

2024:PHHC:172921



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(121) CR-4556-2024
Date of Decision: 10.12.2024

Sruthi JainPetitioner

Versus

Deepak Jain and othersRespondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Atul Yadav, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside the order dated 16.09.2022 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Gurugram, whereby the application moved by the husband of the petitioner/respondent No.1 under Section 91 Cr.P.C. has been partly allowed and direction has been issued to the service provider to preserve the CDR/call details/location of three mobile numbers, for the period from 15.12.2020 to 15.12.2021.
2. Learned counsel for the petitioner submits that vide impugned order dated 16.09.2022, the Court is in effect collecting evidence on behalf of respondent No.1, which is against the well settled principles of law. It is further submitted that in a complaint filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act'), the husband of the petitioner, i.e. respondent No.1, had moved an



application with the following prayers:

“a. Direct the Mobile aggregators of the complainant in respect of her phone numbers 9958844277, 9650294045 and 9958847617 to preserve and file the call date records (CDRs) for at least last on year i.e., from 15.12.2020 to 15.12.2021;

b. Direct the Complainant to file on an affidavit all her messages/ WhatsApp messages along with relevant files exchanged between 9958844277, 9650294045 and 9958847617 to 9718434523, 9555107527 with an undertaking same being untampered, exchanged through respective WhatsApp or any, other messenger, for at least last on year i.e., from, 15.12.2020 to 15.12.2021”

3. It is strenuously urged on behalf of the petitioner that respondent No.1 is seeking to collect evidence through the orders of the Court. It is further submitted that the trial Court has rightly declined the relief sought under clause (b) extracted hereinabove. However, the trial Court has erred in partly allowing the application under Section 91 Cr.P.C., whereby the relief sought under clause (a) has been allowed and resultant directions to preserve the CDR/call details/location of the three mobile numbers mentioned in the said clause, have been issued to the service provider concerned.

4. I have heard learned counsel for the petitioner and with his able assistance perused the record.

5. A perusal of the impugned order would show that the application moved by respondent No.1 under Section 91 Cr.P.C., has been disposed of by the following observations:



“6. It is settled law that in proving the case, parties have to stand on its own leg. Court cannot collect evidence on behalf of parties, however, in such circumstances, where without order of the court, the record cannot be preserved, it is for the court to pass a order so that court can arrive at just decision after production of such evidence before the court as per law.

7. Considering the further facts and circumstances of the case. and in view of the provisions Section 91 Cr.P.C., this court is of the view that call details sought to be preserved are necessary for just decision of the case.

8. In view of the foregoing reasons, the service provider concerned of mobile Nos. 9958844277, 9650294045 and 9958847617 are directed to preserve the CDR/call details/location of aforesaid mobile numbers for the period of 15.12.2020 to 15.12.2021, so that it can be called in evidence of applicant/respondent no. 1 at the relevant time.

9. So far as the direction to complainant/respondent to file affidavit qua whatsapp chat etc. is concerned, this court is of the considered view that directions to the complainant would tantamount to interfere in the right to the privacy of the complainant. Therefore, if there is some chats and there is nothing objectionable in the said chats the complainant is at liberty to produce the same, failing which adverse inference may be taken at the relevant stage. Hence, application in hand stands partly allowed and disposed of accordingly.”

6. A careful reading of the aforesaid observations shows that the trial Court has merely directed the preservation of the CDR etc. and not their production as evidence. Respondent No.1, in order to rely upon the said evidence, would be required to prove the same in accordance with law.

6.1 It is notable that respondent No.1 is an accused/respondent in the complaint filed by the petitioner under Section 12 of the DV Act and the



said proceedings are stated to be at the initial stage. The appropriate time to lead defence evidence on behalf of respondent No.1, is, thus, not likely to arise in the near future, and by then, the aforesaid CDR etc. are likely to have been purged. The period for which the CDR is required, commences from 15.12.2020 and two years would be completed in another three months time, since passing of the impugned order. If the evidence sought to be relied upon by respondent No.1 is not preserved, its non-availability at the appropriate time would cause prejudice to him.

7. Faced with the above, learned counsel for the petitioner is not in a position to deny that the direction issued by the trial Court is confined solely to the preservation of the CDR etc. and the said evidence has not yet been brought on record. Therefore, the argument raised that the impugned order dated 16.09.2022 amounts to collecting evidence on behalf of respondent No.1, has no legs to stand on and hence, the same is rejected.

8. Resultantly, the present petition being bereft of merit, is dismissed.

December 10, 2024

d.gulati/sumit.k

(VIKAS SURI)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No