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

+ **W.P.(CRL) 1406/2019**

OSHIHAMA

..... Petitioner

Through: Ms. Aishwarya Rao, Advocate with
petitioner in person

versus

DELHI POLICE

..... Respondent

Through: Ms. Kamna Vohra, ASC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

08.08.2019

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1. The present petition has been filed by the petitioner praying *inter alia* for grant of full custody of her minor daughter aged about eleven years, who is presently in the custody of her father and for registration of an FIR under the POCSO Act, against her husband for abusing their minor daughter.
2. The petitioner is represented by Ms. Aishwarya Rao, learned counsel, assigned to her by the Delhi High Court Legal Services Committee to appear on her behalf. Learned counsel submits that the petitioner and her husband were married in November, 2003 and have been blessed with a daughter. It appears from the record that the father of the child and husband of the petitioner had applied for the custody of the minor daughter by filing GP No. 2266/2018 before the Family Court. Initially, an order was passed by the Family Court directing that the custody of the child would remain with the father w.e.f. 7.00 pm on Monday till Saturday school timings and thereafter,

her custody would be transferred to the petitioner/mother w.e.f. Saturday school timings, till Monday evening up till 7.00 pm. This order was passed on 28.07.2018. On 16.11.2018, the learned Family Court directed that these custody arrangements would continue till disposal of the main petition.

3. Ms. Vohra, learned ASC appearing for the respondent, submits that the petitioner being aggrieved by the order dated 16.11.2018, passed by the learned Family Court, had preferred MAT. APP. (F.C.) 312/2018, which was dismissed by the Division Bench as meritless vide order dated 26.03.2019.

4. It appears that subsequently, on 23.04.2019, the father of the child had moved an application before the Family Court praying *inter alia* for the permanent custody of the child. According to the petitioner, the learned Family Court wrongly passed an order on 03.05.2019, granting the full custody of the minor to the father while granting the petitioner/mother, visitation rights to see the child on every Saturday between 3.00 to 5.00 pm in the visitation room of the Court.

5. Ms. Rao, learned counsel for the petitioner, submits that as a mother the petitioner is much agitated on account of change of custody orders as according to her, there was enough evidence to establish that the father had been sexually abusing the child. Reliance is placed on eight videos of the CCTV footage and the drawings of the child, which according to the learned counsel, substantiate the said allegations made by the petitioner. She states that aggrieved by the order of the Division Bench, the petitioner has preferred an appeal before the Supreme Court, which is lying under objections.

6. In this background, we have considered the prayers made in the

present petition. Prayer no.(1) seeks full custody of the minor daughter. But in the factual background noted above, we are unable to entertain this prayer regarding grant of full custody of the minor daughter to the petitioner, though the concern of the petitioner as a mother can be well-understood, since the Family court as well as the Division Bench has duly considered the videos relied upon by the petitioner, and she has already sought legal recourse against the judgment dated 26.03.2019, by approaching the Supreme Court. As for the reliefs at prayers (2), (3) and (4), learned counsel for the petitioner states on instructions that the petitioner does not wish to press the said reliefs. Learned counsel requests that the relief at prayer 5 may be granted which is for issuance of a direction to the Police to register the FIR against the petitioner's husband on allegations of sexual abuse of their daughter aged 11 years, who is in his custody.

7. Ms. Vora, learned ASC, submits that a Status Report was filed by the respondent on 21.05.2019, which we have perused. It is an admitted position that the petitioner had filed an application under Section 156 (3) of the Code of Criminal Procedure before the Special Court, POCSO Act, but the same was dismissed vide order dated 05.11.2018. However, the complaint filed by the petitioner along with the application under Section 156 (3) of the Code of Criminal Procedure has been taken cognisance of and treated as a complaint case under Section 200 Code of Criminal Procedure. The petitioner is presently leading evidence before the concerned court. She would have ample opportunities to produce the video clippings/CCTV footage as evidence before the learned Trial Court to substantiate her case.

8. It may be mentioned here that the learned counsel orally informs the Court that the order dated 05.11.2018, was challenged by way of a revision

and the said petition has also been disposed of by the concerned Court by observing that the Trial Court could still issue directions under Section 202 Code of Criminal Procedure for police investigations, if necessary. We are going by the statements of the counsel as copies of the orders have not been filed.

9. In view of the above fact situation, we are of the opinion that any directions to the Police to register an FIR against the petitioner's husband under the POCSO Act, would be premature. We are not inclined to entertain the present petition at this stage since the petitioner is seeking legal recourse before different fora and any observation made by us on merits either ways, is likely to have an adverse effect.

10. The present petition is accordingly disposed of with liberty granted to the petitioner to pursue her remedies, both civil and criminal, in accordance with law.

HIMA KOHLI, J

ASHA MENON, J

AUGUST 08, 2019

bh/MK