

APHC010513122024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

THURSDAY, THE NINTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL REVISION PETITION NO: 2834/2024

Between:

1.KANCHETI NAGESWARA RAO, S/O. SAMBASIVARAO, AGED ABOUT 41 YEARS, OCC ENGINEER, R/O. D.NO. 11-5-2/1/4, RAGHURAM NAGAR, SATTENAPALLI TOWN AND MANDAL, GUNTUR DISTRICT.

...PETITIONER

AND

1.KANCHETI HIMA BINDU, W/o. Nageswara Rao, Aged about 33 years, Occ House Wife, R/o. Flat No. 304, Srinivasa Towers, 1st line, NGO Colony, Narasaraopet Town, Guntur District.

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to be to present this Memorandum of Civil Revision Petition against Order of dismissing in I.A.No.545/2024 in H.M.O.P.No. 256 /2021 on the Addl. Civil Judge (Senior Division) Narasaraopet, Andhra Pradesh, dated 21-10-2024, for the following grounds among other

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceeding in H.M.O.P.No. 256/2021 on the file of

the Court of the Addl. Civil Judge (Senior Division) : Narasaraopet, Andhra Pradesh, pending disposal of C.R.P. before this Hon'ble court and pass

Counsel for the Petitioner:

1. Dr CHALLA SRINIVASA REDDY

Counsel for the Respondent:

1. VENKATA RAMA RAO KOTA

CIVIL REVISION PETITION NO: 2833/2024

Between:

1. KANCHETI NAGESWARA RAO,, S/O. SAMBASIVARAO, AGED ABOUT 41 YEARS, OCC ENGINEER, R/O. D.NO.11-5-2/1/4, RAGHURAM NAGAR, SATTENAPALLI TOWN AND MANDAL, GUNTUR DISTRICT.

...PETITIONER

AND

1. KANCHETI HIMA BINDU, W/o. Nageswara Rao, Aged about 33 years, Occ House Wife, R/o. Flat No. 304, Srinivasa Towers, 1st line, NGO Colony, Narasaraopet Town, Guntur Distict.

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased toMemorandum of Civil Revision Petition against Order of dismissing in IA.No.596/2024 in H.M.O.P.No. 256 /2021 on the Addl. Civil Judge (Senior Division) Narasaraopet, Andhra Pradesh, dated 21-10-2024,

Counsel for the Petitioner:

1. Dr CHALLA SRINIVASA REDDY

Counsel for the Respondent:

1. VENKATA RAMA RAO KOTA

The Court made the following:**COMMON ORDER:**

As these Civil Revision Petitions have been filed by the petitioner/husband under Article 227 of the Constitution of India, aggrieved by the common order dated 21.10.2024 passed by the learned Additional Civil Judge (Senior Division), Narasaraopet in I.A.No.545 of 2024 and 596 of 2024 in H.M.O.P.No.256 of 2021, this Court feels it appropriate to dispose of both the petitions by way of this common order.

2. Brief facts of the case are that the respondent/wife has filed the aforesaid original petition for dissolution of marriage against the petitioner/husband. After recording the evidence of the petitioner/husband, when the matter was posted for further evidence, the petitioner/husband has filed I.A.No.545 of 2024, under Order VIII Rule 1 (3-A) and Section 151 of C.P.C., to condone the delay in filing the additional documents [hospital prescriptions of the petitioner dated 07.10.2019 and 17.09.2019; whatsapp copy dated 29.12.2020; C.D., containing CC footage dated 28.11.2019, phone call conversations between Bachupalli C.I. and respondent dated 02.12.2019, phone call conversation between petitioner and respondent about health issues] and I.A.No.596 of 2024 to receive the electronic evidence to mark as exhibits. The trial Court, having observed that the petitioner/husband has infringed the rights of privacy of his wife i.e. respondent herein, has dismissed applications vide a common order dated 21.10.2024. Aggrieved by the same, the petitioner/husband has filed the present revision petitions.

3. When these matters came up for hearing on 16.07.2025, this Court has granted stay of all further proceedings in H.M.O.P.No.256 of 2021 on the file of learned Additional Civil Judge (Senior Division), Narasaraopet, initially for a period of four (4) weeks, which was extended thereafter, from time to time.

4. Heard Mr. Challa Srinivasa Reddy, learned counsel for the petitioner and Mr. Venkata Rama Rao Kota, learned counsel for the respondent.

5. During the course of hearing, learned counsel for the petitioner contended that the petitioner has produced whatsapp and telephonic conversation of the petitioner/husband with the respondent/wife, which would establish the case of the petitioner/husband. In such a case, the trial Court ought to have received the proposed documents by marking them as exhibits. He submitted that the trial Court has denied to receive the proposed documents and mark the same as exhibits by observing that the petitioner/husband has infringed the rights of privacy of the respondent/wife by recording the telephonic conversation and by disclosing the whatsapp chats. While relying upon a judgment of the Hon'ble Supreme Court of India in **Vibhor Garg Vs. Neha**¹, learned counsel contended that in suits between married persons, the right to privacy is not a relevant consideration since it is not the rationale under which spousal communications were privileged under Section 122 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Act'). He further contended that under Section 122 of the Act, the communication between married persons can be disclosed in matrimonial proceedings like divorce. The Right to privacy cannot be a defence to shun relevant evidence in the form of audio recordings or some other technologically collected private data. As such, learned counsel for the petitioner requested this Court to set-aside the common order passed by the trial Court.

6. On the other hand, learned counsel for the respondent/wife has contended that the unilateral and illegal recording of a private conversation by the petitioner/husband without informing the respondent/wife cannot be said to be a 'communication' at all and any such purported evidence of any such

¹ Special Leave Petition (Civil) No.21195 of 2025

alleged conversations is not admissible in law. He further contended that the conditions set-forth under Section 65B of the Act were not complied with by the petitioner/husband while filing the applications before the trial Court. As there is no infirmity in the common order passed by the trial Court, learned counsel for the respondent/wife requested this Court to dismiss the revision petitions.

7. Admittedly, the petitioner/husband has filed I.A.Nos.545 and 596 of 2024 in H.M.O.P.No.256 of 2021 before the Court below, to receive aforementioned documents by condoning the delay in filing them out of which, a whatsapp copy and a compact disc containing cc footage and phone call conversations of the petitioner and the respondent are also a part, which as per the respondent/wife shall be considered as privileged communication and shall not be disclosed. It is the contention of the petitioner that the protection under Section 122 of the Act does not apply, because the right to privacy is not a valid reason for granting spousal privilege in such situations. Hence, for proper adjudication, this Court deems it relevant to extract Section 122 of the Act, which reads as under:

“122. Communications during marriage: - No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.”

8. It can be understood from the aforesaid provision that neither the husband nor his wife shall be forced to reveal any communication that took place between them during marriage privately, nor are they allowed to disclose such communication without consent. However, when both the

spouses are before a Court in respect of a matrimonial dispute, the bar on such disclosure of communication would be lifted.

9. In the case on hand, the petitioner/husband would be barred from disclosing any form of communication between him and the respondent/wife as it is a privileged communication under Section 122 of the Act, however, in view of the aforementioned exception, the bar on the disclosure of such communication between the petitioner and the respondent would be lifted as the said communication is proposed to be disclosed in a proceeding between a wife and husband, i.e. in the present case the petition filed under Section 12(i)(a) of Hindu Marriage Act by the respondent/wife. Undoubtedly, the petitioner/husband has recorded his conversation with the respondent/wife without her consent and knowledge, but in view of the exception laid down in Section 122 of the Act, the said conversation can be disclosed by the petitioner/husband in a petition filed by the respondent/wife under Section 12(i)(a) of Hindu Marriage Act. As such, the principle of law laid down by the Hon'ble Supreme Court in the judgment relied upon by learned counsel for the petitioner in **Vibhor Garg Vs. Neha** (1st supra) is not in dispute, but, the question that arises now for consideration is whether the petitioner has adhered to the conditions laid down in Section 65B of the Act while producing the electronic evidence.

10. It can be seen that the petitioner/husband proposes to mark whatsapp copy and a compact disk containing CC footage and phone call conversations of him with the respondent/wife, as exhibits, which admittedly falls under electronic device. Section 65A of the Act speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65B of the Act. Section 65B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once

admissible into evidence. For better appreciation of the case, Sections 65A and 65B of the Act, are extracted hereunder:

“65A. Special provisions as to evidence relating to electronic record: - The contents of electronic records may be proved in accordance with the provisions of section 65B.

65B. 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 or 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 subsection 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.”

11. A perusal of Section 65B(1) makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on during the

period in question. The conditions mentioned in subsections 2(a) to 2(d) must be satisfied cumulatively.

12. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of “relevant activities” – whichever is appropriate. In ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and ors***², the Hon’ble Supreme Court, while relooking at Section 65 B of the Act, clarified that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced; which can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him.

13. In the case on hand, though the petitioner was obligated to produce a certificate that identifies the electronic record, containing the whatsapp copy and the telephonic conversations, is operated or owned by him, the petitioner has failed to do so. Even otherwise, as clarified by the Hon’ble Supreme Court of India in ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and ors*** (2nd supra) nothing prevented the petitioner from producing the original device i.e. his mobile phone from which the whatsapp copy and the telephonic conversations were extracted, by stepping into the witness box and proving that the said device on which the whatsapp copy and telephonic conversations were first stored, is owned or operated by him. Moreover, the petitioner/husband, though has requested the trial Court to mark hospital

²[2020] 7 S.C.R.180

prescriptions dated 07.10.2019 and 17.09.2019 as exhibits, the same are Xerox copies without any attestation from the concerned hospital authorities, which cannot be admissible.

14. In view of the aforesaid discussion, this Court is of the opinion that the trial Court has rightly dismissed the applications filed by the petitioner/husband and the same need not be interfered by this Court.

15. Accordingly, these civil revision petitions are dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the Petition, shall stand closed.

JUSTICE V.SUJATHA

Date:09.10.2025

Gss