



BLIND FOLD LEGAL JOURNAL

VOLUME 2 ISSUE 3
[MAR 2023 – MAY 2023]

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“Sanjay Pandey vs Directorate of Enforcement: Intercepting phone communications or recording calls without explicit consent constitutes a transgression of the privacy right protected under Article 21 of the Indian Constitution”

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Case Summary: Sanjay Pandey vs Directorate of Enforcement BAIL APPLN. 2409/2022 & CRL.M.(BAIL) 957/2022

Court: The High Court of Delhi

Observation in Brief: Intercepting phone communications or recording calls without explicit consent constitutes a transgression of the privacy right protected under Article 21 of the Indian Constitution

Date of Judgment: December 08, 2022

Legal Framework: Indian Penal Code, 1860, Information Technology Act, 2000, The Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933, Prevention of Corruption Act, 1988, and Prevention of Money Laundering Act, 2002

Factual Background:

The case revolves around ISEC Services Private Limited ("ISEC"), a cybersecurity consulting firm contracted by the National Stock Exchange ("NSE") in 2009. ISEC's responsibility was to analyze data and assess cyber vulnerabilities within NSE. The analysis involved examining pre-recorded call data provided by NSE on a weekly basis. This process initially utilized a system by M/s Comtel until 2012, after which NEXSUS Techno Solutions Pvt. Ltd. took over.

A complaint alleged that ISEC, in collusion with others, unlawfully intercepted Mahanagar Telephone Nigam Limited ("MTNL") lines at NSE from 2009 to 2017, recording calls of various NSE officials. Subsequently, charges were filed under various sections of the IPC, IT

Act, Telegraph Act, Wireless Telegraphy Act, and PC Act. An ECIR under PMLA was registered by the Enforcement Directorate ("ED") based on the FIR.

Mr. Sanjay Pandey, allegedly involved in ISEC from 2009 to 2017, sought bail. ED contended that Mr. Pandey's advisory role was misleading, presenting evidence to the contrary. They further claimed that ISEC's phone monitoring lacked proper authorization and occurred without NSE employees' knowledge or consent.

ISEC countered that NSE had been monitoring calls since 1997, providing pre-recorded call data for analysis. Their role was to identify suspicious calls related to data security and cyber vulnerabilities. ED argued that the revenue earned by ISEC amounted to "proceeds of crime," alleging money laundering.

Court's Observations and Conclusion:

The DHC emphasized the sanctity of privacy, asserting that recording calls without consent violated Article 21 of the Constitution. It emphasized that such actions require explicit consent to avoid breaching fundamental privacy rights.

Regarding IPC offenses, the Court found insufficient evidence identifying victims of deception or loss. The complaint lacked specifics about cheated customers.

The Court also noted a lack of evidence demonstrating the nature of shared information, its misuse, or criminal intent. No customer complaints or testimonies supported the prosecution's claims.

While acknowledging potential penalties under the Telegraph Act and Wireless Telegraphy Act, the Court stated these were not scheduled offenses. The IT Act's Section 72, covering breaches of confidentiality and privacy, was deemed inapplicable.

Regarding charges under sec. 13(2) read with 13(1)(d) PC Act, deemed PMLA Scheduled Offenses, the Court found no evidence of bribery or illegal gratification. Since NSE is a private entity, no PC Act violations were established in ISEC's dealings.

Ultimately, the DHC concluded that no scheduled offenses were prima facie established, hence no proceeds of crime were generated. This aligns with the precedent set in "Vijay Madanlal Chaudhary & Ors. vs. Union of India & Ors. 2022 SCC OnLine SC 929". Consequently, Mr. Sanjay Pandey was granted bail.

