

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2050 OF 2021

ASHWINI PRASAD DESHMUKH
VERSUS
PRASAD LAXMIKANT DESHMUKH

Mr.S.C.Swami, Advocate for the petitioner.

Mr.Shaikh Ashraf Patel h/f Mr.Abhijit PAvhad, Advocate for the respondent.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

PER COURT :

1. Heard the learned Advocate for the petitioner and the learned Advocate for the respondent. The matrimonial discord between the two parties landed them before the Family Court, Latur, wherein the respondent/husband filed a petition u/s 13(1) of the Hindu Marriage Act, 1955 seeking dissolution of the marriage. Since the divorce is sought on the ground of wife is in relationship with respondent No.2 (before Lower Courts), he was also impleaded as party respondent in the proceedings before the Trial Court.

2. In this pending proceedings, the husband moved an application

vide Exh.77 seeking permission to adduce secondary evidence and the relief in the application was prayed in the background that he had already produced copies of whats app messages between his wife and respondent No.2 (Respondent No.2 before Trial Court), which were obtained by him from the mobile phone given by his wife. Since the claim of the husband of the petitioner is on the ground of adultery, he relied upon the chat history between petitioner/wife and respondent No.2 and he pleaded that he scanned the chat sessions and obtained scan sheets of the messages of his mobile and sent this scanned sheets to the Forensic Laboratory, which had authenticated these messages with the help of Forensic Aid. However, in order to establish and prove this chat to be an authentic one, he seek production of the mobile phone before the Court.

This application has been allowed by the learned Judge of the Family Court in the background that the husband has already filed print out of the alleged chat history between his wife and respondent No.2 but in absence of the certificate u/s 65-B of the Indian Evidence Act, it cannot be read in evidence.

Though the mobile phone of petitioner/wife, which is in possession of the respondent/husband, sought to be produced before

the Court, it is stated that it is having a pattern lock. Unless and until, the lock is opened and the data is transcribed, and the chats are backed up by 65-B certificate, the chat history cannot be relied upon. Though the learned Judge has granted opening of the mobile phone, I do not think it is permissible for him to open the mobile phone pattern lock and as on date, even the husband has produced the chat history without 65-B certificate. In such case the learned Family Judge will have to be carefully tread upon the evidence produced before him, considering the admissibility of this type of evidence without the phone being unlocked and whats app chat on which the husband is seeking reliance is without 65-B certificate.

3. With this observation and a word of caution being expressed, the writ petition is disposed off.

(BHARATI H. DANGRE, J.)