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

+ W.P.(CRL) 583/2013

PANKAJ SHARMA & ORS.

..... Petitioner

Through: Mr. Biswajit Kumar Patra, Advocate

versus

STATE & ANR.

..... Respondent

Through: Ms. Nandita Rao, ASC with SI
Mangal Ram, PS Rajouri Garden
Mr. Kuldip Kumar, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
19.01.2017

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The petitioners have preferred the present writ petition to seek quashing of FIR No. 273/12 under Sections 406/498A/34 IPC registered at police station Rajouri Garden and the proceedings emanating therefrom, against the petitioners.

There are five petitioners in this petition. The petitioner No.1 Pankaj Sharma got married to respondent No.2-the complainant Preeti Sharma, on 14.09.2007. It appears that matrimonial discord erupted early in the marriage, and on 03.01.2008, respondent No.2 left the company of the petitioner. On 20.09.2009, the parties entered into a settlement contained in the Memorandum of Undertaking duly signed by them and witnessed by

four persons, including, the close relatives of respondent No.2. The said Memorandum of Undertaking reads as follows:

“MEMORANDUM OF UNDERTAKING

This MOU has been made between

Mr. Pankaj Sharma: Ist Party

S/o Sh. Ravi Sharma

*R/o 18/631, 2nd Floor, Joshi Road, Karol Bagh, New Delhi –
110005*

Mrs. Preeti Sharma : 2nd Party

D/o Late Sh. Subash Sharma

*R/o 72-A, LIG Flats, Maya Kunj, Mayapuri, New Delhi –
110064*

That this MOU is with regard to the dissolution of marriage which has been mutually and amicably settled by the parties, their pursuance of settlement

- 1) The 1st Party has handed over entire dowry and stridhan articles to the 2nd party today on 20th September, 2009.*
- 2) That the 1st Party (Mr. Pankaj Sharma) shall pay a sum of Rs. 1,75,000/- as full and final settlement to the 2nd Party towards the permanent alimony, the past, present and future maintenance to 2nd Party (Mrs. Preeti Sharma). The amount of Rs. 1,75,000/- shall be paid by the way of pay orders in favour of Mrs. Preeti Sharma by her husband Mr. Pankaj Sharma at the time of signing of 1st and 2nd motion of divorce.*
- 3) That the parties shall make divorce petition by mutual consent before the Hon'ble Court on or before 24th September, 2009.*

This MOU has been made and signed by the parties on this date 20th September, 2009, at Delhi in the presence of each other and presence of witnesses as under:

Sd/-

(Mr. Pankaj Sharma)

Sd/-

(Mrs. Preeti Sharma)

Witnesses:

<i>Sd/-</i> <i>(Rakesh Sharma)</i> <i>C-67, Shivaji Park,</i> <i>New Delhi</i>	<i>Sd/-</i> <i>(Vijay Sharma)</i> <i>C-67, Shivaji Park</i> <i>New Delhi</i>	<i>Sd/-</i> <i>(Tony Sharma)</i> <i>24/15, Moti Nagar,</i> <i>New Delhi</i>	<i>Sd/-</i> <i>Veena Sharma</i> <i>B-115, Shakti</i> <i>Apartment,</i> <i>Sector 9, Rohini. ”</i>
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(emphasis supplied)

Under the said settlement, the parties agreed to obtain divorce by mutual consent. The settlement recorded that the first party i.e. petitioner No.1 Pankaj Sharma had, *‘handed over entire dowry and stridhan articles to the second party today on 20.09.2009’*. The first party i.e. Pankaj Sharma also agreed to pay a sum of Rs. 1,75,000/- in full and final settlement of the claim of the Second Party-respondent No.2 in respect of her claim for maintenance/ alimony for the past, present and future, which was to be paid by way of pay orders at the time of signing of the first and second motion divorce petition. The parties agreed to make the divorce petition by mutual consent on or before 24.09.2009.

In pursuance of the said settlement, the parties indeed moved the first motion petition to obtain divorce by mutual consent under Section 13-B(I) of the Hindu Marriage Act. The said first motion petition was taken up on 03.10.2009 by the learned Additional District Judge when the statements of the petitioner No.1 husband and petitioner No.2/respondent No.2 herein-wife were recorded on solemn affirmation. Respondent No.2 herein, in her statement, inter alia, stated as follows:

“I have settled all the matrimonial disputes amicably with petitioner No.1. The terms of settlement are mentioned in petition Ex.PW1/B. I have received a Pay Order of Rs.

95,000/- dated 08.08.2009 bearing No. 927000 drawn on Syndicate Bank, Karol Bagh, New Delhi, from petitioner No.1 towards first instalment of the settled amount. After complying with the remaining terms of settlement, we shall be left with no claims towards each other. I undertake to abide by the terms of the petition which is Ex.PW1/B.” (emphasis supplied)

From the above, it would be seen that respondent No.2 exhibited the settlement arrived at between the parties on 20.09.2009 as Ex.PW1/B, and also received a pay order for Rs. 95,000/- dated 08.08.2009 towards part payment of the settlement amount of Rs. 1,75,000/-. Divorce by mutual consent, however, did not go through since respondent No.2 claimed that the settlement amount was, in fact, Rs. 15 lakhs and not Rs. 1.75 lakhs as recorded in the settlement/MoU, dated 20.09.2009. Accordingly, the said proceedings fell through.

The petitioner No.1 thereafter initiated proceedings under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, vide HMA No. 206/11 on 05.04.2011. This petition was contested by respondent No.2. During the pendency of the said petition, on the complaint of respondent No.2, the FIR in question came to be registered vide FIR No. 273/12 under Sections 406/498A/34 IPC against the petitioners.

The submission of learned counsel for the petitioner is that the FIR has been filed mala fide and with a view to abuse the process of law. He submits that the said FIR came to be filed only after the petitioner No.1 had initiated divorce proceedings under Section 13(1)(ia) and (ib) of the Hindu Marriage Act. Learned counsel submits that the allegations made in the FIR are contrary to the settlement contained in the MoU dated 20.09.2009

wherein respondent No.2 acknowledged to have received the entire dowry and *stridhan* articles on the same day. The claim for permanent alimony, past, present and future maintenance had also been settled at Rs.1.75 lakhs. Learned counsel for the petitioner, therefore, submits that the FIR – on the face of it, has been filed mala fide. Learned counsel for the petitioner further submits that the lodging of the FIR in the present case was also barred by limitation as prescribed under Section 468 of the Cr.P.C. Section 468 Cr.P.C. provides that, ‘*except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.*’. The period of limitation in respect of an offence which is punishable with imprisonment for a term exceeding one year but not exceeding three years, is three years. The submission is that the maximum punishment prescribed under Section 498A and 406 IPC is three years and thus Section 468(2)(c) is applicable in the facts of the present case. The submission is that the parties are living separately since 03.01.2008 and the cause of action, if any, lastly arose prior thereto. The FIR in question has been registered only on 16.07.2012 i.e. well beyond the period of three years from the date when the cause of action lastly arose. Learned counsel for the petitioner in support of this petition placed reliance on the judgment of this Court in ***Sudhir Kapur & Ors. Vs. State & Anr.*** decided on 10.08.2010 in CrI.M.C. No. 799/2009.

Learned counsel for the petitioner further submits that in terms of the settlement reached with respondent No.2, the petitioner is even now ready and willing to pay the remaining settlement amount of Rs. 80,000/- and the petitioner has brought to Court a pay order for the said amount in favour of

respondent No.2.

On the other hand, the submission of learned counsel for the respondent No.2 is that this Court cannot entertain the present petition since it involves disputed questions of fact. The issue whether under the settlement, petitioner No.1 was obliged to pay Rs. 1.75 lakhs or Rs. 15 lakhs is a factual dispute. He submits that since the mutual consent petition to obtain divorce had lapsed, no reliance can be placed on those proceedings. Learned counsel submits that in the present case, even the charge-sheet stands filed before the trial court and thus, this petition should not be entertained by the Court. He submits that when the settlement/MoU was drawn up on 20.09.2009, and thereafter the first motion petition was filed, obviously, respondent No.2 could not have made allegations with regard to perpetration of cruelty or criminal breach of trust. Learned counsel has sought to place reliance on the judgment of *Avneesh Gupta and Ors. Vs. State of NCT of Delhi & Ors.* 2013 Law Suit (Del) 3390 rendered in Writ Petition (Crl.) No. 588 of 2011, wherein the Court considered the scope of the jurisdiction of the High Court under Section 482 Cr.P.C. in support of the proposition that where disputed questions of fact are raised, the Court should not exercise its extraordinary jurisdiction. Learned counsel has relied on *Sanjay Daksha & Ors. Vs. The Commissioner of Police & Ors.* decided on 04.01.2012 in WP (Crl.) No. 805-07/2005 which points out the circumstance in which this Court would exercise its extra ordinary jurisdiction to quash the FIR and the proceedings.

Having heard learned counsel for the parties, I am inclined to allow the present writ petition. The parties resided together till 03.01.2008 and,

thereafter, they have not co-habited. The question of respondent No.2 being subjected to cruelty in relation to dowry, or otherwise, therefore, relates to the period before 03.01.2008. The parties entered into the settlement/MoU dated 20.09.2009, which was also led in evidence in the first motion petition filed under Section 13-B(I) of the Hindu Marriage Act. No doubt, since that petition failed – as the parties did not move the second motion petition jointly, the said proceedings have no significance so far as the aspect of divorce is concerned. However, the fact that the parties entered into the settlement contained in the MoU dated 20.09.2009 stands duly established by the fact that respondent No.2 in her solemn statement admitted to have entered into the said settlement which was exhibited as Ex. PW1/B. She also received an amount of Rs. 95,000/- during the first motion stage out of the settlement amount of Rs. 1,75,000/-. Having acknowledged that she had received her entire dowry and *stridhan* articles on 20.09.2009, and not having made any allegations whatsoever under Sections 498A or 406 IPC at that stage, the making of the said allegations in her complaint – which led to the registration of the FIR in question, after a span of nearly four years, certainly appears to be mala fide, an afterthought, and an abuse of the process of law. Apart from claiming that the actual settlement amount was Rs. 15 lakhs and not Rs. 1.75 lakhs, the respondent No.2 does not appear to have initiated any declaratory proceedings in respect of MoU till date.

Moreover, I also find merit in the petitioner's submission with regard to the bar of limitation in the taking of cognizance by the Court in the present case. Since the maximum punishment prescribed under Section 498A as well as 406 IPC is three years imprisonment, section 468(2)(c)

Cr.P.C. is clearly applicable in the facts of the present case. On this ground as well, the proceedings arising from the FIR in question are not sustainable.

Reliance placed by counsel for the respondent No.2 on ***Avneesh Gupta and Ors*** (supra) and ***Sanjay Daksha & Ors.*** (supra) is of no avail. In fact, these decisions clearly show that in a situation like the present, this Court would exercise its extraordinary jurisdiction and quash the FIR and the proceedings. In ***Avneesh Gupta and Ors.*** (supra), this Court noted the decision of the Supreme Court in ***Priya Vrat Singh & Ors v. Shyam Ji Sahai***, 2008(3) JCC 2069. In ***Priya Vrat Singh*** (supra), the Supreme Court, inter alia, observed:

“All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.” (emphasis supplied)

No doubt, this Court would exercise its powers to quash the FIR and the proceedings arising therefrom with caution, and only when such exercise is justified in law. Where the exercise of the power advances the cause of justice, and scuttles an attempt made by the complainant to abuse the process of law – which, if continued would produce injustice, the Court would be justified in exercising the power to quash the FIR and the proceedings to prevent such an abuse. It would be an abuse of the process of the court to allow continuation of any action which would result in injustice, and prevent promotion of justice. If the Court finds that initiation/continuation of any proceedings amounts to abuse of process of court, or quashing of the proceedings serves the ends of justice, the Court would not hesitate to quash the same. In ***Sanjay Daksha*** (supra), this Court relied upon the celebrated judgment of the Supreme Court in ***State of Haryana & Ors. Vs. Bhajan Lal & Ors.*** AIR 1992 SC 604. The Supreme Court spelt out several situations where the Court may exercise its extraordinary jurisdiction and quash the FIR and the proceedings arising therefrom. Amongst the considerations, on which the Court may quash the FIR and the proceedings arising therefrom – as laid down by the Supreme Court in ***Bhajan Lal*** (supra), are the following:

“5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.”

“7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The submission of learned counsel for the respondent is that where triable issues arise and disputed questions of facts are raised, this Court cannot exercise its jurisdiction to quash the proceedings thereon. In my view, the mala fides of the respondent No.2 in the present case are writ large. Firstly, the parties resided only for about four months together and parted company in early January, 2008. Secondly, the parties voluntarily entered into a Memorandum of Understanding/Settlement, inter alia, recording that the entire dowry/*stridhan* articles of respondent No.2 had been returned to her. The said settlement also provided for payment of alimony past, present and future to respondent No.2. Between 03.01.2008 and 20.09.2009, no grievance with regard to demand of dowry; perpetration of cruelty, or; criminal breach of trust was ever made by respondent No.2. Even after the proceedings under Section 13-B(I) had failed, respondent No.2 did not initiate any complaint raising any allegations relatable to Sections 406/498A IPC. It was only after about a year and three months of the petitioner filing a petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, that the FIR in question came to be registered. Moreover, as noticed hereinabove, the said complaint was clearly barred by limitation.

In these circumstances, the decisions relied upon by learned counsel for the respondent No.2 are of no avail. Accordingly, the petition is allowed and the FIR No. 273/12 under Sections 406/498A/34 IPC registered at police station Rajouri Garden and the proceedings emanating therefrom against the petitioners, are quashed. The petitioner has offered the pay order for Rs. 80,000/- to learned counsel for the respondent No.2. This Court has also made it clear that respondent No.2 may accept the same without

prejudice to her rights and contentions in any manner. However, learned counsel for the respondent No.2 states that he has no such instructions and respondent No.2 is not available today in Court.

Accordingly, let the petitioner deposit the amount of Rs. 80,000/- in the name of the Registrar General of this Court within two weeks. The amount shall be placed in a fixed deposit for a period of one year. In case, respondent No. 2 wants to withdraw the same, she may withdraw the same without prejudice to her rights and contentions.

The petition stands disposed of. Dasti.

VIPIN SANGHI, J

JANUARY 19, 2017
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