

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No. M-42583 of 2015
Date of decision: 27.04.2017**

Akshay Gaur and others

..... Petitioners.

Versus

State of Haryana and another

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ivan Singh Khosa, Advocate, for
Mr. Shiv Kumar, Advocate, for the petitioners.

Mr. Sanjay K. Saini, AAG, Haryana.

None for respondent No.2.

LISA GILL, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 869 dated 13.12.2014 (**Annexure P-1**) registered under Sections 498-A and 406 of the Indian Penal Code (for short 'IPC') at Police Station Ballabgarh City, District Faridabad and all other consequential proceedings arising therefrom on the basis of an amicable settlement arrived at between the parties.

The above said FIR was registered at the behest of respondent No. 2-Smt. Neha Sharma. The dispute arose between the parties because of matrimonial discord between petitioner No. 1- Akshay Gaur and respondent No.2- Neha Sharma.

Learned counsel for the petitioners refers to the statements of petitioner No. 1 and respondent No. 2, recorded before the learned Judicial Magistrate 1st Class, Faridabad in proceedings under Sections 12 (i),18,19,20,22,23 of the Protection of Women from Domestic Violence Act,

2005. Respondent No. 2 has clearly stated before the learned Judicial Magistrate 1st Class, Faridabad on 15.10.2015 that the matter has been resolved between the parties. It was settled that a sum of Rs. 6.50 lakhs would be handed over to her as full and final settlement. A sum of Rs. 2 lakhs would be paid to her on 19.10.2015 and balance amount at the time of passing of the decree of divorce. As per compromise, after receipt of the said amount all cases filed by her against her husband and his family members would be withdrawn by her. Statement of respondent No.2- Neha Sharma reads as under:

“Stated that my husband as per the compromise shall given Rs.6,50,000/- (six lacs fifty thousand only). Out of which an amount of Rs. 2.00 lakh shall be paid on 19.10.15 and balance amount will be paid on the date of passing of decree of divorce. As per the compromise after receipt of the amount all the cases which have been filed against Akshay and his family members, all the cases shall be got withdrawn. After the decree of divorce there will be no transaction between us. Thereafter I will not claim any other expenses. Before or after the decree of divorce Akshay will not see me and my family member nor will interfere.”

It is submitted that a sum of Rs. 2 lakhs stood paid on 19.10.2015.

A certified copy of decision dated 16.05.2016, whereby petition under Section 13- B of the Hindu Marriage Act filed by petitioner No.1 and respondent No. 2 has been allowed, is on the record of this petition. It is mentioned therein that the entire amount due towards respondent No. 2 has been received by her. Relevant part of the decision dated 16.05.2016 reads as under:

“Joint statement of the parties in support of petition was recorded on 03.11.2015 at the time of filing of joint petition. Joint statement of the parties on second motion has also been recorded today i.e. on 16.05.2016 wherein they have stated that all disputes and issues between them have been settled. Petitioner No. 2 has received Rs. 4,50,000/- (four lacs and fifty thousand only) in cash

from petitioner No. 1. Now they have no claim whatsoever against each other. Both the parties have decided to withdraw the cases filed by them against each other and case under Section 498-A IPC goes for quashing. They have ruled out any possibility of their re-union. The statutory period of six months has already elapsed.”

Admittedly, the petition under Section 13- B of the Hindu Marriage Act has been allowed and divorce has been granted to petitioner No.1 and respondent No. 2.

In the present case, the parties were directed by this Court on 17.12.2015 to appear before the learned trial Court for recording of their statements. However, they did not appear before the learned trial Court. The present petition was adjourned to await the recording of statements of the parties at second motion in the proceedings under Section 13-B of the Hindu Marriage Act. Thereafter, the matter was adjourned on request of learned counsel for the respondent No. 2 on 31.05.2016. Certified copy of the decision dated 16.05.2016 passed by the learned District Judge Family Court-1, Faridabad (Annexure P-4) was placed on record in this case on 21.02.2017. However, none appeared on behalf of respondent No. 2 on 01.03.2017. The matter was adjourned to 15.03.2017 but there was no representation on behalf of respondent No. 2. It was specifically averred by the petitioners that respondent No. 2 is deliberately not coming forward after the grant of divorce despite having received the entire amount due in terms of the settlement between the parties. This matter was yet again adjourned for today in the interest of justice and it was directed that counsel for respondent No. 2 be notified of the date fixed by Court vide order dated 15.03.2017. However, despite the matter being called out twice today and the counsel having been notified, none appears on behalf of respondent No. 2.

Learned counsel for the petitioners submits that respondent No.2 is now deliberately not coming forward for recording of her statement after having received the full and final amount as settled between the parties and after the passing of the decree of divorce. He relies upon decision of Hon'ble Supreme Court in ***Ruchi Agarwal Vs. Amit Kumar Agrawal, 2004 (4) RCR (Criminal) 949*** to submit that continuance of the proceedings in this case would be an abuse of the process of law and the same should be quashed.

It has been held by the Hon'ble Supreme Court in ***Ruchi Agarwal's case*** (supra) that once the parties enter into a compromise and both of them decide to withdraw the cases filed against each other but one of the parties refuses to withdraw the same, despite the other party having fulfilled its obligations, criminal proceedings should not be allowed to continue, as it would be an abuse of the process of the Court. Similarly the Hon'ble Supreme Court in ***Mohd. Shamim Vs. Smt. Nahid Begum 2005 (1) R.C.R (Criminal) 697*** quashed an FIR under Sections 406 and 498-A of the IPC in a situation where the complainant-wife arrived at a settlement and accepted a sum of Rs. 2.25 lakhs from her husband but thereafter backed out of the settlement. The complainant-wife in ***Mohd. Shamim's*** case sought to back out of the settlement on the ground that her signatures on the agreement of settlement and affidavit were obtained by misrepresentation. It was held by the Hon'ble Supreme Court that continuance of criminal proceedings in such a matter would amount to an abuse of the process of Court. Thus, the FIR and all consequential proceedings arising therefrom were quashed.

As noted above, in the present case, respondent No. 2 has received the entire settled amount. It is obvious that she would not have recorded her statement at second motion before the learned District Judge Family Court-1, Faridabad on 16.05.2016 in case the complete amount was not received by her. It is specifically stated by her before the learned District Judge, Family Court-1,

Faridabad that all disputes and the issues between the parties were settled. She received the remaining amount of Rs. 4.50 lakhs in cash from petitioner No. 1. Thus, none of the parties would have any claim, whatsoever against each other. It is specifically mentioned in order dated 16.05.2016 that the parties have decided to withdraw the cases filed by them against each other and the proceedings under Section 498-A of the IPC would also be quashed. From the factual matrix as above, it is obvious that continuance of the present proceedings against the petitioners would be a sheer abuse of the process of Court. Respondent No. 2 for reasons best known to her is not coming forward for recording of her statement for the quashing of the above said FIR even though she has received the entire settled amount and has recorded her statement in this respect before the learned District Judge Family Court-1, Faridabad in the proceedings under Section 13-B of the Hindu Marriage Act.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to quash FIR No. 869 dated 13.12.2014 registered under Sections 498-A and 406 of the Indian Penal Code (for short 'IPC') at Police Station Ballabgarh City, District Faridabad as well as all other consequential proceedings arising therefrom. However, liberty is afforded to respondent No. 2 to seek revival of the proceedings in the above said FIR, if any part of the settled amount between the parties has not been received by her

(LISA GILL)
JUDGE

27.04.2017

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Whether speaking/reasoned : *Yes/No.*

Whether reportable : *Yes/No.*