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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 603/2011 & CrI.M.A.No.5270/2011
RICHHA GUPTA & ORS.

..... Petitioners
Through Mr.Abinash K. Mishra, Advocate
along with petitioners.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents
Through Mr.Rajesh Majahan, Addl. Standing
Counsel for the State along with SI
Ramesh Chand.
Mr.Puneet Maheshwari, Advocate for
R-2 along with R-2 in person.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER
% **20.10.2015**

Petitioner no.1 is the wife of respondent no.2. Petitioner nos.2 and 3 are her parents.

The petitioners have sought quashing of FIR No.81/2010 (P.S. Kamla Market) instituted under Section 3 of the Dowry Prohibition Act, 1961 on the strength of the settlement arrived at between the petitioner no.1 and respondent no.2, her erstwhile husband.

It has been submitted that while the petitioner no.1 was pursuing her studies of law, she came in contact with respondent no.2 and was married to him. Because of differences in matrimonial life, a case came to be lodged by the petitioner no.1 against respondent no.2

and his parents under Sections 498A/406/34 of the Indian Penal Code. The respondent no.2, as a counterblast to the aforesaid case, lodged a case under Section 3 of the Dowry Prohibition Act against the petitioners. It was alleged that in the aforesaid subject FIR that the petitioner No.1 has admitted in her FIR against respondent no.2 and his parents that dowry was paid for solemnization of marriage. It was further alleged that payment of dowry also constitutes offence under Section 3 of the Dowry Prohibition Act.

However, with the intervention of the well wishers and next kith and kin of the petitioners and respondent no.2 and his family as also the efforts of the Delhi High Court Mediation and Conciliation Centre, the dispute between the petitioner no.1 and respondent no.2 has been amicably resolved.

With the efforts of Samadhan, Delhi High Court Mediation and Conciliation Centre the spouse have decided as follows:

- i. “That it is agreed that the entire amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) has been paid by way of two cheques bearing No.257161 amounting to Rs.20,00,000/- (Rupees Twenty Lakhs Only) dated 13.10.2015 and cheque bearing no.257162 dated 15.10.2015 amounting to Rs.15,00,000/- (Rupees Fifteen Lakhs Only) both drawn on Bank of India, Ansari Road, Daryaganj, Delhi-110002 issued in favour of Petitioner no.1. Both the Original cheques bearing Nos.257161 and 257162 have been handed over to the Petitioner No.1, and Petitioner No.1 acknowledges the receipt of the same. The copies of the said cheques are annexed

herewith an Annexure –A (colly).

- ii. That the Second Party shall file an application for withdrawal of H.M.A. Petition No.486 of 2008 within fifteen days from the date of the execution of this agreement settlement.
- iii. That the Petitioner No.1 and the Second Party shall simultaneously file the First Motion for seeking divorce under Section 13-B(1) of Hindu Marriage Act, 1956 within fifteen days from the date of the execution of this settlement agreement.
- iv. That the Petitioner No.1 hereby agrees that undertakes that the aforesaid Cheques of Rs.35,00,000/- (Rupees Thirty Fife Lakhs Only) shall be presented for encashment on or after the date of recording of the statement of Petitioner No.1 and Second Party for the First Motion for seeking divorce with Mutual Consent.
- v. That within 15 working days from the date of recording of the statement of the First Motion, the following pending proceedings shall be withdrawn:-
 - a. C.C.no.285 of 2008 shall be withdrawn by Rich Gupta.
 - b. No objection shall be given by Navin Gupta in Writ Petition (Crl.) No.603 of 2011 for quashing of the proceedings in FIR Case No.81 of 2010 dated 12.7.2010 (P.S.Kamla Market) and the consequential proceedings on 20.10.2015 which is the next date of hearing.
 - c. No objection affidavit shall be given by Petitioner No.1 for quashing of the FIR Case No.115 of 2009 (P.S. Nanakpura) with consequential proceedings.

- vi. That thereafter Second Motion shall be filed by the Petitioner No.1 and Second Party in time as per the law for seeking divorce on the ground of Mutual Consent.”

It has been submitted that pursuant to the agreement, the parties decided to make efforts for completing the entire process of settlement and have also agreed upon that in case of default towards that end on the side of any one of the parties, the defaulting party shall reimburse an amount of Rs.35,00,000/- to the other party. The issue of custody of children also has been settled. The petitioners have undertaken to facilitate quashing of the First Information Report lodged by petitioner no.1 against respondent no.2 and his family.

It has been stated that at the Bar that quashing application with respect to FIR lodged by petitioner no.1 has already been filed and is pending adjudication before this Court.

Taking into account the fact that since the disputes have been amicably settled between the parties, no useful purpose would be served in allowing the investigation in the present case to be continued any further. This Court takes note of the fact that the petitioner no.1 has entered into her life with a clean state and any further investigation in the matter would spoil future prospects of the parties. That apart, in cases of matrimonial disputes, no party is rendered an accused merely because of temperamental differences between the spouses.

In *Gian Singh vs. State of Punjab & Another*, (2012) 10 SCC 303, the Supreme Court has held that cases which are not compoundable under Section 320 of the Cr.P.C. could also be quashed, when continuation of any criminal proceeding would be an exercise in futility and where justice demands that the dispute between the parties should be put to an end and peace is restored. But ending of such criminal proceedings could only be ordered for securing the ends of justice.

The Supreme Court has further observed in *Gian Singh vs. State of Punjab & Another* (Supra):

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact

that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

[Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]

In *Narinder Singh & Ors. Vs. State of Punjab & Anr.* 2014 6 SCC 466.

The pertinent observations of the Apex Court are as under:-

29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(iii) ends of justice, or

(iv) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted

on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise

between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

In the case of ***Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. (2013) 4 SCC 58***, wherein the Supreme Court in respect of the matrimonial disputes has specifically held as follows:-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse

of process of court or that the ends of justice require that the proceedings ought to be quashed....”

Thus, the inherent powers of the High Court, having a wide plenitude could be used for quashing the FIR for securing the ends of justice and to prevent the abuse of the process of the court.

The present FIR does not disclose any serious offence and the same is only a fallout of the matrimonial discord and it cannot have any serious impact on the society.

Keeping in mind the facts of this case and the settlement between the parties, allowing the criminal proceeding to be continued any further would not be in accord with the guiding factor namely securing the ends of justice.

For the reasons aforerecorded FIR No.81/2010 (PS Kamla Market) and all the emanating proceedings thereof are quashed.

The petition is disposed of in terms of the above.

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ASHUTOSH KUMAR, J

OCTOBER 20, 2015

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