

Supreme Court - Daily Orders

Afshan Pracha vs Union Of India on 11 May, 2018

ITEM NO.41

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s).113/2018

AFSHAN PRACHA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 11~~05~~2018 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE      HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD For Petitioner(s) Ms. Indira Jaising, Sr. Adv.

Mr. Mahalaxmi Pawani, Sr. Adv.

Mr. Rudro Chatterjee, Adv.

Ms. Tasneem Ahmadi, Adv.

Ms. Manisha Tyagi, Adv.

Ms. Sunita Bhardwaj, Adv.

Mr. Mehmood Pracha, Adv.

Ms. Sudha Gupta, Adv.

Ms. Lily Thomas, Adv.

Ms. Sufia Aqil, Adv.

Mr. Digvijay Singh, Adv.

Mr. R.H.A. Sikander, Adv.

Ms. Deepa Srinivasan, Adv.

Mr. Prateek Gupta, Adv.

Mr. Danish, Adv.

Mr. Mohd. Danish, Adv.

Mr. Dilawar Abbas, Adv.

Mr. Rehan Ahmad, Adv.

Mr. Amir Naseem, Adv.

Mr. A. Chaliha, Adv.

Mr. Sanjay Jain, Adv. [AOR] For Respondent(s) Mr. Aman Lekhi, ASG Signature Not Verified Mr. Zoheb Hossain, Adv. Digitally signed by SUBHASH CHANDER Mr. Rohit Bhat, Adv.

for Date: 2018.05.11 17:37:26 IST Reason:

Mr. B.V. Balaramdas, Adv. [AOR] WP(Crl.)No.113/18 ... (contd.)  2  DBA  
Mr. Ramesh Gupta, Sr. Adv.

Mr. Manish Kr. Singh, Adv.

Mr. Rajiv Khosla, Adv.

Mr. Surender Chauhan, Adv.

Mr. Vikas Singh, Sr. Adv.

Mr. Manan Kr. Mishra, Sr. Adv.

Delhi High Court Mr. A.D.N. Rao, Adv.

Mr. A. Venkatesh, Adv.

Mr. Sudipto Sircar, Adv.

Mr. Rahul Mishra, Adv.

Mr. Tulika Chikker, Adv.

Mr. Arun Kumar, Adv.

Mr. Dheeraj Kr. Singh, Adv.

Mr. Manish Jain, Adv.

Mr. Prakash Sharma, Adv.

Mr. Mohd. Naved, Adv.

UPON hearing the counsel the Court made the following O R D E R  
When the petitioner, a practising lawyer, approached this Court on 09.05.2018, this Court had passed a long order and issued the following directions :

“(i) The petitioner shall be given adequate police protection by the Commissioner of Police, New Delhi so that her statement can be recorded under Section 164 Cr.P.C.;

(ii) The statement under Section 164, Cr.P.C. shall be recorded by the Chief Metropolitan Magistrate at Patiala House Courts, New Delhi;

(iii) The security that shall be granted to the petitioner should be the women police officers of appropriate rank;

(iv) The Bar Association of Tis Hazari Court is restrained from going on strike or participating in any kind of boycott of any Court in Tis Hazari or any other Court.” WP(Crl.)No.113/18 ... (contd.) □3 □We have been apprised that the statement of the petitioner under Section 164, Cr.P.C. has already been recorded by the concerned Chief Metropolitan Magistrate at Patiala House Courts, New Delhi.

In the course of hearing, we have been apprised that the petitioner has lodged an FIR bearing No.124/2018 at P.S. Subzi Mandi, Delhi and a counter □FIR bearing No.123/2018 has also been lodged.

Ms. Indira Jaising, learned senior counsel appearing for the petitioner and the petitioner submit that the counter □FIR is a manipulated one and has been lodged by persons who have been instigated by the accused in her FIR.

On the contrary, there is a submission on behalf of the learned counsel for the respondents that the FIR is genuine.

The question whether any of the FIRs is genuine or not, cannot be decided by this Court in a petition under Article 32 of the Constitution of India. It

is a matter for investigation and eventual trial. We leave it at that.

In the course of further hearing, learned counsel for the parties further submitted that the cases arising out of the FIRs lodged under Section 154, Cr.P.C. should proceed. We accordingly order that the said FIRs shall be dealt with in accordance with law.

Regard being had to the facts and circumstances, it is directed as follows :

(i) An officer of the rank of Assistant Commissioner of Police (ACP), Crime Branch, New Delhi shall investigate into both the FIRs.

(ii) In both the FIRs, though lodged at P.S. Subzi Mandi, Delhi, if eventually chargesheets are filed and trial is held, for all purposes it shall be at Patiala House Courts, New Delhi.

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(iii) The petitioner who is the accused in the counter-FIR and the accused named in the FIR lodged by the petitioner shall not be arrested.

(iv) When we say that they shall not be arrested, it is requisite that neither of the parties shall create any kind of acrimonious atmosphere or tamper with the witnesses or any evidence which is likely to be brought on record. They shall also cooperate in the investigation.

(iv) There shall be a fair trial and 'fair trial' means none of the parties or any member of the Bar shall create any obstruction because that is the sanctity of rule of law and the said position has been accepted by the counsel for the parties. Needless to say, our aforesaid observations will not debar the parties to enter into a settlement, if they so desire and they will also be at liberty to challenge any order passed by the concerned Court or even take such steps for seeking quashing of the FIRs. Be it further clarified that if any such petition is filed, the same shall be decided in accordance with law.

If the petitioner feels aggrieved with regard to any kind of threat perception, she is entitled to approach the ACP, Crime Branch who, if satisfied, shall make arrangement for her security.

Before parting with the case, we request the learned Acting Chief Justice of High Court of Delhi to constitute the requisite Committee in respect of the High Court and all District Courts at Delhi, if it has already not been constituted, as per the mandate of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as also the guidelines contained in the judgment of this WP(Crl.)No.113/18 ... (contd.) □5 □ Court in the case of Vishaka & Ors. v. State of Rajasthan & Ors. (1997) 6 SCC 241.

Be it noted, the said Committee(s) shall be constituted with quite promptitude.

N e e d l e s s t o s a y , n o o n e s h o u l d b e a member of the Committee who is an accused in any criminal case.

As far as the question of constitution of such committee(s) in other High Courts/District Courts throughout the country is concerned, the learned Chief Justices of each of the High Courts are requested to constitute the Committees in High Courts as well as the District Courts, if not already constituted, within a span of two months.

The Registry of this Court is directed to communicate this order to the Registrars General of each of the High Courts so that they can place the same before the learned Chief Justice or Acting Chief Justice.

The Registrars General of the High Courts shall send a Compliance Report with regard to constitution of the Committee(s) in the High Courts and/or the District Courts on or before 15th July 2018. Let it be made clear, if the Compliance Report is not filed within the said time, the matter shall be listed before the Court suo motu so that Ms. Indira Jaising and the petitioner can address this Court on that singular aspect.

We are absolutely sure, the Bar which maintains the highest tradition, shall maintain a peaceful atmosphere not only in Delhi but throughout the country so that there is a fair and speedy trial and prevalence of peaceful atmosphere.

The writ petition is accordingly disposed of.

(Subhash Chander)

(H.S. Parasher) AR□um□PS

Assistant Registrar