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

+ **W.P.(C) 16104/2022**

JOSHINI TULI

..... Petitioner

Through: Mr. Joginder Tuli, Mr. Shrikant Sharma, Mr. Vishal Gupta and Mr. Cyril Ignatious, Advocates with Petitioner in person

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Through: Mr. Sanjay Lao, SC, GNCTD with Mr. Santosh Kr. Tripathi, SC, GNCTD with Mr. Arun Panwar and Ms. Mehak Rankawat, Advocates for R-1 and R-4 along with ACP Vinod Narang.

Mr. Chetan Sharma, Additional Solicitor General with Mr. Kirtiman Singh, CGSC with Mr. Amit Gupta, Ms. Kunjala Bhardwaj, Mr. Saurabh Tripathi, Mr. Rishav Dubey and Mr. Madhav Bajaj, Advocates

Ms. Anubha Bhardwaj, SPP, CBI with Mr. Sarthak Anand, Ms. Madhu Bhardwaj and Ms. Ankita Gautam, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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22.11.2022

CM APPL. 50260/2022 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 16104/2022

1. The Petitioner herein, who is appearing in person, has filed the instant writ petition as a Public Interest Litigation (PIL), praying for the following relief:-

“a) Allow the present writ petition and issue a writ of mandamus or any other appropriate writ for giving directions to the Respondents, to transfer the investigation of the FIR No.659/2022 registered u/s 365/302/201 IPC at P.S. Mehrauli to the Central Bureau of Investigation/Respondent No.3 from Respondent No.1 and Respondent No.4 ;and /or

b) Pass any other order which this Hon’ble Court may deem fit in the interest of justice.”

2. The Petitioner states that she is an Advocate, who has approached this Court since she is disturbed by the manner in which the investigation is being carried out by the Delhi Police in FIR No.659/2022 dated 10.11.2022 registered at Police Station Mehrauli under Section 365 IPC.

3. It is the case of the Petitioner that a complaint was filed by father of a missing lady at Police Station Vasai, Maharashtra. Since it was found that the girl was missing from Delhi, FIR No.659/2022 was registered at Police Station Mehrauli on 10.11.2022 under Section 365 IPC against one Aftab Ameen Poonawalla.

4. After the arrest of accused/Aftab Ameen Poonawalla and on his disclosure statement, offences under Section 302/201 IPC were added to the case. It is stated that the Police is not investigating the case properly. It is also stated that the case has attracted lot of media attention and that information is being leaked to the media personnel, which is hampering the investigation as well as tampering of the witnesses and evidence. It is stated

that the Delhi Police lacks adequate technical and scientific equipment to find out the evidence and witnesses as the alleged murder took place about six months ago.

5. Mr. Sanjay Lao, learned Standing Counsel and Mr. Santosh Kumar Tripathi, learned Standing Counsel, have vehemently opposed the writ petition by contending that a large team of about 200 Police personnel is involved in the investigation and for searching the missing parts of the body of the deceased. It is stated that the help of local/adjoining Police Stations is also being taken to search the pieces of the body of the deceased. It is further stated that the entire investigation is being monitored by the Special Commissioner of Police, Law & Order, who is informing the day-to-day progress of the investigation to the Commissioner of Police. It is stated that one team has been sent to Himachal Pradesh and another team has been sent to Mumbai for the purpose of investigation and 80% of the investigation is complete.

6. Undoubtedly, this Court can take judicial notice of the fact that the present case, transfer of which is being sought to CBI, has attracted immense media attention, and, therefore, the instant case is nothing but an attempt by an Advocate seeking to bask in the sunlight of the media attention. Apart from making vague allegations that the investigation is not being conducted in a proper manner, there is nothing in the writ petition to demonstrate deficiencies in the nature and quality of investigation. Solely by stating that the investigation is faulty and that only 44% of the cases of murder result in conviction does not mean that every case must be transferred to the CBI.

7. It was felt that a large section of the society, because of poverty,

illiteracy and ignorance, had no access of justice and to provide this access to the poor, deprived, vulnerable, discriminated and weaker sections of the society, the Apex Court encouraged Public Interest Litigations. It is, therefore, the product of the Court's urge to perform its constitutional obligations and to ensure that a person is not deprived of his Right to Life and Liberty guaranteed under Article 21 of the Constitution of India. To achieve this objective, the definition of "aggrieved person" was broadened so that any public spirited person could approach the Court highlighting the problems/agonies of the persons who could not approach the Court so that the Courts could ensure that the Executive performs its duty/obligation which was not being performed.

8. In due course of time, it came to light that Public Interest Litigations were being blatantly abused by filing of petitions with oblique motives. Frivolous petitions are being filed only to attract publicity and these frivolous petitions have to be nipped in the bud to ensure that the sanctity of Public Interest Litigation, which is a very important jurisdiction, created with care and caution, to ensure that the marginalized sections of the society are not left remediless. The instant petition is a classic example of blatant abuse of this jurisdiction.

9. It is unfortunate that an Advocate has made such allegations by stating that forensic evidence in the present case has not been preserved by the Delhi Police, and that recoveries are being touched and assessed by different public and media personnel within the jurisdiction of Mehrauli Police Station. Such type of petitions only affect the morale of the Police and must not be encouraged. Baseless allegations are bound to taint the faith the general public has in the criminal justice system. Delhi Police is a

professional unit and to boost their morale, petitions of this nature must be severely deprecated.

10. The issues of abuse of Public Interest Litigations and the manner in which they have to be dealt have been laid down by the Apex Court. In the case of Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305, the Apex Court has held as under:-

"110. It is depressing to note that on account of such trumpety proceedings initiated before the courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. — are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for

any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system." (emphasis supplied)

11. In the case of B. Singh (Dr.) v. Union of India, (2004) 3 SCC 363, the Apex Court has held as under:-

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes or vendetta to bring to terms a person, not of one's liking, or gain publicity or a facade for blackmail, the said petition has to be thrown out. Before we grapple with the issues involved in the present case, we feel it necessary to consider the issue regarding the "public interest" aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly and strictly regulated at least in certain vital areas or spheres and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well as to malign not only an incumbent-to-be in office but demoralise and deter reasonable or sensible and prudent people even agreeing to accept highly sensitive and responsible offices for fear of being brought into disrepute with baseless allegations. There must be real and genuine public interest involved in the litigation

and concrete or credible basis for maintaining a cause before court and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction.

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12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

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14. The court has to be satisfied about: (a) the

credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddling interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu [(1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116] and A.P. State Financial Corpn. v. Gar Re-Rolling Mills [(1994) 2 SCC 647 : AIR 1994 SC 2151] .) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr) v. K. Parasaran [(1996) 5 SCC 530 : 1996 SCC (Cri) 1038 : JT (1996) 7 SC 265] .] Today people rush to

courts to file cases in profusion under this attractive name of public interest. Self-styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in courts and among the public, failing which such litigation should be axed with a heavy hand and dire consequences."

(emphasis supplied)

12. In the case of Kalyaneshwari v. Union of India, (2011) 3 SCC 287, the Apex Court has held as under:-

"41. In Ashok Kumar Pandey v. State of W.B. [(2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865] this Court took a cautious approach while entertaining public interest litigations and held that public interest litigation is a weapon, which has to be used with great care and circumspection. The judiciary has to be extremely careful to see that no ugly private malice, vested interest and/or seeking publicity lurks behind the beautiful veil of public interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief.

42. In Rajiv Ranjan Singh 'Lalan' (8) v. Union of India [(2006) 6 SCC 613 : (2006) 3 SCC (Cri) 125] , this Court reiterated the principle and even held that howsoever genuine a case brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt; no trust can be placed by the court on a mala fide applicant in a public interest litigation.

43. The courts, while exercising jurisdiction and deciding a public interest litigation, have to take great care, primarily, for the reason that wide jurisdiction should not become a source of abuse of process of law by the disgruntled litigant. Such careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose true facts and approach the Court with clean hands. Thus, it is imperative that the petitions, which are bona fide and in public interest alone, be entertained in this category. Abuse of process of law is essentially opposed to any public interest. One who abuses the process of law, cannot be said to serve any public interest, much less, a larger public interest. In the name of the poor let the rich litigant not achieve their end of becoming richer by instituting such set of petitions to ban such activities."

(emphasis supplied)

13. In the case of State of Uttaranchal v. Balwant Singh Chauhal, (2010) 3 SCC 402, the Apex Court has held as under:-

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

144. In *BALCO Employees' Union v. Union of India* [(2002) 2 SCC 333 : AIR 2002 SC 350] this Court recognised that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the Court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bona fide". Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations." (emphasis supplied)

14. In the case of Tehseen Poonawalla v. Union of India, (2018) 6 SCC 72, the Apex Court has held as under:-

"97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled.

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has

a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space." (emphasis supplied)

15. This Court is of the considered opinion that the present petition has been filed only to gain publicity without there being any material to support the averments made. The prayers urged in this petition are not only against the genesis of a social interest litigation but also the noble intentions that liberalized the rule of *locus standi* and permitted public

spirited citizens to approach the constitutional courts, for the vindication of rights of those who find themselves incapable to do so. In fact, the Apex Court in State of Uttaranchal v. Balwant Singh Chauhal (supra) has held that courts must ensure that petitions filed by busy bodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs to curb frivolous petitions and petitions filed for extraneous considerations.

16. In view of the fact that this petition is only an attempt to gain publicity and is a frivolous petition, this Court is inclined to dismiss the same by imposing costs of Rs.10,000/- on the Petitioner to be paid to the '*Armed Forces Battle Casualties Welfare Fund*' within a period of four weeks from the date of this Order. The proof of the same shall be filed with the Registry of this Court within two weeks thereafter. In case the amount is not deposited within 30 days, the concerned SDM shall recover the same as arrears of land revenue and deposit the said amount with the '*Armed Forces Battle Casualties Welfare Fund*' with intimation to the Registrar General of this Court.

17. The petition is dismissed with the above observations.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

NOVEMBER 22, 2022

hsk/RR