



CRP(PD)(MD)Nos.1590 and 1591 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRP(PD)(MD)Nos.1590 and 1591 of 2022

and

CMP.(MD)Nos.6819 and 6824 of 2022

Balarukesh

... Petitioner/Petitioner/Petitioner
in both petitions

Vs.

Bargavi

... Respondent/Respondent/Respondent
in both petitions

Prayer in CRP(MD)No.1590 of 2022: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 01.06.2022 on the file of the Family Court, Karur made in I.A.No.3 of 2022 in HMOP No.48 of 2020.

Prayer in CRP(MD)No.1591 of 2022: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 01.06.2022 on the file of the Family Court, Karur made in I.A.No.4 of 2022 in HMOP No.48 of 2020

In both petitions:

For Petitioner : Mr.N.Sundaresan

For Respondent : Mr.P.Athimoola Pandian



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COMMON ORDER

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These Civil Revision Petitions are between the same parties and as such, are taken up and disposed of by this common order.

2.The petitioner is the husband. He has filed HMOP No.48 of 2020 seeking to dissolve the marriage between himself and the respondent. The matter was posted for the petitioner side evidence. On 07.03.2022 the petitioner's cross examination was over and on 14.3.2022, it was posted for further evidence on behalf of the petitioner. The petitioner did not appear before the trial Court and as such the evidence was closed and the matter was posted for respondent side evidence. At that stage, the petitioner filed these interlocutory applications along with I.A.No.2 of 2022. While allowing the application in I.A.No.2 of 2022 to reopen the evidence, the trial Court dismissed I.A.Nos.3 and 4 of 2022. The prayer made in I.A.No.3 of 2022 is to recall P.W.1 for the purpose of marking the additional documents, which is sought to be produced vide I.A.No.4 of 2022. The petitioner sought to mark the printed out copies of the Face book chat between the respondent and her mother and secondly, a pendrive consisting of audio recording of the conversation between the respondent and the petitioner and thirdly, the photograph of providing the gifting of gold jewelry. The trial Court found



that all the three documents required certificates under Section 65B of the Indian Evidence Act (hereinafter referred to as 'the Act') and the same was not filed along with the applications and therefore, the applications cannot be allowed. The Family Court also further found that as far as the Face book chat and the pendrive are concerned, these kind of conversations between the spouses are normally recorded without the knowledge of the other side and therefore, they are not admissible as evidence under the Indian Evidence Act. The trial Court also found that the petitioner has not pleaded about the documents originally in his pleadings.

3. *Mr.N.Sundaresan*, learned counsel appearing on behalf of the petitioner, *Mr.P.Athimoolapandian*, learned counsel appearing on behalf of the respondent and perused the material records of the case.

4. The learned counsel appearing on behalf of the petitioner would submit that the reason by the trial Court, the said documents are not mentioned in the petition is factually incorrect and the petitioner has mentioned the same in paragraph No.6 of the petition. He would submit that the same is even denied by the respondent. As far as the second reasoning is concerned, he would submit that there is no such rule which prohibits these



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recorded conversations to be produced before the Court under the Indian Evidence Act. As far as Section 65B of the Act is concerned, the learned counsel would submit that it is true that these documents cannot be marked without Section 65B of the Act. But, however, the trial Court ought to have directed the petitioner to produce the certificate under Section 65B of the Act. The same would have been produced and only with the certificates as per Section 65B of the Act, the petitioner proposes to mark these documents.

5.Per contra, the learned counsel for the respondent, placing reliance upon the judgment of the Hon'ble Supreme Court of India in *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors.*¹ would submit that these are electronic documents requiring a certificate under Section 65B of the Act for the purpose of marking as evidence. When the petitioner produced these documents as additional documents, there was no accompanying certificate along with the same and the trial Court, therefore, rightly dismissed the same. He would further submit that the pendrive cannot be received in evidence and in support of that proposition would rely upon the judgment of this Court in *Dr.M.Sudheer Vs. M.Kamaraj*², more fully

1 AIR 2020 SUPREME COURT 4908

2 (2022) 5 L.W. 721



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relying upon Paragraph No.9 of the said Judgment. He would further submit that when these evidences were there, nothing prevented the petitioner from producing the same originally and only to protract the proceedings at the defence stage and to harass the respondent wife, these documents are now belatedly produced.

6.I have considered the rival submissions made on either side and perused the medical records of the case.

7.As far as the reasoning made by the trial Court that these documents are not mentioned in the pleadings, I am in agreement with the learned counsel for the petitioner that the same are mentioned in the pleadings. The second reasoning that is mentioned that these kind of chats and conversations, which are recorded between the husband and wife, cannot be let in as evidence is concerned, I am of the view that there is no such prohibition under the Indian Evidence Act. It is one thing to give weightage to the particular piece of evidence being the same as normal conversation recorded without the knowledge of the other. But it is another thing to decide about the very admissibility itself. Therefore, I am unable to accept the reason of the trial Court in this regard also. The trial Court is right that these



documents are being electronic documents downloaded from the computers/ electronic devices, cannot be marked unless it is accompanied with a certificate in accordance with Section 65B of the Act. But as far as section 65B of the Act is concerned, it is a procedural requirement and the court should always insist the production of the certificate and for that the petitioner itself need not be dismissed and one opportunity can be given to the petitioner to produce those certificates and only with the certificates, these documents can be marked. Of course, after marking, it is all subject to the general rule of proof and relevancy. The Judgment referred by the learned counsel for the respondent, by this Court in Dr.M.Sundar (cited *supra*) it is a case where the pendrive was not produced before the Court during the trial.

8.In that view of the matter, when the trial Court has thought it fit to reopen the evidence, it ought to have allowed the I.A.Nos.3 and 4 of 2022 also giving an opportunity for the petitioner to further examine himself only with reference to the marking of these documents and of course, it will be open for the respondent to cross examine the petitioner in this regard.

9.In view thereof, these Civil Revision Petitions are allowed on the following terms:



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(i) The order passed by the learned Family Court, Karur, dated 01.06.2022 in I.A.Nos.3 and 4 of 2022 in HMOP No.48 of 2020 are set aside and the said Interlocutory applications are allowed;

(ii) The petitioner shall also file the Section 65B certificates, as the case may be in respect of the said documents in an appropriate form within a period of two weeks from the date of receipt of a copy of this order;

(iii) Upon such filing of the said documents, the trial Court shall permit the petitioner to further examine himself as PW1 and mark the documents and due opportunity shall be given to the respondent to cross examine also.

(iv) Since the matter is pending from the year 2022, because these Civil Revision Petitions are pending for the past two years at the same stage, the trial Court is kindly requested to take up the matter for expeditious disposal and dispose of the same as expeditiously as possible.

No costs. Consequently, connected miscellaneous petitions are closed.

04.07.2024

Neutral Citation :Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

sjj

To

The Family Court, Karur.

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