

# Devender Nahar vs Payal Maheshwari & Ors on 8 September, 2021

**Author: Mukta Gupta**

**Bench: Mukta Gupta**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 86/2021

CRL.M.A. 2756/2021 (for stay)

DEVENDER NAHAR

..... Petitioner

Represented by:

Petitioner in person.

versus

PAYAL MAHESHWARI & ORS.

..... Respondents

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 08.09.2021 The hearing has been conducted through Video Conferencing.

1. By this petition, the petitioner challenges the order dated 17 th October, 2020 passed by the learned Additional Sessions Judge in the Criminal Complaint Case No. 5/2020 filed by the petitioner under Section 200 Cr.P.C. read with Sections 22(1), 16, 17, 19, 19(6) and 21(1) of the POCSO Act and Sections 120-B/34/341/343/363/365/369/379/506/390/442/445/499/500/200 IPC alongwith other relevant sections against the accused person. In the said complaint, the petitioner had impleaded his wife Payal Maheshwari and her family members as the accused.

2. A brief background of the case is that the petitioner got married to Payal Maheshwari on 28th November, 2014, whereafter two children were born from the said wedlock i.e. a daughter on 25 th March, 2007 and a son on 5th February, 2013. According to the petitioner, respondent No. 1 left the CRL.REV.P. 86/2021 PageGUPTA matrimonial home of the petitioner for furthering her career prospects, leaving behind the minor son aged 11 months in the care and custody of the petitioner. In December, 2014, the respondent No. 1 temporarily came to India from Singapore and on 25th September, 2015, respondent No. 1 filed a complaint at PS Defence Colony alleging domestic violence, abuse, beating of children and dowry demands etc. According to the petitioner, subsequently the respondent No. 1 withdrew the said complaint at the CAW Cell on 18th October, 2015 saying that the complaint was incorrect and stands withdrawn. In February, 2016, the respondent No. 1 permanently left for Singapore leaving behind both the minor children in the care and custody of the petitioner. On 25th December, 2018, the respondent No.1 again came back to the matrimonial home from Singapore got a complaint lodged at PS Defence Colony through the minor daughter alleging various offences including the offence under POCSO Act against the petitioner alleging inappropriate touching of the minor daughter. According to the petitioner, an FIR No.

186/2018 was registered at PS Defence Colony on a written complaint dated 30th December, 2018 of the minor daughter against the petitioner.

3. Charge-sheet has since been filed before the learned Trial Court in FIR No.186/2018 and to counter the said complaint, the petitioner filed complaint under Section 200 Cr.P.C. being Criminal Complaint No. 5/2020 titled as 'Devender Nahar versus Payal Maheshwari & Ors.' on which the impugned order dated 17th October, 2020 has been passed, aggrieved wherefrom the petitioner has filed the present petition.

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4. In the Criminal Complaint No.5/2020, the petitioner gives the entire background, as noted above. The petitioner also relies upon certain wordings written by his minor daughter in her diary. The complaint, wherein the impugned order dated 17th October, 2020 has been passed, the main grievance of the petitioner is that a false FIR No. 186/2018 was got registered against him under POCSO Act and various other offences, as the petitioner did not succumb to the illegal threats and pressures caused by the respondents. Petitioner, thus by the Criminal Complaint No.5/2020 stated that various offences under Sections 16, 17, 19, 19(6) and 21(1) of the POCSO Act were committed by lodging the false FIR under POCSO Act besides various other offences and hence, prayed that the complaint be admitted and summons be issued to the accused.

5. Vide the impugned order, the learned Additional Sessions Judge (POCSO) noting the facts and contentions held that POCSO is a special enactment and for the punishment under Section 22(1) of the POCSO Act, it must be first held by the Court that the information was false and that it was furnished with the specified motive. Court held that till the decision in the State case registered on the complaint of the petitioner's daughter is not finalised, the complaint filed by the petitioner alleging false FIR under POCSO Act is not maintainable. As regards the offences under the IPC are concerned, it was held that the petitioner was at liberty to approach the Court of learned Metropolitan Magistrate subject to all just legal exceptions and held the complaint was not maintainable and thus dismissed with costs.

6. Considering the fact that for the IPC offences, the petitioner was at liberty to seek his remedy before the learned Metropolitan Magistrate and no CRL.REV.P. 86/2021 PageGUPTA counter-complaint stating that the complaint lodged by the daughter of the petitioner was a false complaint, can be entertained, at this stage, till the trial in the said FIR is complete, this Court finds no error in the impugned order dated 17th October, 2020.

7. Petition is dismissed.

8. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

SEPTEMBER 08, 2021

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