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

+ W.P.(CRL) 1450/2014 and Crl. M.A. No. 15097/2014

Decided on 3rd February, 2015

SEEMANT SINHA & ORS

..... Petitioners

Through :Mr. Manoj Sharma and Mr. Praveen
K. Maheshwari, Advs. with
petitioners in person.

versus

STATE & ANR

..... Respondents

Through :Mr. Sanjeev Bhandari, Addl.
Standing Counsel with SI Rajendra
Singh, P.S. Krishna Nagar for
respondent no. 1

Mr. Sunil S. Rai, Adv. for respondent
no. 2 with respondent no. 2 in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. By way of present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), petitioners have prayed that FIR No. 369/2008 under Sections 498-A/406/34 of the Indian Penal Code, 1860 (IPC) registered at Police

Station Krishna Nagar, Delhi on the complaint of respondent no. 2, be quashed, in view of the settlement arrived at between the parties before the Delhi Mediation Centre, Karkardooma Courts, Delhi on 10th April, 2012.

2. Petitioner no. 1 was married to respondent no. 2 on 14th May, 2007 as per the Hindu rites and ceremonies at Delhi. One female child was born from their wedlock on 11th March, 2008. On account of marital discord, petitioner no. 1 and respondent no. 2 started living separately from 25th May, 2008 onwards. Petitioner nos. 2 to 7 are relatives of petitioner no. 1. On 30th August, 2008 above referred FIR was registered on the complaint of respondent no. 2 against the petitioner no. 1 and his relatives, that is, petitioner nos. 2 to 7. Respondent no. 2 also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Metropolitan Magistrate, Delhi. She also preferred a petition under Section 125 of the Cr.P.C. before the Metropolitan Magistrate, Delhi. Petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (HMA) was also filed in the court of Additional District Judge, Delhi.

3. During the divorce proceedings, matter was referred to Delhi Mediation Centre, Karkardooma Courts, wherein an amicable settlement

was arrived at between the parties on 10th April, 2012 in the following terms and conditions:

“1. That the petitioner and the respondent have agreed to part their company by obtaining a decree of divorce by filing a petition for divorce by mutual consent.

2. That the respondent and his father have agreed to pay a total sum of Rs.2,50,000/- (Rs. Two Lacs Fifty Thousand Only) to the petitioner in full and final settlement of the present matter as well as on account of her all claims in respect of her maintenance as well as maintenance of the daughter, (present, past and future), permanent alimony, stridhan and dowry articles etc.

3. It is agreed between the parties that the payment shall be made by the respondent and his father in the following manner:

i) Rs.1,50,000/- out of the settled amount shall be paid by the respondent at the time of recording of statement in the first motion petition for divorce by mutual consent, which shall be filed within one month from today. The payment shall be made in cash/DD before the court concerned.

ii) Remaining amount of Rs.1,00,000/- shall be paid by the father of the respondent to the petitioner in cash/DD at the time of recording of statement in the second motion petition for divorce by mutual consent which shall be filed after expiry of six months of statutory period and after 10 days of the expiry of the said statutory period of six months, before the court concerned.

4. It is further agreed between the parties that in case the court exempts the statutory period of six months for filing the second motion petition with first motion for divorce by mutual consent, in that case, all the aforesaid settled amount shall be paid by the respondent and his father to the petitioner in one go immediately before the court concerned in cash/DD.

5. It is agreed between the parties that the petitioner shall withdraw her complaint u/s 12 of DV Act and petition u/s 125 Cr.P.C. from the court concerned after obtaining the decree of divorce by mutual consent from the court concerned.

6. It is stated by the parties that an FIR bearing no. 369/2008 u/s 498A/406/34 IPC has been registered against the respondent and his family members. However, the charge-sheet has not yet

been filed. The respondent shall move for quashing of the said FIR before the Hon'ble High Court of Delhi within fifteen days from getting the decree of divorce, where the petitioner shall cooperate & sign required documents.

7. It is further agreed between the parties that the custody of the daughter namely Aishwarya shall remain with her mother/petitioner and the respondent shall not claim the custody or the visitation right of the child in future.

8. It is agreed between the parties that they shall not file any further case or claim or legal proceeding arising out of the present matrimonial dispute against each other or their family members in future.

9. This settlement is arrived at between the parties voluntarily, without there being any pressure, coercion or threat or undue influence of any kind.

10. It is agreed that the parties shall remain bound by the aforesaid terms of settlement.”

4. Petitioner no. 1 and respondent no. 2 signed the Settlement Agreement; besides them said Agreement was also signed by the father of petitioner no. 1, that is, petitioner no. 2 and brothers of respondent no. 2.

5. In terms of the Settlement Agreement arrived at between the parties, marriage of petitioner no. 1 and respondent no. 2 has since been dissolved by the Family Court (East District) vide a decree of divorce dated 11th March, 2014 passed under Section 13-B(2) of the HMA. Decree of divorce was passed after the settled amount was paid by the petitioner nos. 1 and 2 to respondent no. 2. It may be noted that respondent no. 2 has also withdrawn the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 as well as petition under Section 125 of the Cr.P.C. Despite the settlement and also the fact that terms of settlement stand complied by the parties, respondent no. 2 declined to join the petitioners in filing the present petition for getting the FIR quashed, in terms of Clause 6 of the Agreement. Hence, the present petition.

6. Respondent no. 2 has not filed any response to the petition; however, she has opposed the quashing of FIR on the ground that petitioner no. 2 had orally assured to keep a sum of Rs.2.5 lacs in the name of child in the FDR, which he has not complied. In my view respondent no. 2 cannot be

permitted to backtrack from the settlement after having availed the benefits therefrom.

7. It is not in dispute that parties have settled their disputes amicably before the Mediation Centre on 10th April, 2012 on the terms and conditions as stipulated therein. Petitioner nos. 1 and 2 had agreed to pay a total sum of ₹2.5 lacs to respondent no. 2 towards full and final settlement of all her claims in respect of her maintenance as well as maintenance of the child as also against the permanent alimony, stridhan and dowry articles. This has been so stated in Clause 2 of the Agreement. This amount was to be paid in two installments as envisaged in Clause 3 of the Agreement. ₹1.5 lacs was to be paid at the time of recording of the statement at the time of first motion of divorce by mutual consent. Remaining amount of ₹1 lac was payable at the time of recording of the statement in the second motion. The amounts, as agreed, have already been paid at the time of first motion and second motion, respectively, which fact has been duly admitted. It is also not in dispute that other proceedings have been closed in terms of the settlement arrived at between the parties before the Mediation Centre. It is clear that parties have acted upon the settlement arrived at between them before the Mediation Centre on 10th April, 2012. Plea taken by respondent no. 2 that

petitioner no. 2 had agreed to keep Rs.2.5 lacs in FDR in the name of child appears to have been taken as an afterthought in order to wriggle out from her obligation as contained in Clause 6 of the Agreement regarding quashing of the present FIR. This plea, otherwise, cannot be entertained in view of the written agreement before the Mediation Centre.

8. In *Anshu Soni vs. State*, 2013 (1) AD (Delhi) 111, I have taken a view that parties cannot be permitted to backtrack from the settlement arrived at through the process of mediation, which, otherwise, has been acted upon wholly or partially. In paras 6 and 7, it has been held as under:

“6. After having settled the matter through the process of mediation, which has even been acted upon partially, parties cannot be permitted to backtrack from the same as it will negate the aims and objectives of whole process of mediation. Withdrawal of consent by respondent no.2 on some innocuous ground is impermissible. In *Ruchi Aggarwal versus Amit Kumar Agrawal and Ors.* 2005 (1) ALT 42 (SC), civil and criminal litigations were pending between the husband and wife. Matter was compromised before the Family Court pursuant whereof, a decree of divorce by mutual consent was granted. Wife withdrew application filed by her under Section 125 Cr.P.C. in terms of the settlement, however, she avoided to withdraw the complaint under Sections 498-A/328/506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Accordingly, husband filed a petition before the High Court of Uttaranchal for

quashing of the said complaint. In the said petition, High Court quashed the charge-sheet and the summoning order for want of territorial jurisdiction and transferred the investigations to the concerned Police Station. Wife preferred an appeal before the Supreme Court wherein criminal proceedings were quashed keeping in mind the settlement arrived at between the parties despite opposition of the wife.

7. In Jaibir versus State 2007 (142) DLT 141, in somewhat similar circumstances, a Single Judge of this Court quashed the FIR registered against the father and other relatives of wife despite opposition of the complainant-husband. In the said case also, husband and wife had settled their disputes before the Mediation Centre, Tis Hazari Courts, Delhi. The settlement was even acted upon by the parties, inasmuch as cases registered on the complaint of wife were disposed of in terms of the settlement. Later on, husband opposed the quashing of FIR registered on his complaint against the relatives of wife. It was held thus “this being a complete package, the complainant cannot turn around and oppose the petition after he agreed for quashing of these proceedings at the time of mediation proceedings. There is another aspect which needs to be emphasized. The settlement was arrived at during the 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 settlement of disputes through the process of Mediation. Therefore, once the 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.”

9. For the foregoing reasons, I am of the view that continuance of criminal proceedings would result in abuse of process of law. Accordingly, FIR No. 369/2008 under Sections 498-A/406/34 of the IPC registered at Police Station Krishna Nagar, Delhi and the consequent proceedings emanating therefrom are quashed.

10. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. Dasti.

A.K. PATHAK, J.

FEBRUARY 03, 2015

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