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

+ **W.P.(CRL) 1541/2020**

NADEEM KHAN

..... Petitioner

Through: Mr. Tarun Chandiok and Mr. Naseem
Ahmed, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Ms.
Sehaj Garg and Mr. Amit Gupta,
Advocates for UOI.
Mr. Rahul Mehra, Standing Counsel
(Criminal) on behalf of the State with
Chaitanya Gosain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

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13.10.2020

CRL.M.A. 13275/2020

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(CRL) 1541/2020

1. Issue notice. Mr. Kirtiman Singh, learned counsel appearing for UOI accepts notice. Let counter affidavit be filed within eight weeks. Rejoinder thereto, if any, be filed before the next date.

2. The issues raised by the petitioner in the present petition are pending consideration before the Supreme Court in W.P.(C) No. 994/2019. We

would, therefore, like to await the judgment of the Supreme Court before proceeding in the matter.

3. The case is adjourned *sine die* with liberty to the parties to move an application as and when the decision of the Supreme Court is rendered.

CRL.M.A. Nos. 13274/2020

4. Learned counsel for the petitioner has argued this application at some length. The petitioner has moved the application with the prayer that pending the consideration of this petition, all FIRs registered under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 in police stations within the territory of GNCTD, pending at the stage of investigation, inquiry or trial, be stayed. The petitioner seeks a direction to the Commissioner of Police to restrain him from registering FIRs alleging the commission of offence under Section 4 of the aforesaid Act during the pendency of the writ petition.

5. Firstly, we may notice that the present petition is not in the nature of a PIL. Therefore, for the petitioner to seek a general relief in respect of all cases where Section 4 of the aforesaid Act may be invoked, is not permissible.

6. Learned counsel for the petitioner has firstly argued while placing reliance on Article 145(3) of the Constitution of India, that the minimum number of Judges who should sit for the purpose of deciding any case involving substantial question of law as to the interpretation of the constitution, or for the purpose of hearing any reference under Article 143 should be five. Mr. Chandiook submits that even though there is no similar provision in respect of High Courts, the present petition should be placed

before a Larger Bench.

7. We reject this submission. Admittedly, there is no provision either in the Constitution, or in any other law brought to our notice, which requires us to place the matter before a Larger Bench at this stage. As per roster fixed by Hon'ble the Chief Justice, the present petition has been placed before us to examine the validity of the provisions under challenge.

8. Learned counsel for the petitioner has also sought to refer to certain provisions in Chapter III Volume V of the Delhi High Court Rules, which, in our view, is absolutely misplaced. Even in those Rules no provision has been brought to our notice which requires us to place the matter before Hon'ble the Chief Justice for consideration by a Larger Bench.

9. On merits, the submission of Mr. Chandiok is that Section 3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 declares the practice of triple talaq as popularly known, to be void and illegal. The said provisions reads “*any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal*”. Section 2(c) defines talaq to mean “*talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband*”. Mr. Chandiok submits that once triple talaq has been rendered void and illegal, there is no justification for criminalizing pronouncement of triple talaq, since such triple talaq would have no legal effect on the status of the Muslim marriage. Since it is of no consequence, and does not end marital status of the wife – who may be subjected to triple talaq, there is no purpose of penalising the said Act. Section 4 of the said Act provides “*any Muslim husband who pronounces talaq referred to in Section 3 upon his*

wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine”.

10. Mr. Chandiok has sought to place reliance on a couple of decisions, namely, ***Shayara Bano Vs. UOI and Anr.*** (2017) 9 SCC 1 and ***Behram Khurshid Pesikaka Vs. State of Bombay***, SCR 613 1955. Nothing stated in these judgments supports the aforesaid submission of the petitioner.

11. Legislation is presumed to be valid, unless it is declared to be invalid, or unconstitutional by a Competent Court, and is struck down. *Prima facie* it appears to us that the object of Section 4 of the aforesaid Act is to discourage the age old and traditional practice of pronouncement of talaq by a Muslim husband upon his wife by resort to *talaq-e-biddat* i.e. triple talaq.

12. The purpose of Section 4 appears to be to provide a deterrent against such practice. Merely because triple talaq has been declared to be void and illegal, it does not mean that the legislature could not have made the continuation of such practice an offence. This is our *prima facie* view.

13. We are, therefore, not inclined to grant any interim relief to the petitioner,

14. The application is dismissed accordingly.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

OCTOBER 13, 2020

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