

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

+ **CRL.M.C. 1187/2016 & CrI.M.A. No. 7149/2016**

Date of Decision: May 25th, 2016

GAUTAM SEHGAL & ORS

..... Petitioner

Through: Mr.Prashant Mendiratta, Adv.

versus

STATE (NCT OF DELHI) & ANR Respondents

Through: Mr.Kamal Kumar Ghei, APP.

Mr.D.D.Singh, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner, namely, Sh. Gautam Sehgal, Sh. Ashok Sehgal, Smt. Pooja Sehgal all through their SPA Holder Sh. Bobby Kapoor for quashing of FIR No.140/2012 dated 10.10.2012, under Sections 498A/406/34 IPC registered at Police Station Crime (Women) Cell on the basis of the agreement in view of the settlement arrived at between petitioner no.1 through his SPA holder Sh. Bobby Kapoor and respondent no.2, Ms. Anika Singh through her SPA Holder Sh. Amarjit Singh Khurana on 11.05.2015.

2. Learned Additional Public Prosecutor for respondent-State submitted that the respondent No.2, present in the Court has been identified to be the complainant/first-informant in the FIR in question by her counsel.

3. The factual matrix of the present case is that the marriage

between the petitioner no.1 and the respondent no.2 was solemnized on 30.06.2007. The complainant's in-laws weren't satisfied with the dowry brought by the complainant. The complainant was taunted and tortured by her in-laws for bringing in less dowry. The complainant moved to Australia with her husband where she was taunted and tortured by her husband for dowry. On 26.07.2012, the complainant was compelled to leave her matrimonial house in Australia and all attempts to join him back were in vain. The complainant came back to India on a temporary passport as all her belongings at her matrimonial house in Australia were refused to be given back to her by her in-laws.

Thereafter, respondent no.2/complainant lodged a complaint which resulted into the registration of the FIR in question against the petitioners. The complainant/respondent no.2 filed a petition under Section 13(1) (i-a) of H.M.A bearing no. 1265/2014, pending in the Court of Ms. Reena Singh Nag, Ld. Judge, Family Court, West, Tis Hazari Courts, Delhi. During the pendency of the above mentioned cases, the parties arrived at an amicable settlement.

4. Respondent No.2, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the MOU, it is agreed between the parties that they shall take divorce by way of mutual consent by filing petitions under Section 13(B)(1) & 13(B)(2) of H.M.A details of which have been discussed in the terms of the agreement. It is also agreed that petitioner no. 1 shall pay a sum of Rs. 15 Lakhs in total to respondent no.2 towards full and final settlement of all her claims towards istridhan, permanent alimony and maintenance past, present and future and other expenses. It is agreed

that the payment shall be made in the manner enunciated in the terms of the agreement. It is also agreed that the last installment of Rs. 5 Lakhs shall be paid by way of DD/ Pay Order at the time of recording of statement before this Court for quashing of the FIR in question. It is agreed that the said petition shall be filed by the petitioner no.1 through his POA Holder within 14 working days from the date of passing of decree of divorce by mutual consent. It is also agreed that the respondent no.2 shall also give her affidavit/no objection in support of the said quashing petition. It is also agreed that the instridhan articles as well as articles mentioned in Annexure A-1 to the agreement have been duly handed over to respondent no.2 and it is acknowledged by respondent no.2 by making an endorsement of a receipt of the same. It is also agreed that respondent no.2 has no claims qua any article as such from the petitioner no.1. It is also agreed that respondent no.2 shall not be responsible in any manner whatsoever for the loan taken by petitioner no.1 for a second hand El-Grand Car purchased in Australia. It is also agreed that in case there is any liability is raised against the respondent no.2 as co-borrower or guarantor with the petitioner no.1 then respondent no.2 shall be indemnified against the same by the petitioner no.1. It is also agreed that after receipt of the amount of Rs.15 Lakhs by the petitioner no.1, respondent no.2 shall not be left with any claims with regard to instridhan, permanent alimony and maintenance past, present and future and all other expenses shall stand satisfied upon payment of the said amount within the stipulated time period. It is also agreed that there shall be no ground available to the respondent no.2 to file any other

complaint against the petitioner no.1 or his family members. It is also agreed that the within a period of seven days from the date of recording of statement during first motion under Section 13 B(1) H.M.A., the petitioner no.1, through his POA, and respondent no.2 shall file a joint application in all Courts concerned, informing them of the settlement between the parties being acted upon. It is also agreed that respondent no.2 shall have no objection if the non-bailable warrants or the proclaimed offender proceedings are quashed against the petitioner no.1 and/or his family members. It is also agreed that in case the petitioner does not come forward to pay the amount payable as balance in the last two installments as per the terms of the agreement, then the respondent no.2 shall be at liberty to revive the proceedings as well as the coercive steps which she had agreed to drop/withdraw. It is also agreed that respondent no.2 shall not have any objection if within seven days from recording of statement of first motion, the Proclamation ordered to be issued against petitioner no.1 vide order dated 17.07.2014 is cancelled/revoked. It is also agreed that in case the Trial Court does not revoke/cancel the above mentioned Proclamation ordered to be issued under Section 82 & 83 Cr.P.C., then the petitioner no.1 through his POA shall file a quashing petition before this Court seeking cancellation/revocation/quashing of all such orders whereby coercive steps were ordered to be issued against the petitioner no.1 and/or his family members pertaining to the FIR in question. It is also agreed that respondent no.2 shall withdraw petition bearing H.M.A. No.1265/2014 pending in the concerned Family Court, Tis Hazari on or before the date recording of statement of

parties in the first motion petition. It is also agreed that the parties shall not level any defamatory allegations against each other in future and whatever defamatory allegations have been made till date, the same shall stand withdrawn unequivocally and unconditionally. It is also agreed between the parties that the neither of them/their family members/their attorneys/authorized representatives shall file any complaint/claim/case/petition/suit against each other or each other's family members or relatives for any claim whatsoever including but not limiting to any police complaint or any suit for recovery of money or claiming any right, title or interest in any property or claiming any sort of right title, interest or lien over anything belonging to either of them or their parents/family members/relatives etc. It is also agreed that after the signing of the present agreement nothing shall be due between the parties or their family members and that reciprocal indemnity shall be available to respondent no.2 against the petitioner no.1 and his parents, relatives & friends etc. and no claim whatsoever, tangible or intangible would be made by petitioner no.1 against the respondent no.2 nor her parents, relatives & friends etc. It is also agreed that upon execution of the present agreement and making of statement in the First motion, respondent no.2 shall give in writing to the police authorities of P.S. Crime women Cell, Nanakpura, New Delhi a letter whereby she shall inform the said authorities that she has settled all her disputes with petitioner no.1 and his family members and the LOC opened by them be withdrawn so that the petitioner no.1 and his family members can travel to and fro from India to other countries. It is also agreed that the parties shall not initiate any civil or

criminal proceedings in any court of law or before any authority either in India or abroad in respect of the matrimonial dispute or against the family members of the respective parties, in future and all pending cases are being withdrawn by either parties in sincere and earnest spirit. It is also agreed that there shall remain no dispute, difference, litigation, claim or counter claim(s) whatsoever, whether tangible or intangible of any nature between the parties and that all cases/complaints which have been filed by the parties inter-se arising from the present dispute and orders passed thereto either ex-parte or contested, shall be treated as compromised and appropriate steps will be taken by the party at whose instance the case has been filed, in such manner to get the said case dismissed as compromised in terms of the present agreement. It is also agreed that the parties have not filed any other case(s)/complaint except as stated above before any Court, Forum or Tribunal whether Civil or criminal in nature arising from the present dispute against each other or their family members either in India or Australia or anywhere else in the world. It is also agreed that if any such case/complaint has been filed, the same shall be dismissed as withdrawn/quashed/compounded at the cost, risk and initiative of the person who has filed the said case. It is also agreed that the if such case/complaint is not closed, quashed, withdrawn etc., then the aggrieved party shall be entitled to recover damages for compensation for any loss/harassment suffered because of the pendency of such case/complaint after the execution of the present agreement. It is also agreed that after the dissolution of marriage, neither the first party nor the second party shall interfere in the personal matters of the other

party including marriage, property etc. and they shall not make any defamatory statement against each other in the future and all defamatory statements made before shall stand unequivocally withdrawn. It is also agreed that the parties shall not have any sort of communication with each other in future. Sh. Amarjit Singh Khurana, father and Special Power of Attorney of Respondent No.2 affirmed the contents of the aforesaid settlement and of his affidavit dated 10.03.2016 supporting this petition. In the affidavit, Sh. Amarjit Singh Khurana has stated that he has no objection if the FIR in question is quashed. All the disputes and differences have been resolved through mutual consent. Now no dispute with petitioners survives and so, the proceedings arising out of the FIR in question be brought to an end. Statement of respondent no.2 has been recorded in this regard in which she stated that she has entered into a compromise with the petitioners and has settled all the disputes with them. She further stated that she has no objection if the FIR in question is quashed.

5. In *Gian Singh v. State of Punjab (2012) 10 SCC 303* Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

“61. 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 proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.”

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab (2014) 6 SCC 466*. The relevant observations of the Apex Court in *Narinder Singh (Supra)* 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:

(i) ends of justice, or

(ii) 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.

7. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent no.2 agreed to the quashing of the FIR in question without any threat or coercion or undue influence and has stated that the matter has been settled out of her own free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

8. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the

express provisions of law.

9. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of *State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors.* MANU/SC/0842/2014 and in the case of *Inder Singh Goswami v. State of Uttaranchal* MANU/SC/0808/2009 has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

10. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of *B.S. Joshi and others v. State of Haryana and another* 2003 (4) SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary,

section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

In the light of the aforesaid, this Court is of the view that notwithstanding the fact the offence under Section 498A IPC is a non-compoundable offence, there should be no impediment in quashing the FIR under this section, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

11. *The Courts in India are now normally taking the view that endeavour should be taken to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs such as, matrimonial disputes between the couple or/and between the wife and her in-laws. India being a vast country naturally has large number of married persons resulting into high numbers of matrimonial disputes due to differences in temperament, life-styles, opinions, thoughts etc. between such couples, due to which majority is coming to the Court to get redressal. In its 59th report, the Law Commission of India had emphasized that while dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. Further it is also the constitutional mandate for speedy disposal of*

such disputes and to grant quick justice to the litigants. But, our Courts are already overburdened due to pendency of large number of cases because of which it becomes difficult for speedy disposal of matrimonial disputes alone. As the matrimonial disputes are mainly between the husband and the wife and personal matters are involved in such disputes, so, it requires conciliatory procedure to bring a settlement between them. Nowadays, mediation has played a very important role in settling the disputes, especially, matrimonial disputes and has yielded good results. The Court must exercise its inherent power under Section 482 Cr.P.C. to put an end to the matrimonial litigations at the earliest so that the parties can live peacefully.

12. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility and is a fit case for this Court to exercise its inherent jurisdiction.

13. In the facts and circumstances of this case, in view of statement made by the respondent no.2 and the compromise arrived at between the parties, the FIR in question warrants to be put to an end and proceedings emanating thereupon need to be quashed.

14. Accordingly, this petition is allowed and FIR No.140/2012 dated 10.10.2012, under Sections 498A/406/34 IPC registered at Police Station Crime (Women) Cell and the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

16. Application CrI.M.A. No. 7149/2016 is also disposed of.

(P.S.TEJI)
JUDGE

May 25, 2016
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