Family Court, Chennai, shall issue necessary direction to the Assistant Commissioner of Police, Cyber Crime Cell, Office of the Commissioner of Police, Vepery, Chennai, to retrieve the details mentioned in the petition within a period of two weeks from the date of receipt of order.

In the result the Civil Revision Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua

To

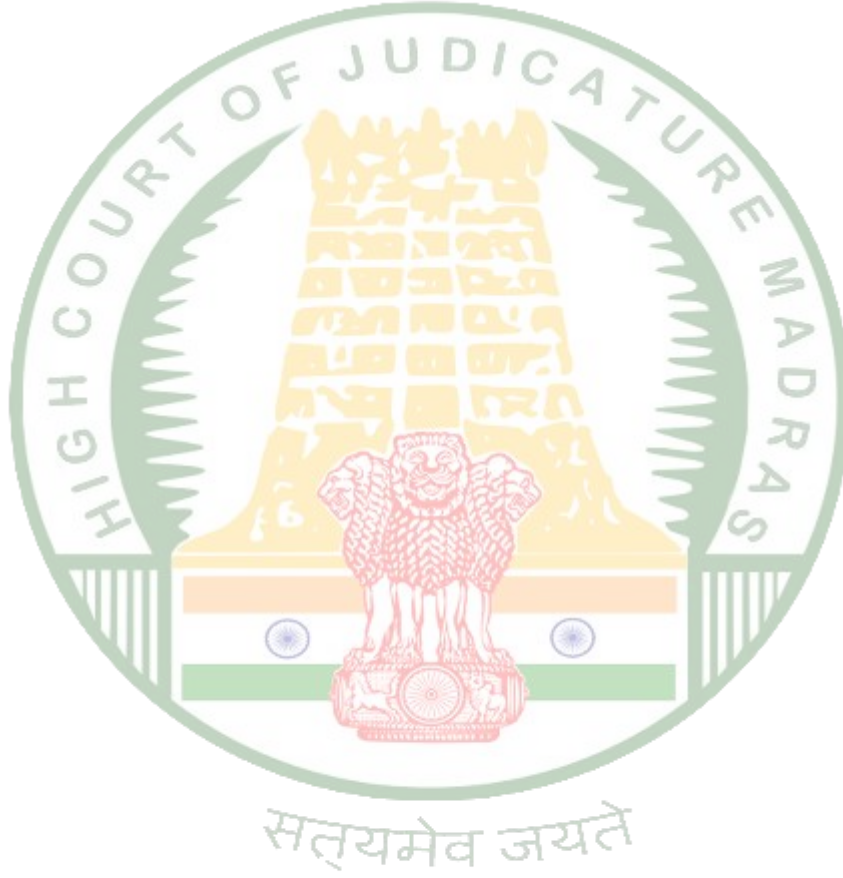
The learned III Additional Principal Judge,
Family Court,
Chennai.

CRP.No.4603 of 2017

+1cc to Mr.A.Palaniappan, Advocate, S.R.No.18408

GJ-II (CO)

RRS (02/04/2019)



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