



2025:CGHC:31217

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 612 of 2025

1 - Chandrakant Mahilange S/o Shri Shishpal Mahilange Aged About 33 Years R/o Village- Chunkatta (Selud) Post And Police Station - Utai Tehsil - Patan District- Durg (C.G.)

... Petitioner

versus

1 - Smt. Nageshwari Gahne W/o Chandrakant Mahilange Aged About 29 Years R/o Near Jaitkhamb Village Sankra Police Station And Post-Somni Tehsil And District- Rajnandgaon (C.G.)

---- Respondent

For Petitioner : Shri Aman Tamrakar, Advocate.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

08.07.2025

1. The petitioner has challenged the order dated 27.6.2024 passed by the learned First Additional Principal Judge, Family Court, Durg in Case No. 423 of 2023, whereby the application moved by the petitioner seeking a direction to produce call detail records of the cellphone of his wife has been rejected.
2. The facts of the present case are that the parties were married off on 4.7.2022 according to the Hindu rites and rituals at village



Sankara, Police Station Somni, Tehsil and District Rajnandgaon. The petitioner/husband filed a petition for dissolution of marriage under Section 13(1)(1a) of the Hindu Marriage Act, 1955. It is alleged that the respondent/wife visited her parents' house 15 days after the marriage and soon thereafter her behaviour changed drastically. It is further pleaded that the respondent misbehaved with the petitioner's mother and brother. It is stated that during the month of September and October, the respondent again went to her parental house and, when the petitioner approached her, she directly refused to accompany him.

3. The petitioner filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights on 7.10.2002. Thereafter, the respondent filed an application under Section 125 of Cr.P.C. on 14.10.2022 before the learned Family Court, Rajnandgaon and also instituted proceedings under the Domestic Violence Act against the petitioner's mother, father and brother. A complaint was also lodged by the respondent before Mahila Thana, Rajnandgaon against her in-laws. Subsequently, the petitioner filed a petition for the dissolution of marriage on the grounds of cruelty. The respondent/wife filed her reply and denied the averments made in the divorce petition. The petitioner moved an application before the Senior Superintendent of Police, Durg on 24.1.2024 making a request to provide call detail records (CDR) of



the respondent's mobile number on the ground that the petitioner doubted her character. A similar application was moved on 30.11.2023. Thereafter, on 12.10.2023, the petitioner moved an application before the learned Family Court seeking a direction to the authorities to provide the respondent's call detail records. The respondent filed a reply denying the allegations made in the said application. In the written arguments, the petitioner stated that the respondent used to talk to her brother-in-law (jija) for long hours. It was also alleged that there might be an illicit relationship between the respondent and her brother-in-law, and therefore, the call detail records are necessary for the adjudication of the case. Learned Family Court vide order dated 27.6.2024, rejected the said application.

4. Learned counsel for the petitioner would argue that there were frequent phone calls between the respondent and her brother-in-law, suggesting a possible illicit relationship. He would further submit that to substantiate the allegation of adultery, the production of call detail records is essential. He would also submit that the application was initially moved before the police authorities but no action was taken therefore a subsequent application was moved before the learned Family Court and the same has been rejected without assigning sufficient reasons. He would pray that the impugned order passed by the learned Family



Court may be set aside and the application may be allowed.

5. I have heard learned counsel for the petitioner at length and perused the documents present on the record.
6. A perusal of the divorce petition filed by the petitioner would show that it has been filed solely on the ground of cruelty. No allegation with regard to adultery has been made in the entire petition. For the first time, such an allegation was made in the application dated 24.1.2024 addressed to the Senior Superintendent of Police, Durg and it was reiterated in the subsequent application dated 30.11.2023. The statements of the petitioner and witnesses were recorded by the police authorities where similar allegations were levelled. When the call detail records were not provided by the police authorities, the petitioner moved an application before the learned Family Court seeking a similar prayer on 12.10.2023. In the said application, the petitioner has simply sought a direction to the authorities to provide the CDR of the mobile number of the respondent and in the said application, there is no allegation with regard to adultery.
7. The impugned order reflects that, for the first time, allegations regarding adultery were made in the written arguments filed by the petitioner, wherein it was stated that the respondent used to talk to her brother-in-law for hours and there might be illicit relationship between them. However, the application for the production of call



detail records does not disclose the relevancy of CDR in specific terms. It is a settled legal position that the call detail records of a person cannot be summoned by the Courts on the basis of vague allegations or suspicion.

8. The Hon'ble Supreme Court in the matter of ***K.S. Puttaswamy and Another vs. Union of India and Others, (2017) 10 SCC 1***, while dealing with the issue of the right to privacy held it to be a fundamental right enshrined in Article 21 of the Constitution and forming an intrinsic part of the freedoms guaranteed in Part III. In paragraph 323, the Hon'ble Supreme Court has held that privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. The relevant paragraph 323 is reproduced herein-below:-

“323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspect of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the



dignity of the human being.”

9. 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."

10. Thereafter, the Hon'ble Supreme Court in the matter of **Mr. 'X' v.**

Hospital 'Z', AIR 1999 SC 495, 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.”

11. Now coming to the facts of the present case, it is evident that there is no allegation of adultery in the petition filed by the petitioner for the dissolution of marriage. Such allegations have been made for the first time in the written arguments. Moreover, in the application moved by the petitioner seeking call detail records, no allegations were made with regard to adultery.
12. As held by the Hon’ble Supreme Court, the right to privacy includes the preservation of personal intimacies, the sanctity of marriage and sexual orientation, therefore, the learned Family Court rightly rejected the application moved by the petitioner. The right to engage in mobile conversations in the privacy of one’s home or office without interference is certainly protected under the right to privacy. Such conversations are often intimate and confidential in nature and constitute an important facet of a person’s private life.
13. In our Constitution, both husbands and wives have a fundamental right to privacy within their marriage and this right is protected



under Article 21 of the Constitution. This means neither spouse can arbitrarily infringe upon the other's personal space, autonomy and communication. While marital relationships involve shared lives it does not negate individual privacy rights. Marriage does not grant the husband automatic access to the wife's private information, communications and personal belongings. The husband cannot compel the wife to share her passwords of the cellphone or bank account and such an act would amount to a violation of privacy and potentially domestic violence. There should be a balance between marital privacy and the need for transparency and at the same time trust in the relationship.

14. Allowing the application moved by the petitioner for the production of call detail records would lead to a violation of the respondent's right to privacy and the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.
15. Taking into consideration the above-discussed facts and the law laid down by the Hon'ble Supreme Court, in the above-mentioned judgments, I do not find any good ground to interfere with the order passed by the learned Family Court. Accordingly, the petition is devoid of merit and is hereby **dismissed**. No cost(s).

Sd/-

(Rakesh Mohan Pandey)
Judge

Nimmi



HEADNOTE

“Privacy is a constitutionally protected right that primarily arises from the guarantee of life and personal liberty under Article 21 of the Constitution of India. It encompasses the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Any intrusion into this right would amount to a violation of the fundamental rights of the individual.”

"निजता एक संवैधानिक रूप से संरक्षित अधिकार है, जो मुख्यतः भारतीय संविधान के अनुच्छेद 21 के अंतर्गत प्राण एवं दैहिक स्वतंत्रता की गारंटी से उत्पन्न होता है। इसमें व्यक्तिगत अंतरंगता, पारिवारिक जीवन की पवित्रता, विवाह, संतानोत्पत्ति, गृह एवं लैंगिक अभिविन्यास का संरक्षण शामिल है। इस अधिकार में किसी भी प्रकार का अनाहूत हस्तक्षेप व्यक्ति के मौलिक अधिकारों का उल्लंघन होगा।"