

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(CRL) 519/2010**

Decided on 06.10.2010

IN THE MATTER OF :

RADHA GUPTA Petitioner
Through : Mr. Ruchir Batra, Adv.

versus

STATE AND ORS Respondents
Through : Mr. Sanjeev Bhandari, ASC for the
State with ASI Giriraj Singh, PS Badarpur.
Mr. Divya Darshan Sharma, Adv. for R-5 & 6
with respondents No.5 & 6 in person.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of a writ of mandamus directing the respondents No.1 to 3 to investigate the matter on her complaint, through Crime Branch/Special Staff or through any other police station, except PS Badarpur. The petitioner has also sought directions to the respondents No.1 & 3 to arrest the culprits in respect of the allegations made by her of receiving threats to life and false implication in other criminal cases.

2. It is the case of the petitioner that on 24.3.2010, when she received a threatening call on her mobile phone, she made a complaint by dialing no.100. It is averred in para 3 of the petitioner that on the same date, i.e., on 24.3.2010, the husband of the petitioner, Sh.Krishna Murari, was kept in illegal custody at PS Badarpur, where the respondent No.4 gave beatings to her husband, but in the morning, he was released on the condition that he would send the petitioner to the police station with ₹.50,000/-. It is also claimed that on 30.3.2010 and 5.4.2010, the husband of the petitioner lodged complaints with the Commissioner of Police, on which no action was taken. Hence, the present petition.

3. A status report dated 21.7.2010 is handed over by the learned ASC for the State. He submits that the petitioner has withheld material information and approached this Court with unclean hands and on this ground alone, the present petition is liable to be dismissed. He submits that the petitioner has failed to reveal that there exists a dispute between her husband, Sh.Krishna Murari, and Sh.Bhoop Singh, respondent No. 6, his son, Hemant, respondent No.5 & Smt.Meena, wife of respondent No.6, in respect of which Shri Krishna Murari, was called by respondent No.4, ASI Desh Raj, who is conducting an enquiry on the complaint of Smt. Meena, for joining investigations. On 27.3.2010, statements of the complainant, Smt. Meena and the husband of the petitioner were recorded, but thereafter Shri Krishan Murari did not join the enquiry, despite repeated calls and instead he filed a complaint against the respondent No.4, with the respondents No.1 & 2. It is further submitted that an inquiry was made into the complaint of the petitioner and her husband by Inspector R.C. Jain, PS Badarpur, and it was

found that on 24.3.2010, a PCR call, vide DD No.42-B, was received in PS Badarpur, which was in turn marked to HC Ram Raj for inquiry and necessary action. HC Ram Raj met the petitioner at her residence, but she did not make any statement and has not made any statement so far.

4. Learned APP for the State states that Sh.Krishna Murari is seeking refuge under the garb of the present petition, got filed by him through his wife and is falsely implicating the respondent No.4, while at the same time, failing to join investigations on the basis of the complaint made by Smt. Meena, wife of respondent No.6.

5. Though counsel for the petitioner disputes the aforesaid position, he does not deny the fact of pendency of a dispute between the petitioner's husband and the wife of respondent No.6.

6. Counsel for the respondents No.5 & 6 states that Smt.Meena had complained that in the month of January 2010, she had handed over cash and jewellery to the husband of the petitioner on an assurance given by him that he would return the same, but he refused to do so and instead threatened to implicate her falsely. As a result, she lodged a complaint against him on 25.3.2010. He further submits that now Smt. Meena has filed a complaint against the husband of the petitioner, under Section 200 Cr.P.C. which is pending before the learned Metropolitan Magistrate, Saket Court. He asserts that the present petition is a gross abuse of the process of Court and yet another attempt on the part of the petitioner and her husband to harass his clients, knowing very well that Sh.Krishna Murari has been named in the complaint filed by the wife of the respondent No.6.

7. A perusal of the present petition shows that apart from the averments made in para 2 which relate to a telephone call received by the petitioner on 24.3.2010, all the allegations in the petition mainly revolve around the threat received by the husband of the petitioner, though he has chosen not to implead himself as a co-petitioner in the petition. Even the averment made in the prayer clause (i) is not only for relief to the petitioner alone, but also to her husband. There is not a whisper in the present petition with regard to the complaint made by Smt.Meena against Sh.Krishna Murari. It is hard to believe the submission of the counsel for the petitioner that the petitioner is completely ignorant of the complaint filed by Smt. Meena, wife of the respondent No.6, against her husband. This is more so when the petitioner has enclosed with the petition, a letter dated 5.4.2010, addressed by her husband to the Commissioner of Police, mentioning the complaints made by respondent No.5 and the members of his family.

8. It appears that the present petition is being used by Shri Krishan Murari as a handle to delay the enquiry proceedings being conducted by PS Badarpur on the basis of the complaint filed by the wife of the respondent No.6 and the petitioner is being made to fight a proxy battle, while her husband remains in the background. Interestingly, even today, it is not the petitioner, but her husband, who is present in the Court, along with the counsel.

9. It is settled law that when a party approaches the Court under Article 226 of the Constitution of India for seeking any relief, he/she is

expected to come with clean hands and reveal all the relevant material and failure to do so itself would disentitle a party in equity from being granted any relief in his/her favour, particularly when extraordinary powers vested in the Court under Article 226 of the Constitution of India are sought to be invoked.

10. In the present case, the intentional silence maintained by the petitioner with regard to the complaint filed by the wife of the respondents No.6 against her husband, shows that the conduct of the petitioner is not above board. She has withheld material information from the Court and has not approached this Court with bonafides. On this count alone, the present petition is liable to be dismissed.

11. Even otherwise, if the petitioner has a grievance that the police station is not registering a FIR or taking necessary steps on her complaint, then she has a remedy of filing an application under Section 156(3) Cr.P.C. before the learned Magistrate. Upon filing such an application the learned Magistrate can always direct the FIR to be registered and proper investigation to be made. The Magistrate can also monitor the investigation to ensure a proper investigation is conducted on the part of the police authorities. In such circumstances, when an equally efficacious alternate remedy is available to the petitioner, this Court is not inclined to entertain the writ petition. Further, it is not the right of the petitioner to claim investigation by a particular agency of her choice and at best, she can claim that the offence alleged by her be investigated in a proper manner.

12. In view of the aforesaid facts and circumstances of the case, this Court declines to exercise the extraordinary powers vested in it under Article 226 of the Constitution of India. The petition is dismissed, while granting leave to the petitioner to seek her remedies in accordance with law.

OCTOBER 6, 2010
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(HIMA KOHLI)
JUDGE