



CNR: KAHC010007202024

NC: 2026:KHC:48949
CRL.P No. 363 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 363 OF 2024

BETWEEN:

venu GOPALAKRISHNAN
S/O LATE K.G GOPALAKRISHNAN
AGED ABOUT 43 YEARS
RESIDING AT C002,
PURVA WESTEND, KUDLA
GATE SIGNAL, HOSUR ROAD
BANGALORE-560 068

...PETITIONER

(BY SRI. SHARATH S KULKARNI FOR
SRI. ARUN GOVINDRAJ, ADVOCATE)

AND:

VIVEK KATOCH
S/O UNKNOWN
AGED ABOUT MAJOR
RESIDING AT E909,
PURVA WESTEND KUDLA
GATE SIGNAL, HOSUR ROAD
BANGALORE-560 068

...RESPONDENT

(BY SRI. HARISH M, ADVOCATE)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO
SET ASIDE THE ORDER DATED 01.12.2022 PASSED BY THE
HON'BLE XLI ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, BANGALORE IN PCR NO.15392/2022

Digitally
signed by
PANKAJA S
Location:
HIGH
COURT OF
KARNATAKA



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DISMISSING THE APPLICATION FILED BY THE PETITIONER U/S 91 OF CR.P.C., 1973 (ANNEXURE-A1) AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This criminal petition is filed under Section 482 of the Cr.P.C., seeking to set aside the order dated 01.12.2022 passed in PCR No.15392/2022 by the XLI Additional Chief Metropolitan Magistrate, Bengaluru (for short, 'the Trial Court'), whereby the application filed by the petitioner under Section 91 of Cr.P.C. came to be dismissed. The said order was affirmed by the LX Additional City Civil and Sessions Judge, Bengaluru (CCH-61) (for short, 'the Revisional Court') in Crl.RP.No.5/2023 vide order dated 15.06.2023.

2. The brief facts necessary for disposal of this petition are that the petitioner lodged a private complaint under Section 200 of Cr.P.C. against the respondent for the offence punishable under Section 498 of IPC, alleging that the respondent had enticed his wife to fulfill his sexual desires and thereafter continued the relationship with her. In order to



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ascertain the factual aspects pleaded in the private complaint, the petitioner filed an application under Section 91 of the Cr.P.C., seeking summoning of the call records and tower locations pertaining to mobile Nos.9008988107, 9741036000 and 9353147548, for the period from 01.01.2021 till submission of the records before the Court. The said application came to be dismissed by the Trial Court vide order dated 01.12.2022. Aggrieved by the same, the petitioner preferred Crl.RP.No.5/2023 before the Revisional Court.

3. Upon re-appreciation of the material on record, the Revisional Court also dismissed the revision petition, confirming the order passed by the Trial Court. Aggrieved by the said order, the petitioner has preferred the present petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. Apart from urging several contentions, learned counsel for the petitioner primarily contended that the petitioner has lodged a private complaint against the respondent for the offence punishable under Section 498 of



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IPC, seeking to take cognizance of the said offence and punish the respondent-accused, alleging that the respondent had enticed the petitioner's wife, had sexual intercourse with her and continued such relationship. It is contended that, in order to substantiate the said accusation, the petitioner principally relies upon the mobile conversations, call details and tower locations to establish that the respondent and the petitioner's wife were together and were maintaining a sexual relationship. Therefore, in order to secure the relevant call details and tower locations, the petitioner has no other efficacious remedy except to seek production of the same by filing an application under Section 91 of Cr.P.C.

6. He further contended that both the Trial Court and the Revisional Court erred in dismissing the application solely on the ground that allowing the same would infringe the privacy of the respondent. According to learned counsel, Section 91 of Cr.P.C. confers such power upon the Court, particularly when a private complaint is lodged alleging an offence under Section 498 of IPC. Accordingly, he prays to allow the petition.



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7. *Per contra*, refuting the aforesaid submissions, learned counsel for the respondent contended that the Trial Court and the Revisional Court, upon meticulous examination of the application and the facts and circumstances of the case, have rightly rejected the prayer of the petitioner. According to learned counsel, merely to ascertain the alleged illicit relationship between the petitioner's wife and the respondent, the petitioner cannot seek the call details and tower locations of the respondent, as the same would infringe upon his constitutionally guaranteed right to privacy. He further contended that obtaining the tower locations and call details would be a futile exercise, as the alleged relationship cannot be established merely on the basis of such records. Accordingly, he prays to dismiss the petition.

8. I have given my anxious consideration to the submission made by the learned counsel for the respective parties and also perused the order passed by the Trial Court and Revisional Court so also the other materials available on record.



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9. As could be gathered from the records, in the application filed under Section 91 of the Cr.P.C., the petitioner has specifically asserted that the respondent was residing in the same apartment as that of the petitioner and had enticed his wife and thereafter developed an illicit relationship with her. It is in this background that the petitioner claims to have been left with no option but to lodge a private complaint before the Trial Court against the respondent for the offence punishable under Section 498 of IPC. It is further specifically asserted that the petitioner's wife had obtained a telephone connection bearing mobile No.9353147548 and was in constant contact with the respondent over phone, apart from allegedly maintaining an illicit sexual relationship with him. The petitioner has also asserted that his wife had uploaded WhatsApp profile pictures with the respondent on her aforesaid new mobile number and that the photographs taken by them prima facie disclose their intimacy. It is the further case of the petitioner that, in order to substantiate the allegation of the offence punishable under Section 498 of the IPC, he has no other option except to place on record the call details, tower locations



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and WhatsApp chats exchanged between the respondent and his wife.

10. Against this backdrop, when the application is considered, the contention of learned counsel for the respondent that permitting the application and securing the mobile details, call records and tower locations would infringe upon the privacy of the respondent cannot be accepted at this stage. At the outset, the petitioner has lodged the private complaint against the respondent himself alleging commission of the offence punishable under Section 498 of IPC. In such circumstances, the respondent cannot, for the purpose of adjudicating the allegations made in the complaint, be treated as a complete stranger or third party. As rightly contended by learned counsel for the petitioner, the call details, mobile conversations and tower locations pertaining to the respondent and the petitioner's wife are relied upon as material to substantiate the allegations made in the complaint. Therefore, the petitioner cannot be said to have any other effective material for placing before the Court the factual aspects alleged by him.



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11. This aspect of the matter has been dealt with in detail by the Hon'ble Apex Court in ***STATE OF ORISSA V. DEBENDRA NATH PADHI***, reported in ***(2005) 1 SCC 568***. The Hon'ble Apex Court has held that, while considering an application under Section 91 of the Cr.P.C., the Court is required to exercise due care and caution with regard to the possible infringement of the privacy of the other party and also examine the relevancy and desirability of the documents sought to be produced. However, in the present case, the respondent himself is a party to the proceedings and the documents sought by the petitioner are directly relevant and necessary for proper adjudication of the allegations made in the complaint. Therefore, the question of treating the respondent as a third party and rejecting the application solely on the ground of invasion of privacy would not arise.

12. In the aforesaid circumstances, the Division Bench of the Madhya Pradesh High Court, in ***M.Cr.C.No.60404/2021***, while considering a similar issue and allowing an application filed under Section 91 of the Cr.P.C. seeking production of documents from the complainant to the



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proceedings, upon placing reliance on the judgment of the Hon'ble Apex Court in **STATE OF ORISSA V. DEBENDRA NATH PADHI** (supra), has held in paragraphs 4.3 to 7 as under:

"4.3 Language employed in Section 91 reveals following foundational ingredients and characteristics :-

(i) Section 91 is meant to be invoked for producing documents/other things by way of summon. (ii) Section 91 can be invoked at any stage of investigation, inquiry, trial or even other proceedings under the Cr.P.C. (iii) Section 91 does not expressly provide as to who can invoke this provision. (iv) However, the language of Section 91 implies that it can be invoked by the Court or the Officer in-charge of the Police Station concerned. (v) And this invocation can be done when the Court or the Police is of the view that production is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under Cr.P.C. (vi) The satisfaction regarding necessity or desirability of the Court or the Police is sine qua non for invoking this provision. (vii) The production of document or other thing is to be made before the Court if



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directed by the Court or before the officer if directed by Police Officer.

4.4 The aforesaid reveals that production of any document or thing can be directed by the Court after being satisfied that such production is necessary and desirable for the purpose of proper and lawful conduction of investigation, inquiry, trial or other proceeding.

The ultimate object behind Section 91 is to confer power in the hands of the Court in case of pending investigation, inquiry, trial or other proceedings to produce document or other thing which the Court deems relevant and cogent to the conduction of investigation, inquiry, trial or other proceedings and which are not already on record. Thus, Section 91 is a supplementary power available inter alia to the Court to do complete justice in investigation/inquiry/trial or other proceedings as the case may be and to prevent failure of justice.

4.5 From the aforesaid analysis, it is vivid that it would not be proper to restrict the right to invoke Section 91 to only the Court and the Police Officer. The window of Section 91 will have to remain open for all the stakeholders in an investigation, inquiry, trial and other



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proceedings, be it the victim, accused, police, Court or any other stakeholders involved.

4.6 However, since the process of investigation is unilateral in nature where the accused has no role to play during pendency of investigation, the accused cannot as of right invoke Section 91. However, the invocation of Section 91 during investigation remains open for the Court, the Police or the victim whereas the accused can invoke Section 91 on and after filing the charge-sheet from which stage the proceedings become multilateral bringing to the fore the other stakeholders i.e. the victim and the accused also, besides the prosecution.

4.7 The paramount object behind Section 91 is to ensure that no cogent material connected to the offence/issue is left undiscovered and unconsidered in the pursuit of truth during investigation, inquiry, trial or other proceedings.

5. Reverting to the factual matrix attending the instant case, it is seen that production has been directed of the cell phone call records of the complainant and some other persons who are said to be somehow connected with the offence in question. The objection taken by the victim is of violation of his right to privacy



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while the objection taken by the prosecution is that the accused has no right to invoke Section 91.

True it is that the right to privacy of the victim may be breached but if the production of the said call details can assist the Court in discovering truth and rendering justice in the matter then the Court has to adopt the due process before invoking Section 91, by affording opportunity to the person whose right to privacy is likely to be breached. This shall not only take care of the apprehension expressed by the complainant about the alleged breach of privacy but shall also ensure furtherance of the investigation/inquiry/trial/other proceedings in a free and fair manner thereby rendering justice and avoiding failure of justice. Thus, in the considered opinion of this Court, the trial Court ought to have heard the victim/complainant before passing the impugned order.

6. As regards objection of the prosecution, this Court is of the firm view that except during the pendency of the process of investigation, the accused cannot be denied his right to invoke Section 91. Section 91 admittedly does not in express terms identifies the stakeholder in



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justice dispensation system who can invoke the said provision, but the content and context of Section 91 implies that the said provision can be invoked by the Court at any stage of investigation, inquiry, trial and other proceedings.

7. The Court can invoke Section 91 either suo moto or on behest of some stakeholder in the process of investigation, inquiry, trial or other proceedings. The cause for invoking Section 91 can arise from any source, be it victim, accused (except during pendency of investigation) and Police. Denying any of the stakeholder, the right to invoke Section 91 may defeat the ultimate object behind Section 91 which is to ensure discovery of truth, rendering of justice and preventing failure of justice. However, any such invocation by any stakeholder at any point of time would be subject to satisfaction of necessity and desirability of that document to the process of investigation, inquiry, trial or other proceedings".

13. Further, the order passed by the Division Bench of the Madhya Pradesh High Court in M.Cr.C.No.60404/2021 has



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been confirmed by the Hon'ble Apex Court in SLP No.13645/2023 vide order dated 18.05.2023.

14. Collocating the aforesaid findings of the Division Bench of the Madhya Pradesh High Court with the facts and circumstances of the present case, the same are squarely applicable. As discussed supra, production of the call details and tower locations would certainly assist the Court in arriving at the truth with regard to the allegations made by the petitioner in the private complaint.

15. For the foregoing reasons, I am of the considered view that the petition deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

- i. The petition is ***allowed***.
- ii. The order dated 01.12.2022 in PCR No.15392/2022 passed by the XLI Additional Chief Metropolitan Magistrate, Bengaluru which was affirmed by the LX Additional City Civil and Sessions Judge, Bengaluru (CCH-61) in



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Crl.RP.No.5/2023 dated 15.06.2023 are hereby set aside.

iii. Consequently, the application filed under Section 91 of Cr.P.C. dated 15.10.2022 is ***allowed.***

iv. The Trial Court is directed to issue necessary summons to the Regional Manager of Bharati Airtel Ltd and the Regional Manager of Reliance Jio Infocomm Ltd for securing the details as mentioned in the application.

**SD/-
(RAJESH RAI K)
JUDGE**

CR
List No.: 1 Sl No.: 17