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

+ **W.P.(CRL) 3239/2024**

ASLAM ALI

.....Petitioner

Through: Mr. Mohd Rashid and Mr. Shabhat Hussain, Advocates with petitioner in person

versus

THE STATE NCT OF DELHI AND ORS.Respondents

Through: Mr. Anand V Khatri, ASC for State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

18.10.2024

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1. The instant petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS") has been filed by the petitioner seeking the following reliefs:

"i. To issue directions to the respondent to provide the necessary protection to the petitioner from the Respondent no. 1 & 2.

ii. Any other or further directions/order which you lordship may deem fit and proper be also passed in the light of the facts and circumstances of the matter in favour of the petitioners, in the interest of justice."

2. Brief facts that led to the filing of the instant petition are as follows:

- (i) The petitioner herein is the father of the respondent no.2, who is a divorced Muslim woman with two children. The respondent no.2 got



married to the respondent no. 3 on 24th February, 2024 according to Muslim Customs, and consequently, she started living with the respondent no.3 at his residence alongwith her two children.

- (ii) However, both the children of the respondent no.2 were sent back by the respondent no.3 to the petitioner by stating that he will not maintain and make the children as a part of his life.
 - (iii) When the petitioner strongly opposed the same, the parties entered into a quarrel, as a result of which, the respondent no.2 allegedly prepared a second key for the house of the petitioner in his absence and subsequently, entered his house on 15th July, 2024.
 - (iv) Pursuant to the aforesaid, the petitioner found that the respondent no.2 had allegedly trespassed his house and his valuable items of gold and silver were missing.
 - (v) On 20th July, 2024, the petitioner debarred the respondent no.2 and her two children as well as respondent no. 3 from entering all his properties and submitted this information to the '*National Daily Newspaper Virat Vehbhav*' and '*Top Stories*', however, the quarrel between the parties continued to take place.
 - (vi) Therefore, being aggrieved of the aforesaid circumstances, the petitioner filed a written complaint dated 6th August, 2024 to the SHO, Police Station Seemapuri, Delhi, the Lt. Governor of Delhi, the Commissioner of Police as well as the Deputy Commissioner of Police, Shahdara District against the respondent no. 2 and 3.
 - (vii) Being aggrieved by the inaction of the concerned authorities on the complaint made by the petitioner, the present petition has been filed.
3. Learned counsel for the petitioner submitted that despite the filing of



the complaint dated 6th August, 2024 by the petitioner, the Police has failed to take any action till date, therefore, the petitioner requires urgent protection of the respondent-State due to the unlawful and illegal act of the respondent no.2 and 3.

4. It is submitted that due to the abovementioned inaction of the respondent-State, the petitioner is under imminent danger and is living under a constant fear as the respondent no.2 and 3 have harassed, tortured and threatened the petitioner on various instances.

5. It is further submitted that due to the aforesaid facts and circumstances, the petitioner is being deprived of his personal life and liberty which is enshrined under Article 21 of the Constitution of India.

6. Therefore, in view of the foregoing submissions, it is prayed that the instant petition be allowed and the reliefs be granted as prayed.

7. Learned ASC for the State vehemently opposed the instant petition and submitted that the instant petition be dismissed being devoid of any merits.

8. Heard learned counsel appearing on behalf of the petitioner and perused the content made in the instant petition.

9. To further strengthen his arguments, the learned counsel for the petitioner relied upon the complaint which is appended as Annexure P-3 to the instant petition and submitted to that the instant complaint has been sent *via* a registered post.

10. Upon perusal of the complaint, i.e., Annexure P-3, it is observed that the same does not bear any stamp of the concerned Police Station and thus, no receiving of the complaint by the concerned Police Station has been placed on record. Therefore, it is crystal clear that no complaint was filed by



the petitioner for lodging the FIR and thus, the petitioner has directly approached this Court by filing the instant petition. Furthermore, it is also observed that the petitioner has failed to follow the relevant provisions as envisaged under the BNSS.

11. At this stage, it is pertinent to note that interference of a High Court by way of issuing a writ of mandamus is warranted only in cases of a breach of obligation on part of a public official where the aggrieved has duly approached the concerned authority and the concerned public officer has denied to discharge his duties in accordance with the law which has violated/infringed the Fundamental Right of the aggrieved. Therefore, a High Court should not interfere with the investigation unless the concerned authority has failed to exercise its duties.

12. In the instant case, it is observed that the petitioner herein had earlier worked with the Delhi Police and has retired from the services as well. Therefore, in view of the same, it is expected that chronological procedure ought to have been followed and the informant/complainant's remedy lies under the relevant provisions as prescribed under the Code of Criminal Procedure, 1973/nw BNSS, which provides the complainant with the relief to approach the concerned Police authority having jurisdiction to record his grievance in the form of a complaint, on the basis of which, the concerned police authority is empowered to investigate upon the said case pertaining to the alleged offence.

13. Bearing in mind the aforesaid facts ad circumstances, it is observed that the petitioner has failed to show on record any substantial proof and give any details with respect to his contention that he went to the Police Station for lodging the FIR. Therefore, it is held that the petitioner has failed



to approach the Delhi Police and has filed the instant petition straightway and the same is nothing but a gross misuse of process of law.

14. Therefore, this Court is of the view that the instant petition has been filed without approaching the concerned Police Station for the registration of his complaint and thus, this Court is of the considered view that the instant petition cannot be entertained as no merit is found for issuance of writ of mandamus to the State through its SHO for granting protection to the petitioner against respondents No. 2 and 3.

15. Accordingly, the petitioner is granted liberty to approach the concerned local police station and lodge the complaint against the respondents No.2 and 3. Thereafter, upon receiving such complaint, the concerned Police authorities shall take appropriate action in accordance with the law.

16. In view of the above directions, the instant petition alongwith pending applications, if any, stands disposed of.

CHANDRA DHARI SINGH, J

OCTOBER 18, 2024

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Click here to check corrigendum, if any