



C.R.P. (PD) No.1545 of 2022

**WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 23.06.2022**

**CORAM**

**THE HONOURABLE MS. JUSTICE R.N.MANJULA**

**C.R.P. (PD) No.1545 of 2022**

**and**

**C.M.P.No. 7816 of 2022**

**P.Indhumathi,  
D/o.Periyasamy**

**... Petitioner**

**Versus**

**1. S.Hariharan,  
S/o. Chiththan**

**2. G.Ilayaraja,  
S/o. Ganesan**

**... Respondents**

**Prayer:-** Civil Revision Petition has been filed under Art. 227 of Constitution of India, praying to set aside the fair ad decreetal order dated 23.02.2022 in I.A.No.2 of 2021 in H.M.O.P. No. 34 of 2019 on the file of Family Court, Salem.



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For Petitioner : Mr.K.Selvaraj

For Respondents : Mr. R.Marudhachalamurthy for R1

R2 – No appearance

### **ORDER**

This Civil Revision Petition has been preferred challenging the order of learned Family Court Judge, Salem dated 23.02.2022 in I.A.No. 2 of 2021 in H.M.O.P. No.34 of 2019.

2. The Revision Petitioner is wife of 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent husband had filed a petition in H.M.O.P.No. 34 of 2019 for dissolution of marriage on the ground of adultery. Pending the proceedings, he has filed an Interlocutory Application in I.A. No.2 of 2021 by stating that he has recorded the whatsapp messages between his wife and the other respondent and filed a CD along with printed copy of the above message and the same was received as evidence by the lower court. Aggrieved over that, the present Civil Revision Petition has been filed.



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3. The learned counsel appearing for petitioner submitted that the evidence produced by the 1<sup>st</sup> respondent is not in terms of Sec.65-B of Evidence Act, which stipulates the conditions to receive electronic evidence. The learned counsel for petitioner further submitted that the whatsapp messages alleged by the 1<sup>st</sup> respondent were not downloaded from either of the cell phone, the Revision Petitioner or the 2<sup>nd</sup> respondent, but he claimed that he had extracted those messages by using an app called Whatscan and hence, it is not admissible in evidence. The learned counsel further submitted that the genuineness of document cannot be tested before adducing its admissibility and the relevancy and the authenticity of document also cannot be tested before adducing its admissibility.

4. The attention of this Court was drawn to the judgment of Hon'ble Supreme Court of India rendered in **2014 (10) SCC 473**. In the said judgment, in para 24, the Apex Court has held as follows :-

*“24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence,*



*the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence (under Section 62 of the Evidence Act), the same is admissible in evidence, without compliance with the conditions in Sec.65-B of the Evidence Act.”*

4. The very contention of the 1<sup>st</sup> respondent while producing the CD is that he had extracted the whatsapp messages of the Revision Petitioner and the 2<sup>nd</sup> respondent by using his own phone. The messages extracted by



the 1<sup>st</sup> respondent is very much available in his phone and he had taken series of messages and produced the same before the court by stating that the same was taken by him through his phone by using a special application.

5. In the judgment of Hon'ble Supreme Court, it is specified that speeches, songs and announcement which were recorded using other instruments by feeding them into a computer, CDs due certification should be given under Sec.65-B of Evidence Act. But, in the case in hand, CDs were made from the cellphone of the 1<sup>st</sup> respondent himself and he did not transmit the messages to any other instrument or CDs were not taken by using any computer. If the messages shown by the 1<sup>st</sup> respondent are not true or if his statement that he downloaded those messages directly from his phone is not true, those facts can be confronted to him during his examination. When the 1<sup>st</sup> respondent has stated that he had downloaded the messages through an App by using his cellphone, and he has filed an affidavit to that effect, that itself might amount to a certificate as contemplated under Sec.65-B of Evidence Act. The contentious issues relating to the authenticity and genuineness of the app or the truth about the



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contents downloaded cannot be raised at the stage of just receiving them.

Hence, I find no ground for interference.

6. In the result, this Civil Revision Petition stands dismissed and the order dated 23.02.2022 passed in I.A.No.2 of 2021 in H.M.O.P. No. 34 of 2019 on the file of Family Court, Salem is confirmed. Consequently, the connected Civil Miscellaneous Petition is closed.

**23.06.2022**

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To

Family Court Judge,  
Salem.



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**R.N.MANJULA, J.**

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