

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>WPCRL No. 185 of 2023</p> <p><u>Hon'ble Sharad Kumar Sharma, J.</u></p> <p>Ms. Soniya Chawla & Mr. L.K. Tripathi, Advocates for the petitioner.</p> <p>Mr. Lalit Miglani, AGA for the State.</p> <p>Mr. Jaivardhan Kandpal, Advocate for the complainant.</p> <p>The petitioner has put a challenge to the First Information Report dated 23.01.2023, wherein the present applicant has been named as accused person shown to be involved in commission of offence under Sections 376 (3), 506 of IPC and Sections 4(2) & 6 of the Protection of Children from Sexual Offences Act, 2012.</p> <p>The learned counsel for the petitioner had questioned the veracity of the First Information Report on the ground, that in accordance with the whatsapp chat, which has been placed on record, in fact, there happens to be some apparent dispute amongst themselves, due to which certain abusive chats have been made <i>inter se</i> between them. What evidencery sanctity would these abusive chats would have so far it relates to questioning the First Information Report by filing Writ Petition under Article 226 of the Constitution of India.</p> <p>In fact, the Writ Courts cannot be drawn to be taken as to be a substitute to conduct a trial to test the</p>

		<p>veracity of the whatsapp chat, in order to question the propriety of FIR and factual controversy, where serious offences have been levelled against the present petitioner.</p> <p>The counsel for the petitioner refers to, that there had been a Panchayat, which has been conducted between them, and a reference has been made to the said effect, but, however, on perusal of the said document, in fact, it is not a Panchayat, which was being conducted but it was rather the Pradhan, is shown to have been entered into certain settlements, but, yet again the said document cannot be said to be having any legal sanctity, because it was absolutely a private arrangement which was made, which is still be a subject matter to be considered at the stage when the trial is conducted against the present petitioner, if at all it had any bearing with regards to the involvement of the present applicant in the commission of the offence.</p> <p>Thirdly, the counsel for the petitioner raises a plea of <i>alibi</i> on the ground that, in accordance with the “Yatra Chart”, which has been annexed with the writ petition, she submits that he was not present on the date when the offence is said to have been committed. This would be yet again the question, which would be absolutely based upon determination of evidence because a plea of <i>alibi</i> cannot be a plea, which could be agitated before the Writ Court, in the absence of there being any mechanism provided to the Writ Courts to scrutinise the evidence, in order to cull out a case as to whether the offence complaint in the FIR is made out</p>
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			<p>against the present petitioner or not, and as to regards his presence.</p> <p>It has been argued by the learned counsel for the petitioner that the conduct of complainant itself is quite explicit and dubious because she is habitual in registering complaints and the reference has been made to one of the complaints (Annexure-9 to the writ petition), which was submitted by her before the Senior Superintendent of Police on 18.10.2021. She further argues, that there happens to be a civil dispute, though there is nothing on record by way of any documentary evidences to show that any civil dispute is pending consideration before them, and merely because of certain observation has been made in the whatsapp chat, it cannot be rationally determined as to be the basis of existence of a civil dispute, which could have been at all a basis for attaching any malice to the FIR, which has been registered by the complainant-Kamla Kandari on 23.01.2023.</p> <p>On perusal of the FIR itself, if the allegation, which is being taken into consideration, in fact, it is an offence, which has been committed against a minor and that is why the provisions of the POCSO Act has been attracted apart from the involvement of the petitioner in commission of offence under Sections 376 & 506 of IPC.</p> <p>The factual background, as raised by the counsel for the petitioner, as per the opinion of this Court, since it is not a subject matter, which could be dealt with by the Writ Court under Article 226 of the Constitution of</p>
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