

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

+ **CRL.M.C. 51/2016**

Date of Decision : March 23rd, 2016

SANDEEP SAKARWAL & ORS

... Petitioner

Through: Mr. Mansimran Singh, Mr. Gijnes
Bhardwaj, Mr. Vishakha Kaur,
Advocates

versus

STATE OF NCT OF DELHI & ORS

... Respondent

Through: Mr. M.P. Singh, Additional Public
Prosecutor for the State with Sub-
Inspector Naresh Kumar, Police
Station Karol Bagh, New Delhi
Ms. Astha, Advocate for respondent
No. 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 petitioners, namely, Sh. Sandeep Sakarwal, Sh. Yudhvir Singh Sakarwal and Smt. Urmila Devi Sakarwal for quashing of FIR No. 128/2009 dated 13.09.2009, under Sections 498A/406/34 IPC registered at Police Station Karol Bagh on the basis of a memorandum of understanding arrived at in the mediation centre, Tis Hazari Courts, Delhi between petitioner no.1 and respondent no.2, Hemlata, on 21.12.2013.

2. Learned Additional Public Prosecutor for respondent-State

submitted that the respondent No.3, namely, Sh. Hemchand Dehrawal, present in the Court has been identified to be the complainant/first-informant and respondent no.2 to be the victim in the FIR in question by their 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 25.12.2004. The complainant/respondent no.3 gave handsome dowry in the marriage of his daughter. After a week of the marriage, the accused persons/petitioners started to harass respondent no.2 for not bringing sufficient dowry as per the expectations of the family members. On 26.02.2005, the parents-in-law and the husband of respondent no.2 asked her to bring Rs. 7,00,000/- from her father to start a new business and respondent no.2 was beaten up by them and was left at the house of the complainant. The petitioners used to keep respondent no.2 hungry for several days. The petitioner no.1 was a drunkard and drug addict and had many times created scene outside the house of the complainant. The behavior of petitioner no.2 was also not good as he used to roam around in the house in his underwear and used to peep inside the room of respondent no.3. On 28.05.2005, petitioner no.2 had lodged a false complaint against the respondent no.2 for which she was taken by the police and later released. The respondent no.2 was driven away when she was pregnant on 31.05.2007. Ultimately, on 14.04.2008, the petitioners threw the respondent no.2 out of the house and since then she has been living with the complainant.

The respondent no.3/complainant lodged a complaint which

resulted into the registration of the FIR in question against the petitioners. Subsequently, the matter was amicably settled between the petitioner no.1 and respondent no.2 before the mediation centre.

4. Respondent Nos.2 & 3, present in the Court, submitted that the dispute between the parties has been amicably resolved. As per the MOU, it has been agreed that the petitioner no.1 and respondent no.2 shall take divorce by way of mutual consent under Section 13 B(1) and 13 B(2) of the H.M.A. It is also agreed that the parties shall also get the FIR in question quashed before a competent Court of Law. It is agreed that the petitioner no.1 shall pay an amount of Rs. 8 Lakhs to respondent no.2 and that this amount shall be a full and final settlement including stridhan, past present and future maintenance. It is also agreed that the minor child namely Master Nikunj Sakarwal shall remain in the custody of respondent no.2 and that the petitioner no.1 shall not have any visitation rights towards the child. It is also agreed that the respondent no.2 shall not claim anything towards the dowry articles/stridhan on account of the maintenance (past present and future), permanent alimony or any property or gifts of any nature whatsoever or maintenance of the child namely Master Nikunj against the petitioner no.1 or against the family members of the petitioner no.1 after receiving the settled/agreed amount of Rs. 8 Lacs. It is agreed that the settlement amount shall be paid in the manner enunciated in the terms of the MOU i.e. in three installments. It is also agreed that the petitioner no.1 shall pay a sum of Rs. 2 Lacs by way of FDR issued by nationalized bank in favour of the minor child at the time of quashing of the FIR in question. It is also agreed that the respondent

no.2 shall be at liberty to withdraw the above mentioned FDR in case of any emergency, with the permission of the Court but without the prior consent of the/consultation/NOC of the petitioner no.1. It is also agreed that the respondent no.2 shall be at liberty to withdraw the monthly/quarterly/half-yearly/yearly interest on the above mentioned FDR. It is also agreed that the parties shall file for divorce under Section 13-B(1) H.M.A. within 15 days from the signing of the present MOU. It is also agreed that the second motion petition shall be filed by the parties within 7 days of the expiry of the statutory period of 6 months from the date of disposal of the first motion petition. It is also agreed that the quashing petition shall be filed by the petitioner no.1 and his family members and that respondent no.2 shall cooperate with them and file her affidavit for the same. It is also agreed that the second quashing petition shall be filed within 15 days from the date of disposal of the petition under section 13-B(2), H.M.A. i.e. second motion by the petitioner no.1 and his family members. It is also agreed that the respondent no.2 shall withdraw the petitions under Section 12 of the D.V. Act and Section 125 Cr.P.C. which are pending before the concerned Ld. MM immediately after recording of the statement under Section 13-B(1), H.M.A. it is also agreed that the petitioner no.1 shall withdraw the petition filed by him under the Guardianship Act against the respondent no.2 immediately after signing of the MOU which is pending before the Court of Ld. Judge, Tis Hazari Courts, Delhi. It is also agreed that the parties shall not interfere in each other's personal matters including marriage, properties, etc. of the other party after. It is also agreed that the parties shall not raise any claim with respect to

the immovable or movable properties, goods and assets of each other in future. It is also agreed that the parties do not have any grievances left against each other, therefore, in view of the same, they have further undertaken that they shall not level any allegations against each other(s) parents/relatives/friends or cause to act in a manner so as to harm the reputation and image of the other, in the family or the society at large. It is also agreed that the no case, claim, petition and/or any other complaint is pending against each other or against any of their family members/relatives in any Court of law/Authority/Police Station or any other authority, office or department in India or abroad except the petition mentioned above that is, the claim under Section 125 Cr.P.C. and under Section 12 of the D.V. Act and case registered at PS Karol Bagh. It is agreed that if any case, claim, petition and/or any other complaint is found to be pending against each other or against any of their family members/relatives in any Court of law/Authority/Police Station or any other authority, office or department in India or abroad then it shall be deemed to be withdrawn. Respondent Nos.2 & 3 affirmed the contents of the aforesaid settlement. 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. Statements of the respondent nos.2 & 3 have been recorded in this regard in which they stated that they have entered into a compromise with the petitioners and have settled all the disputes with them. They further stated that they have 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 nos.2 & 3 agree to the quashing of the FIR in question without any threat or coercion or undue influence and have stated that the matter has been settled out of their 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 tranquillity 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 over burdened 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.

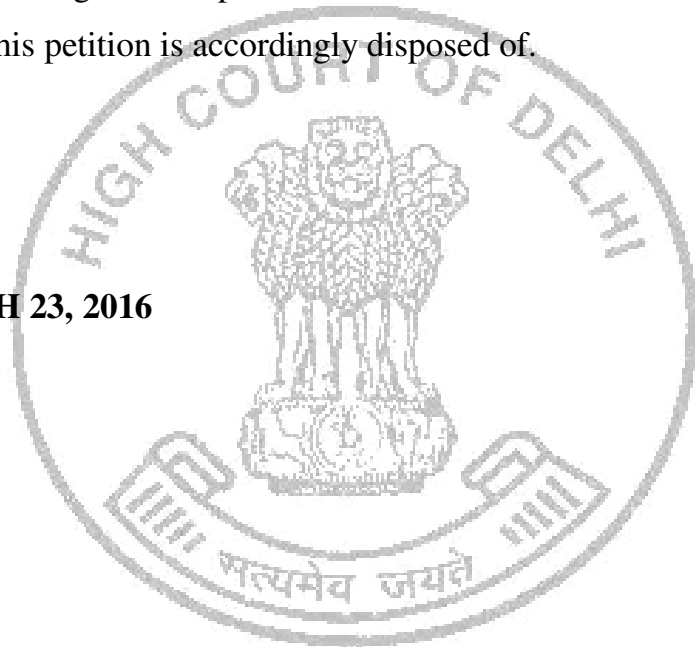
12. Since the subject matter of this FIR is essentially matrimonial, which now stands mutually and amicably settled between the parties, therefore, continuance of proceedings arising out of the FIR in question would be an exercise in futility and is a fit case for this Court to exercise its inherent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

13. In the facts and circumstances of this case, in view of statements made by the respondent nos.2 & 3 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. 128/2009 dated 13.09.2009, under Sections 498A/406/34 IPC registered at Police Station Karol Bagh and the proceedings emanating therefrom are quashed against the petitioners.

15. This petition is accordingly disposed of.

MARCH 23, 2016
dd



(P.S.TEJI)
JUDGE