

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

+ **CRL. M.C. No. 1788/2011**

**Date of Decision : 27.05.2011**

**POOJA WALIA**

**..... Petitioner**

Through: Mr. P.Mendiratta, Adv.

Versus

**STATE & ANR.**

**..... Respondents**

Through: Mr.N.Sharma, APP  
Mr.C.M.Mani, Adv. for respondent no.2

**CORAM :  
HON'BLE MR. JUSTICE V.K. SHALI**

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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 the judgment should be reported in the Digest ?               | YES |

**V.K. SHALI, J. (Oral)**

1. This is a petition filed by the petitioner against the order dated 23.05.2011 passed by the learned Additional Sessions Judge, Tis Hazari Courts, Delhi dismissing the revision petition bearing no. CR No. 34/2011 titled **Ms. Pooja Walia Vs. State & Anr.**

2. Briefly stated the facts leading to filing of the present petition are that in FIR No. 28/2009 under Section 406/498A/34 IPC registered by P.S. Mianwali Nagar, Delhi on the complaint of the present petitioner against her husband, parents-in-law, brother-in-law and the respondent no.2/sister-in-law. The respondent no. 2 filed an application seeking permission to go abroad. The learned

Metropolitan Magistrate passed a detailed order dated 14.05.2011 granted the permission to go abroad.

3. It is alleged that the petitioner could not file the reply as the copy of the application was not furnished to them despite the Court directions. In any case, there was a strong opposition to the permission being granted to the respondent no.2 to travel abroad on the ground that the husband of the present petitioner Arun Handa and her parents-in-law are already settled in U.K. being British passport holders. Some of them have also been declared as proclaimed offender. It was alleged by the petitioner that in case the respondent no.2 is permitted to go abroad she will also not come back. It is apprehended that the entire family may settle down outside India by leaving the present petitioner in lurch.

4. The respondent no. 2 had contended before the learned Magistrate that she has roots in India in as much as her husband is a businessman in India and her two kids are studying in India. The respondent no. 2 is also stated to be employed as a teacher in a school in Dwarka itself and she also filed her income tax returns. The tentative schedule of tour programme was also disclosed by her, and accordingly, after giving consideration to the entire matter, the learned Magistrate permitted the respondent no. 2 to go abroad subject to the following conditions:

- “1. The applicant shall file in Court the entire details giving her date of departure from Delhi and her date of arrival in Delhi including her itinerary including the details of place which she shall be visiting during the vacations in the form of an affidavit.*

2. *In the affidavit, she shall also mention the addresses where she shall be staying during her visit to various places.*
3. *Along with the affidavit, copies of the air tickets shall be annexed.*
4. *The applicant shall furnish two sureties in the sum of Rs.1 lakh cash before leaving the territory of India who shall give surety of her returning back of India.*
5. *The applicant shall also place on record an FDR in the sum of Rs.2 lakh which shall be released back to her on her return back to India.*
6. *The original documents pertaining to property in her name i.e. S-203, HL Area, Sector-6,Dwarka, New Delhi shall also be placed on court record before leaving the territory of India. The said original documents shall also be returned to her on her return back to India.”*

5. The present petitioner felt aggrieved from the said order and preferred a revision which was considered by the learned Additional Sessions Judge. The learned Additional Sessions Judge did not find any merit in the contention of the learned counsel for the petitioner that the parents-in-law of the petitioner being the British passport holders and some of them have already been declared as proclaimed offenders, therefore, she will not come back. It was stated that the property which the respondent no. 2, claims to be worth Rs.50,00,000/- was actually shown in the sale deed worth Rs.4,00,000/- which will grossly inadequate to persuade her to come back to this Court. The learned Additional Sessions Judge after extensive consideration and referring to various pronouncements of Apex Court as well as this Court put a seal of approval on the order passed by the learned Magistrate.

6. Still feeling dissatisfied, the present petitioner filed a petition under Section 482 Cr.P.C. assailing the order of both the learned Magistrate and the learned Additional Sessions Judge dated 14.05.2011 and 23.05.2011 respectively.

7. I have heard the learned counsel for the petitioner, the learned APP and the learned counsel for the respondent no. 2 who is present along with the respondent herself in Court today. I have also gone through the record.

8. At the very outset, I must state that the present petition is in essence a second revision filed by the petitioner raising the same set of grievances which were raised by her before the learned Additional Sessions Judge. Although, the Section 482 Cr.P.C. starts with a non-obstante clause that would mean merely on account of the fact that a person has preferred a revision in the Sessions Court, he need not be necessarily debarred from assailing the order in High Court in exercise of its power in Section 482 Cr. P.C. in order to prevent abuse of process of law or to secure the ends of justice, but ordinarily in the absence of this, the Court would discourage a party to have a petition under Section 482 Cr.P.C.

9. I feel the entire attempt of the petitioner is to have a second revision against the order of the learned Magistrate or even for that matter against the order of the learned Additional Sessions Judge. This is not permissible under Section 397(2) Cr. P.C. Having said so, even on merits, I find that the entire exercise on the part of the petitioner is to put a spoke in the travel plan of the respondent no.

2 only out of sense of vendetta rather than a genuine objection to an application of the respondent. The plea which has been taken by the petitioner that the husband of the petitioner is a British passport holder and so are her parents-in-law and as they have not subjected themselves to the process of law in India cannot be a ground to deny the permission to travel abroad to the respondent no. 2 merely on the ground that she too happens to be a British passport holder when her family is here. She has admittedly been working here as a teacher in a school. She has shown to the Court that no doubt she is a British passport holder which she had acquired in the year 2006 but as on date she is also an Indian Passport holder. It is further stated by the learned counsel for the respondent no. 2 that the Government of India has a policy to promote persons of Indian origin to hold two passports; one of their parent country and the other of the adoptive country. She has also been imposed with certain conditions which I feel are quite stringent so as to procure her attendance during the course of trial. I feel that in a matter of this nature where complaint is made by the wife against the husband and other family members on account of matrimonial discord invariably an effort is made to enrope the entire family of the boy. It has been pointed out to this Court that the respondent no. 2 was married in the year 2002 and is well settled in her matrimonial home while the present petitioner got married in the year 2008 and the her marital discord started in 2009. Unfortunately, the husband and the parents-in-law are the British passport holder and if they have not submitted to the

processes of law in India, it will be totally unfair to assume at this stage that the sister-in-law who too incidentally is a British passport holder would not come back where her husband is working here and her children are studying here. Further, she herself is also working as a teacher and has immovable property. She in my view cannot be held as a hostage to procure the attendance of the other recalcitrant accused persons. In such a situation the entire thrust of the present petitioner is to put pressure on the husband and other family members by ensuring that the respondent no. 2 is not permitted to travel abroad.

10. The learned counsel for the petitioner has also placed reliance on case titled **J. M. Jain Vs. Ahmed Sodek Vaid & Anr.** 1991 CrL. L. J. 244 Single Bench Judgment of the Bombay High Court wherein the High Court had set aside the order of the Trial Court permitting the respondent accused of an offence under FERA to travel abroad on the ground that he being a foreign national was found in possession of Indian and foreign currency. I do not find any analogy between the facts of the said case, and the present case so as to draw an inference that merely because a person is a foreign national he should not be permitted to go abroad when he has roots in India. The learned counsel for the petitioner is overlooking the fact that the present matter is only emanating from the matrimonial dispute and not on account of any violation of statutory provisions like FERA or FEMA or any other white collar crime.

11. I do not find any merit in the petition warranting any

interference of this Court under Section 482 Cr.P.C. Accordingly, the petition stands dismissed. Expression of any opinion hereinbefore may not be considered as an expression on the merits of the case.

**V.K. SHALI, J.**

**MAY 27, 2011  
KP**