

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Rajiv Narain Raina

DEEPINDER SINGH MANN – Petitioner,

versus

RANJIT KAUR – Respondent.

CR No.1734 of 2014 (O&M)

07.03.2014

I. Evidence – Pleadings – What is not pleaded cannot be proved in evidence. [Para 2]

II. Privacy – Voice Recording – Evidence – Matrimonial disputes – Application was moved before the trial judge for producing further additional evidence of an Audio CD said to have been recorded on in 2009 of a conversation between the husband and wife in order to show that the wife refused physical relationship with him and therefore this was reason enough to show that the marriage has not been consummated so far to make it a ground of divorce – In any case, a husband recording conversation surreptitiously of the kind placed in transcription before this Court would appear to be the handywork of a person collecting evidence before hand to be used or misused later, in case required – If he was gathering evidence in advance, he should have been diligent enough to produce the Audio CD at the appropriate stage of the trial when his evidence was being recorded – This is clearly an afterthought as the petitioner was throughout in possession of alleged incriminating material – He cannot be permitted now to do so and would have to depend on his remaining evidence.

III. Privacy – Voice Recording – Evidence – Matrimonial disputes – In a private matter between couples the Court should not permit dirty linen to be washed openly in Court in the name of evidence – That is not the business of the Court – Such requests should normally be discouraged especially when the plea is not taken at the outset unless compelling reasons are found by court and the interest of justice so demands – It is also not the case that the conversation was recorded after closing of evidence – The alleged conversation was admittedly recorded prior to the divorce petition filed by the husband

IV. Privacy – Voice Recording – Evidence – There are voice changing software available on the Net waiting to be downloaded to be applied in hiding or creating identities, creating true or false evidence, making room for impersonation, deceit and the like, which may be hard to crack without special detection by experts specially trained in this evolving field of investigation when experts are not easily found or available presently in courtrooms which remain

severely handicapped and ill equipped with newfangled tools for use or misuse of modern science and technology and to easily apply to a case in hand the repercussions of which may be far reaching and beyond one's ken - It would be a rather dangerous trend to allow people to be fixed or exposed on Audio CDs obtained by malfeasance, in its object of collecting evidence and the secretive means adopted to achieve a lawful or an unlawful end - The computer age is a dangerous age - The mobile phone or electronic gadgets should not be readily allowed to be used as an instrument of torture and oppression against a wife in a matrimonial action unless the court is satisfied that it might tilt the balance between justice and injustice in its cumulative judicial experience, wisdom and discretion in decision making.

V. Privacy - Recording - Married woman - A married woman too has a valuable right to her privacy of speech with her husband in the confines of the bedroom - Couples speak many things with each other unwary that every word would be weighed one day and put under the judicial scanner - Courts should be very circumspect in such matters before allowing such applications - The Courts cannot actively participate in approving mischief and invite invasion of privacy rights not called for in deciding a case where parties are free to adduce evidence aliunde which may or may not be sufficient to obtain a decree of dissolution of marriage - Fools rush in where angels fear to tread - Matrimonial disputes.

Mr. Jaswinder Singh, for the petitioner.

RAJIV NARAIN RAINA, J.(Oral) - The evidence of the petitioner husband was closed by order of the trial judge. The closing of the evidence has not been agitated by the petitioner in any further proceedings. After closing of the evidence, an application was moved before the trial judge for producing further additional evidence of an Audio CD said to have been recorded on 29th January, 2009 in Kasauli of a conversation between the husband and wife in order to show that the wife refused physical relationship with him and therefore this was reason enough to show that the marriage has not been consummated so far to make it a ground of divorce.

2. I asked learned counsel for the petitioner if his client had pleaded this fact in the plaint since it is admitted that the recording was done by the husband himself unknown to the partner. The answer was in the negative. What is not pleaded cannot be proved in evidence. It appears to me that having led his evidence the petitioner does not seem quite satisfied with it.

3. In any case, a husband recording conversation surreptitiously of the kind placed in transcription before this Court would appear to be the handywork of a person collecting evidence before hand to be used or misused later, in case required. If he was gathering evidence in advance, he should have been diligent enough to produce the Audio CD at the appropriate stage of the trial when his evidence was being recorded. This is clearly an

afterthought as the petitioner was throughout in possession of alleged incriminating material. He cannot be permitted now to do so and would have to depend on his remaining evidence. In any case, in a private matter between couples the Court should not permit dirty linen to be washed openly in Court in the name of evidence. That is not the business of the Court. Such requests should normally be discouraged especially when the plea is not taken at the outset unless compelling reasons are found by court and the interest of justice so demands. It is also not the case that the conversation was recorded after closing of evidence. The alleged conversation was admittedly recorded prior to the divorce petition filed by the husband. Thus far is case specific.

4. As an aside I would say that there are voice changing software available on the Net waiting to be downloaded to be applied in hiding or creating identities, creating true or false evidence, making room for impersonation, deceit and the like, which may be hard to crack without special detection by experts specially trained in this evolving field of investigation when experts are not easily found or available presently in courtrooms which remain severely handicapped and ill equipped with newfangled tools for use or misuse of modern science and technology and to easily apply to a case in hand the repercussions of which may be far reaching and beyond one's ken. It would be a rather dangerous trend to allow people to be fixed or exposed on Audio CDs obtained by malfeasance, in its object of collecting evidence and the secretive means adopted to achieve a lawful or an unlawful end. The computer age is a dangerous age. The mobile phone or electronic gadgets should not be readily allowed to be used as an instrument of torture and oppression against a wife in a matrimonial action unless the court is satisfied that it might tilt the balance between justice and injustice in its cumulative judicial experience, wisdom and discretion in decision making. A married woman too has a valuable right to her privacy of speech with her husband in the confines of the bedroom. Couples speak many things with each other unwary that every word would be weighed one day and put under the judicial scanner. Courts should be very circumspect in such matters before allowing such applications as presented in this case. The Courts cannot actively participate in approving mischief and invite invasion of privacy rights not called for in deciding a case where parties are free to adduce evidence aliunde which may or may not be sufficient to obtain a decree of dissolution of marriage. Fools rush in where angels fear to tread.

5. I think it is time the police investigators too should be sensitized on these aspects when gathering evidence in such matters. But this is for the State Governments to explore.

Dismissed.