

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

+ **CRL.M.C. 1852/2011**

% Judgment reserved on: 18th August, 2011
Judgment delivered on: 23rd August, 2011

DALBIR SINGH

..... Petitioner

Through: Mr. Deepak Sharma
and

Ms. Dimple Vivek, Advs.

Versus

STATE & ORS.

..... Respondents

Through: Ms. Rajdipa Behura,
APP for the State

Mr. Sanjay Sharma, Adv. for
R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | Yes. |
| 2. To be referred to Reporter or not? | Yes. |
| 3. Whether the judgment should be reported
in the Digest? | Yes. |

SURESH KAIT, J.

1. Vide the instant petition, the petitioners has prayed to quash the FIR No. 344/2010 under Sections 467/448/427/420/506 Indian Penal Code, 1860,

registered at P.S. Nangloi, Delhi against the petitioner on the complaint of the complainant/respondent No. 2 Smt. Surender Kumari Aora.

2. Vide settlement dated 03.11.2010, it was agreed between the parties that the petitioner shall pay a sum of ₹24,00,000/- (Rupees Twenty Four Lacs) by means of demand draft in the name of respondent No. 2 which will be paid before the court at the time of recording the statement of the parties.

3. Thereafter, the respondent No. 2/Smt. Surender Kumari Arora shall execute the necessary sale deed in respect of property measuring 1000 square yards bearing Khasra No. 33/22/2, 23/31, 53/3, 13/1 situated in village Tikri Kalan, Delhi, i.e., the suit property after the receipt of DD.

4. The cost of the execution of sale deed would be borne by respondent No. 2 and she would cooperate in quashing of the aforesaid FIR.

5. Further, it was agreed that the FIR No. 344/2010

registered at PS Nangloi under Sections 467/448/427/420/506 of the Indian Penal Code, 1860 registered against the petitioner shall be quashed.

6. It was specifically and mutually agreed that respondent No. 2 shall cooperate with the petitioner in quashing of the aforesaid FIR from this court as well as will give affidavit to this effect in PS Nangloi at the time of quashing of the FIR.

7. It was also agreed that the plaintiff would withdraw the suit pending in the court of Civil Judge, Delhi bearing Suit No. 63/2010 on the next date of hearing.

8. As per the settlement before the Mediation Centre, Tis Hazari Courts, Delhi, respondent No. 2 as well as her legal heirs shall have no claim whatsoever in any manner over the suit property after the aforesaid settlement.

9. Ld. counsel for the petitioner submits that in pursuance of the compromise recorded before the Mediation Centre, Tis Hazari Courts, petitioner had paid ₹ 24,00,000/- to respondent No. 2 before the court of

learned Civil Judge, Delhi. Thereafter, the cheques, Demand Draft and the statement of petitioner and respondent No. 2 were recorded on oath as is indicated in order dated 12.11.2010 of Civil Judge, in Suit No. 63/2010.

10. Respondent No. 2 on oath agreed that she shall have no objection if the aforesaid FIR against the petitioner is quashed.

11. Further, respondent No. 2 gave the undertaking before the learned Civil court that she will not interfere in the peaceful possession of the plaintiff and will not claim any right with respect to the title of the suit property as she has sold the suit property to the petitioner.

12. Ld. counsel for the petitioner submits that all the demand drafts and cheques were duly encashed in favour of respondent No. 2, however, after receiving the same, she has shown her true colours and refuse to cooperate with the petitioner for the purpose of quashing of the aforesaid FIR. Further, respondent No. 2 have colluded

with respondent No. 1 with the sole purpose to extort money from the petitioner.

13. Further submits, in the compelling circumstances, the petitioner moved an anticipator bail application before the District Judge III and the same was admitted vide order dated 26.02.2011 with direction to join the investigation.

14. Even at the time of passing of the said order, the learned Additional Sessions Judge enquired from respondent No. 2 whether she had received ₹ 24,00,000/- from the petitioner, to which respondent No. 2 admitted.

15. On the other hand, ld. counsel for the respondent No.2 further submits that she is a widow, and has no independent source of income for her and for her child as well, accept this 1 Biga land in question.

16. Further submits that respondent No. 2 being a helpless widow was under depression and had fear of her life as the Petitioner had been extending threats to her with his associates and further the petitioner in collusion

with other associates filed a suit for permanent injunction titled as **Sh. Ajay vs. Vijay and others** vide suit No. 63/2010 in the court of learned Civil Judge, Tis Hazari courts, Delhi, wherein respondent No. 2 was made Defendant No. 2, therefore, in the peculiar circumstances, the respondent No. 2 had to concede and the matter was referred to Mediation Centre, wherein the respondent No. 2 agreed to received the meagre sum of ₹ 24,00,000/- in lieu of her above said land, even though the market price of the above said land is more than ₹ 1.25 crores. Had the deal been fair, respondent No. 2 would not have raised any objection to the conceded price.

17. Further submits that in view of the above circumstances, the proceedings before the Mediation Centre or proceeding in the Civil Court or the proceeding wherein the bail was granted to the petitioner, were out of compulsion and pathetic circumstances of respondent No. 2, since she was under the constant fear of her life and remained depressed, she could not initiate any

proceeding against the petitioner.

18. This issue is not *res integra*. The same has been settled by the Apex court in a case of ***Mohd. Shamim and others vs. Smt. Nahid Begum and Anr., (2005) 3 SCC 302***, has observed as under :-

“11. Before us, there is no denial or dispute as regard the factum of entering into the aforementioned settlement dated 14.11.2002. In the said deed of compromise it has categorically been averred that the same had been entered into on the intervention of S.N. Gupta, Additional Sessions Judge, Delhi. It has also been accepted that out of sum of Rs. 2,75,000/- , a sum of Rs. 2,25,000/- has been paid to the First Respondent herein and the balance amount of Rs. 50,000/- would be paid at the time of complainant's making statement and no objection for quashing the FIR, which was retained in the court as per the direction of the court. It has further been averred that no dispute remained between the parties regarding the payment of dower amount (Mehar), dowry articles, including the alleged jewellery gift etc.

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 affidavit which were got signed by her by misrepresentation of facts must be rejected. In the facts 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 the Respondent No. 1 herein.

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.”

19. The petitioner has relied upon a judgment of this court in a case of ***Jasbir and others V. State and Anr.***

142(2007) DLT 141, wherein, the parties after settlement
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before the learned Mediator tried to wriggle out of the proceedings arrived at the time of the mediation proceedings. It was held and observed in para 9 of the above said judgment that;

“The settlement was arrive at during mediation proceedings. The Legislature has amended Section 89 of the code of Civil Procedure in the year 2002. There is an all round attempt by the Legislature and Judiciary, as well as the Executive, to promote the settlement of disputes through the process of Mediation. Therefore, once disputes between the parties have been settled by the process of mediation, it would be in the public interest as well as to attach importance to such a process and treat the settlement as a solemn settlement. Otherwise, the movement of mediation may itself suffer if the parties are given to understand that even after they agree for settlement, one of the parties can still back out.”

20. The aforesaid judgment of **Jasbir (supra)**, thereafter relied upon by this court in IA No. 12888/2008 in CS(OS) 1495/2005 decided on 06.07.2009 and also in a case of

Purshottam Gupta and others V. The State and Anr.,

in Crl. M.C. No.3230-32/2006 decided on 23.01.2008, wherein this Court has observed as under:-

“12. Reverting to the present case, acting on the compromise the Respondent No. 2 accepted the amount of Rs. 4 lakhs, accepted the divorce by way of mutual consent and also withdrew the maintenance case under Section 125 CrPC. However, for some unknown reason she chose not to join in the present petition seeking quashing of the criminal proceedings under Sections 498A, 406/34 IPC. She was served in the present proceedings but has chosen to remain absent.

13. This court cannot but accept the statements made on oath by Respondent No. 2 accepting the terms of the compromise and recorded by and forming part of the record of the Punjab and Haryana High Court. She has also accepted the sum of Rs. 4 lakhs in terms of the compromise. The divorce has been granted and the criminal case for maintenance stands withdrawn. Only the last bit regarding the quashing of the criminal proceedings under Sections 498A, 406/34 IPC remains. With the Respondent No. 2 not appearing in these proceedings to contest

the petition, the assertions of the petitioners as noted hereinabove remain uncontroverted.

14. This Court is Therefore inclined to follow the aforementioned two decisions of the Supreme Court in Ruchi Agarwal and Mohd. Shamim and quash the pending criminal proceedings against the petitioners. It may be mentioned that the learned APP for the State also does not dispute the facts stated in the petition or the law as settled by the Supreme Court. He expresses no objection the quashing of the FIR in view of the aforesaid developments.”

21. The question before this court is whether the settlement arrived at Mediation Centre, Tis Hazari and thereafter the statement made on oath and also having received the total amount of ₹ 24,00,000/- in lieu of the property in question is binding upon respondent No. 2 or not?

22. I note the settlement took place before the Mediation Centre, Tis Haziri on 03.11.2010. Thereafter, after the gap of eight days i.e. on 12.11.2010 the statement of respondent No. 2 was recorded on oath before the learned

Civil Judge. Thereafter, she made statement before the learned District Judge III also that she had received ₹24,00,000/- from the petitioner.

23. Even a common man understands that the rates of properties in Delhi increases on a daily basis. With the gap of nine months it is obvious that the rates of the aforesaid property would have increased to at least double if not triple the amount. Therefore, increase in the rates of property had led the respondent No. 2 to resile from settlement affected at Mediation Centre.

24. In view of the above said conduct of respondent No. 2, it would be an abuse of procedure of this court if the criminal proceedings pending against the petitioner are not allowed to be quashed.

25. Keeping in view the above discussion and the law as settled in the above discussed judgments, I quash the FIR No. 344 dated 29.09.2010 registered under Sections 467/448/427/406 at PS Nangloi and the proceedings

emanating therefrom.

26. Accordingly, Criminal M.C. No.1852/2011 is allowed.

27. No order as to costs.

SURESH KAIT, J

August 23, 2011

j/RS