

\$~25

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

+ CRL.M.C. 2021/2016

MOHD.NAUSHAD & ORS.

Through

..... Petitioner

Mr Akhtar Shamim and Ms. Lalita Saxena,
Advocates along with petitioners in person

versus

STATE & ANR.

Through

..... Respondent

Mr. Mukesh Kumar, APP along with SI
Rajender Singh, PS Nand Nagri.
Mr. Dharmesh Kumar, Advocate for R-2
along with R-2 in person

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

%

24.05.2016

Crl.M.A.No.8562/2016 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

Crl.M.C.2021/2016

1. This is a petition under S. 482 Cr.PC moved by the petitioners for quashing of FIR No.47/2012 registered at PS Nand Nagri, Delhi under Ss 406/498A/34 IPC and Section 3/4, D.P. Act and consequent proceedings emanating therefrom on the ground that the parties have compromised the matter.

2. It is submitted by counsel for the petitioners that basically it is a matrimonial dispute. The marriage between petitioner no.1 and respondent no.2 was solemnized according to Muslim Law at Delhi on 22nd February, 2011. After marriage, respondent no. 2 came to her matrimonial house and stayed there but some misunderstanding developed between the petitioner no. 1 and respondent no.2 and both are residing separately since 5th September, 2011. No issue was born out of this wedlock. Respondent no.2 lodged a complaint against the

petitioner in CAW Cell, Seemapuri, Delhi and on her complaint, the present FIR has been filed. With the intervention of the counsels for both the parties, the matter has been amicably settled before the Mediation Centre, KKD Courts vide settlement dated 19th November, 2015 (which is annexed to the petition at pgs. 88-92). As per the settlement, petitioner no.1 has agreed to pay a total sum of Rs.4,00,000/- to respondent no.2 towards all her claims. Petitioner no.1 has already paid a sum of Rs.2,75,000/- to respondent no.2 at the time of withdrawal of DV Act case and petition u/s 125 Cr.P.C. before the learned MM and Family Court(Shahdara). The balance amount of Rs.1,25,000/- has been paid to respondent no.2 by petitioner no.1 today in the Court vide cheque No. 503378 dated 17.5.2016 drawn on Bank of Baroda, Dilshad Garden, Delhi.

3. With this transaction, all the claims have been settled between petitioner No.1 and respondent no.2. It is, therefore, prayed that the instant FIR be quashed.

4. Respondent no.2/complainant, who is present in person (duly identified by the Investigating Officer of the case as well as 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. She further submits that she has received the total settlement amount of Rs.4,00,000/- from petitioner no.1. As such, it is submitted by her that she does not want any action against the petitioners and has no objection to quashing the instant FIR.

5. Mr Mukesh Kumar, Additional Public Prosecutor for the State 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.

6. 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."

7. 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.

8. Accordingly, the petition is allowed and the FIR No.47/2012 registered at PS Nand Nagri, Delhi under Ss 406/498A/34 IPC and Section 3/4, D.P. Act 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 24, 2016

rs