

Payal Maheshwari vs The State (Nct Of Delhi) & Anr on 1 October, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL M.C. No. 1898/2020, and Crl.M.A. Nos.13565/2020,
13566/2020 and 13567/2020

PAYAL MAHESHWARI

Through:

..... Petition

Mr.Vikas Pahwa, Sr. Advoc

Ms.Jahnavi Worah, Advocat

versus

THE STATE (NCT OF DELHI) & ANR..... Respondents

Through: Ms.Meenakshi Dahiya, APP for S

with SI Saris Khan

Ms. Jainika Mohan, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 1.10.2020 (Hearing through Video Conferencing) Crl.M.A. Nos. 13566/2020 and 13567/2020 Exemptions allowed, subject to just exceptions. CRL M.C. No. 1898/2020 and Crl.M.A. No.13565/20 Vide the present petition, the petitioner assails the impugned order dated 19.9.2020 of the learned Additional Sessions Judge-06 POCSO Act, South East, Saket Courts, New Delhi in SC No.121/2019 arising from FIR No. 186/2018 Police Station Defence Colony under Sections 354/323 of the Indian Penal Code, 1860, and Section 8/10 of the POCSO Act, 2012 passed on an application filed on behalf of the respondent No.2 seeking for the electronic data in relation to the complaint dated 28.12.2018 original of which is stated to be with the State qua which the directions have been issued as at para 10 of the impugned order dated 19.9.2020 which reads to the effect:

"The IO shall take help of a computer expert from the police department and they shall examine the computer I laptop on which the complaint dated 28.12.2018 was typed. Accused and his Ld. Cl will also be allowed to be present. The particular file I folder only containing the original electronic data of the complaint dated 28.12.2018 will be opened. The date and time of creation I modification of the file will be noted. One soft copy will be downloaded and provided to the accused in read only format. Printout will also be taken. One copy each will be provided to the accused, complainant and IO. A copy attested by the complainant and the IO shall be forwarded to the court. The complainant shall not delete the file without permission of the court. Compliance be made within 15 days and report be filed in the court."

In reply to specific Court query learned APP for the State submits that the original document dated 28.12.2018 is available with the State on the records of the State and that the FIR has been registered on the complaint of the prosecutrix in the matter i.e., the daughter of the petitioner and the respondent No.2.

In reply to a specific Court query, it is informed on behalf of the State that the complaint dated 28.12.2018 in relation to which the directions were sought by the respondent No.2 qua which the impugned order has been passed relates to a complaint of the petitioner i.e., the wife of the respondent.

Inter alia it has been submitted on behalf of the petitioner that the provision of Section 91 Cr.P.C., 1973 cannot be brought into play in the instant case and cannot be made into a mode for further investigation which can only be conducted under Section 73(8) of the Cr.P.C., 1973, and that the production of the document and seizure thereof as directed vide the impugned order does not fall within the ambit of Section 91 Cr.P.C., 1973 in as much as the production of the said document is neither necessary nor desirable for the purpose of investigation, inquiry or trial.

The prayer is vehemently opposed on behalf of the respondent No.2 submitting to the effect that the creation of a document on a computer can always be analyzed and it assists in ascertaining the aspect of the falsity or otherwise of the complaint dated 28.12.2018 in as much as if it was so typed from the computer of the petitioner, it would bring out the factum of the complaint having been typed and changes made thereto.

It is submitted on behalf of the petitioner that the privacy of the petitioner cannot be intruded in the manner that it is so sought.

It is considered appropriate, in the circumstances, that notice of the petition is issued to the State and the respondent no.2. The response of the respondents be submitted for the next date of hearing with the status of the investigation conducted with the copy of the charge sheet be placed on record by the State.

Renotify on 3.11.2020, till which date the operation of the impugned order is stayed.

A copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J OCTOBER 01, 2020/SV