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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KAROL; J., VIPUL M. PANCHOLI; J.
Special Leave Petition (Crl.) No(s).3171 of 2025; July 31, 2026
HIMANSHU CHORDIA *versus* **STATE OF RAJASTHAN & ANR.**

Code of Criminal Procedure, 1973 (CrPC) — Section 125(1) & Section 125(4) — Interim Maintenance — Adultery as a Defense — Adjudication of Application under Section 125(4) as an Interlocutory Stage - Section 125(4) CrPC — Pendency of Section 125(4) application per se does not bar interim maintenance — Ground of adultery raised under Section 125(4) must be decided after interim maintenance order and before final adjudication — Deferring adjudication of adultery to final disposal is unsustainable - Section 125 is oriented towards social justice, secular in character, and summary in nature to prevent vagrancy and destitution - An application for maintenance is stage one of the proceedings, wherein interim maintenance may be awarded under the second proviso to Section 125(1) - An application filed under Section 125(4) constitutes stage two, and its decision determines whether the case reaches final maintenance under Section 125(1) - If a husband files an application under Section 125(4) alleging adultery, the Court cannot defer its determination to the stage of final adjudication - Adultery, if proved, disentitles the wife to maintenance; hence, the Section 125(4) application must be decided in the interregnum after the order granting interim maintenance and before the final adjudication of the main maintenance petition - If the evidence presented along with the Section 125(4) application ex-facie/on first blush establishes adultery or if the fact is admitted, interim maintenance becomes a non-starter or will be stopped, and the main application will be dismissed - Where the evidence requires proof in accordance with law, interim maintenance will continue during the intervening period while the Court undertakes a review of the evidence to conclusively decide the Section 125(4) application. *[Paras 15 - 20]*

Evidence Act, 1872 — Section 65B (Bharatiya Sakshya Adhiniyam, 2023) — Electronic Records — Admissibility & Regulation of Private Investigators - Electronic Evidence & Private Investigators — Admissibility subject to Section 65B mandatory certification — Lack of legislative regulatory framework for Private Detective Agencies highlighted - Photographs, audio, or video evidence (including those procured via private investigators) are electronic records - Under Section 65B(4) of the Evidence Act, 1872, mandatory certification is a condition precedent to admissibility - Oral evidence cannot substitute this statutory requirement - Admissibility requires relevance to the matter in issue, identification of voice/source, and proof of accuracy by ruling out tampering or morphing - The Code of Criminal Procedure does not recognize private investigating agencies. Concerns regarding individual privacy, data protection, authenticity/morphing of evidence, and lack of regulation/grievance redressal mechanisms for private detectives were raised - The Supreme Court directed copies of the judgment to be forwarded to the Secretary, Ministry of Law and Justice, and the Chairman, Law Commission of India, to consider framing appropriate rules/regulations. *[Relied on Navinchandra N. Majithia v. State of Meghalaya, (2000) 8 SCC 323; R.M. Malkani v. State of Maharashtra, (1973) 1 SCC 471; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1; Paras 21-24]*

For Petitioner(s): Mr. S. S. Jauhar, AOR Mr. Prabhjit Jauhar, Adv. Ms. Tulika Bhatnagar, Adv. Ms. Chahat Raghav, Adv. Ms. Shreya Narayan, Adv. Mr. Tanay Kalia, Adv.

For Respondent(s): Mr. Shiv Mangal Sharma, A.A.G. Ms. Shalini Singh, Adv. Mr. Aishwarya Jaiswal, Adv. Ms. Nidhi Jaswal, AOR Ms. Preeti Singh, AOR Mr. Sunklan Porwal, Adv. Ms. Kriti Dahiya, Adv. Ms. Sakshi Trivedi, Adv. Mr. Akshay Chhabra, Adv.

J U D G M E N T

SANJAY KAROL, J.

1. Leave granted.

2. The question in this appeal is best explained by way of an illustration: A and B are husband and wife. Due to strained relations between them, they began living separately, and B filed for maintenance. One of the primary reasons, as alleged by A for their separation, is the promiscuity of B and her adulterous relationship with other people. In such a scenario, is A obligated to pay B interim or final maintenance?

3. The factual and legal backdrop of this appeal is as follows:

3.1 Himanshu Chordia, the appellant, married Arushi Jain, Respondent no. 2, on 7th July 2014. Trouble started brewing a few years into their marriage, which resulted in, allegedly, the hurling of allegations by Respondent no.2 towards the appellant and also some complaints before the Bangalore Police. She finally left her matrimonial home on 13th May 2020 along with the child born from this union and her valuables. On 5th November 2020, she filed an application under Section 125 of the Code of Criminal Procedure, 1973,[1] being Main Case No. 570/2021, and an application for interim maintenance bearing number 1328/2021, before the Special Additional Chief Judicial Magistrate, PCPNDT Cases, Udaipur. Almost contemporaneously, but in fact, prior in point of time, the Appellant had filed applications under the Guardians and Wards Act, 1890, which is not the subject matter before us. After some back and forth litigation, including both the parties approaching the High Court for one thing or another, the proceedings to decide Respondent No.2's case started in earnest on 6th October 2023 after the High Court, in a Criminal Miscellaneous Petition filed by Respondent no. 2, directed the Court seized of the maintenance case to decide the same within 3 months.

3.2 In such proceedings, the appellant filed an application under Section 125(4), CrPC contending that on account of adulterous relationships, Respondent No.2 is not entitled to any interim maintenance, given the express bar contained in the section. It is the Appellant's case that he filed proof to substantiate his allegation not only in the main application but also by way of additional affidavits. The Respondent No.2 then filed an application for modification of the order dated 4th October 2023, asking for the interim application for maintenance to be decided within 3 months, which came to be allowed by order dated 4th December 2023. This ex-parte order was sought to be set aside by the Appellant by way of another Criminal Miscellaneous Petition bearing No. 522 of 2023 which is pending before the High Court.

3.3 The Special Additional Chief Judicial Magistrate[2], PCPNDT Cases, Udaipur dismissed the Appellant's application under Section 125(4) CrPC along with an application under Section 91 CrPC vide order dated 27th June 2024. The operative portion of the order is as under: -

[1] CrPC
[2] 'Trial Court'

"During the arguments, the Ld. Counsel for the petitioner said that the petitioners was at different place on the date and time as mentioned in the petitioner's documents. The petitioner has also presented some documents in support of her claim showing her presence at different place than the documents. The respondent's allegations regarding the petitioner's adultery with Deepak Mundra are mainly based on photographs and CD. However, the court cannot conclude on the authenticity and originality of these documents at this stage.

The authenticity and originality of all these documents can only be determined after evidence are exhibited. All the facts mentioned in the present application can only be determined after the exhibition of evidence in the main petition of Section 125 of the petitioner on merits. It is also noteworthy that in this case, apart from the respondent Aarushi, the respondent's son Charvik is also a party. In this situation, the petitioner's prayer for interim stay order cannot be dismissed. Therefore, while safeguarding the respondent's rights to decide the objections mentioned in his application at appropriate stage in the main case, this present application under Section 125(4) is disposed of."

(emphasis supplied)

3.4 Vide the same order, the Court also dismissed the Appellant's application under Section 91, CrPC. The discussion with regard thereto is as follows:

"The court is of the opinion on the respondent's application under CrPC 91 is that the respondent prayed for obtaining information from various institutions/departments regarding the petitioner's bank accounts and deposits of last five years, accounts linked with petitioner's mobile number, Petitioner's so called paramour Deepak Mundra's last five year's call details with location information, petitioner's Instagram accounts details, owner/ rent agreement/ licence of AZRAA Bridal Studio, Ashok Nagar, Udaipur, petitioner's last 9 years ITR, ownership details of flat no. 501,502,503 Hitawala tower, Bhuwana, Udaipur. The respondent has not stated about his attempts to gather all these information at his own. Respondent has also not stated anything to get these information apart from the court. As far as the petitioner's bank statements and account details are concerned, it is to be mentioned that the petitioner has submitted her last three years of ITRs making it needless to seek for her all bank details and account statements. In view of the above, the respondent's application is dismissed.

Ordersheet is pending for application of interim maintenance. The parties are directed to argue on that application mandatorily on the next date of hearing. Case diary to be called for arguments on interim stay order on 01.07.2024.

Ambika Solanki, Special ACJM"

3.5 The Appellant filed a quashing petition against these two orders, and the order granting interim maintenance by the Trial Court *vide* order dated 30th July 2024, which was to the tune of Rs. 25,000 each to Respondent No.2 and their son.

3.6 The impugned judgment by the High Court in the petition seeking quashing of the order dated 27th June 2024, whereby his application under Section 125(4) CrPC was rejected. The Court held:

"2.1. It is not disputed that ground of infidelity and the wife is living adulterous life can also be considered by the Court at the time of hearing on an application seeking interim maintenance. In the instance case, the learned Magistrate gave opportunity to the petitioner and then passed the order of interim maintenance and the legality, correctness and propriety of the same is under challenge before the Court of Sessions.

2.2. The petitioner seeks interference of this Court so as to decide the controversy of adulterous life of the respondent-wife as preliminary issue. There is no provision in the Cr.P.C. that mandates adjudication of such an issue before deciding an application for interim maintenance. The submissions with regard to the above has already been considered by the learned trial Court before passing the order of interim maintenance and a further appreciation of which is pending adjudication before the Court of revision.

2.3. This Court feels that the submission of the petitioner is a counter/rebuttal of the main issue, the principal fact that the wife is entitled to get maintenance. As on date, it can be that the above is the disputed question of fact and for which, both the parties should be allowed to adduce evidence and the same adjudicated by the trial Court at the time of final disposal of the inquiry under Section 125 Cr.P.C.

3. In view of the above, this Court finds no merit in the present petition. The same is accordingly dismissed. The stay petition stands disposed of.…"

4. We have heard the learned Counsel for the parties. In order to adjudicate the correctness of the finding in the High Court, we must first consider the object of maintenance; the nature of proceedings under Section 125 of the CrPC; and the contours of Section 125(4). Only thereafter can we consider the question whether the issue of adultery, as it appears in Section 125(4), can be decided as a preliminary issue or is it only capable of decision at the time of final adjudication.

5. The basic idea behind the grant of maintenance, regardless of the legislation in which this right appears, is to ensure that neglect and destitution are prevented for people who are unable to provide for themselves, for instance, a spouse, child or even parents, by imposing an obligation under law upon those who can, or have sufficient means to, provide for those who are unable to maintain themselves. Such law is intended to ensure that individuals unable to provide for themselves have means of securing the essential aspects of a dignified life. It is a means of implementing accountability for those persons who ignore their responsibilities towards family members and dependents. Section 125 reads thus :

"**125. Order for maintenance of wives, children and parents.**

(1) If any person having sufficient means neglects or refuses to maintain –

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d)his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.] .

Explanation. - For the purposes of this Chapter, -(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2) [Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may befrom her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. (5)On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(emphasis supplied)

6. A perusal of various decisions rendered by this Court over time reveals the following features of proceedings under Section 125 CrPC:

6.1 Proceedings under this section are summary in nature, designed to be speedy, aimed to avoid difficulty on the part of the seeking party. In other words, it seeks to prevent vagrancy and destitution. [See: ***Dukhtar Jahan v. Mohd. Farooq***[3]; ***Vimala (K.) v. Veeraswamy (K.)***[4]***; Nagendrappa Natikar v. Neelamma***[5]***; Danial Latifi v. Union of India***[6]***; Rajnesh v Neha***[7]]

6.2 Maintenance proceedings are essentially civil in nature. Thus, the standard of proof applicable is not beyond reasonable doubt as would be in other criminal matters. [***Dwarika Prasad Satpathy v. Bidyut Prava Dixit***[8]; ***Chanmuniya v. Virendra Kumar Singh***

[3] (1987) 1 SCC 624 2-Judge bench
[4] (1991) 2 SCC 375 3-Judge Bench
[5] (2014) 14 SCC 452 2-Judge bench
[6] (2001) 7 SCC 740 5-Judge bench
[7] (2021) 2 SCC 324 2-Judge bench
[8] (1999) 7 SCC 675 2-Judge bench

Kushwaha[9]***; Kamala v. M.R. Mohan Kumar***[10]; ***Rina Kumari v. Dinesh Kumar Mahto***[11]***; Iqbal Bano v. State of U.P.***[12]]

6.3 Only such person who is unable to maintain herself may seek maintenance hereunder. [See: ***Bhagwan Dutt v. Kamla Devi***[13], ***Chaturbhuj v. Sita Bai***[14]]

6.4 The wife seeking maintenance must show that she is unable to maintain herself and concomitantly show that the husband has the means to do so. [See: ***Mohd. Ahmed Khan v. Shah Bano Begum***[15]***; Mohd. Abdul Samad v. State of Telangana***[16]]

6.5 The provision does not recognise any religion and applies to all parties irrespective of the religion they profess. [See: ***Mohd. Abdul Samad(supra)***]

6.6 The order made under this Section is subject to final determination by the Civil Court. [***Inderjit Kaur v. Union of India***[17]; ***Mohd. Abdul Samad*** **(*supra*)]**

6.7 A decree of restitution of conjugal rights does not bar the payment of maintenance under this Section and would not count as disqualification under clause 4 thereof. If the wife refuses to comply, it has to be seen on the facts whether such refusal is justified. [See: ***Rina Kumari*** (*supra*)]

6.8 A decree of divorce does not foreclose the relief under Section 125 CrPC. Section 125(4), which is an exception to the general rule under this section, does not include within its ambit a divorced woman. [See: ***Vanamala v. H.M. Ranganatha Bhatta***[18], ***Swapan Kumar Banerjee v. State of W.B***.[19]]

7. It cannot be gainsaid that the provision is oriented towards social justice; it is secular; and is aimed at providing a sense of sustenance with dignity for those who are unable to provide for themselves. Given its beneficent nature, the principles that govern an application made under this Section, culled out *supra,* have to be interpreted liberally, keeping in view the desired goal.

8. A perusal of the CrPC reveals that the stipulation under Section 125(4) was inserted *vide* amendment in 2001. This indicates that the legislature sought to address a situation where there is, among other possibilities, adultery on part of the wife. The Statement of Objects and Reasons of the said amendment read as under:

"It has been observed that an applicant, after filing application in a court under section 125 of the Code of Criminal Procedure, 1973, has to wait for several years for getting relief from the court. <u>It is, therefore, felt that express provisions should be made in the Code for interim maintenance allowance to the aggrieved person under said section 125 of the Code. Accordingly, it is proposed that during the pendency of the proceedings, the Magistrate may order payment of interim maintenance allowance and such expenses of the proceedings as the Magistrate considers reasonable, to the aggrieved person</u>. It is also proposed that this order be made ordinarily within sixty days from the date of the service of the notice…" (emphasis supplied)

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[9] (2011) 1 SCC 141 2-Judge bench
[10] (2019) 11 SCC 491 2-Judge bench
[11] (2025) 3 SCC 33 2-Judge bench
[12] (2007) 6 SCC 785 2-Judge bench
[13] (1975) 2 SCC 386 3-Judge bench
[14] (2008) 2 SCC 316 2-Judge bench
[15] (1985) 2 SCC 556 5-Judge bench
[16] (2025) 2 SCC 49 2-Judge bench
[17] (1990) 1 SCC 344 2-Judge bench
[18] (1995) 5 SCC 299 2-Judge bench
[19] (2020) 19 SCC 342 2-Judge bench

9. As already reproduced supra, a perusal of the clause suggests maintenance shall be denied if the wife lives in adultery or without any sufficient reason refuses to live with her husband or is living separately by mutual consent. The text of the statute itself points to the answer to the question raised in this appeal. Sub-section (4) of Section 125 provides that if adultery is established, the wife claiming maintenance would not be entitled to the same as an interim measure and therefore, obviously, not even as a final measure. Sub-section (5) thereof makes it even more obvious.

10. Once a petition under Section 125(1) is made before the concerned court, and the person from whom maintenance is sought makes an application under Section 125(4), determination thereof, would depend upon the facts and circumstances of each case; as also the kind of evidence presented in reference to application filed under Section 125(4); whether the interim maintenance so granted to the applicant under the proviso to sub-section (1) of Section 125, would continue to obtain or not.

11. The second proviso to Section 125(1) makes provision for interim maintenance and expenses of proceedings. It is clear therefore that the intent is for the maintenance allowance to reach the applicant expeditiously. It cannot be said as such, that once an application under the latter Section 125(4) has been made, even the payment of interim maintenance in the interregnum, till such application is decided, will be stopped. If it is concluded that the said application has merit, then the interim order would be vacated. If it is concluded otherwise, the interim order would be confirmed/modified. To put it plainly, the pendency of a 125(4) application would not *per se* bar the applicant from receiving interim maintenance on the ground that the said sub-section uses the word ‘interim maintenance’ also. If such a view is accepted, the payment of maintenance would be perpetually contingent on the decision in 125(4), which may, given the nature of the allegation, take considerable time in reaching its final conclusion.

12. Put clearly, it has to be observed that an application for maintenance is stage one of the proceedings wherein by virtue of the second proviso, the court may, circumstances permitting, award interim maintenance. The application under Section 125(4) is stage two and it is the decision in stage two which will determine whether the application reaches the final stage i.e. order of maintenance under Section 125(1) or not. What is provided by Section 125(5) accounts for a situation that is subsequent to final order having been made in stage three.

13. The above discussion can be explained through illustrations. A is the wife and B is the husband.

13.1 In the first scenario, A files for maintenance. Husband enters appearance and the concerned court awards interim maintenance. On a subsequent date, B files an application under Section 125(4). Here, there are two possibilities. If the evidence presented along with the application establishes one of the three situations contemplated in Section 125(4) on the “face of it” or if the situation is that the existence of either of the three scenarios is “admitted”, then the interim maintenance would be stopped and the application for maintenance would be dismissed. If the evidence is required to be proved in accordance with law, the court would undertake a review of the evidence and only after being convinced of its merit, make an order thereupon. In this intervening period between the date of filing the application and the order under Section 125(4), interim maintenance would continue.

13.2 In the second scenario, B while entering appearance in A’s application for maintenance, on the same day, files an application under Section 125(4), then, if the evidence is "admitted"/demonstrates the factual situation on first blush regarding the three scenarios, where maintenance would not be payable by B, then on the very day it is established before the Court, interim maintenance would become a non starter. If again, the evidence is required to be proved in accordance with law, for the time that the court is considering such evidence to arrive at a conclusion, the payment of interim maintenance would continue.

14. To reiterate, if the application for maintenance is to be denied at the interim stage itself, the party having filed the application under Section 125(4) must present clear and cogent evidence that would *ex-facie* establish adultery on part of the claimant for maintenance.

15. We turn our attention, now, to the present facts, wherein the appellant places reliance on Section 125(4) to oppose, in general, respondent no. 2's application for maintenance. As extracted supra, it was the appellant's case before the High Court that his allegations of adultery against Respondent No.2 should be decided as a preliminary issue which would then have a bearing on whether maintenance (interim or otherwise) is to be paid to Respondent No.2 at all or not.

16. In essence, we are to decide whether allegations of adultery, when made, have to be decided at the first instance so as to, if proved, take away the entitlement of the wife to maintenance or is it to be decided at the stage of final adjudication. Adultery, if proved, takes away maintenance from the wife, then the application to prove such a fact has to be decided between the order granting interim maintenance and final adjudication of such application for maintenance.

17. At this stage, a segue into how an allegation of adultery can be/is to be proved may be warranted. Evidence is of two types, direct and circumstantial. The former is the kind that establishes, on the face of it, an allegation.

18. It is obvious that when a case is sought to be proved by circumstantial evidence, it requires a detailed study of the circumstances presented. The evidence furnished in support thereof, including verification, particularly when the evidence in question is electronic, etc. These procedures are bound to take time. Since the stipulation in the Section 125 (4) is that if adultery is proved, the wife would neither be entitled to interim nor final maintenance, we are of the view that if a husband files an application under Section 125(4) and is, at the first instance, able to establish the charge through evidence *ex facie*, then only, there can be said to be a bar to interim maintenance.

19. The courts below clearly fell into error to hold that it was only at the stage of final adjudication that such a question could be decided. This view would render otiose what has been provided in the statute.

20. Applying this understanding to the record, in order to establish that the Respondent No. 2 was living in adultery, the appellant has placed a number of photographs and other evidence. This evidence is obviously electronic in nature. The question that the court must consider at the stage of interim maintenance is whether the evidence so presented establishes adultery. It is obviously open for the Respondent No. 2 to dispute the correctness and legality of the evidence presented, which would then have to be considered by the Court.

In that view of the matter, we are of the view that the Trial Court ought to have decided the appellant's application under Section 125(4). It was incorrect for them to have observed that the appellant's application could not have been decided prior to the final adjudication of the application filed by the wife. The second proviso to sub-section (1) of Section 125 provides for interim maintenance; and as such, the logical flow of proceedings would be that once the basic facts are established, an order is made for interim maintenance, and that would continue to operate till the application under Section 125 (4) is decided conclusively. This is in view of the beneficent nature of the provision. This question is accordingly decided. Consequently, the matter stands remanded to the Trial Court to make a decision on the merits since they had in this instance dismissed the application on the threshold. However, the matter does not end there.

PRIVATE INVESTIGATORS: AN AREA *SANS* REGULATION

21. On the record of this case, the appellant has placed a large number of photographs allegedly of Respondent no. 2 pursuing a relationship outside of marriage. The manner of the photographs leads us to believe that the same may have been procured through private investigators/detectives. What furthers this belief is that the appellant states to have '*received*' these photographs after a particular date when an application was filed. The implication is that they have been received from a third party. A question arose as to the value of these pictures/videos since there is a statement in the file that approximately 92 videos along with 237 photographs have been furnished before the court below. Who took these pictures? Did they have any authorization to do so? What is the procedure for storing these pictures once taken? Whether these pictures sought to be adduced as evidence are in fact genuine pictures or are doctored using technological advancements; do they present an accurate picture or have they been morphed to suit the narrative sought to be built by the parties? What are the implications for the right of privacy of individuals, protection of their personal data, etc.? Obviously, these are concerns that need to be addressed. It appears, though, that there is no body existing currently that could undertake these issues. If such collection of evidence is a reality, there also has to be some limitation to what these individuals can do in pursuit of their profession, some protections for them against allegations such as 354C IPC (voyeurism) and regulation of the data/photographs procured by the investigator. There has to be a mechanism in place to deal with the evolving methods of evidence collection. Verification within the meaning of Section 65B of the Evidence Act, 1872 or its equivalent in the BSA, 2023, is not the only issue. Checks and measures are perhaps required, drawn from the areas of the law, law enforcement, privacy experts, etc., that can deal with issues arising out of such endeavours, including acting as a grievance redressal forum for any individual who may be aggrieved by the actions of the private investigator having overstepped professional bounds and gone into violating the rights of the individual.

22. We notice that in 2007 a bill was introduced in the Rajya Sabha (Upper House) of the Indian Parliament titled The Private Detective Agencies (Regulation) Bill, 2007, which contained 36 sections and provided for the Constitution of a Central Board and State Boards, a list of requirements to be fulfilled for a license, cancellation, suspension of such licenses, maintenance of records, express bar on investigations falling squarely within the domain of statutory/regulatory authorities etc. A perusal of the Statement of Objects and Reasons appended to the Bill reveals that the need to bring a bill in this regard arose from the perspective of business since there was an increasing reliance on private investigators to gather information. While that may be true, we believe that regulation and accountability are equally important in the sphere of private investigation.

While we recognize its growing importance and also the fact that it touches various different aspects of law, as far back as 2000 it was observed by a Bench of three Judges in ***Navinchandra N. Majithia v. State of Meghalaya***[20]**,** as follows**:**

"16. The Code does not recognise private investigating agency. If any person is interested in hiring any such private agency, he may do so at his own risk and cost, but such investigation would not be regarded as investigation made under law. Any evidence collected in such private investigation and any conclusion reached by such investigators cannot be presented by Public Prosecutor in any trial. Of course it may be possible for the defence to present such evidence. In this context, we may refer to a recent decision of this Court *R. Sarala* v. *T.S. Velu* [(2000) 4 SCC 459 : 2000 SCC (Cri) 823]. This Court said that even a Public Prosecutor cannot be officially involved during the stage of investigation. The following observations made by this Court in the said decision will be useful: (SCC p. 461, para 2)

"2. Investigation and prosecution are two different facets in the administration of criminal justice. The role of a Public Prosecutor is inside the court, whereas investigation is outside the court. Normally the role of a Public Prosecutor commences after the investigating agency presents the case in the court on culmination of investigation. Its exception is that the Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage. Involving the Public Prosecutor in investigation is unjudicious as well as pernicious in law. At any rate no investigating agency can be compelled to seek the opinion of a Public Prosecutor under the orders of the court."

On the aspect of admissibility of the evidence, if we for a moment keep aside the non-recognition, then the three-fold- test as laid down in ***R.M. Malkani v. State of Maharashtra***[21]**,** which, while being concerned with the admissibility of a taperecorded conversation, held**:**

"23. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under Section 7 of the Evidence Act. ..."

(emphasis supplied)

This was recently referred to in ***Naresh Kumar Garg (Dr.) v. State of Haryana***[22], 'Identification of the voice' in current terms can be read as verifying the source of the information or in this case, photographs/videos.

When dealing with this nature of evidence, it needs to be examined at the anvil of Section 65-B of the Indian Evidence Act 1872. A three-judge bench in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal***[23], explained the position as thus:

V. Ramasubraminan J:

"**84.** But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, *for the purpose of proving the contents of electronic records*, but Section 65-B

[20] (2000) 8 SCC 323

[21] (1973) 1 SCC 471

[22] 2026 SCC OnLine SC 295

[23] (2020) 7 SCC 1

speaks entirely about *the preconditions for admissibility*. As a result, Section 65-B places admissibility as the first or the outermost checkpost, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.

85. The placement by Section 65-B, of admissibility as the first or the border checkpost, coupled with the fact that a number of "computer systems" [as defined in Section 2(*l*) of the Information Technology Act, 2000] owned by different individuals, may get involved in the production of an electronic record, with the "originator" [as defined in Section 2(*za*) of the Information Technology Act, 2000] being different from the recipients or the sharers, has created lot of acrimony behind Section 65-B, which is evident from the judicial opinion swinging like a pendulum."

RF Nariman J:

"**61.** We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.* [*Anvar P.V.* v. *P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly "clarified" in *Shafhi Mohammad* [*Shafhi Mohammad* v. *State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor* v. *Taylor* [*Taylor* v. *Taylor*, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose."

For the aspect of accuracy too, the certificate under section 65-B IEA could perhaps go a long way.

23. In light of the questions posed by us above, the need to develop our mechanism for dealing with these scenarios cannot be underscored enough. The legislature would obviously need to undertake its own examination of all relevant issues and frame rules/regulations in accordance with the prevalent norms and conditions, but can also make reference to other jurisdictions where laws of similar nature exist, for example, the State of Queensland in Australia, the Province of Ontario and Canada, the Netherlands, Singapore, etc.

24. In view of the above discussion, on the aspect of private investigation, we direct that a copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Government of India, and also the Chairman, Law Commission of India to take a view, as may be appropriate in the matter.

The impugned judgment and order of the High Court dated 04.02.2025 is hereby set aside. The matter is remanded to the Trial Court in the above terms.

Appeal is allowed. Pending application(s), if any, shall stand disposed of.