

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. 7551-52/2006

% Judgment delivered on: 26th October, 2010

RAJESH KHANNA & ANR. Petitioners

Through: Mr. R.N. Jha, Adv.

Versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Manoj Ohri, APP for the
State along with SI N.K. Jha,
P.S. Shakarpur

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (Oral)

1. By this petition under Section 482 of the Code of Criminal Procedure petitioners have prayed that FIR No. 53/2001 under Sections 342/323/506 IPC registered at Police Station Shakarpur and the consequent proceedings arising therefrom be quashed. Not only the petition has been signed by both the petitioners but is also duly supported by their respective affidavits.

2. Factual matrix of the case leading to the registration of FIR is that petitioner no. 1 and petitioner no. 2 got married sometime

in the year 1988 as per the Hindu rites and ceremonies. However, they could not live happily in the matrimonial home after their marriage. On 2nd February, 2001 FIR in question was registered against petitioner no. 1 on the complaint of petitioner no.2. After the investigation charge-sheet was filed in the court of Metropolitan Magistrate and the trial is pending.

3. During the pendency of trial, petitioners settled their disputes amicably. They decided to part ways, accordingly, they jointly filed a petition seeking divorce by way of mutual consent before the Additional District Judge, Delhi wherein their statement to the following effect was recorded on 28th September, 2006:

“JOINT STATEMENT OF: PETITIONER NO.1
SH. RAJESH KHANNA, S/O SH. PREM NATH
KHANNA, R/O 35-A, JAWANT RAI DUGGAL,
PARWANA ROAD, DELHI PRESENTLY AT
15/28, GITA COLONY, DELHI-31 AND OF
PETITIONER NO.2 SMT. GEETA KHANNA D/O
SH. JASWANT RAI DUGGAL, R/O D-69,
BHAGAT SINGH ROAD, GALI NO. 5, MAZLISH
PARK, ADARSH NAGAR, DELHI.

On S.A.

We were married on 11.12.1988 according to Hindu rites and ceremonies at Delhi and from the said wedlock a child namely Sonali was born on 27.10.1989 whose custody is with petitioner no. 2 and will remain with petitioner no.2.

We are living separately since October, 1989.

Due to divergence in our temperaments efforts for our reconciliation failed, now there is no possibility of our living together. So, we have decided to part ways permanently in decent manner by taking divorce by mutual consent.

We have now finally settled all our disputes and claims (Past, present and future) for a total sum of ₹ Four Lacs Sixty Thousand

and Four Hundred only. Out of which petitioner no. 2 has already received ₹ 3,60,000/- and today petitioner no. 1 has given ₹ 40,400/- in cash and a cheque of ₹ 60,000/- bearing no. 324232 dated 28.9.06 drawn on Vijaya Bank, Khajuri Khas, Delhi to the petitioner no. 2. It is further agreed that petitioner no. 2 will withdraw the petition u/s 125 Cr.P.C. pending in the court of Ld. M.M., Rohini and she has agreed to make a statement in the petition for quashing of FIR No. 53/02 U/s 342,323,506 IPC, PS Sakarpur, to be filed in the Hon'ble High Court. It is further agreed between the parties that petitioner no. 1 will not file any petition for the custody of the child and he will not have any visitation rights with the child.

The petition is ExP1 which bears the signatures of petitioners at point A and B respectively. The affidavits of petitioners are Ex.P2 and Ex.P3 respectively.

The mutual consent has not been obtained by force, fraud, undue influence, threat to anyone and this petition has not been presented in collusion with each other. We undertake to abide by the terms and conditions settled between us.

RO&AC

ADJ/DELHI/28.9.06”
(emphasis supplied)

4. It may also be noted here that prior to lodging of the present FIR, petitioner no. 2 had earlier also made a complaint against petitioner no. 1 and his relatives pursuant whereof, FIR No. 158/1990 under Sections 498-A/406 IPC was registered. After investigation charge-sheet was filed in the court of Ld. Metropolitan Magistrate (M.M.). After trial, learned M.M. convicted petitioner no.1 and his other relatives under Sections 498-A/406/34 IPC and sentenced them to face rigorous imprisonment

for three years with fine of ₹ 1000/- each under Sections 498-A/34 IPC and three years rigorous imprisonment under Section 406 IPC. Petitioner no.1 and his relatives filed Criminal Appeal No. 01/2004 before the Additional Sessions Judge, Delhi and since, during the pendency of this Appeal, matter was settled between the parties, their sentence was reduced. The relevant portion of the order passed by the Additional Sessions Judge, Delhi reads as under:-

“However, since now the matter has been settled between the parties and the complainant and her husband accused Rajesh have decided to separate and the complainant has informed the Court that she has no more grouse against the accused persons, the matter may be disposed of by merely modifying sentence imposed.

Thus, instead of sentencing the accused persons to three years RI under Section 498A/34 IPC with fine of ₹ 1000/- each and to three years RI under Section 406 IPC, it is directed that the sentence is reduced to the fine of ₹ 1000/- each which the accused have already deposited and to imprisonment till rising of the Court. Personal bonds and surety bonds cancelled and sureties discharged.”

5. In terms of the settlement, petitioner no. 1 had paid entire settled amount, which fact has been duly recorded in the joint statement of the parties. Petitioner no. 2 also withdrew petition under Section 125 Cr.P.C. Not only this, she even joined the petitioner no. 1 in filing the present petition seeking quashing of the FIR in question, in terms of the settlement arrived at between them. However, when petitioner no. 2 appeared in this Court she

stated that the petition, her affidavit filed in support of the petition and the application seeking exemption from filing certified copies of documents did not bear her signatures. However, she admitted her signatures on her statement recorded by the Additional District Judge, Delhi at the time of disposal of first motion under Section 13(B)(1) of the Hindu Marriage Act, 1955. It appears that she did so in order to wriggle out from her statement as regards quashing of the FIR in question is concerned.

6. Under these circumstances, her disputed signatures i.e. signatures on the last page of the petition, on her affidavit and on the application seeking exemption from filing certified copies along with her admitted signatures on the joint statement dated 9th September, 2004 recorded by the Additional District Judge, Delhi were sent to Forensic Science Laboratory (FSL) for expert opinion. Report of the FSL has been received according to which the disputed signatures and the admitted signatures were of the same person; meaning thereby that not only the petition but her affidavit as well as the application seeking exemption from filing the certified copies had been signed by her. This shows that petitioner no. 2 had filed the present petition along with petitioner no. 1 in terms of the settlement arrived at between them before the Additional District Judge, Delhi, which was even acted upon by the parties since not only the payment was made by petitioner no. 1 in terms of the settlement but was also duly accepted by

petitioner no. 2, inasmuch as, decree of divorce was passed by the Additional District Judge, Delhi in terms of the settlement, which has remained unchallenged till date. At no stage petitioner no. 2 has challenged the aforesaid settlement pursuant whereof, decree of divorce was granted and the payments were made by petitioner no. 1 to petitioner no. 2. This shows that the settlement recorded before the Additional District Judge, Delhi was duly acted upon. Petitioner no. 1 fulfilled his part of obligation by making payment in terms of the settlement. Even petitioner no. 2 fulfilled her part of obligation by signing the present petition for quashing of the FIR.

7. Above factual matrix clearly indicates that the petitioner no.2, as an afterthought and for the reasons best known to her has decided to backtrack from her commitment, which, in my view, she cannot be allowed to do having availed the fruits of settlement by accepting the settled amount. Conduct of the petitioner no. 2 also goes against her since despite having signed the petition, affidavit and the application; she made a statement that the same had not been signed by her.

8. In ***Rajesh and Ors. vs. State and Anr. I (2008) DMC 442*** a Single Judge of this Court, in similar facts, has held as under:-

“..... Respondent no. 2 (wife) cannot be allowed to make mockery of the Court proceedings, nor the statement made by her in the Court can be considered a trash. Respondent no. 2 now cannot be allowed to back out from the compromise or to wriggle out of the statement

made before the court. If it is allowed, there shall be no sanctity to the Court proceedings and the statements made by the witness and the parties before the Court.”

9. In ***Mohd. Shamim vs. Nahid Begum (Smt.) 2005 CrLJ 889***, the Supreme Court observed that having accepted the sum of ₹ 2, 25,000/- pursuant to the compromise arrived at before the Additional District Judge, Delhi, the wife cannot be permitted to resile from the compromise. Similar is the view expressed by the Supreme Court in ***Ruchi Agarwal vs. Amit Kumar Agrawal and Ors. (2005) 3 SCC 299***. In the said case, during the pendency of a divorce petition before Family Court, a compromise was arrived at between husband and wife. Terms of settlement were recorded in a compromise deed which was filed in the Family Court. In terms of the compromise, stri dhan was to be returned to the wife besides payment of maintenance in a lumpsum. Wife also agreed to withdraw criminal case under Section 125 Cr.P.C as well as criminal case under Sections 498-A/323/506 IPC and Section 3 and 4 of Dowry Prohibition Act, 1961. However, before the Family Court could pass an order on the basis of compromise, wife resiled from the compromise on the ground that she had not received the agreed amount. Subsequently, in her statement recorded by the Family Court, she stated that she was ready for divorce and there was also no dispute as to the amount. She withdrew the letter written by her to the Family Court resiling from the compromise. On the basis of this statement, the Family Court passed a decree

of divorce by way of mutual consent and the wife also withdrew the maintenance case under Section 125 Cr.P.C. However, she did not come forward for quashing of the criminal case under Sections 498A/323/506 IPC and under Section 3 and 4 of the Dowry Prohibition Act, 1961. Consequently, husband filed a petition for quashing of the criminal proceedings in the High Court. The said petition was allowed by the High Court and criminal proceedings were quashed but not on the basis of compromise. Wife filed an appeal before the Supreme Court where it was contended that she had been coerced into giving a statement before the Family Court agreeing to withdraw the criminal case at the time of recording of the compromise. However, her this plea was not accepted by the Supreme Court and the criminal proceedings were quashed on the basis of compromise. While doing so the Supreme Court observed as under :-

“We are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”

10. In ***Purshotam Gupta and Ors. vs. State and Anr. MANU/DE/0057/2008*** a Single Judge of this Court, in the similar circumstances where wife had compromised the matter with the husband and accepted the amount of ₹ 4 lakhs, accepted the divorce by way of mutual consent, thought it fit to quash the FIR even though the wife had not consented for the same at the time of petition for quashing of the FIR was taken up.

11. In the present case the factum of compromise having arrived at between the parties has been duly recorded by the Additional District Judge, Delhi in the joint statement of parties. This statement has not been disputed in the sense that no application was filed by the wife before the Additional District Judge, Delhi that her statement was not correctly recorded or was made under undue influence or coercion. Petitioner no. 2 had accepted the payment made in terms of the settlement as recorded by the Additional District Judge, Delhi as also the decree of divorce. Petitioner no. 2 did not challenge the decree of divorce and now more than six years have elapsed since then. Settlement arrived at between the parties was duly acted upon. Having availed the benefits accrued pursuant to the settlement, petitioner no. 2 cannot be permitted to backtrack from other terms of the settlement, which includes quashing of the present FIR.

12. For the foregoing reasons, this petition is allowed and the FIR No. 53/2001 under Sections 342/323/506 IPC registered at Police Station Shakarpur and consequent proceedings emanating therefrom are quashed.

A.K. PATHAK, J.

October 26, 2010
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