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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: October 5<sup>th</sup>, 2010

**Date of Order: November 11<sup>th</sup>, 2010**

**+ W.P. (Crl.) No. 1527 of 2010**

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**Rachna Arora**

**11.11.2010**

**...Petitioner**

Versus

**State & Anr.**

**...Respondents**

**Counsels:**

Mr. R.N. Mittal, Sr. Adv. with Ms. Seema Gulati for petitioner.  
Mr. Vikas Pawha, Standing Counsel for CBI/respondent.

**JUSTICE SHIV NARAYAN DHINGRA**

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|----|-----------------------------------------------------------------------|------|
| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not?                                | Yes. |
| 3. | Whether judgment should be reported in Digest?                        | Yes. |

**JUDGMENT**

1. This petition under Article 226 of the Constitution of India has been filed by a serving officer of U.P. Judicial Services seeking directions of this Court to register an FIR under various provisions of Indian Penal Code, Information Technology Act and for handing over investigation to CBI.

2. I consider that for deciding this petition, it is not necessary to go into the allegations made by the petitioner. It is an undisputed fact that the petitioner has not approached any police station either in U.P. or in Delhi for registration of an FIR and it is not her case that police of either U.P. or Delhi refused to register an FIR. It is her own case that she was a member of U.P. Judicial Service from before her marriage. The alleged offence described by her in the petition was allegedly committed by her

estranged husband

3. I consider that a person can approach this Court under Article 226 of the Constitution of India where legal or other right of a person is infringed by the authorities concerned. If there is no infringement of any legal or other right and there is no allegation of infringement of any legal or other right at the hands of State, the High Court cannot be approached under Article 226 of the Constitution of India. In *The State of Maharashtra v Farook Mohd. Kasim Mapkar and others JT 2010(8) SC 151*, the Supreme Court observed as under:-

*“In Hari Singh vs. State of U.P., (2006) 5 SCC 733, considering the very same provisions, this Court concluded that when the information is laid with the police but no action on that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. It was further held that in case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and submit a report. If he finds that complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. After pointing out the same, the Court has concluded the dismissal of writ petition filed under Article 32.” (para 12)*

4. In *Aleque Padamsee and ors v. Union of India & Ors. (2007) 6 SCC 171*, the Supreme Court observed that in those cases where police refuses to register an FIR, filing of a writ petition is not the remedy and the Supreme Court reiterated its decision in

*Hari Singh's (supra)* case. In the case in hand, the petitioner has not even approached the appropriate police station for registration of an FIR and has directly come to this Court seeking directions for registration of an FIR and for handing over investigation to CBI, I consider that under these circumstances, there was no infringement of fundamental or other right of the petitioner. This petition under Article 226 of the Constitution of India was not maintainable and is hereby dismissed.

5. The DVDs filed by the petitioner along with the present petition for perusal of the Court be returned to her.

**November 11, 2010**  
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**SHIV NARAYAN DHINGRA, J**