



\$~19

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

+ **W.P.(CRL) 2434/2024**

ESHA MITTAL

.....Petitioner

Through: Mr. Dibyanshu Pandey, Mr. Radhe Shyam Sharma, along with the Petitioner. (Mob No. 9953810683)

versus

STATE GOVT. OF NCT OF DELHI & ORS.Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) with Mr. Amol Sinha, ASC, Ms. Priyam Aggarwal & Mr. Abhinav Kr. Arya, Advs. for State.
Ms. Pratima N. Lakra, CGSC with Mr. Shriram Tiwary, Government Pleader, for R-4, R-5, R-6 & R-7/ Union of India. 8860658903
Insp. Dinesh Rana, PS Dwarka North & SI Sumit Kumar, PS Dwarka North.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% 12.09.2024

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarika Suraksha Sanhita, 2023 has been filed by the Petitioner-Ms. Esha Mittal, challenging the *vires* of Standing Order No. SPUWAC/04/2022 dated 30th May, 2022 issued by the Commissioner of Police, Delhi laying down guidelines for investigation of matrimonial/ dowry cases.
3. It is the case of the Petitioner that the said Standing Order to the extent

W.P.(CRL) 2434/2024

Page 1 of 4



that it delays registration of FIR and favours offenders who are living in a foreign country ought to be declared *ultra vires* on the ground of being arbitrary.

4. The brief facts in this case are that the marriage of the Petitioner was solemnized with her husband in Bijnor, Uttar Pradesh on 11th April, 2009. Both the Petitioner and her husband were employed in Gurugram, Haryana. It is the allegation of the Petitioner that various dowry demands were made by the husband, and in May 2010, he quit his employment and left for London. The Petitioner also left her employment and moved to London on dependent visa. There is a further allegation that the mother-in-law of the Petitioner took away jewelry worth more than Rs. 1 Crore and kept the same in a bank locker jointly held by her husband and the mother-in-law. When the accused husband lost his job in London, the husband and the Petitioner returned to India. It is alleged that thereafter she was subjected to violence and abuse by the husband.

5. It is stated that a girl child was born out of wedlock on 23rd January, 2012 and, thereafter, the husband again moved to London. The Petitioner again quit her employment and moved to London to join her husband, where she suffered a miscarriage. It is further stated that in May 2021, the Petitioner gave birth to a child *via* C-section. Unfortunately, the second child passed away after 3 days of birth.

6. The Petitioner now lives with her daughter. There are various disputes which are going on between the Petitioner and her husband. On 20th April 2024, the Petitioner made a complaint to the Respondent No. 2 seeking registration of the FIR against the husband and his parents (her in-laws).

7. It is submitted by the Petitioner that despite the said complaint being



submitted to the police, in view of the aforesaid Standing Order, the passport of the husband has not been revoked and there was a delay in registration of the FIR against the husband. The Petitioner had filed a writ petition being **W.P.(C) 9399/2024** seeking revocation of the passport of the husband. The said petition was withdrawn on 11th July, 2024.

8. Insofar as the constitutionality of the said Standing Order is concerned the submissions of the Id. Counsel for the Petitioner is that the directions given by this Court in **Chandra Bhan & Ors. v. State, MANU/DE/1407/2008** are outdated after the judgment of the Supreme Court in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273**. It is further submitted that the procedure required to be followed for registration of FIR in domestic/ matrimonial disputes pursuant to the decision of this Court in **Chandra Bhan's case** is resulting in delay in registration of the FIR.

9. On behalf of the Respondents, it is submitted that on the complaint of the Petitioner dated 20th April 2024, a FIR has been registered on 17th August 2024.

10. Ms. Pratima Lakra, Id. Counsel appearing for the Central Government has also placed on record various measures that have been put in place by the National Commission for Women which entertains complaints against Non-Resident Indians (NRIs) as well.

11. This Court has considered the matter. Insofar as the safeguards that have been put in place in the said Standing Order are concerned, there have been repeated judicial precedents and judgments by the Hon'ble Supreme Court and High Courts observing that there is misuse of Section 498-A of the IPC. It is to prevent such misuse that the aforesaid guidelines under the said Standing Order have been issued and the same are being followed.



12. However, in case of any exigency the concerned Complainant(s) are always at liberty to approach the concerned Deputy Commissioner of Police (DCP) and to seek immediate redressal of their grievance. Such Complainant(s) are also free to approach the National Commission for Women for any redressal. The impugned Standing Order *per se*, in the opinion of this Court, is not liable to be struck down.

13. Needless to state that, in the facts of this case, since the FIR has now been registered, the investigation shall be conducted in accordance with law by the concerned police authorities, and, all steps shall be taken to look into the allegations made by the Petitioner in the present petition including against the in-laws. The Petitioner shall also not be unnecessarily harassed by her in-laws and any complaint shall be looked into forthwith.

14. The petition is disposed of in these terms.

15. All pending applications are also disposed of accordingly.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

SEPTEMBER 12, 2024/Ni/ms