



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2112 of 2022

Aasha Lata Soni W/o Shri Durgesh Soni, Aged About 38 Years Present R/o House Of Shri Hemlal Swarnkar, Imlipara, Ward No. 02, Near Rathor Aata Chakki, Mahasamund, District Mahasamund (Chhattisgarh), District : Mahasamund, Chhattisgarh. ---- **Petitioner**

Versus

Durgesh Soni S/o Shri Chhabilal Soni, Aged About 44 Years Constable, Grp-285 R/o Danteshwari Vihar Colony, Bhatagaon, Raipur, District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh.

---- **Respondent**

(Cause Title is taken from Case Information System)

For Petitioner : Mr. Vaibhav A. Goverdhan, Advocate

For Respondent : Mr. T. K. Jha, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

05.10.2023

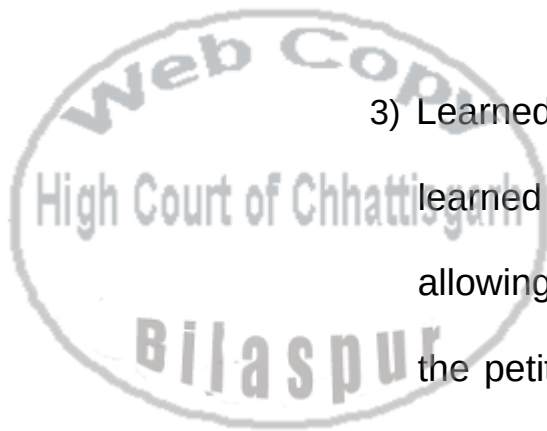
- 1) The petitioner has challenged the order dated 21.10.2021 passed by the learned Family Court, Mahasamund, District Mahasamund, Chhattisgarh in Miscellaneous Criminal Case No.F-118/2019, whereby the application filed by respondent under Section 311 of the CrPC to summon the witness for further cross-examination has been allowed.
- 2) The application under Section 125 of the CrPC was moved by the petitioner for the grant of maintenance and the same is pending before the concerned Family Court since 2019. The petitioner led her evidence, thereafter, the case was



fixed for examination of the witnesses and production of documents. Respondent/husband moved an application under Section 311 of the CrPC along with certificate under Section 65-B of the Indian Evidence Act for re-examination of the petitioner on the ground that certain conversation was recorded on the mobile phone and he wants to cross-examine the petitioner confronting with the conversation recorded on the mobile, and the learned trial Court vide order dated 21.10.2021 allowed the said application.

3) Learned counsel for the petitioner would submit that the learned Court below has committed an error of law by allowing the application as it infringes the right of privacy of the petitioner and without her knowledge conversation was recorded by respondent and the same cannot be used against her. He has placed reliance on the judgments passed by the Hon'ble Supreme Court in the matters of **R. M. Malkani v. State of Maharashtra** reported in **AIR 1973 SC 157** and **Mr. 'X' v. Hospital 'Z'** reported in **AIR 1999 SC 495**, and the judgment passed by the High Court of Madhya Pradesh in the matter of **Anurima alias Abha Mehta v. Sunil Mehta** reported in **AIR 2016 Madhya Pradesh 112**.

4) On the other hand, learned counsel for the respondent would submit that respondent/husband wanted to produce





certain evidence to prove some allegations against the petitioner. He has the right to confront the petitioner with the conversation which was recorded on his mobile phone. He would further submit that learned Family Court has rightly allowed the application.

5) I have heard learned counsel for the parties and perused the documents.

6) In the proceeding under Section 125 of the CrPC after examination of the petitioner, an application moved by the respondent under Section 311 of the CrPC for re-examination of the petitioner/wife was allowed by the learned Family Court on the ground that certain conversation was recorded by the respondent on his mobile and he wants to prove the same against the petitioner, therefore, the piece of the evidence is necessary for just decision of the case.

7) The Hon'ble Supreme Court in the matter of **R.M. Malkani** (supra) in para-30 held as under:-

"30. There is no scope for holding that the appellant was made to incriminate himself. At the time of the conversation there was no case against the appellant. He was not compelled to speak or confess. Article 21 was invoked by submitting that the privacy of the appellants conversation was invaded. Article 21 contemplates procedure established by law with regard to deprivation of life or personal liberty. The



telephonic conversation of an innocent citizen will be protected by Courts against wrongful or high handed interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. It must not be understood that the Courts will tolerate safeguards for the protection of the citizen to be imperiled by permitting the police to proceed by unlawful or irregular methods. In the present case there is no unlawful or irregular method in obtaining the tape recording of the conversation."

8) While dealing with a similar issue it was held in the matter of

People's Union for Civil Liberties v. Union of India

(1997) 1 SCC 301 in para 18 as under:-

"18. The right to privacy-by itself-has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of ones home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern mans life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a mans private life. Right to privacy would certainly include telephone-conversation in the privacy of ones home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."

9) Thereafter, the Hon'ble Supreme Court in the matter of **Mr.**

'X' (supra), held in para 27 and 28 as under:-

"27. Right of Privacy may, apart from contract, also arise out of a particular specific relationship which may be commercial, matrimonial, or even political. As already discussed above, doctor-patient relationship, though basically commercial, is, professionally, a matter of confidence and, therefore, doctors are morally and ethically bound to maintain confidentiality. In such a situation, public disclosure of even true private facts may amount to an invasion of the right of privacy which may sometimes lead to the clash of one persons "right to be let alone" with another persons right to be





informed.

28. Disclosure of even true private facts has the tendency to disturb a persons tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder of protection of health or morals or protection of rights and freedom of others.”

- 10) The High Court of Madhya Pradesh (Indore Bench) in the matter of **Arunima @ Abha Mehta** (supra), reported in **AIR 2016 MP 112** has observed in para -6 and 7 as under:-



“6. On considering the above submissions and the impugned order, I find that the sole question that arises in consideration is whether the tapes produced by the husband are admissible evidence? Admittedly, the conversation was recorded without the knowledge of the wife, behind her back, and is definitely an infringement of her right to privacy. Besides, it is violative of article 11 & 21 of the Constitution of India and has rightly pointed out by the Counsel for the petitioner/wife, that interception in the recording conversation is permitted only under the circumstances. Besides, there is also penalty under section 72 of the Information Technology Act and it could not be used as instrument to create evidence of such nature. The cases cited by the Counsel for the respondent are not applicable in the present context and are of no use to the respondent.

7. I find that to say anything beyond the aforesaid would affect the merits of the case and hence it is held that impugned orders dated 10.07.2014 are contrary to the provisions of law and are hereby set-aside. The trial Court, however, may continue in accordance with the provisions of law. The tapes, however, cannot be admitted in evidence but it may be kept on record.”

- 11) Now coming to the facts of the present case in the light of aforesaid discussed judgments, it appears that the respondent has recorded the conversation of the petitioner



without her knowledge behind her back which amounts to violation of her right to privacy and also the right of the petitioner guaranteed under Article 21 of the Constitution of India. Further, the Right of Privacy is an essential component of right to life envisaged by Article 21 of the Constitution, therefore, in the opinion of this Court, the learned Family Court has committed an error of law in allowing the application under Section 311 of the CrPC along with the certificate issued under Section 65 of the Indian Evidence Act. Accordingly, the order passed by the learned Family Court on 21.10.2021 in Case No. F-118/2019 is hereby set-aside.

12) Accordingly, the instant petition is **allowed**.

13) Interim order granted earlier stands vacated.

Sd/-
(Rakesh Mohan Pandey)
Judge