

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th January, 2016

W.P.(CRL) 261/2016 & CRL.M.A. 1443/2016

MD. MASHKOOR ALAM & ORS

..... Petitioners

Through: Mr Rakesh Bhugra, Advocate.

versus

THE STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Ms Kamna Vohra, Addl. Standing
Counsel (Crl.) with SI Inderjeet, PS-
Malviya Nagar.

Mr Dinesh Garg and Mr A.M.K.
Sherwani, Advocates for R-2 with R-2
in person.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No.1236/2015 under Sections 406/498A/34 IPC registered at Police Station- Malviya Nagar, Delhi.

2. The facts in brief are that Mashkooor Alam, the petitioner No.1 and Huma Naz, the respondent No.2/complainant were married to each other according to Muslim rites on 07.10.2012. Due to temperamental and ideological differences between the parties to the marriage, they started living separately since 04.11.2014. On a complaint instituted by Huma Naz, the subject FIR was registered against her husband Mashkooor Alam and his family members.

3. Huma Naz, who is present in person and has been identified by the IO in the subject FIR, namely, SI Inderjeet, PS- Malviya Nagar as well as her counsel, as above, states that with the intervention and advise of elders in the family and friends, the dispute that led to the registration of the subject FIR has been amicably resolved. The terms of the settlement are enshrined in a Settlement Deed dated 11.01.2016. The salient terms and conditions of the as enshrined in the said Settlement Deed dated 11.01.2016 are as follows:

- “a) That all the disputes between both the parties are being settled at rest.
- b) That it has been agreed between both the parties that the second party who is the complainant in the above mentioned FIR shall not pursue with the same and both the parties will approach the Hon’ble High Court

of Delhi seeking quashing of the above said FIR and the second party shall appear before the Hon'ble High Court of Delhi for giving No Objection/statement regarding withdrawal of the above mentioned FIR bearing No. 1236/2015 at P.S. Malviya Nagar, U/S 498-A/406/34 IPC dated 24.06.2015 against the first party and his relatives.

- c) That as per the settlement, the first party/husband will pay Rs.10,50,000/- (Ten Lacs Fifty Thousand Only) which would include Mehar/dower amount, maintenance both past, present and future, permanent alimony, istridhan and legal expenses, as full and final settlement amount to the second party and after payment of the above said amount, nothing shall remain due towards each other and both the parties will not claim anything from each other in future. The first party/husband will pay the above said amount at three stages as under:-
- i) Rs.3,00,000/- (Three Lacs only) shall be paid to the second party at the time of execution of present settlement deed and signing the quashing petition.
 - ii) Rs.6,00,000/- (Six Lacs only) by way of draft shall be paid to the second party before the Hon'ble High Court of Delhi at the time of quashing of the aforesaid FIR.
 - iii) Rs.1,50,000/- (One Lac Fifty only) shall be paid to the second party at the time of giving

statement by the second party before the concerned court for grant of decree of declaration of annulment of marriage by the Concerned Court of Law.

- d) That since the First Party/Husband namely Md. Mashkoor Alam has already declared divorce by pronouncing, “three time Talaq” to the second party/wife namely Huma Naz in his full senses and conscious mind and communicated the same on 31.03.2015 in writing and the same has been sent to the second party/wife and to her father. The same has been acknowledged by the second party/wife in his complaint before CAW Cell South District, New Delhi dated 20.04.2015 and also in FIR No.1236/2015, P.S. Malviya Nagar dated 24.06.2015.

Furthermore, both of them are continuously living separately from each other since November 2014 i.e. much prior to pronouncement “Talaq”. It is further made clear that after pronouncement of “Talaq” on 31.03.2015 and execution of the present settlement deed, there shall not exist any relationship of husband and wife between both of them. The marriage between both of them already stand dissolved and annulled irretrievably/completely/permanently.

- e) As per the settlement, Second Party/Wife and First Party/Husband as a precaution has agreed to seek a decree of declaration of annulment of their marriage by filing a case

before the concerned court at New Delhi and both of them undertakes to appear and give statements before the concerned court to this effect.

- f) That the present settlement deed has been executed with the free will and consent and without any undue influence, force or fraud from any side whatsoever between both the parties.
- g) That both of them shall not claim to be either husband or wife of each other and the documents endorsing their relationship of husband and wife shall also be altered/removed.
- h) That the present settlement deed has been executed by both the parties in their sound and conscious mind and after reading and understanding the contents of the same and finding the same to be true and correct.
- i) That both the parties shall not challenge the execution of the present settlement deed at any time in future for any purposes.
- j) That it is further made clear that the present settlement deed is a full and final settlement and nothing shall remain due against each other in future and both the parties will not claim anything from each other in any manner whatsoever.

- k) That both the parties have gone through the terms and conditions as stated above and have found the same to be true and correct.”

4. Counsel for the parties state that pursuant to the said settlement between the parties to the union, a sum of Rs.3 lakh has already been received by Huma Naz. The part balance in the sum of Rs.6 lakh has been brought to the court in the shape of a bank draft bearing No.087975 dated 22.01.2016 drawn on Canara Bank, Jit Singh Marg, New Delhi, in favour of Huma Naz. Huma Naz acknowledges receipt thereof subject to its encashment.

5. In terms of the agreement it has been undertaken by Mashkoo Alam that the balance sum of Rs.1.5 lakh shall be paid at the time a decree for divorce is obtained from the court of competent jurisdiction. Counsel appearing on behalf of the Mashkoo Alam states that appropriate proceedings in this behalf shall be initiated within a period of one week from today. The undertaking furnished on behalf of Mashkoo Alam is accepted.

6. The agreement between the parties is lawful. The parties are now directed to comply strictly with the terms and conditions contained therein without demur.

7. Since the dispute that led to the registration of the subject FIR has been amicably resolved by and between the parties to the union without any undue influence, pressure or coercion, no useful purpose will be served by proceeding with the subject FIR and the proceedings arising therefrom.

8. Resultantly, the FIR No.1236/2015 under Sections 406/498A/34 IPC registered at Police Station- Malviya Nagar, Delhi, is hereby set aside and quashed qua the petitioners subject to Mashkoor Alam complying with the undertaking furnished above and subject to petitioners depositing a sum of Rs.20,000/- in aggregate with the Victims' Compensation Fund within a period of two weeks from today. A copy of the receipt thereof shall be provided to the Investigating Officer in the subject FIR.

9. With the above said directions, the writ petition is allowed and disposed of accordingly.

Dasti.

JANUARY 27, 2016
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SIDDHARTH MRIDUL, J