

A.No.6478 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-07-2026

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THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

A No. 6478 of 2024

in

O.P. No. 786 of 2023

~~Madhoo K~~

W/o.Barath Janakiram L,

Currently Residing at

42, 1 Avenue, Kalpakkam, Kancheepuram 603102.

Having Permanent Residence at

D No.1, Ganesan Street,

Krishna Nagar, Pammal,

Kancheepuram, Tamilnadu - 600 075.

..Applicant(s)

Vs

~~Barath Janakiram L~~

S/o.Lakshmanan, D No.1, Ganesan Street, Krishna

Nagar, Pammal, Kancheepuram, Tamilnadu - 600

075.

..Respondent(s)

PRAYER: To take the schedule mentioned documents filed along with Counter Statement on record, mark and admit the same.

For Applicant(s): M/s. G.R. Associates
Niranjan Rajagopalan
Sowjanaya S

For Respondent(s): Mr.Rahul Jagannathan.



ORDER

Heard.

2. This application has been filed by the mother/respondent in the main guardianship petition, seeking permission to place five sets of electronic records on file and to have them marked in evidence. The materials consist of WhatsApp conversations and screenshots, which, according to her, were found on the father/petitioner's mobile phone in 2020. She claims that they refer to drug use, contact with a person allegedly involved in the supply of drugs, searches relating to narcotic substances, conversations concerning drugs and alcohol, and an alleged relationship with another woman.

3. The father has filed the main petition seeking to be appointed guardian of the minor child, born on 11.02.2016, and for permanent custody of the child. The mother opposes the petition. Her case is that the father is unfit to be entrusted with custody on account of his alleged use of drugs and alcohol, and that the materials now sought to be marked have a bearing on his fitness and the welfare of the child.

4. The mother states that in 2020, while the father was asleep, she saw messages on his mobile phone and photographed them using her own phone. The scheduled materials are said to include a conversation about a possible purchase of

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drugs, another drug-related conversation, searches relating to narcotic substances, a conversation with another person about drugs and alcohol, and material concerning an alleged relationship with another woman. She also states that the phone she used to capture the material is available for production.

5. The father denies the allegations. He denies that the messages were sent from his phone and disputes their source, authorship, authenticity and contents. In his deposition, when shown the WhatsApp messages, he stated that they had not been sent from his phone.

6. The father was cross-examined before the Learned Master on 23.08.2024, 24.10.2024 and 28.10.2024. When the mother sought to mark the materials, the Learned Master declined to do so at that stage on the ground that they concerned the personal liberty and privacy of a third party, relying on this Court's decision in *R v. B*, dated 30.10.2024. In that case, the Court considered the admissibility of electronic material obtained from a spouse's phone without consent. The mother thereafter filed the present application seeking an order from this Court permitting the materials to be received and marked.

7. The question is whether the five sets of documents should be excluded at the threshold on the ground of privacy, or whether they may be received and marked

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subject to proof, genuineness, relevance, admissibility, and all the father's objections.

8. The decision in **R v. B** arose from the use of call data obtained from the wife's mobile phone without her consent. The Court addressed the invasion of spousal privacy and the lack of proper certification of the electronic record.

9. Privacy is ordinarily understood as an individual right. In that form, it is often placed against interests described as social or public, such as law enforcement, public safety or the administration of justice. *Priscilla M. Regan, in her work Legislating Privacy: Technology, Social Values, and Public Policy (University of North Carolina Press, 1995)*, points out that this formulation structurally weakens privacy because an individual claim is then weighed against interests presented as belonging to society as a whole.

10. *Regan* advances a broader conception of privacy. She argues that privacy should be understood not only as an individual right, but also as a common, public and collective value. It is common because members of society share an understanding of its importance. It is public because it supports democratic participation, freedom of communication, freedom of association, trust and restraint upon arbitrary power. It is collective because a meaningful level of

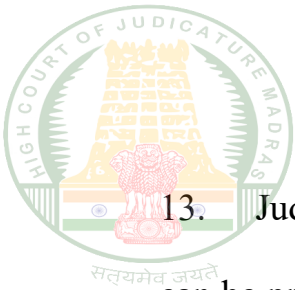
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privacy cannot effectively be secured by isolated individuals acting only for themselves.

11. Privacy, therefore, is not merely an attribute of the individual. It is also an attribute of a free society. Recognition of this social value removes the artificial opposition between the individual and society. It does not mean that privacy encompasses all other social values or that all questions of accommodation disappear. It means that the Court must identify the societal interest protected by privacy and the distinct societal interest said to justify the use of the private material.

12. The issue is not a contest between the father's personal privacy and the mother's desire to produce evidence. Privacy protects the wider social interest in secure communication and freedom from indiscriminate intrusion. The safety and welfare of a child are likewise matters of public concern. Material allegedly showing drug use, procurement of narcotic substances, or association with persons involved in such activity may bear directly on parental fitness and the child's safety, and cannot be excluded merely because it originated in a private communication.



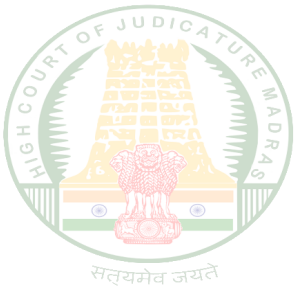
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13. Judicial use of such material does not strip it of its private character. Privacy can be preserved by confining the material to the custody proceeding, examining it confidentially, protecting unrelated third-party information, preventing publication or collateral use, and insisting on proof of source, authenticity, completeness and context.

14. The truth of the allegations is not being decided at this stage. The present question is only whether material said to concern drug use and drug-related associations may be received for consideration in a guardianship proceeding.

15. The welfare of the child is the paramount consideration. It includes not only physical comfort and financial support, but also safety, emotional security, moral welfare and the environment in which the child may be placed. Material having a real and direct bearing on those matters may therefore be received.

16. At the same time, every private communication of a parent does not become relevant merely because custody is in issue. The material must have a rational connection with the child's welfare. Material introduced only to embarrass a party, damage reputation or widen the matrimonial dispute must be excluded.



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17. The learned counsel initially objected to the use of the material on the ground that it had been obtained in violation of the father's privacy. Upon this Court raising the question of whether material allegedly relating to drug dealing and drug use could be treated merely as a matter of individual privacy in a child-custody proceeding, learned counsel for the petitioner/father ultimately did not press the privacy objection. He confined his objection to the source, genuineness, proof, relevance, admissibility and certification of the electronic records. Learned counsel for the respondent/mother accepted that all such objections would remain open.

18. The marking of a document does not amount to proof of its contents. The mother must establish that the records were taken from the father's phone, that they are complete and unaltered, that the participants are properly identified, and that the statutory requirements governing electronic evidence have been met. The sufficiency of the certificate under Section 65-B of the Indian Evidence Act, 1872 shall also be considered in accordance with law.

19. The father shall be entitled to cross-examine the mother and to raise all objections regarding the source, authorship, authenticity, integrity, completeness,

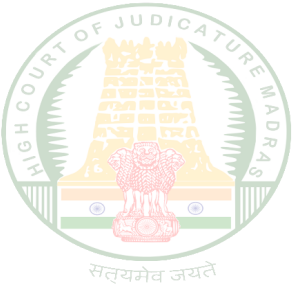
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relevance, admissibility and evidentiary value. No adverse conclusion shall be drawn merely because the documents are received or marked.

20. The documents are received solely for the present guardianship proceeding. This Court has expressed no opinion on the truth of the allegations concerning drugs, alcohol, personal relationships, or any other conduct attributed to the father. Those matters shall be decided only after the evidence is concluded and the materials are tested in accordance with law.

21. The five sets of documents mentioned in the schedule to the application namely conversation with one ~~Mr. Rajeshwar~~ on various affairs and alcohol abuse of the petitioner between 2018 – 2020, conversation of the petitioner with a drug dealer for purchase of Ipswich Drug dated 31.07.2019, Whatsapp conversation of the petitioner with one Mr.Vimal Raj G.Sant planning for drug / alcohol consumption in September 2020, Screenshots of web searches of the petitioner regarding various drugs in 2020, screenshots of flings of the petitioner through inappropriate websites may therefore be received and marked before the Learned Master, subject to proof of genuineness, relevance, admissibility, statutory certification, and all objections of the father.



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22. The application is accordingly allowed. No costs.

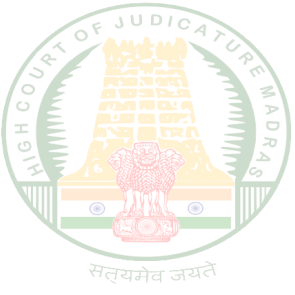
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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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