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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

**ON THE 29<sup>th</sup> OF AUGUST, 2023**

**MISC. PETITION No. 1300 of 2023**

**BETWEEN:-**

**SHRI ABHISHEK RANJAN S/O SHRI AVADHNATH  
CHAUBEY, AGED ABOUT 39 YEARS, OCCUPATION:  
CONSULTANT PLOT NO. 70 PIPRAKALAN BEHIND BLOK  
COLONY GARHWA (JHARKHAND)**

**.....PETITIONER**

***(BY SHRI ABHAY KESHARWANI - ADVOCATE)***

**AND**

**SHRI HEMLATA CHAUBEY W/O ABHISHEK RANJAN,  
AGED ABOUT 40 YEARS, 23-448 NEAR MUKKU DAIRY  
ARJUN NAGAR HUZUR REWA (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI JAGAT SINGH - ADVOCATE)***

*This petition coming on for admission this day, the court passed the following:*

**ORDER**

This Miscellaneous petition is filed by the petitioner being aggrieved of order dated 04.01.2023 passed by the learned Principal Judge, Family Court, Rewa refusing to accept secondary evidence in the form of conversation between husband and wife to prove the aspect of cruelty.

Shri Abhay Kesharwani, learned counsel for the petitioner places reliance on the judgment of Hon'ble Supreme Court in case of **Yusufalli Ismail Nagree Vs. State of Maharashtra (AIR 1968 SC 147)**, wherein Supreme Court referring to provisions contained in Sections 6, 8 and 7 of the Evidence

Act in relation to offence committed under Section 165-A of the Indian Penal Code held that conversation between accused and complainant was tape recorded. Use of tape recorder to record conversation between accused and complainant and keeping the mike concealed in outer room and tape recorder kept in a room then conversation was not hit by Section 162 and was admissible in evidence.

Similarly, reliance is placed on the judgment of High Court of Rajasthan in case of **Smt. Nirmala Vs. Ashu Ram, 1999 SCC OnLine Raj 173**, wherein it is held that conversation is a relevant fact and is admissible under Section 7 of the Evidence Act. The manner and mode of its proof and the use thereof in a trial is a matter of detail and it can be used for the purpose of confronting a witness with his earlier tape recorded statements, it may also be legitimately used for the purpose of shaking the credit of a witness.

Reliance is also placed on the judgment of High Court of Madras (Madurai Bench) in case of **Essaki Ammal @ Chitra Vs. Veerabhadra @ Kumar (212 SCC OnLine Mad 2093)**, it is held that husband seeking to produce Compact Disc containing recording of conversation of husband and wife over phone, wherein wife had used filthy and unparliamentary language against him. High Court of Madras held that a contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible in evidence as per Section 7 of 1872 Act.

Shri Jagat Singh, learned counsel appearing for the respondent wife places reliance on the judgment of **High Court of Punjab and Haryana at Chandigarh delivered on 12.11.2021 in C.R. No.1616 of 2020 (O & M) and C.R. No.2538 of 2020 (O & M)**. It is submitted that Section 14 of the Family Court Act has diluted the applicability of the provisions of the Indian

Evidence Act, 1872 and the technicalities and procedures otherwise followed by the Civil and Criminal Courts may not be applicable to proceedings before the Family Court.

After hearing learned counsel for the parties and going through the record, judgment of Hon'ble Supreme Court in **Yusufalli Esmail Nagree (supra)** is strictly in the domain of criminal jurisprudence. Similarly decision in case of **Smt. Nirmala (supra)** taking into consideration aspect of the provisions contained in the Family Court Act, 1984. In case of **Essaki Anmal Chitra (supra)**, it is held that use of tape recorded statement, proper identification of tapped voice a sine qua non for use of earlier tape recording, especially in cases where voice is denied by alleged maker. Again in this case, provisions of Section 14 of the Family Court Act were not taken into consideration.

However, in case of **Neha (supra)** High Court Punjab and Haryana at Chandigarh has dealt with the right to privacy as upheld by various judicial pronouncements including one in **People's Union for Civil Liberties Vs. Union of India, 1997(1) SCC 301**, wherein in para 18 it is held 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 one's 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 man's 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 man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's 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."

Thus, it is held that recording of telephonic conversation of the Wife without her knowledge is a clear cut infringement of her privacy.

High Court Punjab and Haryana at Chandigarh in case of **Dr. Tripat Deep Singh Vs. Dr. (Smt.) Paviter Kaur, 2018(3) RCR (Civil) 71** has held that conversations between husband and wife in daily routine cannot be made the basis of or considered for deciding a petition under Section 13 of the Act.

Madhya Pradesh High Court in **Anurima @ Abha Mehta Vs. Sunil Mehta s/o Chandmal, 2016(1) MPLJ 333** has held that if husband recorded conversation of wife with other person without her knowledge then it is an infringement of her right to privacy and is violative of Articles 19 and 21 of the Constitution of India. Tapes cannot be admitted in evidence. Impugned order of the Trial Court allowing application of husband to place C.D. on record as evidence liable to be set aside and quash.

In view of such decision of Madhya Pradesh High Court, when comprehensively the impugned order is looked at, then it is evident that there is no illegality in the same, inasmuch as, a conversation recorded without the permission of the wife and without her knowledge cannot be used without exposing it to the violation of the right to privacy of the wife and, therefore, impugned order does not call for any interference, petition fails and is hereby **dismissed.**

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