

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 5279 of 2015

Date of decision:- 20.07.2017

Yuvraj and anr.

...Petitioners

versus

Munish Singla and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Bhoop Singh, Advocate
for the petitioners.

Mr. Sahil Khunger, Advocate
for the respondents.

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 21.07.2015 passed by the learned Civil Judge (Jr. Divn.) Ludhiana.

Brief facts of the case are that defendants-petitioners (for entered into agreement to sell their land measuring 18 kanals 04 marlas with respondents vide agreement to sell dated 09.02.2006 at the rate of Rs. 34,50,000/- per acre and the sale deed was to be executed on or before 15.07.2006. However, respondents were not ready to perform their part of the contract and in this regard, petitioner have the recorded conversation to show that the respondents were not ready to perform their part of the contract. Thereafter, the petitioner moved an application before the learned trial Court for directing respondent-Munish Singla to give his sample voice for getting the same compared with recorded voice of respondent No. 1. The application was dismissed by the learned trial Court vide its order dated 11.04.2014 on the ground that the case is at the stage of evidence of the plaintiff, and thus the application is at pre-mature stage. Thereafter, when

the evidence of the petitioner/defendants started then the petitioner moved an application for giving the voice sample by respondent No. 1, for comparison with his recorded voice, which was kept pending and was taken up on an application filed by the petitioner under Section 151 C.P.C, as the petitioner's own evidence was started. This application was also dismissed by the learned trial Court, vide impugned order dated 21.07.2015 (Annexure P-1).

Learned counsel for the petitioners argued that the direction for giving the sample voice by Munish Singla was essential for the just and proper decision of the case, as it can only prove whether respondents were ready and willing to perform their part of the contract and were having sufficient funds at the relevant time or that they were showing their inability regarding arrangement of funds for execution of the sale deed.

This argument of learned counsel for the petitioners is liable to be dismissed, as on the similar subject, the application filed by the petitioner was dismissed as withdrawn and thus, this application was held to be barred. The present application was filed just to delay the proceedings. The comparison of the voice is not necessary for proper adjudication of the case. Further the petitioners have not mentioned on which date, month or year, the voice was recorded. Further even if the tapes if true, are not admissible in evidence. There is no question of seeking expert opinion about their authenticity. The Court below had dismissed the application of the petitioners on the ground that in view of the judgments, cited by learned counsel for the respondents i.e ***People's Union for Civil Liberties (PUCL) v. Union of India 1997(1) RCR (Civil) 720 and Smt. Rayala M. Bhauvaneswari v. Nagaphanender Rayala, 2008(2) ICC 442***, the tapping

of conversation was held to be illegal, as it infringed the right or privacy.

Learned counsel for the petitioners submits that the judgments in ***Rayala case (supra)*** is not applicable to the facts of the present case, as that was a case of matrimonial dispute where husband taping conversations of his wife with parents of friends and seeking to produce hard disc in Court to substantiate his case. However, it was held that Act of recording conversation without knowledge of wife is illegal and amounts to infringement of her right to private. These tapes even if true are not admissible in evidence.

This argument is also liable to be rejected as the petitioners cannot take benefit on the sole ground that in Rayala's case (supra), it was a matrimonial dispute. Reference at this stage can be made to judgment i.e ***1997(1) R.C.R (Civil) 720*** wherein Hon'ble the Supreme Court has held that right to privacy is a part of the right of life and personal liberty enshrined under Article 21. Once facts in a given case constitute a right to privacy, Article 21 is attracted. Telephonic conversation is an important facet of a man's private life. In para 15 and 16, it has been observed as under:-

15. In Govind v. State of Madhya Pradesh, 1975(2) SCC 148,
a three Judge Bench of this Court considered the constitutional validity of Regulations 855 and 856 of the Madhya Pradesh Police Regulations which provided surveillance by way of several measures indicated in the said regulations. This Court upheld the validity of the regulations by holding that Article 21 was not violated because the impugned regulations were “procedure established by law” in terms of the said article. In R. Rajagopal alias R.R. Gopal and another vs. State of Tamil Nadu, 1994(6) SCC 632, Jeevan Reddy, J. speaking for the Court observed that in recent times right to privacy has acquired constitutional status. The learned Judge referred to Kharak's

case, Govind's case and considered a large number of American and English cases and finally came to a conclusion that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a right to be let alone. A citizen has a right to “safeguard the privacy of his own, his family, marriage, procreation, mother-hood, child-bearing and education amount other matters.”

16. 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”.

A co-ordinate Bench of this Court in a case of Gurcharan Singh vs. Major Singh, passed in C.R. 535-2014, decided on 11.12.2015 had dismissed the petition which was against the order rejecting an application filed by the defendant that the plaintiff shall be compelled to give a voice sample to make a comparison of certain admissions made in panchayat in the presence of certain persons in the village.

This Court held that statements made in the panchayat, even if true, cannot be used as an admission in the light of the statutory interdict contained in Section 23 of the Evidence Act.

In view of the above discussion, the revision petition is dismissed being devoid of merits.

20.07.2017

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes