

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 18571/2025

Kailash Menaria S/o Onkar Lal Menaria, Aged About 37 Years, R/o Vpo Gawadi, Via Dariba, Tehsil Railmagra, Dist. Rajsamand At Present 27 Vivek Nagar Sector 3 Hiran Magri, Udaipur.

-----Petitioner

Versus

1. Yashoda Menaria W/o Kailash Menaria D/o Madan Lal Menaria, R/o Chorwadi, Tehsil Akkola, Dist. Chittorgarh.
2. Bherulal Menaria S/o Jamna Shankar Menaria, R/o Gawadi, Via Dariba, Tehsil Railmagra, Dist. Rajsamand.

-----Respondents

For Petitioner(s)	:	Mr. Kailash Menaria, the petitioner through VC
For Respondent(s)	:	Mr. Jubin Mehta for respondent No. 1 Mrs. Deepika Soni for respondent No.2

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

06/05/2026

1. The present writ petition has been preferred by the petitioner challenging the order dated 11.11.2024 passed by the Judge, Family Court No. 3, Udaipur (for short 'Family Court') in Civil Misc. Case No.231/2023 titled "*Kailash vs. Yashoda & Anr.*", whereby the application filed by the petitioner under Section 65B of the Indian Evidence Act read with Section 151 of C.P.C. seeking permission to exhibit the call detail records and WhatsApp chats of the respondents came to be rejected.
2. Heard.
3. The petitioner, who is present through VC, submits that he instituted proceedings under Section 13 of the Hindu Marriage Act, 1955 before the Family Court against respondent No. 1-wife as well as respondent No. 2, on the grounds of cruelty and adultery.

It is submitted that after filing of the reply by the respondents and framing of issues, the matter was fixed for evidence. During the course of evidence, the petitioner moved an application under Section 65B of the Indian Evidence Act seeking permission to exhibit the call detail records of respondent No. 1 and respondent No. 2 along with WhatsApp chats extracted from the mobile phone of respondent No. 2.

4. It is further submitted that the Family Court, vide impugned order dated 11.11.2024, rejected the said application on the ground that the printed call records and WhatsApp chats constituted secondary electronic evidence and were inadmissible in absence of a certificate under Section 65B(4) of the Evidence Act. The Family Court further observed that the petitioner had procured the call details of respondent Nos. 1 and 2 without their consent, thereby infringing their right to privacy guaranteed under Article 21 of the Constitution of India.

5. Assailing the aforesaid order, the petitioner contends that the Family Court failed to appreciate that original electronic record viz. emails containing the call detail records received directly from the telecom service provider, were preserved in his laptop and could have been produced before the court as and when directed. It is submitted that in such circumstances, insistence upon a separate certificate under Section 65B(4) of the Evidence Act at that stage was unwarranted.

6. It is contended that instead of directing the petitioner to produce the original electronic device containing the emails and electronic record, the Family Court mechanically rejected the

application without properly appreciating the nature and source of the evidence sought to be produced.

7. The petitioner further submits that call detail records were obtained through MyJio application and were transmitted by the service provider to his personal email account, from where copies were downloaded and taken on his personal computer solely for the purpose of placing the same before the court in support of his case.

8. It is also submitted that the Family Court erred in rejecting the application on the ground of privacy, overlooking the fact that the divorce petition had specifically been filed on the ground of adultery and that the call detail records and WhatsApp chats were necessary for proper adjudication of the controversy involved in the proceedings. According to the petitioner, denial of permission to exhibit such evidence has seriously prejudiced his right to effectively establish his case before the Family Court.

9. In support of his aforesaid contention, the petitioner places reliance on a decision of the Hon'ble Supreme Court in ***Vibhor Garg vs. Neha (2025 INSC 829)*** as well as Madhya Pradesh High Court at Gwalior in ***Smt. Anjali Sharma vs. Raman Upadhyay (Misc. Petition No. 3395 of 2023) decided on 16.06.2025.***

10. *Per contra*, learned counsel appearing for the respondents while supporting impugned order, submit that the application preferred by the petitioner was wholly misconceived and not maintainable under the provisions of the Indian Evidence Act. It is contended that mobile numbers in question admittedly belonged

to respondent No. 1 and respondent No. 2 and not to the petitioner and, therefore, the petitioner had neither any lawful authority nor any legal entitlement to obtain or produce their call detail records before the court. It is argued that the petitioner was neither the subscriber of the said mobile numbers nor an authorized representative of the telecom service provider and, therefore, access to such confidential information was *ex-facie* unauthorized and illegal.

11. It is further submitted that disclosure and production of personal call records and private communications without consent of the concerned parties amounts to infringement of their fundamental right to privacy guaranteed under Article 21 of the Constitution of India. Learned counsels contend that the mandatory requirements prescribed under Sections 65B and 66 of the Indian Evidence Act had not been complied with by the petitioner. According to the respondents, in absence of a valid certificate under Section 65B(4) of the Evidence Act, the alleged electronic records were inadmissible in evidence. It is also argued that mere photographs of WhatsApp chats could not be treated as admissible electronic evidence unless accompanied by proper transcripts and duly certified electronic records in accordance with law. On these grounds, learned counsels pray that the writ petition being devoid of merit deserves to be dismissed.

12. I have considered the submissions advanced by rival parties, perused the material available on record and examined the judgments cited at Bar.

13. Upon perusal of the material available on record, this Court finds that the Family Court has proceeded on an unduly narrow and technical approach while rejecting the petitioner's application under Section 65B of the Indian Evidence Act.

14. This Court notes that the petitioner specifically pleaded that the call detail records were generated through the service provider's system and transmitted to his registered email account, which remain preserved in his electronic device. The existence of the original electronic record, therefore, could not have been ignored. In view of the settled position of law laid down by the Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal; AIR 2020 Supreme Court 4908**, the requirement under Section 65B(4) is procedural in nature and may be complied with by permitting production of the original electronic record or directing the party to furnish the requisite certificate at an appropriate stage, instead of outright rejection.

15. This Court further finds that the Family Court has failed to appreciate that at the stage of exhibiting documents, the primary consideration is the relevancy and mode of proof of the electronic record. The issue of admissibility in strict terms is to be finally decided at the stage of appreciation of evidence and not at the threshold in a manner that forecloses the party from leading material evidence, particularly when the petitioner asserts availability of original electronic record.

16. So far as reliance placed by the respondents on the right to privacy is concerned, this Court is of the view that though privacy is a constitutionally protected right under Article 21, it is not

absolute and has to be balanced with the right of a party to lead relevant evidence in matrimonial proceedings involving allegations of adultery.

17. In Vibhor Garg (supra), the Hon'ble Supreme Court has observed as under :-

*“12.4 In our view, [Section 122](#) of the Evidence Act does not concern itself with right to privacy vis-à-vis spouses which is evident on a reading of the Section and on discerning its plain meaning. The 69th report of the Law Commission of India in 1977 observed that the section is “based on the abiding communication between the husband and wife, which is of such a nature that their mutual communications are not always to be regarded on the same footing as communications between person who have no such intimate tie”. It prefaced this by noting that the law of evidence has generally demonstrated a “degree of solicitude towards the sanctity of marriage”, and also referred to Best CJ’s opinion in *Doker vs. Hasler*, (1824) 171 E.M. 992, that “the happiness of the marriage... requires that the confidence between man and his wife should be kept for ever inviolable”. Similarly, the 1853 report of the English Commission on Common Law Procedure had observed that the ‘happiness’ of human life depends on a large part upon the “inviolability” of domestic confidence, and that the “alarm and unhappiness” caused to society by the disclosure of confidential communications outweighs the disadvantage in terms of a loss of evidence during trials.*

12.5 Therefore, the Delhi High Court observed in [RIT Foundation vs. Union of India](#), 2022 SCC OnLine Del 1404, that the Law Commission Report makes it clear that the “raison d’etre for the spousal privilege (is) the “higher degree of confidence that goes with a marriage”. This was also the view taken by the Delhi High Court in an earlier case – [S.J. Choudhary vs. State](#) 1984 SCC OnLine Del 185 – where it held that the “prohibition under [Section 122](#) of the Evidence Act is based on the ground that the admission of such testimony is likely to disturb the peace of the family and weaken the feeling of mutual confidence”.

12.6 Clearly therefore, the founding rationale for [Section 122](#) of the said Act, as has been recognised by the Law Commission and subsequently by certain High Courts, was to protect the sanctity of marriage and not the right to privacy of the individuals involved. Therefore, in adjudicating situations where the privilege under [Section 122](#) of the Act is not granted, as in suits between a couple (an exception provided for in [Section 122](#) itself), the right to privacy is not a relevant consideration, since it is not the rationale under

which spousal communications were deemed privileged under [Section 122](#) of the Act. Conclusion:

13. In view of the aforesaid discussion, we set aside the impugned order dated 12.11.2021 passed by the High Court in CR No.1616 of 2020 (O & M) and restore the order passed by the Family Court dated 29.01.2020 passed by the learned Principal Judge, Family Court, Bhatinda. The Family Court is directed to take on record the supplementary affidavit filed by way of examination-in-chief along with memory card/chip of the mobile phones, compact disc (CD) and transcript of the conversation recorded in memory card/chips of the mobile phones for the relevant period and consider the same as evidence, in accordance with law.

The appeal is allowed and disposed of in the aforesaid terms.”

18. The Madhya Pradesh High Court in **Smt. Anjali Sharma** (*supra*) has also recognized that in matrimonial disputes, electronic communications may assume significance for adjudication of *inter se* disputes and cannot be excluded solely on the ground of privacy, if otherwise relevant and admissible in law. The observations of the Court in the said judgment are reproduced as under :-

“35. In view of the discussion made above, this court is of the opinion that the Legislature, being fully aware of the principals of admissibility of evidence, has enacted [Section 14](#) in order to expand that principle in so far as disputes relating to marriage and family affairs are concerned. The Family Court is thereby freed of restrictions of the strict law of evidence. The only test under [Section 14](#) for a Family Court to receive the evidence, whether collected legitimately or otherwise, is based upon its subjective satisfaction that the evidence would assist it to deal effectually with the dispute.

36. Further, after having received such evidence on record, the Family Court is free to either accept or discard or give weightage or discard a particular piece of evidence while finally adjudicating the dispute. In other words, merely because evidence has been taken on record by virtue of [Section 14](#), there is no compulsion on Family Court to rely upon such piece of evidence and it can discard such evidence if it is not found trustworthy while appreciating the evidence at the adjudication stage. It is also open to the opposite party to dispute, cross-examine and disprove the evidence so cited and to contest any claim being made on the basis of such evidence. The limited relaxation given by [Section 14](#) is that even if under conventional rules of evidence, a report, statement, document,

information or other matter is not admissible, the Family Court may yet receive such evidence on record if in its opinion, the evidence would assist it to deal effectively with the dispute. What value or weightage is to be given to such evidence is the discretion of the judge, when finally adjudicating the dispute.

37. Wide powers inherit more responsibility. In view of the unusual and wide power conferred on Family Court under [Section 14](#), certain safeguards are required to be adopted by the Family Court while exercising its power under that provision. Some of such safeguards may be:

- i. even though a given piece of evidence has been admitted on record, the Court must be extremely careful in relying upon such evidence while deciding lis. The authenticity & genuineness of such evidence must be strictly and meticulously examined.*
- ii. if in its opinion, the nature of the evidence sought to be adduced is inappropriate, embarrassing or otherwise sensitive in nature for any of the parties, may be litigating or not, the Family Court may restrict the parties who are present in court at the time of considering such evidence. It may conduct in-camera proceedings so as not to cause embarrassment to any person or party.*
- iii. all proceedings must be conducted strictly within the bounds of decency & propriety, and no opportunity should be given to any party to create a spectacle in the guise of producing evidence.*
- iv. any party aggrieved by the production of such evidence would be at liberty to initiate appropriate proceedings, whether in civil or criminal law, against party for procuring evidence illegally, although the initiation or pendency of such proceeding shall not make the evidence so produced inadmissible before the Family Court.*

38. In view of the discussion made above, it is held that:

- (a) the evidence is admissible so long as it is relevant, irrespective of the fact how it is collected. The possible misuse of this rule of evidence, particularly in the context of the right to privacy, can be addressed by prudent exercise of judicial discretion by the Family Court, not at the time of receiving evidence but at the time of using evidence at the stage of adjudication;*
- (b) merely admitting evidence on record is not proof of a fact-in-issue or a relevant fact. Admitting evidence is not even reliance by the court on such evidence. Admitting evidence is mere inclusion of evidence in record, to be assessed on a comprehensive set of factors, parameters and aspects, in the discretion of the court;*
- (c) the test of 'relevance' ensures that the right of a party to bring evidence to court, and thereby to a fair trial, is not defeated. What weight is to be given to evidence so brought-in, and*

whether or not the court ultimately relies upon such evidence for proof of a fact-in-issue or a relevant fact, is always in the discretion of the court.

(d) merely because a court allows evidence to be admitted, does not mean that the person who has illegally collected such evidence is absolved of liability that may arise, whether in civil or criminal law or both;

(e) such evidence must be received and treated with caution and circumspection and to rule-out the possibility of any kind of tampering, the standard of proof applied by a court for the authenticity and accuracy of a such evidence should be more stringent as compared to other evidence;

39. In view of the aforesaid, the impugned order, dated 13/4/2023, passed by learned Family Court in Case no.122-A/2018(HMA), is upheld. The petition is dismissed.”

19. In light of the aforesaid legal position, this Court is of the view that impugned order dated 11.11.2024 suffers from non-application of mind and incorrect appreciation of law governing electronic evidence and the scope of Section 14 of the Family Courts Act.

20. Accordingly, the writ petition deserves to be allowed. The impugned order dated 11.11.2024 is set aside, and the Family Court is directed to permit the petitioner to place the electronic records on record in accordance with law, subject to compliance of Section 65B of the Indian Evidence Act at the appropriate stage, and thereafter, decide their admissibility and evidentiary value in accordance with law at the stage of final.

21. Stay petition as well as all pending application(s), if any, shall also stand disposed of.

(MUKESH RAJPUROHIT),J