

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.13165 OF 2019 (GM -FC)

BETWEEN:

... PETITIONER

(BY SRI MANMOHAN P.N., ADVOCATE)

AND:

1.

2.

... RESPONDENTS

(BY SRI N.GOWTHAM RAGHUNATH, ADVOCATE FOR R1;
SRI ARUN GOVINDRAJ, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD:23.2.2019 ON IA NO.8 IN M.C. NO.556/2018 PASSED BY THE V ADDL PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE PRODUCED AS ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 23-02-2019 passed by the V Additional Principal Judge, Family Court, Bangalore on I.A.No.8 in M.C.No.556 of 2018 whereby the Court permits summoning of mobile tower record details of the mobile number of the petitioner.

2. Heard Sri P.N.Manmohan, learned counsel appearing for the petitioner, Sri N.Gowtham Raghunath, learned counsel appearing for respondent No.1 and

Sri Arun Govindraj, learned counsel appearing for respondent No.2.

3. Brief facts that lead the petitioner to this Court, as borne out from the pleadings, are as follows:-

The 1st respondent and the 2nd respondent are wife and husband. After their marriage, the relationship turning sore, the wife files a petition before the Family Court in M.C.No.556 of 2018 seeking annulment of marriage with the 2nd respondent on account of cruelty. Merit of the claim of the wife or the defence of the 2nd respondent/husband is not the issue in the present *lis*. In the said proceedings, the husband files an application seeking call record details of the wife and her alleged pararnour which the court allows by an order dated 24-11-2018. That is challenged before this Court by the wife in Writ Petition No. 1338 of 2019. In the said petition it was the contention of the wife that none of the defense that the wife had let in *qua* the said interlocutory application is considered by the concerned Court. This Court, accepting

the said contention, sets aside the order and directed the wife to prefer an application seeking review of the order passed allowing I.A.No.5 of 2018. It is then the application in I.A.No.8 was filed seeking review of the order dated 24.11.2018. Answering the said application for review, the concerned Court refused to allow the said application but grants summoning of tower location details only from the concerned authority i.e., the mobile operator. The tower location of the wife and the petitioner is sought to be produced before the concerned Court. The petitioner is the alleged paramour of the wife of the 2nd respondent as alleged by the husband. The said paramour is before this Court calling in question the said order on the ground that he is a third party to the proceedings. This Court, entertaining the petition, granted an interim order as prayed for, by its order dated 05-04-2019. The said interim order of stay is in operation as on date.

4. The learned counsel appearing for the petitioner would contend with vehemence that he is a third party to

the proceedings and his call record details or tower details which is one and the same, is directed to be produced by the Court through the Manager of Mobile operator. It violates his right to privacy, as not being a party to the proceedings his call record details cannot be sought to be summoned by the husband.

5. The learned counsel appearing for the 2nd respondent would submit that the 2nd respondent is entitled to place his defence in the proceedings and, therefore, the Court has rightly summoned call record details of the petitioner as the wife has extra-marital relationship with the petitioner and would place reliance upon the judgment of the Apex Court in the case of **HIRACHAND SRINIVAS MANAGAONKAR v. SUNANDA - (2001) 4 SCC 125** and the judgment of the Delhi High Court in the case of **DEEPTI KAPUR v. KUNAL JULKA - 2020 SCC OnLine Del 672**. He would further contend that the wife has not even challenged the said order, the petitioner has no locus to challenge, if the wife has not

challenged it. Therefore, the order is required to be confirmed and the details as sought for are to be summoned. It is his emphatic submission that he needs the wife, there is a child and he cannot let go his wife and, therefore, he wants to prove adultery against the wife and retain her.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. There are three protagonists to the *lis* – one the husband, other the wife and third the petitioner, alleged paramour of the wife. The husband and the wife have dispute between them and the wife alleging cruelty by the husband has preferred a matrimonial case in M.C.No.556 of 2018. The narration in the petition seeking annulment of marriage is to certain allegations against the husband. The said matter is pending consideration before the concerned Court. In the proceedings i.e., M.C.No.556 of 2018, an application is filed by the husband in I.A.No.5 of

2018 seeking call record details of the wife and that of the petitioner on the ground that the wife and the petitioner have an illicit relationship between them, which was the reason for the petition being filed by the wife alleging cruelty. It was his case in the application that there was no cruelty meted out whatsoever to the wife. It was only a ruse to get over the marriage and continue to live with the petitioner. This application was allowed, despite objections filed by the wife. The wife then calls in question that order which allowed the application in I.A.No.5 of 2018 in terms of its order dated 24.11.2018 before this Court in Writ Petition No.1338 of 2019. This Court, by its order dated 23-1-2019, allowed the petition by the following order:

"6. I have considered the submission made by both side.

*The Hon'ble Supreme Court in the case of **STATE OF MAHARASHTRA v. RAMDAS SHRINIVAS NAYAK & ANR** reported in **AIR 1982 SC 1249**, has held that if a particular contention raised by a party is not considered by the trial Court, then in such a situation the appropriate remedy for the aggrieved party is to seek review of the order.*

7. In view of the aforesaid enunciation of law by the Hon'ble Supreme Court and in the facts of the case, I deem it proper to dispose of this petition with

liberty that in case the petitioner files an application for review of the order dated 24-11-2018, within a period of one week from the date of receipt of certified copy of the order passed to-day, the Family Court shall decide the same by a speaking order, after affording an opportunity of hearing to the parties within a period of three weeks from the date of filing of such an application by the petitioner, before proceeding to implement the order dated 24-11-2018./

It is made clear that this Court has not expressed any opinion on the merits of the case.

*With the aforesaid liberty, the writ petition is **disposed of.**"*

This Court permitted the wife to prefer a review petition before the same Court seeking review of the order dated 24-11-2018. It is then the wife files detailed review application seeking review of the earlier order by way of filing I.A.No.8 of 2019. Objections were filed by the husband to the said review contending that mobile number and call record details were absolutely necessary to demonstrate illicit relationship between the wife and the petitioner which was coming in the way of a happy marriage to the husband and the wife which in fact had corrupted innocence and moral values of the minor child. Therefore, he wanted to prove the said point. The

concerned Court, by its order dated 23.02.2019, does something new. On a consideration of the review application and the objections filed to it, the concerned Court passed the following order:

*"18. As stated supra, the respondent/husband is not seeking for summoning of conversation through calls, SMS chats, **but only he is seeking the tower location details for adjudication of case in accordance with law. Therefore, if the tower location details are summoned, it will suffice justice. Hence in the light of the above, without going to the other aspects and on merits of the case, looking to the surrounding circumstances, the nature of pleadings, the allegations made against each other, the relief sought by the petitioner, in the interest of justice, this court do not hesitate to answer the point No.1 partly in the negative.***

19. Point No.2: For the reasons stated on Point No.1, this Court proceed to pass the following:

ORDER

I.A.No.VIII under Order 47 Rule 1 r/w Section 114 and 151 of CPC filed by the petitioner/wife is hereby dismissed partly.

*Consequently, instead of summoning the Regional Manager, Bharthi Airtel Limited to place the call details, conversation and SMS logs, **the respondent/husband is entitled to get tower location details only, from the concerned authority. Thus the Regional Manager, instead of appearing before the Court, can transmit the Tower Location details only with regard to the concerned phone numbers before the Court.***

Keeping the fact of relationship between the parties, there is no order as to costs.”
(Emphasis added)

The Court observes that the husband is not seeking summoning of conversation through calls, SMS chats but he is only seeking tower location details for adjudication of the case in accordance with law. Therefore, the reasoning of the concerned Court is that it would not violate privacy. It directs the Regional Manager, Bharthi Airtel Limited to place the tower location details only. Of whom is the question – of the wife or the petitioner herein. The petitioner is a third party as he is not a party to the proceedings. Therefore, he rushes to this Court contending that his right to privacy is violated by the order.

8. The issue would now be whether the order would violate the right to privacy of the petitioner. As stated earlier, the petitioner is not a party to the proceedings. The allegation of the husband is that the wife has illicit relationship with the petitioner. The petition for divorce is not filed by the husband. It is the wife who initiates

Matrimonial Case No.556 of 2018 against the husband seeking annulment of marriage on the ground of cruelty.

9. The submission of the learned counsel appearing for the 2nd respondent is that he wants his wife, there is a child born from the wedlock and child's future is in jeopardy due to the act of the wife in having relationship with the petitioner. If this was the intention of the husband, he would not have waited for four long years as on date, in preferring a petition seeking restitution of conjugal rights. He wants to fight the matrimonial case instituted by the wife for divorce and does not want to file a case for restitution of conjugal rights. Therefore, the intention of the husband is only to prove alleged adultery on the part of the wife for which reason the tower details of the third party cannot be permitted to be divulged. It would undoubtedly violate the right to privacy of the petitioner who is not a party, who is not put on notice and whose defence is not permitted to be projected even. Therefore, permitting tower details of the petitioner would

be contrary to law without him being in the know of any proceedings between the husband and the wife, but only on an allegation of the husband that the wife is in illicit relationship with the petitioner.

10. Insofar as the judgments relied on by the learned counsel appearing for the 2nd respondent/husband are concerned, in the case of **HIRACHAND SRINIVAS MANAGAONKAR** (*supra*), the issue was whether the wife who had committed a wrong can take advantage of her own wrong. The learned counsel for the husband seeks to press this judgment into service for the reason, that the wife having had relationship with the petitioner has committed a wrong and if she has committed a wrong can she be permitted to take advantage of her own wrong. The judgment is inapplicable on the face of it. The facts of the case at hand and what is challenged before this Court has nothing to do with the findings in the judgment *supra*. The next judgment rendered by the High Court of Delhi in the case of **DEEPTI KAPUR** though refers to the judgment

in the case of **JUSTICE K.S.PUTTASWAMY**, holds that call details between the wife and her friend were necessary for a resolution of the dispute, and permits the same, would again be inapplicable to the facts of the case at hand. In the case therein the husband had clandestinely recorded conversation between the wife and her friend in which the husband had alleged that she has spoken highly derogatory about the family of the husband. This was permitted to be placed on record as electronic evidence, notwithstanding the fact that the conversation was with the friend, a third party. The inapplicability of the said case, to the case at hand is that the conversation between the wife and her friend had already been recorded by the husband and it was a relevant fact to be brought in, in a case instituted by the husband seeking annulment of marriage, on the ground that the wife and her friend have been speaking in the manner which would not be conducive to continue the family relationship. Therefore, the said production of the compact disc was permitted as it was relevant for divorce proceedings. The said judgment

is again, on the face of it, inapplicable to the facts of the case.

11. In the case at hand, tower details of the petitioner is permitted to be taken and produced. It is for the first time, the petitioner comes into the picture merely on an allegation of illicit relationship. He is a third party to these proceedings. Third party's privacy cannot be permitted to be violated on the specious plea of the husband that he wants to prove illicit relationship between the petitioner and the wife. It is trite that right to privacy is implicit in the right to life and liberty guaranteed to the citizens of the Country under Article 21 of the Constitution of India. It is a right to be 'let alone'. 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 right to privacy. Therefore, the order which directs tower details of the petitioner to be placed before the Court in a proceeding, which he is not even a party, undoubtedly violates informational privacy.

12. The acceptance of the order by the wife, by not challenging it as of now, would have no bearing on the right of the petitioner to seek quashment of the said order insofar as, it concerns him, as he is a third party. Wife, who is anyway party to the proceedings, has instituted divorce case, her acceptance or otherwise, cannot bind the petitioner. There is no warrant to permit tower details of the petitioner to be summoned or brought before the concerned Court to aid the plea of the husband who has not even filed any case.

13. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order dated 23.02.2019 passed by the V Additional Principal Judge, Family Court, Bengaluru on I.A.No.8 stands quashed.

**Sd/-
JUDGE**

bkp
CT:MJ