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

DECIDED ON : 3rd NOVEMBER, 2016

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CRL.M.C. 1047/2016

UDAI SHANKAR SHAH @ UDAI SHANKAR SHAW & ORS.

..... Petitioners

Through : Mr.Rajesh Kumar, Advocate with
Mr.Mukesh Kumar, Advocate along
with petitioner No.1 in person.

versus

MANJU

..... Respondent

Through : Mr.Jatin Rajput, Advocate with
Mr.Vikram Mathur, Mr.Rajender
Pratap & Mr.Atul Mishra, Advocates.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioners for quashing of the Complaint Case No.455/2003 instituted under Section 12 Protection of Women from Domestic Violence Act, 2005 (In short 'DV Act') pending before the Court of learned Metropolitan Magistrate. Petition is contested by the complainant/ respondent.

2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, the parties had settled their disputes before Counselling Cell, Family Courts, Rohini, on 25.09.2014. Terms and conditions of the settlement were incorporated therein. Pursuant to the settlement, the parties moved the Court seeking divorce by mutual consent. First motion petition was allowed on 29.11.2014. The complainant also withdrew petition under Section 125 Cr.P.C.

3. Admitted position is that subsequent to the grant of first motion, the complainant did not appear to give consent for divorce by mutual consent by filing second motion petition. Complainant's counsel urged that terms and conditions agreed to at the time of settlement were not properly understood by the complainant and she was not aware that her daughter would forfeit all her rights.

4. The matter was settled by the complainant before Counselling Cell on 25.09.2014. Comprehensive terms and conditions of settlement were incorporated therein. It was partly acted upon. The parties filed first motion petition for seeking divorce by mutual consent and ₹1.30 lac as agreed were paid to the complainant. However, the complainant changed her mind and did not co-operate in moving joint petition for second motion. She even did not withdraw the complaint case instituted under Section 12 of the DV Act.

5. Since the matter was settled by the complainant with her free consent and the settlement agreement was signed before the Counsellor, Family Court, the complainant cannot be permitted to back out and continue with the proceedings instituted under Section 12 of the DV Act. Record reveals that the complainant is not taking keen interest to pursue the

complaint case and on various dates has not bothered to appear before the Trial Court. The proceedings pending before the Court under Section 12 of the DV Act cannot be used for harassment to the petitioners who are resident of West Bengal. The complainant cannot be permitted to deviate from the settlement; it would be an abuse of the process of the Court if the criminal proceedings are allowed to continue.

6. In view of the above, the proceedings instituted under Section 12 of the DV Act pending before the Court of learned Metropolitan Magistrate are quashed.

7. Regarding directions to the complainant to consent for divorce by mutual consent, in my view, she cannot be forced to give consent for divorce by mutual consent. Under Section 13(B) of the Hindu Marriage Act, consent of both the parties for mutual divorce must continue till the decree is finally passed. In the event, either of the parties withdraw the consent before passing the final decree, the petition cannot survive and is liable to be dismissed.

8. The petitioners shall be at liberty to avail appropriate legal remedies available to them against the complainant for violating the terms and conditions of the settlement.

9. The petition stands disposed of in the above terms.

(S.P.GARG)
JUDGE

NOVEMBER 03, 2016 / tr