

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31th May, 2016

W.P.(CRL) 1511/2016 & CRL.M.A 7876-7877/2016**SHRIPRAKASH DWIVEDI**

..... Petitioner

Through: Ms Shantha Devi Raman and
Mr Arbaaz Hussain, Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondents

Through: Mr R.S.Kundu, Addl. Standing
Counsel (Crl.).

SI Rakesh Kumar, PS- Saket.

Mr Sanjeev Pandey, Respondent No.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 seeking quashing of FIR No.1073/2015 under Section 498A IPC registered at Police Station- Saket, New Delhi, and the proceedings emanating therefrom.

2. The petitioner was married to late Smt. Poonam Dwivedi, sister of Mr Sanjeev Pandey, respondent No.2 herein. The parties to the union have a son, namely, Sahil Dwivedi, who is in the care and custody of the respondent No.2.

3. The subject FIR came to be registered on a complaint instituted by late Smt. Poonam Dwivedi before CAW Cell, PVR Saket, New Delhi, which eventually culminated into the subject FIR.

4. Subsequent to the registration of the subject FIR an amicable resolution was entered into between the parties to the marriage as recorded in the settlement agreement dated 04.09.2015 with the aid and assistance of the Mediation Centre, Saket Courts, New Delhi. The salient terms of the said settlement agreement dated 04.09.2015 are as follows:-

“(i) That both the parties have agreed that it is not possible to live together for the time being. The parties have agreed that they shall reside separately. The parties agree that they shall not interfere in the personal affairs/life of each other.

(ii) That it is further agreed between the parties, that for the welfare of their son Master Sahil Dwivedi, the applicant Husband shall pay a lump sum of Rs. 8,00,000/- (Rs. Eight Lakh only) to Master Sahil. It is further agreed between the parties that second party Husband

Sriprakash Dwivedi shall also pay a sum of Rs. 15,000/- (Rs. Fifteen Thousand only) per month besides the aforesaid amount of Rs. 8,00,000/- (Rs. Eight Lakhs Only) to his Son Master Sahil Dwivedi till he attains the age of 21 years. The said amount of Rs. 15000/- per month shall be paid by Sriprakash Dwivedi directly in the Saving Bank Account bearing No. 61225839219 in Sate Bank of Bikaner & Jaipur having its Branch at Saket, New Delhi of Master Sahil on or before of 10th of each English Clendar month starting w.e.f. September, 2015.

(iii) That it is further agreed between the parties that the aforementioned settled amount of Rs. 8,00,000/- (Rs. Eight Lakh only) shall be paid by the applicant/Husband Sriprakash Dwivedi to his son Master Shahil in the following manner:-

- (a) That the applicant Husband shall pay Rs. 5,00,000/- (Five Lakh only) before the Hon'ble Referral Court on next date of hearing i.e. on 10.09.2015 by way of demand draft in the name of Master Sahil. It is agreed between the parties that the said amount of Rs. 5 Lacs shall be converted into the FDRs for a period of five years in the name of Master Sahil wherein the nominee shall be his mother Smt. Poonam Dwivedi.
- (b) That the applicant Husband shall file the quashing petition before the Hon'ble High Court on or before 08.10.2015 and that complainant Smt. Poonam Dwivedi or through her AR undertakes to cooperate in getting the FIR quashed. It is agreed that the applicant/husband shall pay Rs.3,00,000/- (Three Lakh only) at the time of quashing of FIR bearing

No.1073/15 under section 498A IPC before the Hon'ble High Court of Delhi by way of demand draft in the name of Master Sahil. It is agreed between the parties that the said amount of Rs. 3 Lacs shall also be converted into the FDRs for a period of five years in the name of Master Sahil wherein the nominee shall be his mother Smt. Poonam Dwivedi.

- (iv) It is further agreed between the parties that custody of Master Sahil Dwivedi shall remain with his mother Smt. Poonam Dwivedi and applicant Husband shall not claim the custody of the child and it is stated by the parties that Smt. Poonam Dwivedi is suffering from a terminal illness hence, in case of her demise prior to Master Sahil attaining the age of majority, the custody of Master Sahil shall remain with the maternal uncle (Mama) i.e. Shri Sanjeev Pandey S/o Narbadeshwar Prasad Pandey R/o House No. 85 C, L Block Saket, New Delhi 110017. However, Sriprakash Dwivedi father of Master Sahil Dwivedi shall have the visitation right of his son.
- (v) That complainant i.e. Smt. Poonam Dwivedi is the absolute owner of the Flat bearing No.B-407, Kennwood Tower, Charmwood Village, Faridabad, Haryana and the applicant/Husband Sri Praksh Dwivedi or his relatives or successors will not have any right to claim the said property or to enter into the said property.
- (vi) That the Complainant i.e. Smt. Poonam Dwivedi has expressed her wish to bequeath her property situated at Faridabad in favour of her minor son Master Sahil.

- (I) That the Complainant i.e. Smt. Poonam Dwivedi undertakes to execute her last and final WILL in which it shall be declared that the property bearing No. Flat bearing No. B-407, Kennwood Tower, Charmwood Village, Faridabad, Haryana shall be transferred in the name of Master Sahil Dwivedi on attaining the age of majority and till then Mr. Sanjeev Pandey (brother of the complainant) will be the executor of the Will. It is further stated that said WILL shall be executed on or before 9th September, 2015 and a copy of the same shall be placed on record on the next date of hearing before court.
- (II) It is agreed between the parties that pursuant to the present settlement, nothing shall remain due between the parties against each other and it is agreed that the parties shall not file any other case/complaint/claim against each pertaining to their matrimonial relationship.”

5. Late Smt. Poonam Dwivedi undertook to cooperate with her husband, the petitioner herein, in getting the subject FIR quashed either herself or through her authorized representative, the respondent No.2 herein, in view of the circumstance that she was terminally ill at that point of time. Late Smt. Poonam Dwivedi breathed her last on 27.09.2015, i.e., prior to the institution of the present petition. However, Mr Sanjeev Pandey, the respondent No.2 herein, who is her authorized representative, as afore-stated, as well as her brother and Sahil Dwivedi the minor son of the parties to the marriage are present in person and have been identified by the IO in the Subject FIR,

namely, SI Rakesh Kumar, PS- Saket, New Delhi, state that as desired by late Smt. Poonam Dwivedi they have no objection if the subject FIR is quashed as enshrined in clause (iii)(b) of the settlement between the parties, which is extracted herein below:-

“That the applicant Husband shall file the quashing petition before the Hon’ble High Court on or before 08.10.2015 and that complainant Smt. Poonam Dwivedi or through her AR undertakes to cooperate in getting the FIR quashed. It is agreed that the applicant/husband shall pay Rs.3,00,000/- (Three Lakh only) at the time of quashing of FIR bearing No.1073/15 under section 498A IPC before the Hon’ble High Court of Delhi by way of demand draft in the name of Master Sahil. It is agreed between the parties that the said amount of Rs. 3 Lacs shall also be converted into the FDRs for a period of five years in the name of Master Sahil wherein the nominee shall be his mother Smt. Poonam Dwivedi.”

6. Pursuant to the afore-stated amicable resolution the custody of Sahil Dwivedi, who is aged about seventeen years, is with his maternal uncle, the respondent No.2 herein.

7. In compliance to the afore-stated settlement agreement a sum of Rs.8 lakh has already been received by Sahil from his father, the petitioner herein. It is further undertaken on behalf of the petitioner that a sum of Rs.15,000/-

per month shall be provided to Sahil without demur till the latter attains the age of 21 years. The undertaking is hereby accepted.

8. The flat bearing No. B-407, Kennwood Tower, Charmwood Village, Near Suraj Kund, Faridabad, Haryana- 121009 shall be transferred in the name of Sahil on his attaining the age of majority. Even otherwise late Smt. Poonam Dwivedi who was the undisputed owner of the afore-stated apartment has executed a Will in favour of Sahil which Will shall not be contested by the petitioner herein on any ground whatsoever.

9. The agreement between the parties dated 04.09.2015 is lawful and is hereby accepted leaving the parties to comply with the terms and conditions thereof without demur.

10. In view of the foregoing, no useful purpose will be served by proceeding with the subject FIR and the proceedings emanating therefrom. Resultantly, the present petition is allowed. FIR No.1073/2015 under Section 498A IPC registered at Police Station- Saket, Delhi and the proceedings emanating therefrom are hereby set aside and quashed qua the petitioner subject to his depositing a sum of Rs.10,000/- with the Victims' Compensation Fund within a period of four weeks from today. A copy of the receipt thereof shall be provided to the IO in the subject FIR.

11. With the above directions the writ petition is allowed and disposed of accordingly.

SIDDHARTH MRIDUL, J

MAY 31, 2016

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