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

+ W.P.(CRL) 216/2016

JITENDER KUSHWAHA

..... Petitioner

Through:

Mr.S.K.Rai, Advocate

Mr.Syed Rehan, Advocate

versus

STATE & ANR.

..... Respondents

Through:

Mr.R.S.Kundu, A.S.C. for the State

with Mr.Ankit Kumar Gulia,

Advocate with SI Sanjeev Choudhary

PS Vasant Vihar

Mr.Vinod Kumar & Mr.Jaskaran

Singh, Advs. for complainant/R-2

AND

+ W.P.(CRL) 234/2016

JITENDRA KUSHWAHA

..... Petitioner

Through:

Mr.Syed Rehan, Advocate

versus

STATE & ANR

..... Respondents

Through:

Ms.Nandita Rao, A.S.C. for the State

with Ms.Srilina Roy & Ms.Neha

Dhir, Advocates with SI Sanjeev

Choudhary PS Vasant Vihar

Mr.Vinod Kumar & Mr.Jaskaran

Singh, Advs. for complainant/R-2

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

12.02.2016

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1. The present writ petitions have been filed by the Petitioner under Article 226 of Constitution of India for quashing of case FIR No.254/2011,

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under Sections 498-A/406/34 IPC, P.S. Neb Sarai, Delhi and FIR No.33/2013, under Sections 471/420/467/468/34 IPC, P.S. Vasant Vihar, Delhi on the basis of settlement.

2. Brief facts, as stated by the Petitioner in the present petitions, are that on 3rd July, 2010, the marriage of the Petitioner and Respondent no. 2 was solemnized according to Hindu rites and ceremonies. However, no child was born out of the said wedlock. That due to some temperamental differences, the Petitioner & the Respondent no. 2 could not continue with their matrimonial tie & the Respondent no. 2 left the company of the Petitioner on 6th November, 2010. On 19th October, 2011, respondent no. 2 made a complaint against the petitioner before PS Neb Sarai, South District, Delhi and the Police later on registered an FIR No.254/2011 under Sections 498-A/406/34 IPC. However, in FIR No.254/2011, after failing to get bail from Metropolitan Magistrate, the petitioner finally got bail on 13th February, 2012 from this Court. Thereafter, on 6th February, 2013, respondent No.2 made another complaint against the petitioner alleging that petitioner sold the bike given to him at the time of marriage through forged signature and the said complaint was later on registered into FIR No.33/2013 under Section 420/467/468/471/34 IPC.

3. Learned counsel for the petitioner submits that on 15th October, 2015, the marriage of the Petitioner and Respondent no. 2 has been dissolved by mutual consent. A copy of the decree dissolving the marriage between the Petitioner and Respondent No.2 has been annexed with the petition as Annexure 'P-5' and in term of said settlement, the Petitioner is handing over ₹ 3 lakhs to the Respondent no. 2-complainant by way of pay order, today in Court, a copy of which has also been placed on record.

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4. Respondent No.2 is present in Court along with her counsel and acknowledges the receipt of Bankers Cheque of ₹ 3,00,000/-. She submits that she has no objection if FIRs in question are quashed.
5. Counsel for the State submits that since it is a matrimonial dispute and the parties have settled the matter, appropriate order may be passed by this Court.
6. The FIR No. 254/2011 registered at P.S. Neb Sarai, Delhi and FIR No.33/2013 registered at P.S. Vasant Vihar against the present petitioner are for committing the offences punishable under Sections 498-A/406/34 IPC and 420/467/468/471/34 IPC respectively. Offences punishable under Section 498-A/467/468/471 IPC are non-compoundable offence. In the decision of *Gian Singh v State of Punjab & Anr. 2012 (9) SCALE 257*, the three Judges Bench of the Supreme Court dealing with the issue of quashing of FIR has observed as under:-

"57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz: (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences

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are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

7. Learned counsel for the petitioner and complainant submit that after the matter in dispute has been amicably settled between the parties, no purpose would be served in prosecuting the petitioners, therefore the FIR in question and criminal proceedings emanating therefrom may be quashed

8. In view of the aforesaid amicable settlement arrived at between the parties, I am of the considered view that no useful purpose would be served by continuing the criminal proceedings against the Petitioners, which will only be an exercise in futile and wastage of precious time of the Court.

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9. Accordingly, the petitions are allowed and FIR No.254/2011, under Sections 498-A/406/34 IPC, P.S. Neb Sarai, Delhi and FIR No.33/2013, under Sections 471/420/467/468/34 IPC, P.S. Vasant Vihar, Delhi are hereby quashed.

Order *dasti*.


PRATIBHA RANI, J.

FEBRUARY 12, 2016

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