

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.665/2022.

Date of Decision: 17th October, 2024.

Dharmesh SharmaPetitioner
Versus

Tanisha SharmaRespondent

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. N.S. Chandel, Sr. Advocate with
Mr. Vinod Kumar Gupta, Advocate.

For the Respondent: Mr. Sanjeev Kuthiala, Sr. Advocate
with Mr. Abhishek, Advocate.

Bipin Chander Negi, Judge (oral).

By way of the present petition, challenge has been laid to the impugned judgment dated 17.11.2022, whereby the trial Court has rejected an application under Section 65(B) of the Indian Evidence Act read with Section 14 of the Family Court Act.

2. Heard counsel for the parties and perused the pleadings.

3. A perusal of the application filed under Section 65(B) of the Indian Evidence Act read with Section 14 of the Family Court Act reveals that by way of the present application, the petitioner intends to place on record an alleged conversation inter se the respondent-wife with her mother.

4. At the very outset, it would be appropriate to mention that a telephone conversation is an important facet of an individual's private life. The right to holding a telephone conversation in the privacy of one's home/office without interference can certainly be claimed as a "**Right to Privacy.**" Telephone tapping/illegal means of collecting evidence in the aforesaid context would therefore infract Article 21 of the Constitution of India, unless it is permitted under the procedure established by the law.

5. In this respect, it would be appropriate to refer case reported as ***People's Union for Civil Liberties (PUCL) Vs. Union of India and Anr, 1997 (1) SCC 301.*** The relevant extract whereof have been reproduced herein below:-

"17. We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under [Article 21](#) of the Constitution. Once the facts in a given case constitute a right to privacy, [Article 21](#) is attracted. The said right cannot be curtailed "except according to procedure established by law".

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.

19. Right to freedom of speech and expression is guaranteed under [Article 19\(1\)\(a\)](#) of the Constitution. This freedom means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture, or in any other manner. When a person is talking on telephone, he is exercising his right to freedom of speech and expression. Telephone-tapping unless it comes within the grounds of restrictions under [Article 19\(2\)](#) would infract [Article 19\(1\)\(a\)](#) of the Constitution."

6. Right to Privacy has further been dealt with by the Apex Court in detail in case titled ***K.S. Puttaswamy & Anr. Vs. Union of India & Ors., 2017 (10) SCC 1***, wherein right to privacy has been held to be an integral part of Article 21 of the Constitution of India.

7. Recorded conversation of the respondent-wife, in the case at hand, with her mother, which is sought to be placed on record, therefore is held to be illegal, as it amounts to infringement of her right to privacy. Since the aforesaid recording is illegal, therefore, it is not admissible in evidence.

8. In view thereof, I see no merit in the present petition and present petition is dismissed being devoid of merits and so also the pending application(s), if any. Interim order stands vacated.

9. Parties to appear before the trial Court on 05.11.2024.

(Bipin Chander Negi)
Judge

17th October, 2024
(Gaurav Rawat)