

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-31806 of 2012.
Decided on:-20.10.2015.

Ajay Kumar.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Prashant Sethi, Advocate
for respondent No.2.

HARI PAL VERMA, J.

Petitioner Ajay Kumar son of Ram Narain Saini, resident of Siswal Ki Dhani, Tehsil Adampur, District Hisar has filed the present petition under Section 482 Cr.PC for quashing of FIR No.139 dated 2.6.2008 under Sections 498-A, 406 and 506 IPC registered at Police Station Adampur, District Hisar (Annexure P-1). The FIR has been sought to be quashed in the light of joint statement by the parties recorded on 8.5.2012 (Annexure P-2) before the District Judge (Family Court), Hisar in a case titled as "Ajay Kumar Versus Sushila".

Learned counsel for the petitioner has contended that the marriage between the petitioner and respondent No.2 was solemnised on 12.11.2005. One male child was born out of this marriage on 30.3.2007. However, the said child could not survive and died on 21.4.2007. Thereafter, no other child was born out of this marriage.

The aforementioned FIR was got registered by the respondent No.2-complainant against the petitioner and respondents No.3 to 5. However, the respondents No.3 to 5 were found innocent by the police and they were not challaned. However, on an application under Section 319 Cr.PC filed by the respondent No.2, respondents No.3 to 5 were ordered to be summoned as accused by the trial Court vide order dated 16.11.2010. Said order was challenged by respondents No.3 to 5 in this Court by way of Criminal Revision No.106 of 2011. During the pendency of said revision petition, the parties decided to compromise the matter with the intervention of respectable persons and other relatives. As a result thereof, petitioner Ajay Kumar and respondent No.2 Sushila filed a joint petition under Section 13-B of the Hindu Marriage Act, 1955 before the District Judge (Family Court), Hisar with a prayer that the marriage between them be dissolved through a decree of divorce by mutual consent. The joint statement of the petitioner as well as respondent No.2 suffered before the District Judge (Family Court), Hisar on 8.5.2012 reads as under:

“Our marriage was solemnized according to Hindu Vedic rites and customs at village Ghursal on 12.11.2005. Out of our wedlock, one issue was born but he died on 21.04.2007

and presently there is no surviving child out of this marriage. There has not been any cohabitation between us since 27.1.2007. We cannot reside together and our marriage be dissolved as there is no chance of re-union. Today petitioner No.1 has paid a sum of Rs.2,50,000/- (Rs. Two lacs fifty thousand only) to the petitioner No.2 Sushila on account of permanent alimony etc. Everything has been settled between the parties and now nothing remains due towards either side and no claim of future maintenance, alimony or any right in property would be raised by either of the parties. It is also settled that all the pending cases between the parties shall be withdrawn in view of this settlement. Our marriage may be dissolved by decree of divorce by way of mutual consent.

The mutual consent has not been obtained by force, fraud, undue influence, threat to any one and this petition has not been presented in collusion with each other.

*Sd/-
(V.P. Gupta)
District Judge, Family Court, 08.05.12”*

Learned counsel for the petitioner, thus, has sought quashing of the FIR in the light of the aforesaid settlement arrived at between the parties before the Family Court, Hisar. He has relied upon the judgment of Hon’ble Delhi High Court in ***Rajesh and others Versus State and another 2008 (3) JCC 1536*** to contend that when on account of compromise a full and final settlement has been arrived at between the parties, the FIR registered against the husband is liable to be quashed. The wife cannot be allowed to back out of the statement made before the Court. If such a course is allowed to be adopted, then the very object of institution of the

Court will lose its sanctity. The parties are bound with their respective statements made before the Court. Learned counsel for the petitioner has further argued that conduct of the petitioner cannot be appreciated as the respondent No.2 even disputed the payment of Rs.2,50,000/- despite the fact that the petitioner has paid the said amount to her.

Learned counsel for the petitioner has, therefore, argued that there being the statement suffered by respondent No.2 before the Court at the time of granting divorce by mutual consent, the continuance of the present FIR is nothing but the total abuse of the process of law. The petitioner has not only paid Rs.2,50,000/-, rather, all the dowry articles have been returned by him as everything has been settled between the parties. There is specific statement to the effect that “no claim of future maintenance, alimony or any right in property would be raised by either of the parties”.

On the other hand, learned counsel for respondent No.2 has contended that though there is a statement of respondent No.2 to the aforesaid effect, however, all the dowry articles have not been returned to her and the petitioner has orally assured her to hand over all the dowry articles including the jewellery. Therefore, the jewellery is yet to be recovered from the petitioner.

I have heard learned counsel for the parties.

The joint statement was suffered by the parties before the District Judge (Family Court), Hisar on 8.5.2012. During the pendency of

the present petition, this Court vide order dated July 14, 2015 had passed the following order:

“Present:- Mr. Ajay Jain, Advocate for the petitioner(s).

Mr. Vikas Chopra, DAG, Haryana.

Mr. Parshant Sethi, Advocate has put in appearance on behalf of respondent No.2.

The dispute in this case is now revolving around the fact as to whether amount of Rs.2,50,000/- was paid to respondent No.2. Learned counsel for the petitioner submits that this amount was paid to respondent No.2 in court but the learned counsel for respondent No.2 denies this fact.

Learned State counsel, under the instructions of HC Vipin Kumar submits that the amount of Rs.2,50,000/- is lying deposited in the Treasury.

Learned counsel for respondent No.2 further submits that the gold articles as per affidavit placed on record have also not been returned and due to this reason the dispute continues despite settlement.

Learned counsel for petitioner wants to have instructions in this regard.

List on 29.7.2015.

Interim order to continue.

July 14, 2015

*(Surinder Gupta)
Judge”*

On 29.7.2015, some better sense had prevailed upon respondent No.2 and she has accepted the payment of Rs.2,50,000/-.

However, she alleged that her golden jewellery had not been returned to her. On that date i.e. 29.7.2015, this Court had passed the following order:

“Present:- Mr. Ajay Jain, Advocate for the petitioner.

*Mr. Vikash Chopra, Deputy Advocate General,
Haryana.*

*Mr. Virender Pratap Singh, Advocate for
Mr. Parshant Sethi, Advocate for respondent
No.2.*

It is submitted by learned State counsel and learned counsel appearing on behalf of respondent No.2 that the amount of Rs.2,50,000/- was paid to respondent No.2 and even during the course of investigation she has admitted this fact. Learned State counsel submits that respondent No.2 is alleging that her golden jewellery has not been returned.

Learned counsel for the petitioner submits that as per the submissions made in petition under Section 13-B of the Hindu Marriage Act, all the matters have been fully and finally settled and there remained nothing due between the parties either in cash, kind or claim.

In view of the above, learned counsel appearing for respondent No.2 prays for adjournment to have instructions.

Adjourned to 07.08.2015.

29th July, 2015

*(SURINDER GUPTA)
JUDGE”*

After considering the arguments of learned counsel for the parties and perusing the records of the case, this Court finds that plea of respondent No.2 that there was oral assurance on the part of the petitioner

to return the jewellery articles is totally misconceived. In case the statement suffered before the Court is not respected, the very purpose of the institution of judicial system will be frustrated. It seems that the respondent No.2 intends to resile to honour her statement made before the Family Court. It has not been disputed by respondent No.2 that she has not signed the statement before the Family Court or she was made to suffer such statement under some mistaken belief. There is no allegation of any fraud or misrepresentation on the part of the petitioner. Therefore, this Court finds that respondent No.2 cannot take a different stand particularly when she has suffered a specific statement to the effect that “everything has been settled between the parties and now nothing remains due towards either side and no claim of future maintenance, alimony or any right in property would be raised by either of the parties”. Therefore, respondent No.2 is estopped from taking a different stand, rather, she is bound to honour the statement suffered by her before the Family Court.

In view of the aforesaid discussion and considering the joint statement (Annexure P-2) suffered by the petitioner as well as respondent No.2 before the District Judge (Family Court), Hisar on 8.5.2012 in the petition under Section 13-B of the Act bearing HMA Case No.3 of 2009 titled as “Ajay Kumar Versus Sushila”, the present petition is allowed. Resultantly, the FIR No.139 dated 2.6.2008 under Sections 498-A, 406 and 506 IPC registered at Police Station Adampur, District Hisar (Annexure

P-1) along with all subsequent proceedings arising therefrom is quashed on the basis of joint statement (Annexure P-2) made by the respondent-wife.

October 20, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE