

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 20th September, 2021.**

+ **CM(M) 626/2021**

DR. SITANSHI SHARMA

..... Petitioner

Through

Mr. Arvind Nayar, Senior Advocate
with Mr. Rajiv Bakshi and Mr.
Akshay Joshi, Advocates

versus

VANDANA SHARMA & ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]

AMIT BANSAL, J. (Oral)

CM No.32398/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 626/2021 and CM No.32397/2021 (for interim directions)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 21st August, 2021 passed by the Civil Judge-08 (Central), Tis Hazari Courts, Delhi in CS No.1369/2020, whereby the application filed on behalf of the petitioner/defendant No.1 (hereinafter for convenience referred to as the 'petitioner') under Section 151 of the Code of Civil Procedure, 1908, seeking directions to Bharti Airtel Limited to

CM(M) 626/2021

Page 1 of 7

preserve and produce the Call Detail Records (CDR) of the mobile number of the respondent No.3/defendant No.2 (hereinafter for convenience referred to as the 'respondent No.3'), being the husband of the petitioner, for the period from 08th October, 2020 to 01st July, 2021 and till the final disposal of the suit, has been dismissed. During the arguments pertaining to the said application and the present petition, the counsel for the petitioner limited his prayer to the preservation of the aforesaid CDR.

4. The suit from which the present petition arises was filed by the respondents No.1 and 2/plaintiffs (hereinafter for convenience referred to as the 'respondents No.1 and 2'), being the mother-in-law and father-in-law of the petitioner, seeking permanent injunction against the petitioner and her family members from forcibly entering the suit property bearing No.49/7, Rajpur Road, Civil Lines, Delhi and from causing any interference in the peaceful use and occupation of the said property. Vide order dated 15th October, 2020, an interim injunction was passed in favour of the respondents No.1 and 2 and against the petitioner restraining the petitioner from disturbing the peaceful possession of the respondents No.1 and 2 and entering into the suit property. The aforesaid suit was contested on behalf of the petitioner by filing written statement. The petitioner also filed an application under Section 26 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) in the said suit praying residence and protection orders under the said Act.

5. The application, from the dismissal of which the present petition arises, was filed on behalf of the petitioner for preservation the CDR of the respondent No.3. It was contended that the CDR would demonstrate that the respondent No.3 has been residing at the suit property and had never shifted

to a separate residence as alleged in the plaint. Therefore, the foundation for the suit for permanent injunction was false and hence, it was important to preserve the CDR of the mobile number of the respondent No.3 to prove that the suit had been filed by the respondents in collusion.

6. The aforesaid application was contested on behalf of the respondents by filing replies. In the replies it is contended that, (i) the Court could not collect evidence for the parties; (ii) since the issues were yet to be framed, the scope of evidence would be decided only thereafter; (iii) the application was a roving and fishing inquiry to prepare for the petitioner's defence in the divorce proceedings pending between the petitioner and the respondent No.3; (iv) the preservation of CDR of the respondent No.3 would amount to invasion of his privacy; (v) the right of residence claimed by the petitioner in the suit property was irrespective and independent of the shifting of residence of the respondent No.3 from the suit property as the petitioner is required to prove that the suit property is the matrimonial home/shared household of the petitioner and respondent No.3; (vi) the residence of the respondent No.3 after 18th March, 2017, being the date when the respondent No.3 and the petitioner admittedly separated, is immaterial for determination of matrimonial home/shared household under the PWDV Act; and (vii) the relief sought in the present application was not relevant for the subject matter of the suit or for the application filed on behalf of the petitioner under Section 26 of the PWDV Act.

7. The Trial Court dismissed the said application in terms of the impugned order, observing that:

- (i) as far as the purpose of the application to show collusion between the respondents was concerned, the respondent No.3

had not denied that he keeps visiting his parents i.e., the respondents No.1 and 2 and further that an application for transposition on behalf of respondent No.3 was already pending before the Trial Court;

- (ii) since the suit was filed by alleged owners of the property seeking injunction against forcible entry and dispossession, even assuming that relief against respondent No.3 was frivolous, it would not affect petitioner as such because admittedly, the petitioner and respondent No.3 were residing separately;
- (iii) the application claimed relief for a period after the date of admitted separation i.e. 18th March, 2017 and therefore, for the purposes of the relief claimed by the petitioner under the provisions of PWDV Act, the period till 2017 was relevant for determining shared household;
- (iv) the judgment relied upon by the petitioner in *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors.* (2020) 7 SCC 1 was not applicable to the facts of the present case as the said judgment lays down guidelines for criminal trials; and
- (v) the present matter does not warrant for roving inquiry as sought by the petitioner through the said application.

8. Learned senior counsel appearing on behalf of the petitioner has drawn my attention to paragraph 11 of the plaint to contend that respondent No.3 had left the suit property and stopped residing with his parents therein so that the interim injunction could be passed in favour of the respondents No.1 and 2. It was further submitted that through the present application,

the petitioner is only seeking preservation of CDR from 08th October, 2020 to 01st July, 2021 so that in the event that the said CDR is deemed relevant, and subsequently required at the time of trial, the same are available. In the normal course, CDR are not preserved for a period of more than one year. He relies upon the observations made by the Supreme Court in *Arjun Panditrao Khotkar* (supra) in paragraphs 62 and 71 to contend that directions made by the Supreme Court with regard to preservation of CDR would be applicable to all proceedings in all Courts in the country that deal with electronic records.

9. I have perused the impugned order passed by the Trial Court. The suit in question was filed by the respondents No.1 and 2, being the mother-in-law and father-in-law of the petitioner, seeking permanent injunction against the petitioner and her family members from forcibly entering the suit property. Keeping in mind the focus of the suit, the current residence of the respondent No.3, being the husband of the petitioner, has no relevance to the suit. Even in respect of the application filed on behalf of the petitioner under Section 26 of the PWDV Act, the same has no relevance as the petitioner would have to prove that she resided in the suit property before 18th March, 2017, being the admitted date of separation between the petitioner and the respondent No.3. Therefore, the Trial Court has rightly observed that the residence of the husband after the said date of 18th March, 2017 has no relevance in the context of the suit.

10. I have perused the judgment in *Arjun Panditrao Khotkar* (supra) as relied upon by the senior counsel for the petitioner. The said judgment arises from a reference, which was concerned with the interpretation of Section 65B of the Indian Evidence Act, 1872 (Evidence Act) in order to

determine whether the requirement of a certificate thereunder was mandatory in all circumstances and whether such certificate or electronic evidence may be produced at the later stage of a criminal trial. On a reading of paragraph 62 of the said judgment, it emerges that the general directions issued by the Supreme Court to cellular companies and internet service providers to maintain CDR and other relevant records for the concerned period in a segregated and secure manner were given in relation to the CDR or other records, which were seized during investigation in the said period. Furthermore, on a reading of paragraph 72 of the said judgment, it is clear that it is in the context of such CDR or relevant records seized during investigation that the Courts dealing with electronic evidence have been directed to ensure preservation of electronic records, and the production of certificate at the appropriate stage under Section 65B of the Evidence Act. The aforesaid directions given by the Supreme Court cannot be invoked by the petitioner to seek preservation of the CDR of the respondent No.3 as sought in the present case.

11. Therefore, the Trial Court has rightly observed that the application filed by the petitioner is in the nature of a roving inquiry, which is not warranted in the present case. In the considered view of this Court, even if the contention of the petitioner is accepted that she is not seeking access to the said CDR through production thereof and the same are only for perusal of the Court at the time of trial, this would still amount to invasion of privacy of the respondent No.3.

12. There is no infirmity in the impugned order that requires interference by this Court while exercising jurisdiction under Article 227 of the Constitution of India.

13. Dismissed.

AMIT BANSAL, J.

SEPTEMBER 20, 2021

dk

