

Before Ritu Bahri & Ashok Kumar Verma, JJ.

RITU SAIGAL—Appellant

versus

RAKESH SAIGAL—Respondent

FAO No.4720 of 2017

March 04, 2022

Hindu Marriage Act, 1955—S.13(1)(ia) and (ib)—Indian Evidence Act, 1872—Ss.62 and 65B— Family Courts Act, 1984— S.14—Wife’s appeal against decree of divorce to husband on ground of cruelty—Dismissed—Section 14 of 1984 Act grants wide powers to Family Court on relevance and admissibility of evidence led in dispute between husband and wife—Discretion granted to Family Court to receive evidence which, in its opinion, is necessary to deal effectively with dispute even if not admissible under 1872 Act— Husband’s evidence taken on record by Family Court—Certificate under Section 65B and conversation in CD, its transcript and text messages—During cross-examination, wife had occasion, but did not lead evidence that there were deletion or addition in sentences in CD, transcript and text messages—Husband’s evidence held to be correctly taken into account—Wife publicized husband as womanizer, drunkard and had bad habits—Amounts to cruelty— Demolished reputation of husband—Appeal dismissed— Husband directed to give Rs.50 lacs as permanent alimony.

Held that, the above said Section has given wider powers to the Family Court on the issues of relevance and admissibility of evidence which are led in a dispute between husband and wife. As per the above said Section, it is the discretion of the Family Courts to receive any evidence, report, statement, document, information or matter which in its opinion, is necessary to deal effectively with the dispute even if it is not admissible in Indian Evidence Act, 1872.

(Para 19)

Further held that, in Three-Bench judgment of the Supreme Court passed in ***Anvar P.V. Vs. P.K. Basheer and others 2014 (10) SCC 473***, it is held that if electronic record is used as a primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance of the conditions of Section 65B of the Evidence Act.

(Para 20)

Further held that, as per the facts, certificate under Section 65B was placed on record on 18.11.2016 and the conversation in the CD (Ex.P1), its transcript (Ex.P2) and text messages (Ex.P3) were taken on record. During cross-examination, the appellant-wife had an occasion to lead any evidence to show that there were deletion or addition in sentences in CD (Ex.P1), its transcript (Ex.P2) and text messages (Ex.P3). However, she did not lead any evidence. Therefore, for all intents and purposes, the above said evidence led by the respondent-husband has been correctly taken into account for deciding issue No. 1 with respect to cruelty meted out to the respondent-husband. Another ground of cruelty was that the appellant-wife used to make frequent calls in the office of her husband to Manish Rai (PW2), who was an employee in his firm Needle & Thread Pvt. Limited. He stated that the appellant-wife would persistently call their office in the years 2013 and 2014 to enquire about the timing of the arrival and departure of the respondent-husband in the office. Similar enquiries about some lady colleagues were also made by her. He further stated that he was asked extremely personal questions as to how respondent-husband used to treat lady colleagues and whether or not he flirted with them. She also made enquiries from his office colleagues viz. Dinesh, who was the office boy and Vishwanath, who was their pantry boy, on the same footing as per the deposition made by Manish Rai (PW2). The appellant-wife had publicized her husband as a womanizer, drunkard and had bad habits. The said act of the wife would amount to cruelty as it would demolish the reputation of husband. The explanation given by the wife that she did so to protect the future of the children could not wipe out her act of demolishing reputation of her husband.

(Para 23)

Kanwaljit Singh, Senior Advocate with
Sunpreet Singh, Advocate
for the appellant.

Aashish Chopra, Senior Advocate with
Gurpreet Randhawa and
Sugandha Kundu, Advocates
for the respondent.

RITU BAHRI, J.

CM-27426-CII-2018

Application is allowed, as prayed for.

CM-27427-CII-2018

(1) Application is allowed and reply on behalf of the respondent alongwith Annexure R/1 is taken on record.

(2) The appellant, Ritu Saigal has come up in appeal against the judgment and decree dated 20.03.2017 passed by Family Court, Gurugram whereby the respondent-husband Rakesh Saigal has been granted divorce in a petition under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955 on the ground of cruelty.

(3) The marriage of the parties was solemnized on 11.02.1996. It was an arranged marriage. They were residing in a separate house in Malviya Nagar, Delhi where their elder son namely Arjun Saigal was born on 28.07.1997 and the younger son namely Madhav Saigal was born on 13.07.1999. However, as per the respondent-husband, the behaviour of the appellant-wife was very aggressive. The respondent-husband was engaged in garment export trade for which he had to do national and international travel. The respondent-husband purchased a residential plot in Sector-50, Noida in the joint names of the parties and constructed a house. They alongwith their children lived in the said house from February, 2001 to April, 2004. Thereafter, the respondent-husband purchased a flat bearing No.D-143, Oakwood Estate DLF Phase-2, Gurgaon (Gurugram) in their joint names and the parties shifted there.

(4) The divorce petition was filed on 13.05.2014 in which the respondent-husband stated that his elder son, Arjun used to be beaten by the appellant-wife with a clothes wire hanger on several occasions. He also stated that even his younger son was also beaten by the appellant-wife on several occasions. On 30.04.2014, the appellant-wife had shouted at Arjun for being an expensive child to maintain and when Arjun responded that his father used to give him the money, she called the police on helpline number 100 and Arjun too did the same. The police officials came and declined to intervene and said that they would intervene only if the appellant-wife would give a complaint in writing. On 01.05.2014, the appellant-wife threatened to come to the office of the respondent-husband and in order to protect himself, he filed a suit for injunction against her. Thereafter, the conduct of the appellant-wife became worse and finally, the respondent-husband alongwith the children left the house on 07.05.2014 and in this backdrop, the divorce petition was filed. Later on, the respondent-husband did not press ground of desertion.

(5) On notice of the petition, the appellant-wife filed a written statement and alleged that family members of her husband used to ill-treat her and she had never misbehaved with his family and children. When she wanted to rejoin the service, her father-in-law asked her to quit the job and refused to look after her elder son claiming that they were not her servants. The father of the respondent-husband was alcoholic despite various illnesses. The respondent-husband left his parental home to save himself from trauma, harassment and humiliation of daily fights with his alcoholic father. The parties had shifted to Malviya Nagar, New Delhi on rent. She admitted that the respondent-husband was engaged in garment export which involved national and international travel. He was based in Chennai from 2006 to 2010 when he was country head of M/s. French Connection under the name and style of “FCUK” and during this time, she had taken care of her children “as father and mother”. She had denied that she had ever been rude to the respondent-husband's friends, relatives or colleagues. She further stated that she had undergone a Chefs course in IICA in 2012-13 and also obtained a diploma from City and Guild in 2013-14. She had got admission in B.Sc. (Hotel Management) in Madurai University in 2014 through distance learning. She admitted that the plot in Sector-50 Noidawas in the joint names of the parties. She further stated that she had contributed all her savings in the purchase and construction of the said plot/house. She admitted that flat bearing No. D-143, Oakwood Estate, DLF Phase-II, Gurgaon (Gurugram) was in the joint names of the parties. She stated that the husband and his parents had proximal plots in Sushant Lok, Gurgaon bearing No.B-361 and B-279 respectively. Her parents were residing in Suncity, Sector-56, Gurgaon. She denied that she had never cared for the children properly. They had been educated in Heritage School, Gurgaon where lunch was served and their elder son was going to Pathways International School, Gurgaon where even breakfast was served. On 30.04.2014, her elder son Arjun had raised his hand on her. The husband instead of reprimanding him, started assaulting and abusing her and in this backdrop, she called the police on helpline number 100. The police officials asked her to file a written complaint and on this, the respondent-husband apologized to her. The respondent-husband had left the house situated in DLF City, Phase-II Gurgaon alongwith both the children on 07.05.2014 in a planned manner. He left the house after having breakfast and on the same date, she received summons in the afore-said civil suit for injunction. He had also filed a police

complaint dated 26.11.2013 in Police Station, DLF Phase-II, Gurgaon against her on false allegations.

(6) The respondent-husband filed a replication.

(7) From the pleadings of the parties, following issues were framed on 10.04.2015:-

“1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition?

2. Relief.”

(8) The respondent-husband appeared as PW1 and reiterated his version in the divorce petition and stated that the relationship between the parties continued to deteriorate and the appellant-wife remained hostile and aggressive towards his parents and his sister. He referred to one incident when the father of a friend of his son Arjun Saigal (PW3) enquired from him as to how Arjun had sustained serious injuries on his back and chest. On enquiry from his son, he disclosed that the injuries had been inflicted with a clothes wire hanger by the appellant-wife and he further disclosed that the appellant-wife had brutally beaten him and his younger brother on several occasions but the child was too scared and ashamed to tell anyone about it. When he confronted the appellant-wife about this, she did not deny the allegations and instead became belligerent and defiant. The husband-respondent recorded the conversation in the CD (Ex.P1) and its transcript (Ex.P2). Thereafter, the respondent-husband narrated the incident which took place on 30.04.2014. He received a call from his son, Arjun (PW3) who disclosed that the appellant-wife was abusing and attacking him and that the police had been called. The respondent-husband reached home to find a police official with the appellant-wife and Arjun. On enquiry, he came to know that appellant-wife had shouted at Arjun alleging that he was an expensive child to maintain and when Arjun responded that his father used to give him the money, she attacked and abused him besides calling the mother and sister of the respondent-husband as prostitutes. She also shouted and abused the respondent-husband alleging that he was having an affair with his lady colleague in London who was separated from her husband. The respondent-husband had tried to explain that he only had a professional relationship with that lady. However, he could not pacify appellant-wife and she continued to make enquiries about his conduct with lady colleague from his other colleagues. She would send him abusive text messages and calls. The respondent-husband begged

her not to destroy his professional life. He further stated that on 01.05.2014, she had threatened to come to his office and this made him to file a civil suit for injunction against her which was rejected and the appeal against the said order was also rejected. In this backdrop, he along with children had left the matrimonial home on 07.05.2014.

(9) The respondent-husband examined Manish Rai (PW2), who was an employee in his firm Needle & Thread Pvt. Limited. He stated that the appellant-wife would persistently call his office in the years 2013 and 2014 to enquire about the timing of the arrival and departure of the respondent-husband in the office. Similar enquiries about some lady colleagues were also made by her. He further stated that he was asked extremely personal questions as to how respondent-husband used to treat lady colleagues and whether or not he flirted with them. He also pointed out to Ritu Saigal (appellant-wife) that the questions were inappropriate. He also mentioned these calls to two of his office colleagues viz. Dinesh, who was the office boy and Vishwanath, who was their pantry boy. They had told him that they too had received similar calls from Ritu Saigal (appellant-wife). Vishwanath had even ridiculed Rakesh Saigal that if he could not keep his house in order how he would run the office. He stated that Rakesh Saigal (respondent-husband) was a man of unquestionable integrity and character who treated ladies and gents alike.

(10) Finally, the elder son of the parties, Arjun, who appeared as PW3, stated that he and his brother were ill-treated, abused and assaulted by their mother and this caused him much humiliation and he reiterated that he was severely beaten with a clothes wire hanger by his mother and she used to beat him and his brother “without any rational reason”. He also stated that he had narrated his woes to his friend namely Yash who told the same to his father. Thereafter, his father i.e. respondent-husband made enquiry from his mother i.e. appellant-wife. However, she was defiant and shouted and abused in a loud voice and this caused mental trauma to him. He also reiterated the incident of 30.04.2014.

(11) The Family Court observed that when the respondent-husband was cross-examined, the appellant-wife did not question him regarding the CD (Ex.P1) and its transcript (Ex.P2). In the messages (Ex.P3), the wife- appellant had clearly demanded an end to their relationship and he was not cross-examined by the appellant-wife on any of the documentary evidence (Ex.P1 to Ex.P3). She did not deny the veracity of the documents (Ex.P1 to Ex.P3). She admitted that the

said documents had been supplied to her before recording of cross-examination of the respondent-husband, but despite that, no suggestion regarding the alleged omissions and alterations or manipulations in the said documents was put to the respondent-husband. She also did not examine her parents to support her version that she was being harassed by the husband, his family members as well as her children. There was no averment in her pleadings or affidavit that her husband had slapped her in the presence of her children on 30.04.2014 and in this backdrop, oral version had been discarded by the Family Court. In her cross-examination, the appellant-wife had admitted that she had called up Manish Rai (PW2) six times and she did not put any query to him. She also admitted that there was no reason for her elder son Arjun to depose against her.

(12) The Family Court had referred judgments passed in *Gian Chand and others* versus *State of Haryana*¹, *Laxmibai (Dead) Thr. L.Rs & Anr.* versus *Bhagwanthuva (Dead) Thr. L.Rs, 2013(1)*, *Seema* versus *Alkesh Chuadhary*² and *Meghna Singh and others* versus *Gurdial Singh and others*³ on the proposition that if a witness was not cross-examined on a particular fact, the unchallenged part of his evidence has to be relied upon.

(13) The respondent-husband had also placed on record certificate dated 18.11.2016 (page No. 329 of Family Court record) under Section 65- B(4) of the Indian Evidence Act, 1872 as Ex.P4 identifying Ex.P1 to P3. Hence the Family Court returned a finding that the said documents (Ex.P1 to Ex.P3) stood proved.

(14) After going through the aforesaid evidence, the Family Court while referring to judgments passed in *Gurbux Singh* versus *Harminder Kaur*⁴ *Sunita Devi* versus *Shri Lala*⁵, *Suman Kapur* versus *Sudhir Kapur*⁶, *Sujata Uday Patil* versus *Uday Madhukar Patil*⁷ *Naveen Kohli* versus *Neelu Kohli*⁸ and *Dr. N.G. Dastane* versus *Mrs.*

¹ 2013(3) ACJ 49

² 2011 (3) CCC 785

³ 2004(1) CCC 525

⁴ (2010) 14 SCC 301

⁵ AIR 2009 HP 52

⁶ (2009) 1 SCC 422

⁷ (2006) 13 SCC 272

⁸ AIR 2006 SC 1675

*S. Dastane*⁹ held that the respondent-husband had successfully proved that the appellant-wife had always misconducted herself and she had never behaved in a manner of becoming wife, mother or daughter-in-law. She had also not objected to production of the documentary evidence Ex.P1 to Ex.P3. She had not denied that she had referred to the mother and sister of the respondent-husband as prostitutes. She had also not denied levelling allegations questioning the fidelity of the respondent-husband or making enquiries from his colleagues. She had further not denied text messages (Ex.P3) with respondent-husband. There was no reason for her elder son Arjun to depose against her. Yet, he had clearly stated that his mother (appellant-wife) had always been rude, abusive, quarrelsome and aggressive without provocation. He is a grown up boy and would have supported his mother if she was victimized spouse. The Family Court further observed that the instances brought on record were more than ordinary wear and tear of family life. Hence, the divorce was granted to the respondent-husband on the ground of mental cruelty.

(15) Learned Senior Counsel, Mr. Kanwaljit Singh, appearing for the appellant-wife has argued that the certificate dated 18.11.2016 (page No.329 of Family Court record) under Section 65-B(4) of the Indian Evidence Act, 1872 for placing on record conversation in the CD (Ex.P1), its transcript (Ex.P2) and text messages (Ex.P3) is not admissible in evidence. He has referred to judgment passed by this Court in *CR No. 1616 of 2020* titled as *Neha and another* versus *Vibhor Garg and others*, in which it is held that an act of recording conversation without the knowledge of the wife is illegal and amounts to infringement of right to privacy. He has further referred various judgments passed in *Ramchander* versus *Ananta*¹⁰, *Sangita Rani wife of Sanjeev Kumar* versus *Sanjeev Kumar son of Sh. Manmohan Lal*¹¹, *Dinesh Kotwal* versus *Anju Kotwal*¹², *Dilbagh* versus *Smt. Sushila*¹³ and *Special Leave to Appeal (C) Nos. 17337-17338-2017* titled as *Col. Pawan Kumar Sharma* versus *Smt. Bhavana Sharma*, on the proposition that vague assertions of jealousy, selfishness and possessiveness causing unhappiness or stress, mere coldness or lack of affection do not constitute cruelty and irretrievable

⁹ (1975) 2 SCC 326

¹⁰ 2015(2) R.C.R. (Civil) 1

¹¹ 2017(1) Law Herald 102

¹² 2017(4) R.C.R. (Civil) 136

¹³ 2017(3) PLR 671

break down of the marriage cannot be made a ground for granting a decree of divorce under Section 13 of the Hindu Marriage Act, 1955.

(16) Learned Senior Counsel, Mr. Aashish Chopra, appearing for the respondent-husband has referred to various judgments passed in *Preeti Jain* versus *Kunal Jain and another*¹⁴ *Deepali Santosh Lokhande* versus *Mr. Santosh Vasantrao Lokhande*¹⁵ and *Deepti Kapur* versus *Kunal Julka*¹⁶ to contend that provisions of the Family Courts Act, 1984 and Indian Evidence Act, 1872, have been considered with respect to admissibility of electronic record. It has been consistently held that communication between husband and wife was admissible in evidence without complying conditions of Section 65B of Indian Evidence Act, 1872 and the Family Court has given discretion under Section 14 of Family Courts Act, 1984 to examine such evidence without insisting on compliance of Section 65B of Evidence Act, 1872.

(17) Heard learned counsel for the parties.

(18) A perusal of the Family Court record shows that the certificate under Section 65-B of Indian Evidence Act, 1872 is dated 18.11.2016 (Ex.P4). The respondent-husband tendered his affidavit on 19.02.2016 (Ex.PW1/A) and on the same date, he tendered CD Ex.P1, its transcript Ex.P2 and text messages Ex.P3. On 24.10.2016, the respondent-husband was cross-examined. A perusal of the cross-examination shows that he had furnished text messages (Ex.P3) and produced CD (Ex.P1). The contents of CD, its transcript and text messages (Ex.P1 to P3) were only questioned. The certificate under Section 65B of Indian Evidence Act was placed on record on 18.11.2016 and the wife was cross-examined on 21.12.2016 and she had admitted that copy of CD (Ex.P1) was supplied to her before recording cross-examination of the respondent-husband and she also admitted that in her affidavit dated 21.12.2016 (Ex.RW1/A), she had not mentioned anything about CD Ex.P1 or its transcript Ex.P2. She merely denied the material incorporated in the transcript Ex.P2. With respect to text messages Ex.P3, she stated that some sentences were missing and some sentences had been incorporated. She further admitted that she had not brought on record details of the sentences which she claimed were wrongly incorporated in Ex.P3 and details of

¹⁴ 2016 AIR (Rajasthan) 153

¹⁵ 2018(1) Mh.LJ 944

¹⁶ 2020 SCC OnLine Del 672

the sentences which had been omitted in Ex.P3. Hence, for all intents and purposes, CD Ex.P1, its transcript, Ex.P2 and text messages Ex.P3 were part of the record and had been given to the appellant-wife before her cross-examination done on 21.12.2016. Even the certificate under Section 65B of Indian Evidence Act, was filed prior to her cross-examination i.e. on 18.11.2016. Since no evidence was led by the appellant-wife with respect to correctness of the CD Ex.P1, its transcript Ex.P2 and text messages Ex.P3, the contents of these evidences were rightly accepted by the Family Court and taken into account for deciding the divorce petition. On this point, reference can be made to a judgment passed by Rajasthan High Court in **Preeti Jain** versus **Kunal Jain and another**¹⁷. In that case, the Court had examined Section 14 of the Family Courts Act, 1984 and Sections 65B and 122 of the Indian Evidence Act, 1872. Section 14 of the Family Courts Act, 1984 is reproduced as under:-

“A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872). -A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

(19) The above said Section has given wider powers to the Family Court on the issues of relevance and admissibility of evidence which are led in a dispute between husband and wife. As per the above said Section, it is the discretion of the Family Courts to receive any evidence, report, statement, document, information or matter which in its opinion, is necessary to deal effectively with the dispute even if it is not admissible in Indian Evidence Act, 1872. The relevant portion of the above said judgment is reproduced as under:-

“Section 14 of the Family Courts Act, 1984 provides that a family court may receive any evidence, report, statement, documents, information or matter which in its opinion will facilitate the effective adjudication of the disputes before it, “whether or not the same would be otherwise relevant or

¹⁷ 2016 AIR (Raj) 153

admissible under the Indian Evidence Act, 1872". The aforesaid section therefore makes it pellucid that the issues of relevance and admissibility of evidence which regulate a regular trial do not burden proceedings before the family courts. It is the discretion of the family court to receive or notto receive the evidence, report, statement, documents, informations etc. placed before it on the test whether it does or does not facilitate an effective adjudication of the disputes before it. Aside of the aforesaid, I am of the considered view that Section 65B of the Act of 1872 only deals with the secondary evidence qua electronic records. It does not at all deal with the original electronic records, as in the instant case, where the pinhole camera, with a hard disk memory on which the recording was done has been submitted before the Family Court. The Apex Court in the case of *Anvar P.V. Vs. P.K. Basheer [(2014)10 SCC 473]* has held that if an electronic record is produced as a primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance with the conditions of Section 65B of the Act of 1872. That evidence would take the colour of primary evidence, subject no doubt to its credibility based on forensic examination and cross examination. Further, I am of the considered view that the privilege in respect of the husband and the wife's communication under section 122 of the Act of 1872 would also not attract, as Section 14 of the Family Court Act eclipses Section 122 of the Evidence Act in proceedings before the Family Court. Section 14 aforesaid is a special law, so to say, as against the general law, which Section 122 of the Act of 1872 encapsulates vis-a-vis privileged communications between husband and wife."

(20) In three-bench judgment of the Supreme Court passed in *Anvar P.V. versus P.K. Basheer and others*¹⁸, it is held that if electronic record is used as a primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance of the conditions of Section 65B of the Evidence Act. In para Nos. 20, 22, 23 and 24, it has been observed as under:-

“20. In *State (NCT of Delhi) v. Navjot Sandhu alias Afsan*

¹⁸ 2014(10) SCC 473

Guru, 2005 (3) Apex Criminal 49:(2005) 11 SCC 600, a two- Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of thecalls pertaining to the cellphones, it was held at Paragraph-150 as follows:

“150. According to Section 63, secondary evidence means and

includes, among other things, “copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies”. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub- section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.”

22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. *Generalia specialibus non derogant*, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility

of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The appellant admittedly has not produced any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground.

24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an

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 65B of the Evidence Act.”

(21) With the above said observations, the judgment of *State (NCT of Delhi) versus Navjot Sandhu alias Afsan Guru*¹⁹ was overruled in *Anvar P.V.'s case (supra)*.

(22) Hence, the aforesaid judgment and the judgment passed in *Neha's case (supra)* would not be of any help to the appellant-wife. However, against the judgment of *Neha's case (supra)*, *SLP(C)-21195- 2021* is pending.

(23) In the present case, as per the facts, certificate under Section 65B was placed on record on 18.11.2016 and the conversation in the CD (Ex.P1), its transcript (Ex.P2) and text messages (Ex.P3) were taken on record. During cross-examination, the appellant-wife had an occasion to lead any evidence to show that there were deletion or addition in sentences in CD (Ex.P1), its transcript (Ex.P2) and text messages (Ex.P3). However, she did not lead any evidence. Therefore, for all intents and purposes, the above said evidence led by the respondent-husband has been correctly taken into account for deciding issue No. 1 with respect to cruelty meted out to the respondent-husband. Another ground of cruelty was that the appellant-wife used to make frequent calls in the office of her husband to Manish Rai (PW2), who was an employee in his firm Needle & Thread Pvt. Limited. He stated that the appellant-wife would persistently call their office in the years 2013 and 2014 to enquire about the timing of the arrival and departure of the respondent-husband in the office. Similar enquiries about some lady colleagues were also made by her. He further stated that he was asked extremely personal questions as to how respondent-husband used to treat lady colleagues and whether or not he flirted with them. She also made enquiries from his office colleagues viz. Dinesh, who was the office boy and Vishwanath, who was their pantry boy, on the same footing as per the deposition made by Manish Rai (PW2). The appellant-wife had publicized her husband as a womanizer, drunkard and had bad habits. The said act of the wife would amount to cruelty as it would demolish the reputation of husband. The explanation given by the wife that she did so to protect the future of the children could not wipe out her act of demolishing reputation of her husband. The

¹⁹ 2005 (3) Apex Criminal 49

Supreme Court in *Vishwanath S/o Sitaram Agrawal* versus *Sau. Sarla Vishwanath Agrawal*²⁰ held that wife publishing notice in newspaper making baseless allegations that her husband was womanizer and drunkard, would amount to cruelty and it further held that event of cruelty which happens subsequent to filing of divorce petition, can also be taken into consideration. The concept of mental cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious belief, human values and their value system. The Supreme Court referred various judgments and summed up as under:-

Section 13(1)(ia) does not define 'cruelty and the same could not be defined - The 'cruelty may be mental or physical, intentional or unintentional - If it is physical, the court will have no problem to determine it. It is a question of fact and degree - If it is mental, the problem presents difficulty. *Shobha Rani vs. Madhukar Reddi, 1988(1) SCC 105*, relied.

(ii) The expression 'cruelty has an inseparable nexus with human conduct or human behaviour - It is always dependent upon the social strata or the milieu to which the parties that have been conditioned by their social status.

(iii) Conception of legal cruelty undergoes changes according to the changes advancement of social concept and standards of living - To establish legal cruelty, it is not necessary that physical violence should be used. *Shobha Rani vs. Madhukar Reddi, 1988(1) SCC 105*, relied.

(iv) A set of facts stigmatized as cruelty in one case may not be so in another case - The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. *Shobha Rani vs. Madhukar Reddi, 1988(1) SCC 105*, relied.

(v) Each case may be different - New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. *Sheldon vs. Sheldon, 1966(2) All England Reporter 257*, relied.

²⁰ 2012(7) SCC 288

(vi) Mental Cruelty in Section 13(1)(ia) of Hindu Marriage Act can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other.

(vii) What is cruelty in one case may not amount to cruelty in the other case – The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious belief, human values and their value system. ***Samar Ghosh vs. Jaya Ghosh, 2007(2) RCR (Criminal) 515; 2007(2) RCR (Civil) 595, 2007(2) Recent Apex Judgment (RAJ) 177***, relied.

(viii) Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. ***Praveen Mehta vs. Inderjit Mehta 2002(3) RCR (Civil) 529***, relied.

(ix) Question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. ***A. Jayachandra v. Aneel Kaur 2005(1) RCR (Civil) 309***, relied.

(24) Moreover, the evidence given by Arjun (PW3), the elder son of the parties also shows that apart from normal wear and tear of family life, the husband and wife were not having normal relationship. Arjun had been assaulted by the appellant-wife on one occasion and the police was called on 30.04.2014. In cross-examination, no query was put to him about the allegations of beatings and misconduct levelled against his mother. He did not deny the version of 30.04.2014 and only a suggestion was put to him whether his father was present when the police had arrived but Arjun had clarified that his father had come later when he had called him.

(25) The appellant-wife led no evidence to show that there was cordial relationship with her son in the form of oral testimony of her relatives, friends, neighbours or servants and no evidence was led to show that the incident dated 30.04.2014 as alleged by Arjun (PW3) against her, did not take place.

(26) In the present case, efforts were made by interacting with the parties for final settlement on 22.12.2021. The respondent-husband had offered to transfer his share in the apartment (DLF City, Phase-II, Gurgaon (Gurugram), where the appellant-wife was staying, in her name and he was ready to pay Rs.50 lacs towards full and final settlement and prior to appearing in this Court, 3-4 mediation were already taken place. However, the said offer was not accepted by the appellant-wife who was present with her sister, Deeksha Anand and in this backdrop, appeal was listed for final arguments. The respondent-husband is also making payment of Rs.80,000/- p.m. as an interim maintenance under Section 24 of the Hindu Marriage Act, as per order dated 09.08.2018.

(27) The younger son, Madhav Saigal, had also appeared in the Court on 22.02.2022 and he became emotional having tears in his eyes, and wanted the parties to part ways in a peaceful manner. He is a young boy of 22 years and he convinced his father to make payment of Rs.80 lacs to the appellant-wife apart from transfer of flat situated in Gurugram, where she was staying. However, the appellant-wife did not agree to the said proposal.

(28) The findings given by the Family Court with respect to cruelty have been duly proved from the evidence i.e. CD Ex.P1, its translation Ex.P2 and text messages Ex.P3 as well as the deposition given by Manish Rai (PW2), ex-colleague of the respondent-husband and his son Arjun Saigal (PW3).

(29) The divorce has been rightly granted on the ground of cruelty. Moreover, the parties have been staying separately since 07.05.2014 and almost 8 years have gone by as they were married on 11.02.1996. It is a case of dead and irretrievable marriage.

(30) Hence, no ground to interfere in judgment and decree dated 20.03.2017 passed by Family Court, Gurugram is made out. However, keeping in view that the appellant-wife is being given Rs.80,000/- p.m. as interim maintenance under Section 24 of Hindu Marriage Act, 1955, the respondent-husband is directed to give Rs.50 lacs as permanent alimony to her.

(31) Appeal is dismissed.

Pending application (if any) stands disposed of.
