IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

CRIMINAL REVISION No. 4134 of 2018

SURESH KUMAR

Versus

SMT. ANEETA

Appearance:

Shri Parmanand Sahu - Advocate for the petitioner.

Shri Sukhnandan Pandey - Advocate for respondent.

Reserved on : 07.08.2026

Pronounced on : 13.08.2026

O R D E R

This criminal revision has been preferred by the petitioner/husband challenging the order dated 24.01.2018 passed by Principal Judge, Family Court, Chhatarpur in MCrC No.183/2014, whereby the Family Court has allowed an application under Section 125 of the Cr.P.C. and awarded an amount of Rs.6,000/- to respondent/wife towards monthly maintenance.

2. Learned counsel for the petitioner/husband submits that in reply to the application under Section 125 of the Cr.P.C. filed by the respondent/wife, the petitioner came with the specific case that the respondent/wife is living in adultery, therefore, she is not entitled to any maintenance, but despite availability of sufficient material in the form of compact disc (CD) and transcript, showing living of the respondent/wife in adultery, the Family Court

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has awarded the monthly maintenance to the respondent. He submits that, although the Family Court has taken into consideration the factum of adultery, but has not considered the entire text of the transcript, especially the contents of page no.39 to 42, which shows that the respondent has been living in adultery and is maintaining illicit relationships with several persons. In support of his submissions, learned counsel for the petitioner placed reliance on the decisions of Hon'ble Supreme Court in the case of Himanshu Chordia v. State of Rajasthan and Another, **2026 SCC OnLine SC 1461** as well as of a Coordinate Bench of Chhattisgarh High Court in the case of Smt. Manjari Tiwari (Dubey) v. Vaibhav Dubey, **2026 LiveLaw (Chh) 19**. With these submissions he prays for setting aside the impugned order and for allowing the criminal revision.

3. Learned counsel appearing for respondent/wife supports the impugned order and prays for dismissal of the criminal revision.

4. Heard learned counsel for the parties and perused the record.

5. Although the CD and transcript have not been marked as Exhibits, but from perusal of an interim order dated 18.12.2017 passed by Family Court, it is clear that the Family Court has permitted the petitioner/husband to produce the CD and transcript in secondary evidence. However, on perusal of the impugned order dtd.24.01.2018, it is apparent that although the Family Court in paragraph 19 of its order, has taken note of the fact that the petitioner/husband had recorded the telephonic conversation from the mobile phone of the respondent/wife, but it has not considered the transcript and the contents of the CD containing the said call recordings in their entirety, while recording its finding regarding the adultery of the respondent/wife, in paragraph 23 of the impugned order.

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6. The Hon'ble Supreme Court in the case of Himanshu Chordia v. State of Rajasthan and Another, **2026 SCC OnLine SC 1461 = 2026 INSC 778,** has held as under:

> **"17.** At this stage, a segue into how an allegation of adultery can be/is to be proved may be warranted. Evidence is of two types, direct and circumstantial. The former is the kind that establishes, on the face of it, an allegation.
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> **18. It is obvious that when a case is sought to be proved by circumstantial evidence, it requires a detailed study of the circumstances presented. The evidence furnished in support thereof, including verification, particularly when the evidence in question is electronic, etc. These procedures are bound to take time. Since the stipulation in the Section 125 (4) is that if adultery is proved, the wife would neither be entitled to interim nor final maintenance, we are of the view that if a husband files an application under Section 125(4) and is, at the first instance, able to establish the charge through evidence ex facie, then only, there can be said to be a bar to interim maintenance.**
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> **19.** The courts below clearly fell into error to hold that it was only at the stage of final adjudication that such a question could be decided. This view would render otiose what has been provided in the statute.
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> **20.** Applying this understanding to the record, in order to establish that the Respondent No. 2 was living in adultery, the appellant has placed a number of photographs and other evidence. This evidence is obviously electronic in nature. The question that the court must consider at the stage of interim maintenance is whether the evidence so presented establishes adultery. It is obviously open for the Respondent No. 2 to dispute the correctness and legality of the evidence presented, which would then have to be considered by the Court.
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> In that view of the matter, we are of the view that the Trial Court ought to have decided the appellant's application under Section 125(4). It was incorrect for them to have observed that the appellant's application could not have been decided prior to the final adjudication of the application filed by the wife. The second proviso to sub-section (1) of Section 125 provides for interim maintenance; and as such, the logical flow of proceedings would be that once the basic facts are established, an order is made for interim maintenance, and that would continue to operate till the application under Section 125 (4) is decided conclusively. This is in view of the beneficent nature of the provision. This question is accordingly decided. Consequently, the matter stands remanded to the Trial Court to make a decision on the merits since they had in this instance dismissed the application on the threshold. However, the matter does not end there. "

7. Further, in the case of Vibhor Garg vs. Neha, **(2025) 10 SCC 128,** the Hon'ble Apex Court, while considering the admissibility of electronic evidence in matrimonial proceedings, has held as under:

> **"42.** The first issue deals with the aspect of the validity of discreetly recorded digital evidence. The second issue deals with spousal privilege under the Evidence Act and the relaxation of the rules of evidence by the FC Act. The last issue deals with the spouse's right to privacy and the ambit of such privacy.
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> ***Validity of secretly obtained evidence***

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43. This Court has often had the occasion to deal with the issue of using illegal and immoral ways to procure evidence against a person without the knowledge of the person**. It is often alleged by accused persons that the investigating authorities did not follow legal methods and procedures to obtain the evidence against them. Sometimes recording devices and phone-tapping mechanisms are resorted to for the purpose of collecting relevant evidentiary material. In such cases, the view taken by this Court has been that merely the fact that an evidence was not obtained strictly in accordance with law does not absolutely bar the admissibility of such an evidence. The Court, while appreciating such evidence, may have to tread with caution and be assured about the accuracy and reliability of such evidence but the said evidence cannot be said to be irrelevant and/or inadmissible merely on the argument that it was illegally obtained.**

44. In *Yusufalli Esmail Nagree* v. *State of Maharashtra* [*Yusufalli Esmail Nagree* v. *State of Maharashtra*, 1967 SCC OnLine SC 87 : (1967) 3 SCR 720 : AIR 1968 SC 147] ("*Yusufalli Nagree*"), a three-Judge Bench of this Court was dealing with a case of corruption wherein a conversation was secretly recorded by the police by laying a trap and concealing a microphone in the room of the accused. The conversation was recorded on a tape recorder. The admissibility of this recorded conversation was objected to on the ground that this was recorded without the knowledge of the accused and the accuracy of the conversation recorded on the tape recorded was challenged.

44.1. This Court, speaking through Bachawat, J., rejected these arguments made by the accused. While this Court refused to lend its approval to the police practice of tapping telephone wires and setting up hidden microphones for the purpose of tape recording, it held that the fact that the tape recording was done without the knowledge of the accused is not in itself an objection to its admissibility in evidence because the accused in this case was free to talk or not to talk; his conversation was voluntary and there was no element of duress, coercion or compulsion. It was further observed that the imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 7 of the Evidence Act.

44.2. This Court further observed with respect to the balance to be struck between the relevance and caution while dealing with a tape-recorded conversation as follows: (SCC OnLine SC para 6)

"*6. … If a statement is relevant, an accurate tape record of the statement is also relevant and admissible*. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified. *One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with*."

(emphasis supplied)

45. In furtherance to the above view came the judgment of this Court in *R.M. Malkani* v. *State of Maharashtra* [*R.M. Malkani* v. *State of Maharashtra*, (1973) 1 SCC 471 : 1973 SCC (Cri) 399] ("*R.M. Malkani*"), wherein the validity of a tape-recorded conversation was in question. This Court, while allowing the tape-recorded conversation to be admitted in evidence, observed the following: (SCC p. 477, para 23)

"*23.* **Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record**. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act. It is res gestae. It is also comparable

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to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under Section 7 of the Evidence Act."

46. The aforesaid test laid down by this Court has become a *locus classicus* on the issue of determining the admissibility of a tape-recorded conversation. The three-fold test of relevance, identification and accuracy has to be satisfied before a court admits a recorded conversation in evidence. However, the fact that the conversation was recorded without the consent and knowledge of the person speaking is not a prohibition on the admissibility of the evidence, as laid down by the Evidence Act and read into the statutory provisions by this Court.

Applicability of Section 122 of the Evidence Act to a proceeding for divorce

47. As explained above, Section 122 of the Evidence Act deals with two parts — compellability and permissibility. The facts of the present case concern only the applicability of the second part of Section 122 i.e. the one dealing with permissibility. The husband in this case would have ordinarily been barred from disclosing any form of communication that was disclosed by the wife to him by virtue of being a privileged communication under Section 122. But due to the exception provided in that section, the bar on the disclosure of such communication is lifted since the communication sought to be disclosed in the present case is in a proceeding between the husband and the wife i.e. the petition filed by the husband for divorce under Section 13 of the Hindu Marriage Act. Therefore, such a privileged communication is not barred from being disclosed and brought before the Court and the objection taken by the wife with respect to Section 122 of the Evidence Act is not acceptable.

48. Looking at it from another angle, under Section 122 of the Evidence Act, what is barred in the present case is the disclosure of the communication made by the wife to the husband by the latter standing in the witness box. But the communication that was made to the husband is itself not barred. The phone on which the conversation was recorded is no different from an eavesdropper. The restriction under Section 122 does not apply to the communication that was made by the wife to the husband and the same can also be proved by means other than the husband himself coming to the witness box to disclose that communication. However, the overriding exception in the second part of the section with regard to disclosure in a proceeding between the spouses would apply; and under the exception, the doctrine of privileged communication would not apply.

49. Section 14 of the FC Act gives a wide discretion to the Family Courts in deciding matrimonial disputes since they can go beyond the strict rules of evidence in terms of relevance and admissibility while admitting any evidence which they think is relevant for the adjudication of the dispute at hand. However, we do not think that adverting to Section 14 of the FC Act is required in the present facts when the Evidence Act itself permits such a communication to be admitted in evidence by way of an exception. The powers under Section 14 of the FC Act would normally be resorted to in a scenario where the Evidence Act creates some prohibition with respect to the relevance or admissibility of any evidence. But if the Family Court is of the opinion that it is expedient to go beyond the procedural technicalities of the Evidence Act for adjudicating the dispute, in such a case, the Family Court is allowed to take that evidence on record, notwithstanding what is stated in the Evidence Act. But the exercise of this extraordinary power under Section 14 of the FC Act is not warranted in this case.

50. Some arguments have been made by the learned Amicus about the fact that permitting such an evidence would jeopardise domestic harmony and matrimonial relationship inasmuch as it would encourage snooping on the spouse, thereby fracturing the very objective of Section 122 of the Evidence Act. We do not think such an argument is tenable. If the marriage has reached a stage where spouses are actively snooping on each other, that is in itself a symptom of a broken relationship and denotes a lack of trust between them. The said snooping cannot be said to be a consequence of the Court admitting the evidence obtained by snooping. In fact, snooping

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between partners is an effect and not a cause of marital disharmony. The privacy of communication exists between spouses, as has been recognised by Section 122, but the said right of privacy cannot be absolute and has to be read also in light of the exception provided in Section 122 of the Evidence Act. When Section 122 itself recognises and protects spousal privacy in the first part of the section, then the said right has to be construed in terms of Section 122 only and has to be subject to the exception contained therein. In other words, when the right to privacy of communication between spouses is the very basis of Section 122, then the exceptions to these should also flow only from Section 122 of the Evidence Act.

51. During the years when this Court decided cases such as *Yusufalli Nagree* [*Yusufalli Esmail Nagree* v. *State of Maharashtra*, 1967 SCC OnLine SC 87 : (1967) 3 SCR 720 : AIR 1968 SC 147] and *R.M. Malkani* [*R.M. Malkani* v. *State of Maharashtra*, (1973) 1 SCC 471 : 1973 SCC (Cri) 399] , **bugging, snooping, tapping were considered acts that had a clear element of invading the privacy of an individual for the purpose of gathering concrete evidence. Devices like tape-recorders and microphones were carefully placed in a space wherein the conversations could be secretly recorded, and the entire process was not as easy as clicking a button on a mobile phone. Even in those times, the courts have encouraged the need for having better evidence for adjudication than to close the doors of technology and refuse to accept the material in front of them on the mere ground that privacy would be breached.**

52. On the other hand, before a court of law, a relevant piece of conversation available on an electronic device should not be allowed to be shut out when it is the best evidence available for deciding the dispute. The erstwhile Evidence Act is a legislation that was more than a century old and therefore obviously could not encapsulate all the technologically varied challenges which the modern technology poses before us. **Yet, what the said legislation remarkably conveys is that the purpose of the law of evidence is not to create barriers but to break them to ensure that a clearer picture is created in the mind of the Judge so as to decide a dispute before it.** This is why, when the evidence is not direct, the legislation allows a Judge to rely on circumstantial evidence; it allows presumptions of fact and law and adverse inferences to be drawn from the conduct of parties and witnesses so that a fair and reasonable conclusion can be reached from the material on record. **Now, in today's day and age, when the technological advancement has made it easier to record and recreate moments of past and present for reference in future, then to say that such better forms of evidence and material would not be admissible on the ground of they being in violation of the right to privacy would amount to defeating the very object of the Evidence Act.** That was the reason for Parliament to amend the Evidence Act by incorporating Section 65-B, which specifically deals with electronic evidence.

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Section 122 of the Evidence Act and Right to Privacy

54. The learned Amicus as well as the learned counsel and the learned Senior Counsel for the respective parties have relied upon a number of judgments of the High Courts in support of their rival contentions. Having regard to the view which we have taken in the matter, we find that the conclusions arrived at in *Preeti Jain* v. *Kunal Jain* [*Preeti Jain* v. *Kunal Jain*, 2016 SCC OnLine Raj 2838 : AIR 2016 Raj 153] ; *Jil* v. *State of Gujarat* [*Jil* v. *State of Gujarat*, 2024 SCC OnLine Guj 4363] ; *Essaki Ammal* v. *Veerabhadra* [*Essaki Ammal* v. *Veerabhadra*, 2012 SCC OnLine Mad 2093 : (2012) 4 CTC 743] ; *Havovi Kersi Sethna* v. *Kersi Gustad Sethna* [*Havovi Kersi Sethna* v. *Kersi Gustad Sethna*, 2011 SCC OnLine Bom 120] ; *Deepti Kapur* v. *Kunal Julka* [*Deepti Kapur* v. *Kunal Julka*, 2020 SCC OnLine Del 672] **are just and proper inasmuch as tape recorded/digitally recorded conversation between the spouses was permitted to be let in as evidence in support of the contentions raised by the parties, having regard to the parameters laid out under Section 122 of the Evidence Act.**

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55. However, in *Anurima* v. *Sunil Mehta* [*Anurima* v. *Sunil Mehta*, 2015 SCC OnLine MP 7340] ; *Abhishek Ranjan* v. *Hemlata Chaubey* [*Abhishek Ranjan* v. *Hemlata Chaubey*, 2023 SCC OnLine MP 7205] by the High Court of Madhya Pradesh at Jabalpur Bench; *Saroj* v. *Aashish Yadav* [*Saroj* v. *Aashish Yadav*, 2024 SCC OnLine MP 9687] by the High Court of Madhya Pradesh at Indore Bench; *Ram Talraja* v. *Sapna Talreja* [*Ram Talraja* v. *Sapna Talreja*, 2022 SCC OnLine MP 6115] by the High Court of Madhya Pradesh at Indore Bench; *Aasha Lata Soni* v. *Durgesh Soni* [*Aasha Lata Soni* v. *Durgesh Soni*, 2023 SCC OnLine Chh 3959] ; ***Rayala M. Bhuvaneswari* v. *Nagaphanender Rayala* [*Rayala M. Bhuvaneswari* v. *Nagaphanender Rayala*, 2007 SCC OnLine AP 892 : AIR 2008 AP 98]** ; *Deepinder Singh Mann* v. *Ranjit Kaur* [*Deepinder Singh Mann* v. *Ranjit Kaur*, 2014 SCC OnLine P&H 4826] ; *Tripat Deep Singh* v. *Paviter Kaur* [*Tripat Deep Singh* v. *Paviter Kaur*, 2018 SCC OnLine P&H 8244] ; *Neha* v. *State of Haryana* [*Neha* v. *State of Haryana*, 2020 SCC OnLine P&H 4469] ; *Vishal Kaushik* v. *Family Court* [*Vishal Kaushik* v. *Family Court*, 2015 SCC OnLine Raj 7851 : (2016) 1 RLW 693] ; *Dharmesh Sharma* v. *Tanisha Sharma* [*Dharmesh Sharma* v. *Tanisha Sharma*, 2024 SCC OnLine HP 5208] ; and *Kethana Lokesh* v. *Rahul R. Bettakote* [*Kethana Lokesh* v. *Rahul R. Bettakote*, 2024 SCC OnLine Kar 6368] decided on 19-6-2024 passed by the High Court of Karnataka at Bengaluru, **the High Courts declined to permit the conversation recorded by one of the spouses to corroborate the contention as being in violation of the right to privacy under Article 21 of the Constitution of India. Hence, it is necessary to dilate upon the contours of the right to privacy in the context of Article 21 of the Constitution with reference to the recent dicta of this Court rendered by Constitution Benches.**

56. In *K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] ("*Puttaswamy*"), Chelameswar and Bobde, JJ. enunciated that the constitutional right to privacy under Article 21 is limited to the relationship between the citizen and the State. Bobde, J. (as he then was) drew a distinction between "common law rights" and "fundamental rights" by observing thus: (SCC p. 539, para 397)

"*397*. … we can dismantle a core assumption of the Union's argument : that a right must either be a common law right or a fundamental right. The only material distinctions between the two…. lie in the incidence of the duty to respect the right and in the forum in which a failure to do so can be redressed. Common law rights are horizontal in their operation when they are violated by one's fellow man, he can be named and proceeded against in an ordinary court of law. Constitutional and fundamental rights, on the other hand, provide remedy against the violation of a valued interest by the "State",… It is perfectly possible for an interest to simultaneously be recognised as a common law right and a fundamental right."

57. However, Nariman, J. in *K.S. Puttaswamy* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] observed that Article 21 was couched in a negative form in order to interdict State action that fell afoul of its contours. But right to privacy being a fundamental right could be both against the Government as well as private individuals. The discussion in *Puttaswamy* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] was restricted to the right to privacy under Article 21 primarily against State action.

58. Kaul, J. suggested horizontal application of the right to privacy by holding that: (*K.S. Puttaswamy case* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] , SCC p. 620, para 593)

"*593*. … (*in*) today's world, privacy is a limit on the Government's power as well as the power of private sector entities."

Later in the judgment, he concluded that the right to privacy is a fundamental right, and that it: (*K.S. Puttaswamy case* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] , SCC p. 634, para 644)

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"*644*. … is a right which protects the inner sphere of the individual from interference from both State and non-State actors."

Further, once again emphasising that technology has made it possible for non-State actors to "enter citizens' houses", he held that: (*K.S. Puttaswamy case* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] , SCC p. 635, para 646)

"*646*. … privacy is one of the most important rights to be protected both against State and non-State actors and be recognised as a fundamental right."

However, Kaul, J. began his judgment by observing that: (*K.S. Puttaswamy case* [*K.S. Puttaswamy (Privacy-9 J.)* v. *Union of India*, (2017) 10 SCC 1] , SCC p. 618, para 584)

"*584*. … (*the*) right to privacy is claimed qua the State and non-State actors. Recognition and enforcement of claims qua non-State actors may require legislative intervention by the State."

He thus recognised that in the status quo, while enforcing the right to privacy against private bodies might be desirable, it was perhaps not yet possible.

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65. In view of the aforesaid discussion, we firstly observe that Section 122 of the Evidence Act is not assailed in these proceedings. Secondly, under Section 122 of the said Act, privileged communication between the spouses is protected in the context of fostering intimate relationship. **However, the exception under Section 122 of the Evidence Act has to be construed in light of right to a fair trial which is also an aspect of Article 21 of the Constitution of India. When we weigh the respective rights of the parties in a trial within the parameters of Section 122 of the Evidence Act, we do not think that there is any breach of right to privacy in the instant case**. In fact, Section 122 of the aforesaid Act does not recognise such a right at all. On the other hand, the said section carves out an exception to right to privacy between spouses and therefore cannot be applied horizontally at all. In this regard, we reiterate that as per the procedure established by law, Section 122 of the Evidence Act does not touch upon the aspect of right to privacy as envisaged under Article 21 of the Constitution, let alone invade upon such right. The reason is because Section 122 of the Evidence Act recognises the right to a fair trial, right to produce relevant evidence and a right to prove one's case against a spouse so as to avail the relief sought for by a party.

66. As already discussed, Section 122 of the Evidence Act deals with both compellability as well as permissibility. The first part deals with compellability while the second part deals with permissibility. The second part dealing with permissibility is followed by two exceptions which are:

(*a*) proceedings in suits between married persons; and

(*b*) proceedings in which one married person is prosecuted for any crime committed against each other.

Under the exception, the requirement of taking consent from the other spouse before disclosing the communication is done away with. Therefore, the exception has been carved out in Section 122 of the Evidence Act itself to state that such privilege between spousal communication does not extend to a case of litigation between the spouses themselves. In such a situation, the spouses would have the right to prove their respective cases and therefore can let in such evidence which is permitted under Section 122 of the Evidence Act, if one could use the expression "spill the beans".

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> **69.** In our view, Section 122 of the Evidence Act does not concern itself with the right to privacy *vis-à-vis* spouses which is evident on a reading of the section and on discerning its plain meaning. The 69th Report of the Law Commission of India in 1977 observed that the section is "*based on the abiding communication between the husband and wife, which is of such a nature that their mutual communications are not always to be regarded on the same footing as communications between person who have no such intimate tie*". It prefaced this by noting that the law of evidence has generally demonstrated a "degree of solicitude towards the sanctity of marriage", and also referred to Best, C.J.'s opinion in *Doker* v. *Hasler* [*Doker* v. *Hasler*, (1824) 171 EM 992 : 1824 Ry & M 198 : 171 ER 992] , that "the happiness of the marriage…requires that the confidence between man and his wife should be kept forever inviolable". Similarly, the 1853 Report of the English Commission on Common Law Procedure had observed that the "happiness" of human life depends on a large part upon the "inviolability" of domestic confidence, and that the "alarm and unhappiness" caused to society by the disclosure of confidential communications outweighs the disadvantage in terms of a loss of evidence during trials. [Report of the 69th Law Commission of India on the Indian Evidence Act, 1872, p. 636.]
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> ….. ….. ….. ….. ….. ….. ….. ….. ….. ……
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> **71.** Clearly therefore, the founding rationale for Section 122 of the said Act, as has been recognised by the Law Commission and subsequently by certain High Courts, was to protect the sanctity of marriage and not the right to privacy of the individuals involved. Therefore, in adjudicating situations where the privilege under Section 122 of the Act is not granted, as in suits between a couple (an exception provided for in Section 122 itself), the right to privacy is not a relevant consideration, since it is not the rationale under which spousal communications were deemed privileged under Section 122 of the Act."

8. From perusal of record of Family Court containing deposition sheet of Suresh Kumar Raikwar (NAW-1), dated 09.01.2018, it is apparent that learned counsel appearing for the petitioner/husband sought permission of the Family Court to exhibit the CD and transcript containing the recorded conversation. The deposition sheet further records that permission for leading secondary evidence in respect of the CD and transcript had already been granted vide order dated 18.12.2017. It further appears from the said deposition sheet that permission to exhibit the CD and transcript was thereafter declined by the Family Court.

9. It is pertinent to note that the order sheet dated 09.01.2018 by which the evidence of petitioner/husband was declared closed and matter was fixed for final arguments, does not record such refusal or disclose any reason for declining permission to exhibit the CD and transcript. It also does not record

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that the permission earlier granted vide order dated 18.12.2017 for producing the said documents as secondary evidence, was subsequently withdrawn or denied. When permission to produce the CD and transcript as secondary evidence had already been granted vide detailed order dated 18.12.2017, any subsequent decision to refuse, withdraw or recall such permission ought to have been specifically recorded by the Family Court, particularly when such decision had the effect of excluding the said material from consideration. The absence of any such order or recording in the order sheet dated 09.01.2018 assumes significance while examining whether the CD and transcript were, in fact, excluded from evidence and, if so, on what basis.

10. It appears from the deposition sheet dtd.09.01.2018 that the aforesaid refusal was made with reference to the judgment of the Andhra Pradesh High Court in Rayala M. Bhuvaneswari v. Nagaphanender Rayala, **AIR 2008 AP 98 = 2007 SCC OnLine AP 892**, wherein the Court had taken the view that a secretly recorded conversation are illegal and could not be permitted in evidence, inter alia, on the ground of violation of privacy. However, the aforesaid view, insofar as it treats the right to privacy as an absolute bar to the admissibility of a secretly recorded conversation in matrimonial proceedings, has subsequently been considered by the Hon'ble Supreme Court in Vibhor Garg **(supra).** The Hon'ble Supreme Court, while considering the admissibility of audio recordings in matrimonial proceedings, has held that the mere fact that a conversation was recorded without the knowledge or consent of the person concerned does not, by itself, render such recording inadmissible. The Hon'ble Supreme Court has emphasized the relevance, identification and accuracy of such evidence and has held that an objection founded merely on privacy cannot

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operate as an absolute bar to its reception in evidence in matrimonial proceedings.

11. In view of Section 14 of the Family Courts Act, 1984, the Family Court is not fettered by the strict technical rules of relevance and admissibility contained in the law of evidence and may receive any report, statement, document, information or other matter which, in its opinion, may assist it in effectively dealing with the dispute, notwithstanding that such material may not otherwise be relevant or admissible under the ordinary rules of evidence. Thus, the Family Court is empowered to adopt a broader approach in receiving material which may assist it in effectively adjudicating the matrimonial dispute. However, such relaxation of the strict rules of evidence does not dispense with the duty of the Family Court to examine and appreciate the evidentiary value of the material once it is received on record.

12. In this context, the principle laid down in Rayala M. Bhuvaneswari **(supra)** insofar as it proceeds on the basis that a secretly recorded conversation cannot be received in evidence merely on account of infringement of privacy, cannot be applied as an absolute proposition. The objection founded merely upon privacy, therefore, could not by itself constitute a ground for excluding the CD and transcript from consideration.

13. In the instant case, once the Family Court had already granted permission vide order dtd.18.12.2017 to produce the CD and transcript as secondary evidence, any subsequent decision to refuse or withdraw such permission ought to have been specifically recorded and supported by reasons. However, the order sheet dtd.09.01.2018 does not disclose any such refusal or withdrawal, though the deposition sheet dtd.09.01.2018 indicates that permission to exhibit

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the CD and transcript was declined taking note of decision in the case of Rayala M. Bhuvaneswari **(supra)**. However, there is nothing apparent from the record explaining the basis on which the material, which had earlier been permitted to be led as secondary evidence, was subsequently not permitted to be exhibited**.**

14. It is further significant to mention that, as per order dated 05.07.2017, the evidence of the respondent/wife had already been declared closed by the Family Court. Thereafter, on 22.07.2017, the petitioner/husband filed an application under Section 63 read with Sections 65-A and 65-B of the Evidence Act for leading secondary evidence in respect of the CD and transcript. The said application was allowed by the Family Court vide order dated 18.12.2017, although without there being any application for taking the said documents on record. The procedure adopted by the Court in allowing an application for leading secondary evidence of the documents, without there being any application for taking those documents on record, is not known to law.

15. Moreso, in such circumstances, once the application filed by the petitioner/husband was allowed, it was incumbent upon the Family Court either to fix the matter for producing rebuttal evidence of the respondent/wife or to afford her an opportunity to say something with regard to the CD and transcript permitted to be brought on record in secondary evidence. However, no such opportunity was afforded to the respondent/wife by fixing the case for that purpose. At the same time, the Family Court ought to have asked the petitioner/husband as to whether he wants to recall the witnesses already examined on behalf of the respondent/wife. Instead, the Court proceeded to fix the matter for the evidence of the petitioner/husband, however by passing an order in the deposition sheet of the petitioner/husband the Court recalled its previous order dtd.18.12.2017 in the light of aforesaid decision of Andhra

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Pradesh High Court in the case of Rayala M. Bhuvaneswari (supra). For this reason also, impugned order cannot be sustained.

16. Furthermore, even if it is assumed that the Family Court intended to decline exhibition of the CD and transcript on the ground of the violation of privacy, as contemplated in Rayala M. Bhuvaneswar**i (supra),** such approach could not be sustained as an absolute proposition in view of the law laid down by the Hon'ble Supreme Court in Vibhor Garg **(supra).** It is, therefore, incumbent upon the Family Court, particularly where electronic material is relied upon to establish that the respondent/wife was living in adultery, to consider the relevant contents of such material before recording a finding on the allegation. The Family Court was required to examine the said material, including its relevance, identification and accuracy, and thereafter assess its evidentiary value. Adultery is one of the grounds specifically contemplated under Section 125(4) of the Cr.P.C., which has a direct bearing upon the entitlement of a wife to claim maintenance. Therefore, where the petitioner/husband has placed electronic material in the form of a CD and transcript in support of such allegation, the same could not have been ignored without assigning appropriate reasons**.**

17. Perusal of impugned order also, does not disclose any such consideration of the CD and transcript. Even though the material had earlier been permitted to be led as secondary evidence, there is no clear indication in the impugned order as to whether the said material was ultimately excluded, discarded or rejected, or for what reason the same was not considered while recording the finding on the allegation of adultery.

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18. Resultantly, for want of consideration of the CD and transcript in its real perspective, the impugned order being unsustainable is set aside and matter is remanded to the Family Court for deciding the application under Section 125 of the Cr.P.C. afresh, after restoring the same to its original number that too after taking into consideration the entire evidence including the aforementioned CD and transcript and in the light of decisions of Hon'ble Supreme Court in the case of Himanshu Chordia **(supra)** and Vibhor Garg **(supra).**

19. Parties are directed to remain present before the Family Court on 16.09.2026. It is also hereby observed that if the parties do not appear on the given date, the Family Court shall issue fresh notice/summons to them with a view to secure their presence before the Court.

20. At the same time, it is also directed that till the fresh decision of application under Section 125 of the CrPC, the petitioner/husband shall continue to pay the amount of maintenance to the respondent/wife as per order dtd.24.01.2018 passed by the Family Court.

21. With the aforesaid, this criminal revision is allowed partly and disposed of.

22. Pending application(s), if any, shall stand disposed of.

23. Registry is directed to send back the record of the Family Court immediately for compliance of the order passed by this Court today.

(DWARKA DHISH BANSAL)
JUDGE

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