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## Case Comment: Does Seeking Information to prove Adultery amount to Infringement of the Right to Privacy – Sachin Arora v Manju Arora

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### INTRODUCTION

The case of Sachin Arora v Manju Arora<sup>1</sup> sheds light on the issue of proving adultery vis à vis the right to privacy of a person. A fairly recent judgment by the Hon'ble Delhi High Court inquires and decides whether seeking information about the whereabouts of a spouse to prove the charge of adultery would amount to an infringement of the right to privacy of the said spouse. The issue is, that adultery is hard to prove and one requires certain information which is deemed private to prove such indulgence. Until proven the aggrieved spouse cannot seek legal relief from the courts, e.g. divorce. Therefore, the question that the courts addressed in this case is whether asking for such information which is private but would help the aggrieved spouse prove their charge of adultery and thus seek the legal relief they require, infringes on the right to privacy of the alleged adulterous spouse. The significant issue in this case is, whether a

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<sup>1</sup> *Sachin Arora v Manju Arora* (2023) SCC Online Del 2692

spouse who is indulging in adultery can effectively hide behind his right to privacy when asked for such information which would prove adultery. The judgment further delves into the question of how to decide between two contesting fundamental rights, namely, the right to privacy and the right to a fair trial. This is a really interesting case which sets a precedent.

## **FACTS OF THE CASE**

This appeal petition was filed before the Hon'ble Delhi High Court by the husband-petitioner against the family court's order in favor of the wife-respondent allowing her application to seek information from Hotel Fairmount Jaipur regarding the petitioner's stay, record details of the room he was staying in along with ID proofs, CCTV footage, and Call Detail Records. To accurately understand the case, here are the relevant facts:

1. Marriage between the parties was solemnized as per the Hindu rites and rituals in 1998. Both parties continued to stay in the shared household along with their daughter, however, disputes arose between them.
2. The respondent thereafter filed a petition for divorce under section 13(1)(i) of the Hindu Marriage Act, 1955 (HMA)<sup>2</sup> on the grounds of cruelty and adultery. The respondent submitted that the petitioner was staying in Hotel Fairmount Jaipur with a lady and her minor daughter. She alleged that her husband was indulging in adulterous acts with this woman outside of their marriage.
3. To substantiate her allegations of adultery, the respondent approached the hotel authorities for the requisite details. She required booking details for room 219, the check-in check-out register details, and photocopies of the ID proofs and payment details. However, the hotel denied her request.
4. The respondent then applied to the learned family court to seek the documents she required to prove the charge of adultery and thereof be granted divorce.
5. The petitioner submitted that if this application is allowed it would not only infringe his right to privacy, but also of his lady friend's and her minor daughter's.

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<sup>2</sup> Hindu Marriage Act 1955, s 13 (1)(i)

6. The learned Family Court allowed the application directing the hotel and the mobile network agencies to preserve the required data and documents and send the same under sealed covers to the court. While passing the impugned order, the learned Family Court opined that *“the documents being sought by the respondent were necessary to prove the charges of adultery and cruelty leveled against the petitioner by her.”*<sup>3</sup>
7. The petitioner, unconvinced by the impugned order, approached the Delhi High Court with the appeal petition.

## ISSUES

There are three crucial issues that the court identified here, these are given as follows:

1. Whether the respondent successfully made out a prima facie case.
2. The ambit of section 14, Family Courts Act 1984 vis à vis basic principles of Indian Evidence Act 1872.
3. Most importantly, whether the Information sought by the respondent would amount to infringement of the right to privacy of the petitioner and others.

## ARGUMENTS AND DISCUSSION

There are many interesting arguments levelled by both sides to support their claims. These arguments shape essential discussions around important aspects of Constitutional Law, Fundamental Rights, and relevant sections of the Family Courts Act 1984 and Indian Evidence Act 1872.

While arguing before the Hon'ble Delhi High Court, both the counsel for the petitioner and the counsel for the respondent brought up several important arguments along with relevant case laws in furtherance of their respective claims. Firstly, the petitioner primarily argued that the respondent was unable to make a prima facie case against the petitioner and the case filed was merely based on speculation that her husband was indulging in adulterous acts. The counsel for

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<sup>3</sup> *Sachin Arora v Manju Arora* (2023) SCC Online Del 2692

the petitioner also believed that the learned family court failed to consider this. The counsel for the respondent here was of the view that the respondent had not filed a meritless petition solely on the grounds of speculation, rather she had conclusive proof that her husband was staying in Hotel Fairmount Jaipur with another woman on confirmed dates. Further, they added that to conclusively prove adultery, the respondent required the said documents.

Secondly, the counsel for the petitioner argued that no useful purpose would be fulfilled by calling for Call Detail Records of the petitioner's two mobile numbers as they can in no way prove that the petitioner was indulging in adulterous acts, and further if provided, they can be used as a tool by the respondent to defame the petitioner. To this, the counsel for the respondent furthered that the call records are essential to prove the proximity of relations between him and his lady friend, which can be used as evidence to prove her charge of adultery against the petitioner. Next, the counsel for the respondent also argued that the summoning of these documents fell within the ambit of section 14 of the Family Courts Act, 1984. This section provides that "*A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).*"<sup>4</sup> This means that family courts are vested with wider powers compared to the civil courts about admitting and receiving evidence on record. This means that specific evidence that is private and thus cannot be admitted by a civil court under the Indian Evidence Act 1872, family courts have discretion to admit specific evidence that they deem significant for deciding the matter.

Lastly and perhaps most importantly, the counsel for the petitioner argues that by allowing such information to the respondent, the court will be infringing not only the petitioner's right to privacy about also of his lady friend along with her minor daughter. This is certainly the most important argument put forward by the petitioner. The counsel for the respondent skilfully argues this and makes a case for the respondent. They argue that the right to privacy is not

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<sup>4</sup> Family Courts Act 1984, s 14

infringed because, like most fundamental rights, the right to privacy is also not absolute and has certain reasonable restrictions imposed on it about public interest and public justice.

All these arguments are taken into consideration by the Hon'ble Delhi High Court and a judgment is pronounced. Additionally, specific essential points are taken into consideration by the Hon'ble High Delhi Court that are of vital importance and form the central point of this discussion.

## JUDGMENT

The Hon'ble Delhi High Court dismissed the appeal of the petitioner and accepted the respondent's plea. It is, however, the reasoning which is of the essence. The Hon'ble court while assessing the first issue held that the respondent has successfully made out a prima facie case against the petitioner. The use of photographs by the respondent showing the petitioner near his lady friend and the details regarding the room number and dates on which the respondent believes that her husband was engaging in adulterous acts are sufficient to prove a prima facie case. The court acknowledged that even though the photos in themselves are not sufficient to prove adultery, *"it cannot be said that it does not even point towards a prima facie case"*.<sup>5</sup> The court also noted that the petitioner had taken contradictory stands at various times; he mentioned in his statement that he met the lady on to official work-related trip and later he mentioned that he met his lady friend by chance. Such contradictory statements didn't work in the petitioner's favour.

Next, to reason that the respondent not going out of bounds of section 14, FCA by seeking information from the petitioner and thus using it as evidence in the court of law, the court relied on *Linda Constance Edwards v William Edwards*<sup>6</sup>. It was held that because it is extremely difficult to prove direct evidence of adultery, the court thought that *"in a case like the present, when a wife seeks the help of the Court for procuring evidence which would go a long way to prove adultery on the part of her husband, the Court must step in; this would align with Section 14 of the Family Courts*

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<sup>5</sup> *Sachin Arora v Manju Arora* (2023) SCC Online Del 2692

<sup>6</sup> *Linda Constance Edwards v William Edwards & Anr* (2000) SCC OnLine Del 933

*Act which gives a leeway to the Court to consider evidence which may be not admissible or relevant under the Indian Evidence Act.”<sup>7</sup>*

Lastly, to prove that the petitioner’s right to privacy was not infringed, the court relied on *KS Puttuswamy v Union of India*<sup>8</sup>. The court discussed that under the Puttuswamy judgment, it was held that like all fundamental rights, the right to privacy which is guaranteed under Article 21 of the Indian constitution<sup>9</sup>, is not an absolute right and certain reasonable restrictions can be imposed on the same. Court further notes that owing to public interest and public justice such restrictions can be thus imposed, it reads *“The Hindu Marriage Act specifically recognizes adultery as a ground for divorce and therefore, it would not at all be in the public interest that the Court should on the ground of the right to privacy, come to the aid of a married man who, during the subsistence of his marriage, is alleged to have indulged in sexual relationships outside his marriage.”*<sup>10</sup>

Another important point made by the case is that certain fundamental rights must be given to others when the question is of public interest and public justice. Here, the respondent has a right to fair trial which would require all relevant documents to be produced before the court. Therefore it was held that the petitioner’s right to privacy would have to yield to the respondent’s right to fair trial because as the court mentions, *“It is important to appreciate that while the right to privacy is essentially personal, the right to a fair trial has wider ramifications and impacts public justice, which is a larger cause. The cause of public justice would suffer if the opportunity of a fair trial is denied by shutting out evidence that a litigating party may wish to lead at the very threshold.”*<sup>11</sup> This means that the respondent’s right to a fair trial would prevail over the petitioner’s right to privacy. The Hon’ble Court also relies on another case, *Joseph Shine v Union of India*<sup>12</sup>. It says that as it is held under this case, *“the freedom to have a consensual sexual*

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<sup>7</sup> *Sachin Arora v Manju Arora* (2023) SCC Online Del 2692

<sup>8</sup> *KS Puttuswamy v Union of India* (2017) 10 SCC 1

<sup>9</sup> Constitution of India 1950, art 21

<sup>10</sup> *Sachin Arora v Manju Arora* (2023) SCC Online Del 2692

<sup>11</sup> *Ibid*

<sup>12</sup> *Joseph Shine v Union of India* (2019) 3 SCC 39

*relationship outside marriage by a married person, does not warrant protection under Article 21.*<sup>13</sup> This means that privacy rights would not protect adulterous acts.

## ANALYSIS

The court provided a very progressive judgement in favour of the right to a fair trial. The right to fair trial means that anyone and everyone who approaches a court of law has a right to defend and/or present their case to the best of their ability. Everyone has a right to be heard, this is the basic principle of natural justice and the court protected the right to fair trial over the right to privacy. As we know, most fundamental rights are not absolute; there are reasonable restrictions placed on them and in such cases where two fundamental rights are in dispute, a court of law must undertake necessary steps to strike a perfect balance between both party's contested fundamental rights. Like here in this case, the right to privacy of the petitioner was put against the right to a fair trial of the respondent, and keeping in mind the public interest, greater justice, and morality, the court gave its verdict to support the right to a fair trial of the respondent. It was ultimately held that the rights of an aggrieved spouse to collect relevant information concerning reasonable apprehension of their partner indulging in adulterous acts would not infringe the right to privacy of the alleged adulterous spouse.

Another reason perhaps why the court took this stand was to provide justice to the aggrieved spouse who is alleging that their partner is unfaithful and adulterous but has no other means to prove the same except to provide the court with private details. It was unjustified to protect the right to privacy of the alleged adulterous spouse here because that would leave the aggrieved spouse no legal recourse.

The court also made it fairly clear that section 14, FCA broadens the ambit of evidence that can be accepted in a family court because of the sensitive nature of complaints and the private nature of the proceedings. If the family courts were to stick with how evidence is presented in any other civil dispute, it would not be very useful to have family courts in the first place because some

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<sup>13</sup> *Sachin Arora v Manju Arora* (2023) SCC Online Del 2692

leeway was essential to function when handling such private disputes of marriage, adoption, divorce, succession, etc.

## **CONCLUSION**

After this discussion, it can be effectively said that whenever there is a dispute between two fundamental rights, the right that would advance public interest, public morality, and public justice would prevail. Additionally, as we have already understood most fundamental rights are not absolute; there are reasonable restrictions placed on them and in such cases where two fundamental rights are in dispute, a court of law must undertake necessary steps to strike a perfect balance between both party's contested fundamental rights. Like here in this case, the right to privacy of the petitioner was put against the right to a fair trial of the respondent, and keeping in mind the public interest, greater justice, and morality, the court gave its verdict to support the right to a fair trial of the respondent. It was ultimately held that the rights of an aggrieved spouse to collect relevant information concerning reasonable apprehension of their partner indulging in adulterous acts would not infringe the right to privacy of the alleged adulterous spouse. This was a very purposive interpretation by the bench and it secured justice to the aggrieved wife. This is perhaps the beauty of common law, one can have freedom to manoeuvre their way within the system. Judgements like these are a stepping stone towards a better and more efficient system.

This case is now pending before the apex court as an appeal. It would thus be compelling to further engage with the decision of the apex court.