



2025:CGHC:18450

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CrMP No.314 of 2025

Order Reserved on 27.01.2025

Order Delivered on 23.04.2025

Prahlad Rathour S/o Shri Bodhan Singh Rathour Aged About 40 Years Caste Rathore, R/o Village Lalpur, Police Station Gaurela, Tahsil Pendra Road, District Gaurela- Pendra- Marwahi (C.G.).

... Petitioner

versus

State of Chhattisgarh Through Station House Officer, Police Station Khamhardih, District Raipur (C.G.).

... Respondent

For Petitioner	: Mr. Pankaj Singh, Advocate
For State/Respondent	: Mr. Pranjal Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Kumar Verma
CAV ORDER

1. This petition has been preferred by the petitioner under Section 528 of the BNSS, 2023, which stems from the FIR dated 28.02.2023, lodged at Police Station Khamardih, Raipur, against the petitioner under Sections 294, 323, 506, 376, and 376(2)(n) of the Indian Penal Code, 1860. The prosecutrix alleged that the petitioner, a Food Inspector, deceived her by

concealing his marital status, threatened her with the release of obscene videos, and subjected her to physical and sexual assault. Charge-sheet was filed on 13.06.2023, bearing No. 154/2023, and the trial commenced with the prosecutrix's examination on 29.04.2024 and cross-examination on 11.07.2024. Petitioner is constrained to approach this Court to impugn and assail the action of Special Judge (Atrocities), Raipur, in respect to case bearing No. 30/2023 (State v/s Prahlad Rathour & Anr), wherein the learned Special Judge has denied permission to defense to open/examine the Facebook or Instagram account of the prosecutrix in the peculiar facts and circumstances of the case, as also, to play the audio record concerning the prosecutrix and examine the prosecutrix thereof. Therefore, the petitioner is invoking the benign jurisdiction of this Court, as the denial of permission deprives the trial of the petitioner and the opportunity to effectively challenge the prosecutrix's allegations through evidence.

2. The brief factual background of the prosecution case is that the prosecutrix lodged an FIR against the present petitioner on 28.02.2023 under Sections 294, 323, 506, 376, and 376(2)(n) of the Indian Penal Code, 1860. The allegation levelled against the petitioner are that the prosecutrix is a Zila Panchayat Member in Baloda Bazar District. The petitioner, who is a Food Inspector, first met the prosecutrix at Baloda Bazar Collector Office in connection with work related to a Society

matter. As per the allegations, the prosecutrix and the petitioner began communicating over calls and grew closer over time. Approximately 18-19 months later, the prosecutrix came into knowledge that the petitioner-Prahlad Rathour already married person and had two children. Allegedly, when the prosecutrix confronted the petitioner about concealing this fact, an argument and quarrel ensued, leading to the severance of their relationship. For the next 5-7 months, the petitioner did not communicate with the prosecutrix. However, it is alleged that the petitioner continued to attempt to contact the prosecutrix through various means. As alleged, the petitioner later contacted the prosecutrix using his friend's phone number and threatened her, claiming he would make obscene videos of the prosecutrix public. According to the prosecutrix, the petitioner forced her to sit in his vehicle (Scorpio) and took her to a Lodge on Kachna Road. The prosecutrix managed to delete 4-5 obscene videos of herself from the petitioner's phone. Following this, she requested to be dropped at the bus stand. However, the petitioner refused, stating it was too late for buses and suggested they stay at the lodge. This led to a heated argument and a physical altercation. The prosecutrix alleged that the petitioner forcibly took her to a lodge, where he blackmailed and physically assaulted her. He is accused of tying her hands and legs, coercing her, and restraining her until the next day. The petitioner then promised to drop her at a location but instead drove elsewhere. While

traveling, he allegedly involved others, including Anita Sahu and Pramila Sahu, who, along with the petitioner, physically assaulted the prosecutrix and took her belongings. Later, she was allegedly abandoned at Baloda Bazar during the night. Later, the prosecutrix lodged an FIR on 28.02.2023 at Police Station Khamardih, Raipur. The charge-sheet was filed by the prosecution on 13.06.2023, bearing No. 154/2023.

3. After the filing of the charge-sheet on 13.06.2023, charges were framed against the petitioner, and the trial commenced. As part of the trial proceedings, the prosecutrix was summoned to Court for her examination-in-chief on 29.04.2024, during which the prosecution filed its case and the prosecutrix recorded her statement. Subsequently, the prosecutrix was scheduled for cross-examination on 11.07.2024.
4. During the cross-examination of the prosecutrix on 11.07.2024, the defence sought the permission to open the prosecutrix's Facebook and Instagram accounts in the presence essence of the Special Public Prosecutor and the defense counsel. This request was made to verify the authenticity of certain photographs presented by the defense, which the prosecutrix had denied being associated with, alleging they were edited and sourced from her social media profiles.
5. The defense also requested permission to play an audio recording allegedly involving the prosecutrix. The intention was to confirm the

authenticity of the voice in the recording and to question the prosecutrix regarding its contents to support the defense's case.

6. The request of the defense was rejected on the premise that the authenticity and chain of custody of the evidence presented were not adequately established. Furthermore, the request to access the Facebook and Instagram accounts of the victim was also rejected, as no prior procedural steps had been taken to authenticate or obtain certified records of the social media content in question. Additionally, regarding the audio recording, the Court noted that the pen drive containing the recording had not been submitted during the investigation and was not part of the charge-sheet, rendering its origin and custody unclear. Hence, the present petition.
7. Learned counsel for the petitioner contended that at the outset, the petitioner has an inherent and constitutionally protected right to ensure that the trial conducted against him does not violate the principles of fairness and justice as enshrined under Articles 14, 19, and 21 of the Constitution of India. The evidence sought to be introduced is relevant as per the provisions of the Indian Evidence Act and directly pertains to the Issues raised during the examination-in-chief of the prosecutrix. Its Introduction is essential for effectively challenging her testimony and assessing her credibility. He further contended that the permission sought

to access the prosecutrix's Instagram and Facebook accounts, as well as to introduce the audio recording, is made in good faith and not to cause delay, vexation, or prejudice to the prosecution. He further contended that the defence undertakes to provide a certificate under Section 65B of the Indian Evidence Act, 1872, to ensure the admissibility and authenticity of the electronic evidence being sought to be introduced. It is further contended that Section 351 of the BNSS, 2023 empowers the court to summon, examine, recall, or re-examine any person or evidence at any stage of the trial if it is essential for the just decision of the case. The audio-video evidence sought to be introduced is directly relevant to the facts in issue. Under Section 165 of the Indian Evidence Act, the court has the authority to order the production of any evidence or document that it deems necessary to discover or obtain proof of relevant facts. Under Section 94 of the BNSS, the court is empowered to summon or order the production of any document or thing that it deems necessary or desirable for the purpose of a fair and just trial. It is, therefore, prayed that this Court may be pleased to:

(a) Call for the records of the case and the proceedings in Case No. 30/2023 (State v/s Prahlad Rathour & Anr) pending before the learned Special Judge (Atrocities), Raipur, pertaining to the First Information Report dated 28.02.2023 registered at Police Station Khamardih, Raipur,

under Sections 294, 323, 506, 376, and 376(2)(n) of the Indian Penal Code, 1860, along with the charge-sheet and all other relevant documents for examining the legality, propriety, and correctness of the impugned order/action.

(b) This Court may be pleased to quash and set aside the dictum/mandate of Special Judge (Atrocities), Raipur, in respect to case bearing number 30/2023 (State v/s Prahlad Rathour & Anr), wherein the learned Special Judge has denied permission to defense to open/examine the Facebook or Instagram account of the prosecutrix, as also, to play the audio record concerning the prosecutrix and examine the prosecutrix thereof.

(c) This Court may be pleased to direct the learned Special Judge (Atrocities), Raipur, to permit the defence/petitioner to: access the prosecutrix's Facebook and Instagram accounts in the presence of the Special Public Prosecutor and the defence counsel for the purpose of verifying the authenticity of the photographs presented during the trial.

(d) This Court may be pleased to direct the learned Special Judge (Atrocities), Raipur, to permit the defence/petitioner to: Call for the audio recordings allegedly involving the

prosecutrix and, after verifying their authenticity, allow the petitioner to play the said recordings during her cross-examination to confirm the authenticity of the voice and enable effective cross-examination.

(e) Pass any further order in favor of the petitioner as the Court may deem fit under the facts and circumstances of the present matter.

8. *Per contra*, learned counsel for the State opposes the submission made by learned counsel for the petitioner and contended that the learned trial Court has rightly finds that it does not seem appropriate to access and view the Facebook or Instagram account of the prosecutrix in the Court. If the Facebook or Instagram account of the prosecutrix would examine in the Court, the right to privacy of the prosecutrix would be violated and on this count also the petition deserves to be dismissed at this stage.

9. I have heard learned counsel for the respective parties and considered their submissions made herein above and also went through the records with utmost circumspection.

10. Article 21 of the Constitution of India held as under :-

“Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law.”

11. Recently a landmark judgment has been passed by the Hon’ble Supreme Court in case of **Justice K.S. Puttaswamy(Retd) Vs. Union of India** reported in **2019 (1) SCC 1** established that :-

“the right to privacy is an intrinsic part of the right to life and personal liberty. This means that privacy is a fundamental right, not just a procedural right, and is protected by the Constitution.”

The said judgment has significant implications for the scope of fundamental rights in India. It affirms the expansive interpretation of Article 21 and emphasizes the importance of a holistic approach to interpreting and safeguarding fundamental rights.

12. In the case of **State of Maharashtra Vs. Madhukar Narayan Mardikar (1991)**, the Hon’ble Supreme Court affirmed that everyone has the right to privacy, regardless of their background.

13. The Supreme Court has opted to read Article 21 of the Constitution in conjunction with the Universal Declaration of Human Rights in order to

broaden its application. The Constitution of India does not expressly support the right to privacy as a core libertarian ideal. In case of **Kharak Singh v. the State of U.P. (1962)**, when the surveillance of suspects was at issue, the right to privacy came to light.

14. The Right to Privacy is a human right, enshrined in numerous international covenants and institutions as reflected in Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights, 1966. In **K.S Puttaswamy (supra)**, the Court ruled that privacy is a fundamental right, protected intrinsically under the right to life and personal liberty. Privacy is a right enjoyed by every human being by virtue of their existence. It can extend to other aspects such as bodily integrity, personal autonomy, protection from state surveillance, dignity, confidentiality, etc.
15. The Oxford Dictionary of Law defines privacy as the “right to be left alone. The right to a private life...” Taking a cue from this definition, we can say that the right to privacy is the right to keep our personal information private. Personal information can include electronic communication, sexual orientation, professional activities and even feelings or intellect.
16. The Right to Privacy is one of these rights since the right to life in Article 21 of the Constitution is flexibly defined to cover all parts of a

person's existence that make their life more meaningful. Respect for privacy is regarded as a Fundamental Right of humans in many international treaties. It is essential for maintaining human dignity and is one of the fundamental components of a democracy. It upholds one's rights as well as those of other people. Privacy as a concept is not new. The divisions in ancient Greece were called Polis and Oikos, or the public or political world and the private or familial sphere, respectively. The "Right to Privacy", on the other hand, is a relatively contemporary concept. The Right to Privacy is one of these rights since the right to life in Article 21 of the Constitution is flexibly defined to cover all parts of a person's existence that make their life more meaningful. The concepts of privacy and the Right to Privacy are difficult to grasp. Privacy often relates to modern information and communication technologies and is based on the principle of natural rights. The right to privacy refers to our ability to protect the space around us, which includes all we own, such as our bodies, homes, assets, ideas, feelings, secrets, identities, etc.

17. The Right to Freedom should be carefully examined by the Parliament and the Supreme Court, and a means for balancing the conflicting rights to privacy and freedom of expression should be developed. In the digital age, data is a valuable resource that shouldn't be unregulated. This situation indicates that India's time for a robust data protection regime has come. Article 21 states that a person's right to privacy is essential to

their right to personal freedom. Rights to privacy are not unqualified. They are subject to reasonable restrictions for the defence of crimes, the welfare of the weak, morality, or the defence of other human rights.

18. Considering the facts and circumstances of the case, submissions advanced by the learned counsel for the parties, Article 21 of the Constitution, judgment passed by the Hon'ble Supreme Court and other related materials.
19. Reverting to the factual matrix attending the instant case, perusal of the record would show that during cross-examination of the prosecutrix, the learned defense counsel submitted that the prosecutrix was denying the fact that she is living with the accused-Prahlad and his family members in all the photographs filed by them in the Court and the prosecutrix has stated that her photo has been edited in all the above photographs, it is possible that her photo has been taken from her Facebook or Instagram ID and edited. Therefore, permission was sought in the Court in the presence of the Special Public Prosecutor and the defense counsel to open and see her Facebook or Instagram ID. Considering the facts and circumstances of the case, the trial Court finds that it does not seem appropriate to access and view the Facebook or Instagram account of the prosecutrix in the Court, hence permission to access and view the Facebook or Instagram account of the victim was not granted. In view of

the above, in the opinion of this Court, the learned trial Court has rightly rejected the prayer to access and view the Facebook or Instagram account of the prosecutrix in the trial Court. If permission is granted to examine the Facebook or Instagram account of the prosecutrix as also to play the audio record concerning the prosecutrix, then privacy of the victim may be compromised. The objection taken by the prosecutrix is of violation of her right to privacy while the objection taken by the prosecution is that the accused has no right to seek permission to examine the Facebook or Instagram account of the prosecutrix as also to play the audio record concerning the prosecutrix.

20. From the above stated case laws, it is apparent that the above stated contentions raised by the learned counsel for the petitioner cannot be examined by this Court. The adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 of the Cr.P.C. (now Section 528 of BNSS). In view of the material on record, it cannot be held that the impugned proceedings in Case No.30/2023 are manifestly attended with malafide and maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge.

21. Accordingly, the present CrMP lacks merit and thus, liable to be and is hereby **dismissed**.

Sd/-
(Arvind Kumar Verma)
Judge

Vasant