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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1759/2016
KABIR KOHLI & ORS

Through Ms Nidhi Banga, Adv. alongwith petitioners in person Petitioner
versus
STATE & ANR

Through Mr Ashok Kumar Garg, Additional Public Prosecutor for the State Respondent
Mr Prabhjit Jauhar, Adv. for R2 alongwith R2 in person

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 06.05.2016

Crl. MA 7425/2016 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

Crl. MC 1759/2016

This is a petition under Section 482 Cr.PC moved by the petitioners for quashing of FIR No.165/2012 registered at Police Station Karol Bagh, New Delhi under Sections 406/498A/34 IPC and consequent proceedings emanating therefrom on the ground that the parties have compromised the matter.

It is submitted by counsel for the petitioners that the petitioner no.1 got married to the respondent no.2. However, due to temperamental differences, the parties could not live together. Pursuant to a complaint lodged by the respondent no.2 before Crime against Women Cell, instant FIR was registered. The respondent no.2 also filed a petition under Section 12 of Protection of Women (against Domestic Violence) Act, 2005. Another petition under Section 12(1)(a) of Hindu Marriage Act for annulment of marriage or in the alternative for divorce under Section 13(i) (i) of HMA was filed against the petitioner no.1. She also instituted a petition for annulment / dissolution of marriage. During the course of proceedings due to intervention of the family members, relatives and common friends, the petitioner no.1 and the respondent no.2 agreed to settle all their disputes. A sum of Rs.22,70,000/- was already paid by the petitioner no.1 to the respondent no.2. It was further agreed that the petitioner no.1 shall pay a further sum of Rs.50,00,000/- to the respondent no.2 in full and final settlement of all her claims which will be paid in three instalments. A sum of Rs.25 lac to be paid at the time of recording of statement of

the petitioner no.1 and the respondent no.2 at the time of recording of statement of parties under S.13-B(i) HMA, second instalment of Rs.15 lac at the time of second motion and Rs.10 lac at the time of quashing of this FIR. It is submitted that a sum of Rs.25 lac has already been paid and marriage between the parties has been dissolved by a decree of divorce by way of mutual consent vide order dated 17.12.2015. The balance amount of Rs.10 lacs has been paid by the petitioners to complainant today in the Court by way of demand draft, copy of which has been placed on record. It is thus prayed that the instant FIR be quashed.

The respondent No.2/complainant, who is present in person (duly identified by her counsel) submits that she has amicably resolved all disputes with the petitioners voluntarily without there being any threat, coercion or pressure of any sort. It is further submitted by her that she has received full and final amount of Rs.50 lacs in lieu of all her claims. As such, it is submitted by her that she does not want any action against the petitioners and has no objection to quashing of the instant FIR.

Mr Ashok Kumar Garg, Additional Public Prosecutor for the State appears on advance notice and submits that in view of the settlement arrived at between the parties, he has no objection to quashing of FIR, however, since the State machinery has been set in motion on account of the acts of the petitioners, they be burdened with costs.

Needless to say, offences with which the petitioners are booked are non-compoundable. However in the case of *Gian Singh v State of Punjab & Anr. 2012 (9) Scale 257*, the three Judges Bench of the Supreme Court dealt with the issue of quashing of FIR in non compoundable offences. Para 57 of the report is extracted hereunder:-

“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 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 flavour 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.”

In view of the same, since it is a matrimonial dispute which the parties have amicably resolved, continuation of the criminal proceedings would be a futile exercise and it will be rather in the ends of justice to give quietus to such litigation.

Accordingly, the petition is allowed and the FIR No.165/2012 registered at Police Station Karol Bagh, New Delhi under Sections 406/498A/34 IPC and consequent proceedings emanating

therefrom are hereby quashed.

The petition stands disposed of accordingly.

A copy of this order be given *dasti* to counsel for the petitioners.

SUNITA GUPTA, J

MAY 06, 2016/*rd*