



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

324/2

CR-2543-2024 (O&M)
Reserved on : 30.09.2025
Pronounced on : 22.12.2025
Uploaded on : 22.12.2025

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

Rachna Srivastava Petitioner

versus

Sanjay Srivastava and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Petitioner in person.
Mr. Saurabh Bhatia, Advocate
for respondent No.1.
Mr. Kulwinder Singh, Advocate (through V.C.)
for respondent No.2.

PANKAJ JAIN, J.

1. Present revision petition is directed against order dated 01.04.2024 passed by JMIC Gurgaon.
2. The disputes relates to admission of personal diary of the petitioner in evidence. The Trial Court has allowed the diary to be tendered in evidence. The present revision petition has been preferred relying upon ratio of law laid down by Supreme Court in the case of **Vibhor Garg vs. Neha** reported as **2025 INSC 829**.
3. Counsel for the petitioner submits that diary in question being a privileged communication, cannot be allowed to be admitted in evidence in view of the provisions of Section 122 of the Evidence Act, 1872 re-enacted as Section 128 of the Bhartiya Sakshya Adhiniyam,

2023.



4. The argument raised by counsel for the petitioner is misconceived. The personal diary of the complainant is being sought to be admitted in evidence. Section 122 of the Evidence Act reads as under:-

“122. Communications during marriage.—No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.”

5. The issue is squarely covered by ratio of law laid down by Supreme Court in the case of ***M.C. Verghese vs. T.J. Ponnann, AIR 1970 SC 1876***, wherein Supreme Court observed as under:-

“14. A prima facie case was set up in the complaint by Verghese. That complaint has not been tried and we do not see how, without recording any evidence, the learned District Magistrate could pass any order discharging Ponnann. Section 122 of the Evidence Act only prevents disclosure in giving evidence in court of the communication made by the husband to the wife. If Rathi appears in the witness box to give evidence about the communications made to her husband, prima facie the communications may not be permitted to be deposed to or disclosed unless Ponnann consents. That does not, however, mean that no other evidence which is not barred under s. 122 of the Evidence Act or other provisions of the Act can be given.

15. In a recent judgment of the House of Lords Rumping v. Director of Public Prosecutions, (1962) All E.R. 256 Rumping the mate of a Dutch ship was tried for murder committed on board the ship. Part of the evidence for the prosecution admitted at the trial consisted of a letter that Rumping had written to his wife in Holland which amounted to a confession. Rumping had written the letter on the day of the



killing, and had handed the letter in a closed envelope to a member of the crew requesting him to post it as soon as the ship arrived at the port outside England. After the appellant was arrested, the member of the crew handed the envelope to the captain of the ship who handed it over to the police. The member of the crew, the captain and the translator of the letter gave evidence at the trial, but the wife was not called as witness. It was held that the letter was admissible in evidence. Lord Reid, Lord Morris of Borth-Y-Gest, Lord Hodson and Lord Pearce were of the view that at common law there had never been a separate principle or rule that communications between a husband and wife during marriage were inadmissible in evidence on the ground of public policy. Accordingly except where the spouse to whom the communication is made is a witness and claims privilege from disclosure under the Criminal Evidence Act, 1898, (of which the terms are similar to S. 122 of the Indian Evidence Act though not identical), evidence as to communications between husband and wife during marriage is admissible in criminal proceedings.

16. The question whether the complainant in this case is an agent of the wife because he has received the letters from the wife and may be permitted to give evidence is a matter on which no opinion at this stage can be expressed. The complainant claims that he has been defamed by the writing of the letters. The letters are in his possession and are available for being tendered in evidence. We see no reason why inquiry into that complaint should, on the preliminary contentions raised, be prohibited. If the complainant seeks to support his case only upon the evidence of the wife of the accused, he may be met with the bar of S. 122 of the Indian Evidence Act. Whether he will be able to prove the letters in any other manner is a matter which must be left to be determined at the trial and cannot be made the subject-matter of an enquiry at this stage.

(underlining by us)”

6. In the considered opinion of this Court, the personal diary of the complainant does not fall within the ambit of Section 122 of the Evidence Act.



7. Section 128 of the Bhartiya Sakshya Adhiniyam, 2023, and thus, the same cannot be prohibited from taking into evidence relying upon Section 128 of BSA Act, 2023.
8. Finding no merits in the present revision petition, the same is ordered to be dismissed.
9. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

22.12.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No