AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order reserved on 25.11.2025
Order pronounced on 11.02.2026
Uploaded on 11.02.2026

WP227 No. 158 of 2025

Smt. Manjari Tiwari (Dubey) W/o Vaibhav Dubey, aged about 37 years R/o Through father Shri Maheshchand Tiwari, House No. 873, Khati Baba, Near Shirwood College, Jhansi, Distt. Jhansi (U.P.)

... Petitioner

versus

Vaibhav Dubey S/o Shri Ram Prakash Dubey, aged about 37 years R/o House No. 03, Natthani Apartment, New Shanti Nagar, Raipur (C.G.)

... Respondent

For Petitioner	:	Shri Hemant Kesharwani and Shri Swapnil Keshari, Advocates
For Respondent	:	Shri B.P. Sharma and Shri Pushp Gupta, Advocates

(Hon'ble Shri Justice Sachin Singh Rajput)

C A V Order

For convenience, the parties in this Writ Petition shall be referred to as the petitioner/wife and the respondent/husband.

2. Challenge in this petition is to the order dated 12.12.2024 passed by the First Additional Principal Judge, Family Court, Raipur, District Raipur, CG (hereinafter referred to as 'Family Court') in Case No. 718/2023 by which the

application filed by respondent/husband herein under Order VII Rule 14 CPC has been allowed.

3. **Facts of the case in short:** The respondent/husband filed an application seeking a decree of divorce against the petitioner/wife under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act of 1955"). During the pendency of the said divorce application, the respondent/husband filed another application under Order VII Rule 14 CPC for taking the mobile recording of the conversation and Whatsapp chat made between the petitioner/wife, her relatives and other persons on record. Application under Order VII Rule 14 CPC was duly replied to by the petitioner/wife raising an objection that the respondent/husband was a man of suspicious mindset and that the call recording and the Whatsapp chat sought to be brought on record by him were obtained through illegal means by hacking her mobile, and therefore, prayed for rejection of that application. Learned Family Court however allowed the application of the respondent/husband by the order dated 12.12.2024 holding that the documents sought to be brought on record may be helpful in deciding the application for divorce. It is this order which is under challenge in this petition.

4. Learned counsel for the petitioner/wife submits that the order dated 12.12.2024 (Annexure P-1) which is under challenge in this petition is illegal and without any basis as the documents sought to be brought on record by the respondent/husband were obtained by playing fraud and without the consent of the petitioner/wife. He submits that the respondent/husband by obtainment of such documents has invaded upon the privacy of the petitioner/wife and thus transgressed her fundamental right of life and personal liberty as enshrined under Article 21 of the Constitution of India. He

submits that the Family Court has fallen in serious error of law in not considering the fact that the documents obtained and sought to be produced in the pending divorce case by the respondent/husband are not admissible in evidence. In support of his submissions, counsel for the petitioner placed reliance on the decision of this Court in the mater of **Aasha Lata Soni v. Durgesh Soni** rendered on 05.10.2023 in **CRMP No. 2112 of 2022**.

5. On the other hand, learned counsel for the respondent/husband supports the order impugned to be just and proper and submits that after the application filed by the respondent/husband under Order VII Rule 14 CPC being allowed, the documents sought to be brought on record have been exhibited without there being any protest or objection from the side of petitioner/wife as to the admissibility of the same, and therefore it cannot be said at this stage the Family Court has committed an error of law and jurisdiction in passing the order impugned. He submits that merely allowing the application filed by the respondent/husband under Order VII Rule 14 CPC cannot be said to cause any prejudice to the interest of the petitioner/wife, and therefore, the petition is liable to be dismissed *in limine*. Learned counsel for the respondent/husband further submits that the order impugned has just allowed the respondent/husband to bring certain electronic documents on record having passed the test of Section 65-B of the Indian Evidence Act, 1872 (for short “Evidence Act”) which does not mean they have been considered or proved and the burden to prove the same would still lie on the respondent/husband at the appropriate stage. It is submitted that from the certificate given by respondent under Section 65-B of the Evidence Act it is manifestly clear that the photographs, conversations and Whatsapp chats sought to be brought on record are in its original form without any tempering therewith. According to the counsel for the respondent/husband, merely

because the electronic documents were obtained by the respondent/husband without the consent of the petitioner/wife cannot be construed to be an invasion on her privacy. In support of his submissions, learned counsel for the respondent/husband placed reliance on the decisions of the Supreme Court in the matter of **M.C. Verghese v. T.J. Poonan** reported in **(1969) 1 SCC 37** and in the matter of **Vibhor Garg v. Neha** reported in **2025 INSC 829**.

6. Heard counsel for the parties and perused the documents on record including the order impugned.

7. Before harping on the analysis of the merit aspect of the case in hand, this Court thinks it necessary to take note of the provisions of Sections 14 and 20 of the Family Courts Act, 1984 (for short "Act of 1984") and Section 122 of the Evidence Act. They are reproduced as under for ready reference:-

> **"Section 14 of the Act of 1984. Application of Evidence Act,** - A Family Court may receive as evidence any report, statement, documents, 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 (1 of 1872).
>
> **"Section 20 of the Act of 1984. Act to have overriding effect**.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."
>
> **"Section 122 of Evidence Act. Communication during marriage.**- No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or

proceedings in which one married person is prosecuted for any crime committed against the other."

8. Section 14 of the Act of 1984 provides for an exception to the general rule of evidence regarding admissibility of any report, statements, documents, information or matter, which the Family Court considers necessary to assist itself to deal effectually with a dispute. It appears that such a provision is made keeping in view the nature of cases which are dealt with by the Family Courts. It is worthwhile to mention here that Section 14 of the Act of 1984 is a special legislation by virtue of which, the strict principles of admissibility of evidence as provided under the Evidence Act have been diluted. Now if a cumulative reading of Sections 14 and 20 of the Act of 1984 is made, restricted application of the provisions of the Evidence Act qua the documentary evidence which includes electronic evidence, whether or not the same is otherwise admissible, appears at the surface. The only guiding factor for a Family Court is that in its opinion such evidence would assist it to deal with the matrimonial dispute effectually and effectively. These two provisions further indicate that it would be within the absolute power and authority of the Family Court either to accept or discard any particular evidence in finally adjudicating the matrimonial dispute. To say that a party would be precluded from placing such documents on record and/or such documents can be refused to be exhibited unless they are proved as per Evidence Act, seems to run contrary to the object of Section 14 of the Act of 1984.

9. Before referring to the judicial pronouncements dealing with the scope of Section 14 of the Act of 1984 and Section 122 of the Evidence Act it appears profitable to turn to the argument of learned counsel for the

petitioner/wife that the evidence produced by the respondent/husband has not been obtained by legal means and that the method adopted by him in so doing violates her right of privacy enshrined under Article 21 of the Constitution of India. Dealing with the admissibility of the tape recorded conversation obtained through illegal means in a criminal case involving the offences punishable under Sections 161 and 385 of the Indian Penal Code in the matter of **R.M. Malkani v. State of Maharashtra** reported in **(1973) 1 SCC 471** the Supreme Court has held as under:-

> "24. It was said by counsel for the appellant that the tape recorded conversation was obtained by illegal means. The illegality was said to be contravention of Section 25 of the Indian Telegraph Act. There is no violation of Section 25 of the Telagraph Act in the facts and circumstances of the present case. **There is warrant for proposition that even if evidence is illegally obtained it is admissible**. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See Jones v. Owen [(1870) 34 JP 759]. The Judicial Committee in uruma, Son of Kanju v.R. [1955 AC 197] dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches. The Judicial Committee held that the evidence was rightly admitted. The reason given was that if evidence was admissible it matters not how it was obtained. There is of course always a word of caution. It is that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the

> accused. That caution is the golden rule in criminal jurisprudence."
>
> "25. This Court in Magraj Patodia v. R.K. Birla [AIR 1971 SC 1295] dealt with the admissibility in evidence of two files containing numerous documents produced on behalf of the election petitioner. Those files contained correspondence relating to the election of Respondent 1. The correspondence was between Respondent 1 the elected candidate and various other persons. The witness who produced the file said that Respondent 1 handed over the file to him for safe custody. The candidate had apprehended raid at his residence in connection with the evasion of taxes or duties. The version of the witness as to how he came to know about the file was not believed by this Court. **This Court said that a document which was procured by improper or even by illegal means could not bar its admissibility provided its relevance and genuineness were proved."**

The Supreme Court thus allowed the material obtained by impermissible or illegal means to be admitted in evidence. It is pertinent to mention here that the aforesaid case was the one where strict rules of evidence were applicable and there was no provision available like Section 14 of the Act of 1984. This judgment was subsequently followed by the Supreme Court in the matter of **State (NCT of Delhi) v. Navjot Sandhu** reported in **(2005) 11 SCC 600**.

10. Dealing with a case involving an issue whether a party to a divorce proceeding can be compelled to undergo medical examination in order to ascertain his/her mental condition, the Supreme Court in the matter of **Sharda v. Dharampal** reported in **(2003) 4 SCC 493** has held as under:-

> "76. The matter may be considered from another angle. In all such matrimonial cases where divorce is sought, say on the ground of impotency, schizophrenia etc. normally without there being medical examination, it would be difficult to arrive at a

conclusion as to whether the allegation made by a spouse against the other spouse seeking divorce on such a ground, is correct or not. In order to substantiate such allegation, the petitioner would always insist on medical examination. If the respondent avoids such medical examination on the ground that it violates his/her right to privacy or for that matter right to personal liberty as enshrined under Article 21 of the Constitution of India, then it may in most of such cases become impossible to arrive at a conclusion. It may render the very grounds on which divorce is permissible nugatory. **Therefore, when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as an absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash. In matters of the aforesaid nature where the legislature has conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent.** Thus the court has to reconcile these competing interests by balancing the evidence interests involved.

77. If for arriving at the satisfaction of the court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the court passes an appropriate order, the question of such action being violative of Article 21 of the Constitution of India would not arise. **The court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected."**

11. It is relevant to note here that though at the time when the judicial pronouncement in *Sharda v. Dharampal (supra)* came from the Supreme Court in the year 2003, right to privacy was not recognized as a fundamental

right yet having regard to Article 21 of the Constitution of India the Courts were made to see that the right of a person to defend himself is not put to jeopardy. However, as a subsequent development in the matter of **K.S. Puttaswamy v. Union of India** reported in **(2017) 10 SCC 1** the right to privacy was given the recognition of fundamental right expanding the ambit of Article 21 of the Constitution of India where a 9-judge Constitution Bench has held as under:

> "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."

12. Thus if a conjoint reading of the judicial pronouncements of the Supreme Court in ***Sharda and Puttaswami (supra)*** is made, it becomes clear as a broad-day-light that though the right to privacy has been given the recognition of fundamental right yet it is not absolute.

13. Having thus seen the aforesaid law enunciated by the Supreme court it becomes loud and clear that even though right to privacy has been recognized as a fundamental right, the same is not absolute and is subject to exceptions and limitations and reasonable restrictions. The litigating party

certainly has a right to privacy but 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 settled concept of fair trial that a litigating party gets a fair chance to bring relevant evidence before a Court of law. It is pertinent to note that while the right to privacy is essentially a personal right, the right to 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. The specific statutory provision contained in Section 14 of Family Courts Act, which says that evidence would be admissible, whether or not the same is otherwise admissible under Evidence Act.

14. If it were to be held that evidence sought to be adduced before a Family Court should be excluded based on an objection of breach of privacy right then the provisions of Section 14 would be rendered nugatory and dead-letter. It is to be borne in mind that Family Courts have been established to deal with matters that are essentially sensitive, personal disputes relating to dissolution of marriage, restitution of conjugal rights, legitimacy of children, guardianship, custody, and access to minors; which matters, by the very nature of the relationship from which they arise, involve issues that are private, personal and involve intimacies. It is easily foreseeable therefore, that in most cases that come before the Family Court, the evidence sought to be marshaled would relate to the private affairs of the litigating parties. If Section 14 is held not to apply in its full expanse to evidence that impinges on a person's right to privacy, then not only of Section 14 but the very object of constitution of Family Courts may be rendered meaningless. Therefore, the test of admissibility would only be the relevance. Accordingly, fundamental considerations of fair trial and public justice would warrant that evidence be

received if it is relevant, regardless of how it is collected.

15. Recently in the matter of **Vibhor Garg v. Neha reported** in **2025 INSC 829** it has been categorically held by the Supreme Court that Section 122 of the Evidence Act does not concern itself with right to privacy of the spouses which is evident on a reading of the Section and on discerning its plain meaning. Relevant portion of the said judgment is reproduced as under:-

> "12.6 Clearly therefore, the founding rationale for Section 122 of the said Act, as has been recognised by the Law Commission and subsequently by certain High Courts, was to protect the sanctity of marriage and not the right to privacy of the individuals involved. Therefore, in adjudicating situations where the privilege under Section 122 of the Act is not granted, as in suits between a couple (an exception provided for in Section 122 itself), the right to privacy is not a relevant consideration, since it is not the rationale under which spousal communications were deemed privileged under Section 122 of the Act."

16. Thus in view of the aforesaid factual and legal discussion, this Court is of the view that the order impugned allowing the application of the respondent/husband under Order VII Rule 14 CPC permitting him to bring the electronic documents on record, is fully justified and does not need any interference by this Court. Accordingly, the petition is without any substance and therefore it is hereby dismissed. Order impugned is affirmed.

Sd/-

(**Sachin Singh Rajput)**

Judge

Jyotishi/Ashish