



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FIRST DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA
CIVIL REVISION PETITION NO: 1319 OF 2021

Between:

1. Sidagam Sanjeev, S/o Dorayya , aged 35 years,
Occ- Teacher, Rio D.No. 15-25, Gollalamera Road,
Kottapeta, Near Boys Hostel, Yeleswaram,
Yeleswaram Mandal, East Godavari District

...PETITIONER(S)

AND:

1. AKULA VENKATA LAKSHMI W/o Sidagam Sanjeev,
D/o Akula Ramakrishna, aged 26 years, Occ-Housewife,
R/o. D.No. 2-27, Gandarada, Korukonda,
East Godavari District.
2. Gali Rajkumar, S/o Not Known, aged 26 years,
Municipal Teacher, Municipal Elementary school,
Allam Vari Street, Samalkot, East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): K V SESHAGIRI RAO

Counsel for the Respondents: T V JAGGI REDDY

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

CIVIL REVISION PETITION No.1319 OF 2021

Between:

Sidagam Sanjeev, S/o Dorayya, Aged 35 years,
Occupation: Teacher, R/o D.No.15-25, Gollalametta
Road, Kottapeta, Near Boys Hostel, Yeleswaram,
Yeleswaram Mandal, East Godavari District. Petitioner

And

1) Akula Venkata Lakshmi, W/o Sidagam Sanjeev,
D/o Akula Ramakrishna, Aged 26 years,
Occupation: Housewife, R/o D.No.2-27, Gandarada,
Korukonda, East Godavari District.

2) Gali Rajkumar, S/o Not known, Aged 26 years,
Municipal Teacher, Municipal Elementary School,
Allam Vari Street, Samalkot,
East Godavari District. Respondent

DATE OF ORDER PRONOUNCED: 01-07-2022

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? Yes/No

NAINALA JAYASURYA, J



***THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

+ CIVIL REVISION PETITION No.1319 of 2021

%Date : 01.07.2022

Sidagam Sanjeev **Petitioner**

And

\$ Akula Venkata Lakshmi and another **Respondent**

! Counsel for the Petitioner : **Mr.K.V.Sheshagiri Rao**

^ Counsel for Respondents : **Mr.T.V.Jaggi Reddy and Mr.A.S.C.Bose**

< GIST : --

> HEAD NOTE : --

? Cases referred : --

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA****CIVIL REVISION PETITION No.1319 of 2021****ORDER:**

The present Revision Petition has been filed aggrieved by the docket Order dated 31.03.2021 in H.M.O.P.No.274 of 2018 on the file of the III Additional Senior Civil Judge, Kakinada, East Godavari District.

2. Heard Mr.Palanki Rama Mohan Rao, learned counsel on behalf of Mr.K.V.Seshagiri Rao, Advocate appearing for the petitioner and Mr.T.V.Jaggi Reddy, learned counsel for the 1st respondent. Despite service of notice, none entered appearance on behalf of the 2nd respondent.

3. The petitioner herein is the husband of the 1st respondent. He filed O.P.No.274 of 2018 on the file of the III Additional Senior Civil Judge, Kakinada, East Godavari District under Section 13(1)(i) of the Hindu Marriage Act, 1955 seeking annulment of marriage between the petitioner and the 1st respondent on the ground of adultery. In the said O.P, the 1st respondent filed counter and contesting the same. The petitioner along with the main O.P filed certain documents including Original Residence Certificate dated 15.08.2018, Originals of 10 photos of respondents 1 & 2 with C.D and e-mail screen shot. As the said documents were not marked, the petitioner filed an application in I.A.No.40 of 2020 to recall him and to mark the said documents as exhibits. In the said application, the 1st respondent filed a counter, but was not present at the time of hearing of the said I.A. The learned Trial Judge after considering the matter and perusing the counter was



pleased to allow the said application by an Order dated 17.12.2020. Subsequently, at the time of marking the documents, the counsel for the 1st respondent raised objection for marking the same and the Court below by the impugned docket Order held that the petitioner is not entitled to recall himself and to mark the documents mentioned in I.A.No.40 of 2020. The learned Trial Judge *inter alia* opined that in order to receive the photographs with C.D and e-mail online copy, the petitioner has to establish the requirement contemplated under Section 65-B of the Indian Evidence Act, but the petitioner did not fulfill the conditions contemplated under Section 65-B and also failed to furnish the Certificate under Section 65-B of Indian Evidence Act. The learned Trial Judge also opined that the petitioner failed to establish the mode of acquisition of 10 Photographs with C.D and e-mail online copy and as such failed to establish the admissibility of the documents. Aggrieved by the said Order, the present Revision Petition has been preferred by the petitioner/husband.

4. The learned counsel for the petitioner *inter alia* submits that the Order of the learned Trial Court constitutes failure to exercise the jurisdiction vested in it and therefore the same is liable to be set aside. He submits that the learned Trial Judge failed to appreciate that I.A.No.40 of 2020 seeking to recall the petitioner and mark the originals of the documents was allowed on 17.12.2020 and despite the same, erred in not allowing marking of the documents, which are crucial for establishing the petitioner's case on the premise that the petitioner failed to establish the admissibility of the documents. He further



submits that the learned Trial Court erred in coming to a conclusion that in order to receive the photographs with C.D and e-mail online copy, the petitioner is required to comply with the conditions for marking of the documents as contemplated under Section 65-B of the Evidence Act. He submits that the learned Trial Court erred in holding that the petitioner failed to establish the admissibility of documents, even before marking of the same. He also submits that the learned Trial Court at least should have given an opportunity to the petitioner to fulfill the conditions contemplated under Section 65-B of the Evidence Act and mark the documents, but the learned Trial Court failed to consider the matter in a proper perspective. He further submits that the learned Trial Court had committed a gross error in opining that the petitioner failed to establish the mode of acquisition of 10 Photographs with CD, e-mail online copy etc., and the same is not sustainable. The learned counsel in support of his contentions placed reliance on the Judgment of the Hon'ble Supreme Court in **State by Karnataka Lokayukta Police Station, Bengaluru v. M.R.Hiremath**¹. The learned counsel submits that, in any event, the learned Trial Court ought to have granted sometime to enable the petitioner to file a copy of the Certificate as contemplated under Section 65-B of the Evidence Act, instead of rejecting the marking of the documents. Making the said submissions, the learned counsel seeks to allow the C.R.P, by setting aside the Order under challenge.

¹ AIR 2019 Supreme Court 2377



5. The learned counsel for the respondent on the other hand while drawing the attention of this Court to the relevant paragraphs in the counter, *inter alia* submitted that no Certificate was produced by the petitioner as per Section 65-B of the Indian Evidence Act, which provides for admissibility of electronic records. He submits that unless Certificate of the Company is filed along with the documents, the same cannot be received. It is his submission that to avoid manipulation of documents, filing of the Certificate was prescribed by the Act and the same cannot be dispensed with. Drawing the attention of this Court to the various averments in the counter opposing the application in I.A.No.40 of 2020, the learned counsel would further submit that the previous Presiding Officer refused to mark the documents and the petitioner, therefore, cannot maintain the present application. The learned counsel submits that in any event, the Court below has not committed any irregularity nor the Order under Revision is perverse, warranting interference by this Court, in exercise of powers under Article 227 of the Constitution of India. Relying on the decision of the Hon'ble Supreme Court in **Anvar P V vs. P K Basheer and Others**² and **Sonu @ Amar vs. State of Haryana**³, the learned counsel submits that the Order under Revision warrants no interference and accordingly urges for dismissal of the same.

² 2014 LawSuit(SC) 783

³ 2017 LawSuit(SC) 704



6. On appreciating the rival contentions of both the learned counsel, and perusing the material on record, the point that falls for consideration by this Court is as to whether the impugned Order is un-sustainable, in the facts and circumstances of the case?

7. In order to appreciate the rival contentions, it may be appropriate to refer to the relevant provisions of Law. Section 65-A of the Indian Evidence Act provides that the contents of electronic records may be proved, in accordance with the provisions of Section 65-B of the Indian Evidence Act and the same is reproduced hereunder for ready reference.

65-B. Admissibility of electronic records.—

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and



(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;



(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

8. In **Anvar P V vs P K Basheer and Others** referred to supra, a three member Bench of the Hon'ble Supreme Court had an occasion to deal with Section 65-B of the Indian Evidence Act. The Hon'ble Supreme Court while opining that any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A of the Act can be proved only in accordance with the procedure prescribed under Section 65-B of the Evidence Act, held that an electronic record by way of secondary evidence shall not be admitted in evidence, unless the requirements under Section 65-B of the Act are satisfied. The Hon'ble Supreme Court categorically held that in the case of C.D, V.C.D, Chip etc., the same shall be accompanied by a Certificate in terms of Section 65-B of the Evidence Act obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible. The Hon'ble Supreme Court in Para 26 of the Judgment, however clarified that if electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65-B of the Evidence Act.



9. In **Sonu @ Amar vs. State of Haryana** referred to supra, the Hon'ble Supreme Court dealt with an issue, *inter alia*, with regard to permissibility of an objection regarding inadmissibility of electronic record at the stage of appeal before the Hon'ble Supreme Court. In the said case, Call Detail Records (C.D.Rs) of the mobile phones were filed before the Trial Court without a Certificate as required by Section 65-B of the Evidence Act. No objection was taken even at the appellate stage before the High Court. The Hon'ble Supreme Court, in the attending facts and circumstances of the case, *inter alia* opined that if an objection was taken to the C.D.Rs, being marked without a Certificate, the Court could have given an opportunity to rectify the deficiency. The Hon'ble Supreme Court further opined that admissibility of a document, which is inherently inadmissible is an issue, which can be taken up at the appellate stage, because it is a fundamental issue and that the mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage and held that an objection that C.D.Rs are un-reliable, due to violation of the procedure prescribed under Section 65-B(4) of the Evidence Act, cannot be permitted to be raised before it, as the objection relates to mode or method of proof.

10. **State by Karnataka Lokayukta Police Station, Bengaluru v. M.R. Hiremath** referred to supra is a case, wherein an appeal was preferred against the Judgment of the High Court of Karnataka in a petition filed under Section 482 of the Code of Criminal Procedure. The Hon'ble High Court allowed the said petition, *inter alia* holding that



failure to produce the Certificate under Section 65-B(4) of the Evidence Act at the stage when the Charge Sheet was filed was fatal to the Prosecution. The Hon'ble Supreme Court after referring to the relevant provisions of Law and the Judgment in **Anvar P V vs. P K Basheer and Others**, referred to supra at Paras 14 and 15 of the Judgment held as follows:-

14. The provisions of Section 65B came up for interpretation before a three judge Bench of this Court in **Anvar P.V. v P.K. Basheer**. Interpreting the provision, this Court held : Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. Section 65B(4) is attracted in any proceedings where it is desired to give a statement in evidence by virtue of this section. Emphasising this facet of sub-section (4) the decision in Anvar holds that the requirement of producing a certificate arises when the electronic record is sought to be used as evidence. This is clarified in the following extract from the judgment : Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

15. The same view has been reiterated by a two judge Bench of this Court in **Union of India and Others v CDR Ravindra V Desai**⁴. The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in **Sonu alias Amar v State of Haryana**, in which it

4 (2018) 16 SCC 272



was held : The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency.

11. A conspectus of the above decisions of the Hon'ble Supreme Court would make it clear that electronic records cannot be admitted in evidence unless mandatory requirements of Section 65-B of the Evidence Act are satisfied.

12. In the present case, the view taken by the learned Trial Judge that the petitioner did not fulfil the conditions contemplated under Section 65-B of the Evidence Act and failed to furnish the Certificate under the said Section cannot be found fault with. However, if the documents i.e., Photographs with C.D and e-mail online copy are not accompanied by the Certificate in terms of Section 65-B(4) of the Evidence Act, an opportunity should have been afforded to the petitioner in the light of the expression of the Hon'ble Supreme Court in the Judgments referred to supra. Further, as rightly contended by the learned counsel for the petitioner, the learned Trial Judge went wrong in opining that the petitioner failed to establish the mode of acquisition of the Photographs with C.D etc., even before marking the documents. Though the learned counsel for the 1st respondent raised a contention that the I.A filed by the petitioner itself is not maintainable as the earlier Presiding Officer refused to receive the same, this Court is not inclined to accept the said submission, in the absence of any Order or material on record to that effect. While this Court is in complete agreement with the contentions advanced by the learned counsel for



the 1st respondent that in the absence of the Certificate, as required under Section 65-B(4) of the Evidence Act, the electronic record cannot be admitted into evidence, as the same is the curable defect, deems it appropriate to remand the matter to enable the petitioner to rectify the deficiency. Accordingly, the Order under Revision is set aside and the matter is remitted to the learned Trial Judge for passing appropriate Orders after affording opportunity to the petitioner to fulfil the conditions as contemplated under Section 65-B(4) of the Evidence Act.

13. The Revision Petition is accordingly, allowed. It is made clear that this Court has not expressed any opinion on the proof, relevancy and admissibility of the documents sought to be marked and the learned Trial Judge is at liberty to pass appropriate Orders, in accordance with Law, uninfluenced by the observations, if any, made by this Court. There shall be no Order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

NINALA JAYASURYA, J

Date: .06.2022

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THE HON'BLE SRI JUSTICE NINALA JAYASURYA

Civil Revision Petition No.1319 of 2021

Date: .06.2022

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