

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 7005-14/2006 & CrI M A 11889/2006

IMTIAZ SAGIR KHAN & ORS Petitioners
Through Mr. Abhijit Sinha, Advocate

versus

STATE & ORS Respondents
Through Mr. Sanjay Lao, APP for State.
Mr. Sanobar Ali, Advocate for R-2.

and

CRL.M.C. 7004/2006 & CrI M A 11886/2006

IMTIAZ SAGIR KHAN Petitioners
Through Mr. Abhijit Sinha, Advocate

versus

SALMA KHAN (SALMA KHATOON) Respondent
Through Mr. Sanobar Ali, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER
11.02.2009

1. The prayer in CrI M C No. 7005-14/2006 is for quashing the FIR No. 344 of 2004 under Sections 498-A/406/495 read with 34 IPC registered at Police Station Seema Puri, Delhi. The ground on which the quashing is

sought, is that during the pendency of the proceedings before the learned Additional Sessions Judge ('ASJ') at Karkardooma Court, Delhi where the revision petition filed by the Petitioner No.1 husband challenging the order dated 2nd May 2006 passed by the learned Metropolitan Magistrate ('MM') directing payment of interim maintenance @ Rs.10,000/- per month to Respondent No. 2 wife was pending, a compromise was recorded between the parties, whereby the petitioner was to pay Respondent No.2 a sum of Rs.7.5 Lakhs in full and final settlement of all her claims and pursuant to which all proceedings between the parties would be terminated. It is submitted that although the petitioners have been throughout willing to abide by the terms of settlement Respondent No.2 has sought to resile from the compromise. In fact she filed an application before the learned ASJ stating that she agreed to the settlement under a bonafide mistake and sought disposal of the revision petition on merits. Reliance is placed by the counsel for the petitioner on the judgments of the Supreme Court in ***Ruchi Agarwal v. Amit Kumar Agrawal 2005 II AD (S.C.) 409*** and ***Mohd. Shamim v. Nahid Begum (Smt.) (2005) 3 SCC 302*** in support of the plea that a party to settlement that has been recorded in a judicial order cannot be permitted to resile from such settlement.

2. CrI M C No. 7004/2006 is filed by husband Imtiaz Sagir Khan challenging orders dated 14th August 2006 and 29th September 2006 passed by the learned ASJ in CR No. 20/2006. The dismissal of CR No. 20 of 2006 resulted in the affirmation of the order dated 2nd May 2006 passed by the learned MM directing payment of interim maintenance of Rs.10,000/-

per month by the Petitioner to Respondent.

3. On 22nd November 2006 this Court passed the following order in these two petitions as well as in a third petition being Crl M C No. 6992-98 of 2006 (which seeks the quashing of FIR No. 125 of 2006 registered against the petitioners therein for the offences under Sections 465/468/469/471 read with Section 34 IPC):

“Crl.MC. No. 7005-16/2006 and Crl M No. 11889/2006
Crl M C No. 6992-98/2006 and Crl M NO. 11873/2006
Crl M C No.7004/2006 and Crl M No. 11886/2006

Petitioner is relying upon order dated 22.7.2006 passed by learned ASJ, Karkardooma Courts, Delhi wherein it is recorded that parties have arrived at settlement according to which petitioner was to pay a sum of Rs.7.5 lacs to the complainant/wife in full and final settlement of all civil and criminal cases pending between the parties, in lieu of all dowry articles as well as past, present and future maintenance.

Submission of the learned counsel for the petitioner is that petitioner is still ready to abide by the said settlement. On the other hand, counsel for the respondent submits that though settlement terms were recorded in the order dated 22.7.2006, it was never acted upon and the parties resided as before and it is for this reason that the complainant had not received even the part amount as mentioned therein. Respondent shall file the reply to the petitions within four weeks, rejoinder within four weeks thereafter.

Renotify on 3rd April 2007.

It may be noted that on 2nd May 2006 learned MM had passed the order granting interim maintenance to the

respondent/complainant @ Rs.10,000/- per month. This maintenance is granted with effect from the date of filing of application under Section 125 CrPC. It would be appropriate to pass an order directing the petitioner to pay the arrears of maintenance within four weeks from today and also future maintenance by 7th of each month at the aforesaid rate. This order is passed having regard to the fact that even if the petitioner ultimately succeeds in these petitions, he shall have to pay a sum of Rs.7.5 lacs to the complainant and, therefore, the amount paid towards maintenance can always be adjusted. In case the petitioner fails in these petitions, the maintenance amount will have to be paid by the petitioner in that eventuality.

Subject to petitioner's paying the maintenance at the aforesaid rate as well as arrears of maintenance within four weeks, execution of non-bailable warrants is stayed.

Crl M No. 12837/06 in Crl M C 7004/2006

By this application, petitioner wants some documents to be placed on record. Permission granted. Documents are taken on record. Application stands disposed of."

4. By a subsequent order dated 11th December 2006 this court directed that the petitioner shall deposit an amount of Rs.3,10,000/- with the Registrar of this Court. This order was complied with. By orders dated 30th August 2007 and 10th October 2007 the said amount has been released to the Respondent Salma Khatoon.

5. Respondent No.2 Salma Khatoon is present in person and also

represented by her counsel. It is submitted by learned counsel for the Respondent No.2 that she was under a bonifide mistake about the terms of the compromise which were recorded by the learned ASJ in the proceedings dated 22nd July 2006 in CR No. 20 of 2006. She is not willing to go in for a mediation to explore the possibility of a compromise. She states that she is willing to reside with Petitioner No.1. Learned counsel further submits that the sums paid thus far to Respondent No.2 are towards the arrears of interim maintenance. The learned MM by the order dated 2nd May 2006 directed payment of interim maintenance from the date of the petition i.e. May 2004. This was further explained by this Court in its order dated 22nd November 2006. He seeks to distinguish the judgments in ***Ruchi Agagwal*** and ***Mohd. Shamim*** by pointing out that the Respondent No.2 has never accepted any sum pursuant to the purposed settlement recorded by the learned ASJ although he does not deny that she has received Rs.2,25,000/- in the proceedings before the Crime Against Women (‘CAW’) Cell in lieu of the dowry articles.

6. The proceedings dated 22nd July 2006 before the learned ASJ read as under:

“Present Sh. Sagir Ahmed Khan, Special Attorney/father of petitioner/husband Imtiaz SagirKhan (Copy of the SPA is already on record) with Sh. Tariq Farooki, Advocate
Salma Khan, respondent/wife with Sh. Sanobar Ali, Advocate accompanied by her father.

It is jointly submitted by Sh. Sagir Ahmed Khan,

Special Attorney/father of the petitioner/husband, their counsel on one hand and by Smt. Salma Khan, respondent/wife, her father Ameen Miya and their counsel that both the parties have already arrived at an amicable settlement according to which the petitioner/husband through his father would pay a sum of Rs.7,50,000/- to the respondent/wife in full and final settlement of all civil and criminal pending between the parties, in lieu of all dowry articles, pas, present and future maintenance.

The respondent/wife has undertaken to join hands with the petitioner/husband and his Special Attorney, Sh. Sagir Ahmed Khan, in finishing all the criminal cases pending against the petitioner/husband and all other accused persons by way of helping them for quashing of the FIRs or in otherwise finishing off the cases against the petitioner/husband and other co-accused persons.

Sh Sagir Ahmed Khan, Special Attorney/father of the petitioner/husband has undertaken on that he will place on record before this Court a pay order in the sum of Rs.3,75,000/- favouring the respondent/wife mentioning her name therein as Salma Khatoon within 20 days from today and will also place on record before this Court the other pay order of the remaining amount of Rs.3,75,000/- favouring respondent/wife within 90 days from today.

It is also jointly submitted and undertaken on behalf of the parties that the pay orders on judicial record before this Court shall be released to the respondent/wife after finishing off all criminal cases against the petitioner/husband and his co-accused persons or at any other time as may be jointly submitted by them

before this Court.

Matter be now listed for 14.08.06 for placing the first pay order, as ordered above.”

7. However on 31st July 2006 the Respondent No.2 filed an application before the learned ASJ stating inter alia as under:

“2. That on 22.7.2006 respondent Salma Khan appeared before this Hon’ble Court and as such some offer was made for the settlement of the case between the parties and as such respondent under bonafide impression that the offer of the settlement is pertaining to present revision exclusively hence expressed her consent for the said settlement but later on came to that the said settlement is for all the disputes between the parties criminal as well as civil for which undersigned respondent is never agreed upon.

3. That the respondent is subjected untold suffering not only by the revisionist but also by all the in-laws and as such sought justice.....

4. That the factum of divorce is disputed moreover on the basis of Talaknama which was prima facie found forged by the learned Metropolitan Magistrate and as such FIR has been lodged for forgery and fabrication against the revisionist and his family members.

5. That the respondent is not able to earn livelihood moreover she is not remarried.

6. That the respondent seeking permission of this Hon’ble Court by moving the present application for disposal of the present revision on merit and the order dated 22.7.2006 may kindly be stayed, in the interest of justice.”

In reply to the said application the present petitioners

listed out what has transpired in the court of the learned ASJ.”

8. On 14th August 2006 the learned ASJ who recorded the compromise, was constrained to pass the following order:

“14.08.06

Present Sh. Sagir Ahmed, Special Attorney/father of petitioner/husband - Shri Imtiaz SagirKhan (Copy of the SPA is already on record) with Sh. Tariq Farooki, Advocate

Ms. Salma Khan, respondent/wife with Sh. Sanobar Ali, Advocate.

The respondent/wife had, in between the two dates of hearing, moved an application for disposal of the present criminal revision on merits as the respondent/wife wanted to wriggle out of the compromise arrived at between the parties on the pretext that she had not understood the full import of the same on account of some misunderstanding. Thus, it is clear that the respondent/wife does not want the mutual compromise, according to which she has to receive certain amount at the end of civil and criminal disputes pending between the parties.

Fairly enough, it is submitted on behalf of the petitioner/husband that although, it is not fair on the part of the respondent/wife to back out from the compromise arrived at in the court itself yet when the respondent/wife does not want to honour the compromise the present revision petition be disposed of on the merits.

Since one of the parties to the compromise arrived at

before this Court is backing out from the same and the compromise is not being implemented upon, I do not feel it appropriate to dispose of this revision petition myself so that the party who has backed out is not prejudiced in the final verdict.

So, in view of the above circumstances, present revision be sent to Hon'ble District & Sessions Judge, Delhi with the request to transfer it to some other competent court for its disposal according to law.

Parties are directed to appear before Ld. District & Sessions Judge, Delhi on 02.09.06.

This longer date has been given on the joint request of the parties and their counsel according to their convenience.”

9. Thereafter the petition CR No. 20 of 2006 was disposed of by another learned ASJ on merits by the impugned order dated 29th September 2006. It was held that there was no illegality in the order of the learned MM directing payment of interim maintenance @ Rs.10,000/- per month.

10. Learned counsel for the Petitioners has placed considerable reliance upon the observations to the following effect in para 12 of the judgment in

Mohd. Shamim:

“12. In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the first respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavits which were got signed by her by misrepresentation of facts

must be rejected. In the fact and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of Respondent 1 herein.”

It is submitted that inasmuch the terms of the compromise have been recorded by the learned ASJ on 22nd July 2006 it was not open to Respondent No.2 to resile from the settlement.

11. In the considered view of this Court, there is a distinction to be drawn between the facts in the case *Mohd. Shamim* and the facts on hand. As can be seen from para 11 of the said judgment in *Mohd. Shamim* the parties had acted upon the terms of settlement in that case. Out of sum of Rs.2,75,000/- which had been agreed to be paid, a sum of Rs.2,25,000/- had already been paid to wife. The balance amount which was to be paid at the time of quashing of the FIR was retained in the court as per the direction of the court. Virtually, therefore, the entire compromise had been acted upon by the parties. Again in para 13 of the said decision, the Supreme Court observed as under:

“13. Ex facie the settlement between the parties appears to be genuine. If the contention of the first respondent herein is to be accepted, she would not have accepted the sum of Rs.2,25,000/- and in any event, she could have filed an appropriate application in that behalf before the court of S.N. Gupta, Additional Sessions Judge, Delhi. What was least expected of her was that she would return the said sum of Rs.2,25,000/- to the appellants herein.”

12. On the other hand, in the present case within 10 days of the order dated 22nd July 2006, of the learned ASJ, the Respondent No.2 filed an application explaining why she was resiling from the terms of settlement. Without going into the correctness of the differing versions, it appears to this Court that the facts of the instant case are different from those *Mohd. Shamim*. Therefore, that decision cannot really help the Petitioners. The decision in *Ruchi Agarwal* is also distinguishable on facts.

13. A further feature that requires to be noticed is that the learned ASJ who recorded the terms of settlement has acknowledged that one of the parties to the compromise has backed out of the compromise. In all fairness he asked the case to be placed before another learned ASJ for being decided on merits. Where either of the parties is willing to act upon the compromise, and has not taken any steps pursuant thereto, it would be impermissible for this Court to compel either of them to act on such compromise.

14. It is stated by learned counsel for the petitioner that pursuant to order dated 22nd November 2006 passed by this Court, Respondent No.2 has received a sum of Rs.5.9 lakhs till date. This, together with a sum of Rs.2,25,000/- already paid to her before the CAW, works out Rs.8.15 lakhs. It was submitted that the petitioners are still willing to abide by the compromise as recorded in the order of learned ASJ dated 22nd July 2006.

15. The order dated 22nd November 2006 of this Court makes it clear that

the payment of interim maintenance was directed to be made “having regard to the fact that even if the petitioner ultimately succeeds in these petitions, he shall have to pay a sum of Rs.7.5 lakhs to the complainant and, therefore, the amount paid towards maintenance can always be adjusted. In case the petitioner fails in these petitions, the maintenance amount will have to be paid by the petitioner in that eventuality.” From the order dated 2nd May 2006 of the learned MM it is clear that the amount of interim maintenance @ Rs.10,000/- per month was to be paid from the date of petition, i.e. May 2004. Therefore the sums released thus far to Respondent No.2, and the amount of interim maintenance paid thus far @ Rs.10,000/- per month by the petitioner to Respondent No.2 is really in satisfaction of the said order dated 2nd May 2006. Therefore, it cannot be said that any amount has been received by Respondent No.2 till date pursuant to the settlement recorded in the order dated 22nd July 2006 of the learned ASJ. The resultant position is that the settlement as recorded in the said order has not been accepted or acted upon by Respondent No.2

16. In that view of the matter, this Court finds no ground to quash the FIR No. 344 of 2004 under Sections 498-A/406/495 read with 34 IPC registered at Police Station Seema Puri, Delhi.

17. As regards Crl M C No. 7004/2006, having perused the impugned order dated 2nd May 2006 passed by the learned MM affirmed by order dated 29th September 2006 of the learned ASJ, this Court is unable to find any material illegality warranting interference by this Court. As rightly

observed by the learned ASJ, the said amount is only by way of interim maintenance. The petitioner is located in Dubai. He has not pointed out any particular difficulty in complying with the said order of interim maintenance.

18. Therefore, the only order that commends itself to this Court is to direct the learned MM to dispose of the main petition seeking maintenance within six months from today. Reserving to the Petitioners the right to urge all the contentions raised in this petition on merits, other than the contention regarding the settlement recorded by the learned ASJ in the order dated 22nd July 2006, before the learned MM during the hearing of the main petition, Crl M C No. 7004 of 20056 is dismissed.

19. For the aforementioned reasons, both the petitions and the pending applications are dismissed.

20. A copy of this order be sent to trial court concerned forthwith.

S. MURALIDHAR, J.

FEBRUARY 11, 2009.
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