



2025:DHC:1555



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 28.02.2025

+ CM(M) 2301/2024 & CM APPL. 20615/2024 FOR
PRESERVATION OF CALL DATA & CM APPL. 61147/2024
O 16 R 6 CPC

GAUTAM MEHRA

.....Petitioner

Through: Ms. Malvika Rajkotia,
Mr. Mayank Grover, Ms.
Aashna Talwar, Advs.

versus

SONIA MEHRA & ANR.

.....Respondents

Through: Mr. Prashant Mendiratta,
Ms. Neha Jain, Mr.
Sanchit Saini and Mr.
Rahul Bhaskar Advs.
Mr. Shrish Kohli, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT (ORAL)

RAVINDER DUDEJA, J.

1. Petitioner has impugned the order dated 04.03.2024, passed in HMA No. 991/2023, whereby, the learned Family Court dismissed the application filed by the petitioner under Order 16 Rule 6 of Code of Civil Procedure [“CPC”] read with Section 14 of the Family Courts Act, seeking preservation of call data records of the respondents.



2. The dispute between the petitioner and respondent No. 1 emanates from the filing of the divorce petition titled “*Gautam Mehra Vs. Sonia Mehra & Anr.*”, HMA No. 991/2023 by the petitioner before the Family Court, Saket.

3. Petitioner filed a petition under Section 13 (1) (i) & (i-a) of the Hindu Marriage Act seeking dissolution of marriage on the grounds of cruelty and adultery. In the said matter, petitioner filed an application under Order 16 Rule 6 CPC read with Section 14 of the Family Courts Act, inter alia, seeking summoning, preservation and furnishing of mobile call records of the mobile numbers of respondent No.1 & 2 for the past two years. Respondent No. 2 is stated to be paramour of respondent No. 1.

4. Vide impugned order dated 04.03.2024, learned Family Court dismissed the application filed by the petitioner. The relevant paras of the impugned order read as under:-

“5. Now, the photographs filed on record by the respondent no.1 are beyond the pale of dispute in as much as they have been taken from the instagram account of the petitioner itself. The photographs prima facie reveal that there were friendly relations between both the families i.e. family of petitioner and family of respondent no.2. The photographs also show that the petitioner and respondent no.2 used to meet frequently with their spouses. Thus, as both the families were having such good relations, it is but natural for the parties to have exchange of phone calls and in these circumstances, the duration of phone calls or time of phone calls cannot in any manner show that there were adulterous relationship between respondent no. 1 and respondent no.2. Further, their tower location would also naturally coincide many a times as the respondents were at the same place - partying together with friends and families. I am aware of the fact that section 14 of the Family Courts Act, 1984 empowers a family court to receive in evidence any document.



However, at the same time while ordering for preservation, of call records of a party, the right of privacy has to be duly considered and directions for preservation of call records cannot be passed on purely vague and specious pleas of the petitioner. The judgment of the Hon'ble High Court of Delhi in the case titled as **Sachin Arora (Supra)** has in detail dealt on this subject. However, on facts the said judgment can be distinguished from the present case. In the case titled as, "**Vishwas Shetty Vs. Preethi K. Rao and Anr.**" in **W. P. (C) 13165/2019 the Hon'ble High Court of Karnataka** had rejected the prayer of the husband seeking call detail record of wife's paramour holding that the same would amount to infringing his right to privacy.

6. Thus, in view of totality of facts and circumstances, the nature of allegations, the undisputed photographs filed on record by the respondent no. 1 and also taking into consideration the right to privacy of respondent no.1 and respondent no.2, I do not deem it appropriate to order for preservation of call records. The application accordingly stands dismissed."

5. Learned counsel for the petitioner submits that the production of call data records is very much important and imperative to decide the *lis* pending adjudication between the parties before the Family Court. It is further submitted that the Family Court has completely disregarded the fact that the petitioner has produced the WhatsApp messages, photographs and police complaints to prima facie prove that respondent No. 1 is indulging in an adulterous relationship with respondent No. 2. It is also submitted that petitioner has placed on record of the Family Court various video and audio recordings, WhatsApp messages from respondent No. 1 to the petitioner apologizing and admitting to her illicit and adulterous relationship with respondent No. 2.



6. It is argued that the learned Family Court erred in prejudging *lis/*issues before it by rendering a finding that the photographs revealed that there were friendly relations between both the families and that photographs reveal that petitioner and respondent No. 2 used to meet frequently with their spouses. The reasoning given by the learned Family Court that if the respondents are meeting frequently and were having good relations, then the duration of phone calls would not show that there was adulterous relationship. It is argued that the duration of the mobile calls as well as the intensity and talking at odd hours would lend credence to the factum of an illicit relationship between the two respondents. It is submitted that a married man talking to a married lady, not being his wife at odd hours and that too for long duration lends corroboration to the other evidences of adultery and the same would be adjudicated upon after a full-fledged trial, and therefore, to pre-judge the issue now by saying that the phone calls shall not in any manner prove an adulterous relationship is travesty of justice and is an attempt on the part of the Family Court to render a finding without the evidence being on record.

7. Learned counsel for petitioner further submits that respondent No. 1 had also been using the mobile phone registered in the name of her mother to make calls to respondent No. 2 after the discovery of her illicit relationship with respondent No. 2. With regard to the right to privacy, it has been argued that the right of fair trial would supersede the right of privacy.



8. Learned counsel for the petitioner submits that the learned Family Court failed to appreciate that there were videos, conversations and the transcripts on record with regard to the conversations between the petitioner and respondent No. 1 wherein respondent No. 1 has clearly sought apology for the mistakes made by her qua the relationship with respondent No. 2 and undertook to rectify the same. These facts cumulatively lead to the irresistible conclusion that she was maintaining illicit relationship and therefore the call logs are relevant to adjudicate the *lis*/dispute qua the adulterous relationship between the two respondents.

9. It is submitted that the right to privacy of an individual is not greater than the right to fair trial of a person. In support her arguments, the learned counsel places reliance on the decision of this Court in the case of **Sachin Arora Vs. Manju Arora 2023 SCC Online Del 2692 and Deepti Kapur Vs. Kunal Julka, 2020 SCC Online Del 672.**

10. It is argued that the CDRs sought by the petitioner are relevant to prove the proximity of relationship between the respondents. The frequent calls made by the respondents would evince the factum of close association between respondent No. 1 and her paramour, the respondent No. 2. The tower locations of respondents would prove that respondents have indulged in various illicit and adulterous activities.

11. Mr. Prashant Mendiratta, learned counsel appearing for respondent No. 1, has supported the order of the learned Family Court,



stating that the court has rightly dismissed the application filed by the petitioner by protecting the right of privacy of respondent No. 1, which though, not absolute, but cannot be curtailed by vague and unfounded averments. It is submitted that the application filed by the petitioner fails to prima facie corroborate the allegations with any proof and just make generic averments. In the absence of proof of foundational facts alleging adultery, the application for summoning the CDR is nothing but an abuse of process of law. It is argued that in his application, petitioner has asked for the blanket relief seeking call records for the past two years, which is untenable. No specific date, time and place in respect of call records have been sought which goes to prove that the CDR application is nothing but a fishing exercise.

12. It is submitted by the learned counsel for respondents that respondent No. 2 is a close friend of the petitioner. Both the families were on visiting terms with each other and shared close relationship. They even used to go together on family holiday trips, and therefore that being so, there was nothing unnatural that the parties used to have exchange of phone calls. The duration of the phone calls or the time of phone calls cannot in any manner show that there was adulterous relationship between the respondents. According to the learned counsel, even the tower locations would coincide many a times as respondents were at the same place partying together with friends and families. It is submitted that in the photographs, petitioner and respondent No. 1 can be seen sharing company with respondent No. 2



and his wife during good times. The WhatsApp conversations and recordings do not in any manner show that respondents were having adulterous relationship with each other. Rather, in one of the WhatsApp chats, respondent No. 1 has clarified that she has never crossed the boundary. It is thus submitted that prima facie, there is no evidence that the respondents were into adulterous relationship.

13. It is argued that the impugned order does not suffer from any illegality/perversity, and therefore, does not call for any interference.

14. Learned counsel, appearing for respondent No. 2, submits that it is basically a dispute between petitioner and respondent No. 1. He is a stranger to the disputes. His privacy cannot be permitted to be violated on the specious plea of the petitioner that he wants to prove the illicit relationship between the respondents. It is further submitted that right to privacy is implicit in the right to life and liberty guaranteed under Article 21 of the Constitution of India. A citizen has a right to safeguard the privacy of his own, his family, marriage and other incidental relationships. Informational privacy also forms an integral part of the right to privacy.

15. It has been further submitted by the learned counsel for respondent No. 2 that the mobile number whose CDRs, the petitioner wishes to summon, is registered in the name of the father of respondent No. 2 and such number is being used in international clients dealing of the company where respondent No. 2 is employed. Learned counsel argues that the privacy of respondent No. 2 cannot be



permitted to be violated on the basis of suspicious plea of the petitioner that his spouse is involved in an illicit relationship. Any order which directs the CDRs containing tower details of respondent No. 2 to be placed before the court in proceedings in which he is not directly involved would amount to violation of his informational privacy.

16. In his application, under Order 16 Rule 6 CPC, petitioner sought directions for preservation and protection of the mobile call records of three mobile numbers. Mobile number 9999990339 stands registered in the name of respondent No. 1, mobile number 9815587765 is stated to be registered in the name of mother of the respondent. Allegedly, respondent No. 1 was using the mobile number registered in the name of her mother for making telephone calls to respondent No. 2. Mobile number 9818405111 is stated to be registered in the name of father of respondent No. 2. The foremost question for consideration before this Court is as to whether issuing directions for preservations and furnishing the mobile call records for a period of last two years would impinge upon the right of privacy of respondents.

17. In the case of **K.S. Puttuswamy Vs. Union of India, (2017) 10 SCC 1**, a nine Judge Constitution Bench of the Supreme Court held that right to privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both state and non-state actors and allows the individual to make autonomous



life choices. However, such a right is not an absolute right. This right has to be necessarily subject to reasonable restrictions especially when the restrictions are in public interest. The relevant para for the purpose of the present discussion are extracted below:-

“325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.”

18. While dealing with a similar issue, the Delhi High Court in the case of *Sachin Arora (supra)* was of view that the Hindu Marriage Act specifically recognises adultery as a ground for divorce and therefore, it would not at all be in public interest that the Courts should on the ground of right to privacy, come to the aid of a married man who, during the subsistence of his marriage, is alleged to have indulged in sexual relationships outside his marriage. In this regard, the Division Bench made reference to the observations of the Coordinate Bench in paragraph Nos. 22 to 24 of its decision in the case of *Deepti Kapur (supra)*. The same read as under:—

22. It is crucial to note however, that at the time that the decisions in *M.P. Sharma v. Satish Chandra* and subsequently



in *Pooran Mal (supra)* were rendered, privacy was not recognised as a fundamental right under the Constitution, as indeed no such right had been expressly enunciated by our Founding Fathers. Today however, in *Puttaswamy (supra)*, our Supreme Court has recognised privacy as a fundamental right, while qualifying it to say that the right to privacy is not absolute but is subject to exceptions, limitations and contours; and must be placed in the context of other rights and values. However, even at the time of *M.P. Sharma (supra)* and *Pooran Mal (supra)*, Articles 14, 19(1)(f), 19(1)(g), 20(3) and 31, under which these cases arose, were very much in Part-III of the Constitution dealing with fundamental rights; and yet the Supreme Court opined that merely because a search or seizure was illegally conducted and may amount to breach of a fundamental right, that would not make the search or seizure invalid in law. Applying the same principle, this court is of the view that although today, privacy is recognised as a fundamental right, that alone would not make evidence collected in breach of that right, inadmissible. Muchless would it negate the specific statutory dispensation contained in section 14 of the Family Courts Act, which says that evidence would be admissible, whether or not the same is otherwise relevant or admissible under the Evidence Act.

23. While a litigating party certainly has a right to privacy, that right must yield to the right of an opposing party to bring evidence it considers relevant to court, to prove its case. It is a critical part of the hallowed concept of fair trial that a litigating party gets a fair chance to bring relevant evidence before court. It is important to appreciate that while the right to privacy is essentially a personal right, the right to a fair trial has wider ramifications and impacts public justice, which is a larger cause. The cause of public justice would suffer if the opportunity of fair trial is denied by shutting-out evidence that a litigating party may wish to lead at the very threshold.

24. Since no fundamental right under our Constitution is absolute, in the event of conflict between two fundamental rights, as in this case, a contest between the right to privacy and the right to fair trial, both of which arise under the expansive Article 21, the right to privacy may have to yield to the right to fair trial. Reference in this regard may be made to the observations of a 5-Judge Constitution Bench decision of our Supreme Court in *Sahara*



India Real Estate Corporation Limited v. Securities and Exchange Board of India²⁵, where the court observes thus:

“..... It must not be forgotten that no single value, no matter exalted, can bear the full burden of upholding a democratic system of government. Underlying our constitutional system are a number of important values, all of which help to guarantee our liberties, but in ways which sometimes conflict. Under of Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against other important, and often competing, values. This process of definition, qualification and balancing is as much required with respect to the value of freedom of expression as it is for other values. Consequently, free speech, in appropriate cases, has got to correlate with fair trial. It also follows that in an appropriate case one right (say freedom of expression) may have to yield to the other right like right to a fair trial. Further, even Articles 14 and 21 are subject to the test of reasonableness after the judgment of this Court in *Maneka Gandhi v. Union of India*.”

19. In the case of **Joseph Shine Vs. Union of India (2019) 3 SCC 39**, the Supreme Court emphasized that freedom to have a consensual sexual relationship outside marriage by a married person does not warrant protection under Article 21 of the Constitution of India. Thus, it is no more *res-integra* that the right to privacy is not an absolute right and must yield to the right to fair trial.

20. The next issue therefore for determination in the present petition is as to whether the petitioner has been able to make out a prima facie case and whether the information regarding the mobile call records is relevant and would fall within the ambit of Section 14 of the Family Courts Act, which provides that the Family Court may receive as evidence any report, statement, document, 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.

21. The photographs lifted from the Instagram merely show friendly relations between the families of petitioner and respondent No. 2. At best, they also prima facie show that they used to meet frequently. However, the screen-shots of the WhatsApp conversations do show that the relationship between petitioner and respondent No. 1 was not very cordial and there were some exchange of words on account of the reasons that respondent wanted to have a tattoo of "S", which the petitioner suspects to be the first letter of the name of respondent No. 2. The transcript of video (Annexure P-12) dated 13.12.2022, forwarded by respondent No. 1 to the petitioner, would show that respondent No. 1 is seeking apology for her mistakes.

22. Adultery is committed in darkness and secrecy and therefore it is not easy to fetch direct proof of adultery. Section 14 of the Family Courts Act permits the Court to receive any evidence which may assist it to effectively deal with the dispute irrespective of whether the said evidence is relevant or admissible under the Indian Evidence Act. Since the divorce petition is on the ground of adultery, the petitioner wants to show the proximity of respondents through a long duration call and that too exchanged during odd hours.

23. At this stage, the Court has to take only a prima facie view not to pre-judge the case. Whether or not the call logs would be of any help in corroborating the allegation of adultery is not for the Court to



consider at this juncture. If the evidence of call detail records is ultimately not found to be satisfactory or sufficient for concluding the finding of adultery, the Family Court would be free to reject the same at the time of ultimate analysis of the case.

24. Since petitioner wants to make out a case of adultery from mobile call logs, conduct and other behavioral patterns, it would not be in the interest of justice to prevent such evidence being brought before the Family Court. The call data record is in possession of mobile service provider and petitioner cannot lay his hands on said record without assistance of the Court. The record may get destroyed with passage of time in terms of policy of Telecom Regulatory Authority of India (TRAI) and may not be available by the time, the case reaches the stage of evidence, and thus needs to be preserved. Therefore, the learned Family Court ought not to have brushed aside the request of petitioner-husband for preservation and summoning of the record. That being so, I am unable to sustain the impugned order passed by the learned Family Court under Order 16 Rule 6 CPC.

25. Petition is allowed with direction that the call detail records of the mobile phones of respondent No.1 and her mother for the last two years be preserved and the same be produced before the learned Family Court in a sealed cover. However, court finds no need for issuing directions for preserving the call detail records of the mobile phone number which stands in the name of father of respondent No. 2,



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inasmuch as, the call detail records of the mobile phone of the petitioner and her mother would serve the purpose.

RAVINDER DUDEJA, J.

FEBRUARY 28, 2025

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