

KAUP010018102021



IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS
JUDGE, UDUPI

PRESENT:- Sri Shantaveer Shivappa,
B.A., LLB., (Spl.)
Principal District & Sessions Judge
Udupi

Dated this 8th day of February, 2023

Sessions Case No.39/2021

Complainant State
By Police Inspector,
Women Police Station, Udupi

(Learned By Public Prosecutor)

/Vs/

Accused Aryan Chandwani
S/o.Rajan Charvi
Aged about 22 years,
R/at. Room No.102,
Surabi Pride, Vidyarathna Nagar,
Shivalli Village, Manipal, Udupi

Permanent address:
Room No.601, D. Akshardham
Building, Link Road,
Opp. Goregaon Sport Club,
Rajan Pada, Malad, Maharastra.

(By Sri S.A./Sri.Y.V.H., Advocate)

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ORDER ON APPLICATION FILED U/SEC.91 of Cr.P.C.

The brief facts of the case are as under:

The Accused had filed this application contending that there was frequent chats between the Accused and the Victim. The Accused had produced the said messages and chats exchanged between him and the Victim with certificate U/Sec.65B of Indian Evidence Act and confronted to the Victim, but the prosecution has objected for marking the same.

2. It is further contended that phone of the Complainant does contain the Instagram chats and messages exchanged between the Victim and the Accused. The messages are absolutely necessary for the Accused to prove his defense and also for proper and just decision of the case. But, the Investigating Agency has deliberately not retrieved the chats found in the mobile phone of the Victim. Hence, it is necessary to retrieve the chats and messages of the Victim. As such sought for directing the Victim to produce her mobile phone and to furnish her Instagram ID and password in order to retrieve data by the Experts. The Accused is ready to bear

all the expenses for retrieval of the data and sought for allowing the petition.

3. To this petition learned Special Public Prosecutor has filed detailed objections contending that the petition is not maintainable either in law or on facts. It is contended that Instagram is a free social media platform which allows users to share photos and videos. It also allows the users to add captions, hashtags and location information to their posts. The users can follow other users and view their posts in their news feeds. The users can also engage with posts by liking, commenting, and sharing them with other users. Instagram profiles can be public or private. Instagram has the features of stories, direct messaging, and filters to enhance user experience. The stories that are uploaded to Instagram are available only for 24 hours after which they are deleted.

4. It is further contended that anyone aged more than 13 years can create an account by registering with an email address and selecting a username. Mobile number is not required to open an Instagram account. A person can have multiple profiles under similar or different names. Due

to the ease of creating accounts, fake accounts and impersonating a person is very easy as one has to only create a new E-mail ID and account under any name. Creating an account does not require any proof of identification. It is very easy to impersonate a person in Instagram.

5. It is contended that direct messaging between two or more people are not visible to others. Texts/photos/posts sent in private conversations can be deleted in many ways. One can delete a message they have sent or delete a message sent to them by others. The messages can be deleted and have no time limit. Therefore, words can be twisted or manipulated to insinuate specific meanings. Even after disabling an account, the chats are still visible to other users with the account name being "Instagram User". If the account has permanently been deleted, all chats, stories, and posts will be deleted and cannot be recovered by themselves. After 30 days of account deletion request, all information will be permanently deleted and it cannot be retrieved. Any information related to Instagram are stored in a cloud/server and not on the local/physical device. As such, the chats are

not in the physical form but in the server of Instagram. Instagram has a feature of "unsend" which deletes the message from both the parties without any notification. Further some posts are available for few hours or few days and after that it will be deleted by the Instagram itself.

6. It is further contended that though the Accused had furnished his Instagram chats but it is not complete. The Section 65B of Indian Evidence Act Certificate is also not submitted by the Accused or the person authorized to submit the same. The Accused had produced the Instagram chats while hearing on his bail petition, at that time his mobile was seized and was with the Investigating Officer and the Accused was in Judicial Custody. It clearly goes to show that Instagram chats are not stored in physical form and can be accessed by anyone else.

7. Moreover the chats between the Victim and the Accused said to be of 16 months back when she was student. Now she is working with a company and a lot of information pertaining to that company will be on her phone. As per company policy the company data cannot be shared to a third

party. The Accused contended that he has an Instagram Account with ID by name 'Cyberpaapi' through which he had chatted with the Victim in the year 2021. The Accused also stated that he has produced the chats and messages between them with certificate U/Sec.65B of Indian Evidence Act and confronted to the Victim but it is objected by the prosecution. As such the same was not marked.

8. The Investigating Officer had made efforts to retrieve the data from the mobile phone of the Accused, but no evidence was found in his phone. No fruitful purpose would be served by retrieving data from the phone of the Victim. Now the Accused only to harass and put the Victim under mental trauma had filed this application to call for her mobile phone. Moreover, the Accused who placing reliance on certain facts much before the date of the offence. The Accused has not contended how theses chats are relevant or connected with the incident. The Accused has not urged any valid grounds to allow the application and sought for rejection of the same.

9. Heard both the sides and perused the records.

10. The points that arise for consideration of the

Court are as under:

(1) Whether the Victim needs to be directed to produce her mobile phone to retrieve the data as sought by the Accused?

(2) What order?

11. The findings of the court on the above points are as under:

Point No.1: In the Negative

Point No.2: For the reasons, discussed as under:

REASONS

12. POINT No.1:- The learned Advocate for the Accused and the learned Special Public Prosecutor have argued as per their application and objection.

13. A perusal of the records goes to show that at the time of filing of his bail application the Accused had produced Instagram chats between himself and the Victim running into 92 pages. A perusal of the records also reveals that at the

time of moving the bail application the Accused was in Judicial Custody and his mobile phone was with the Investigating Officer for retrieving the data. The specific contention of the Special Public Prosecutor is that the mobile phone is not a necessity for retrieving the data of the Instagram Chats. Even the Accused can very well retrieve the Instagram chats of himself with the Victim through his Instagram account. Further the Accused had already produced the Instagram chats between himself and the Victim running into 92 pages. The Accused and the Victim admitted that they were known to each other and there were frequent exchange of messages between them. But it does not mean that as a result of such friendship or acquaintance on the date of incident there was consensual sex between the Accused and the Victim. The Accused has to prove his defense that there was consensual sex between himself and the Victim on the said date, for which the Instagram messages or chats are not necessary. Moreover, as already discussed above the Accused can very well produce messages exchanged between himself and the Victim prior to the incident. As such, the Victim or the

Prosecutrix cannot be directed to produce her mobile phone to retrieve the data regarding her Instagram Account. For the reasons discussed as above, point No.1 is answered in the Negative.

14. **Point No.2:-** For the reasons discussed as above, the following:

ORDER

Application filed U/Sec.91 of Cr.P.C. by the Accused is hereby rejected.

No order as costs.

(Dictated to the Stenographer, who transcribed /computerized, then corrected by me, print taken, pronounced in the open court on 8th day of February, 2023)

(Shantaveer Shivappa)
Principal District & Sessions Judge
Udupi.