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

+ W.P.(CRL) 1089/2017

SURJEET SINGH & ORS. Petitioners
Through: Mr.Gurbaksh Singh, Adv.

versus

THE STATE (NCT OF DELHI) & ANR. Respondents
Through: Ms.Kamna Vohra, ASC.
Ms.Manjeet Kaur, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **17.04.2017**

CrI.M.A No.6102/2017

Exemption allowed, subject to all just exceptions.

Application is disposed of accordingly.

W.P.(CRL) 1089/2017

The petitioner No.1 who is the husband of respondent No.2 and petitioners No.2, 3 & 4 who are related to the petitioner No.1 have sought quashing of FIR No.34/2016 dated 16.01.2016 (Police Station Paschim Vihar) instituted under Sections 498/354/313/376/34 of the IPC on the basis of a settlement having been entered into between the parties.

The petitioner No.1 was married to respondent No.2 on 11.12.2005 in accordance with Hindu religious rites. After about 10 years of the marriage, dispute arose between the husband and wife, leading to filing of a complaint at Ajmer in Rajasthan. The complaint, interestingly, was withdrawn on the very next day of filing the same. The parties perhaps had come to the conclusion that it was difficult for petitioner No.1 and respondent No.2 to

continue any further with matrimonial obligations and therefore not only the complaint was withdrawn but a compromise was also got recorded in Mahila police station at Ajmer, Rajasthan.

The compromise/settlement referred to above indicated that the petitioners had agreed to pay Rs.10 lakhs in all towards full and final settlement of all claims of respondent No.2. In token of the parties having settled the dispute and to show bonafides, a cheque dated 01.05.2015 of the amount of Rs.10 lakhs was also paid to the respondent No.2 on 20.04.2015.

Thereafter, a divorce petition was filed before the concerned Family Court and at the time of first motion, a draft of Rs.5 lakhs was handed over to the respondent No.2. It has been submitted on behalf of the petitioners that the cheque dated 01.05.2015 of Rs.10 lakhs which was earlier given to the respondent No.2 on 20.04.2015 was returned to the petitioners. The parties had agreed that another instalment of Rs.5 lakhs would be paid at the time of the second motion and on the date of decree of divorce.

However, before the divorce decree could be passed, a complaint was filed by respondent No.2 on 03.06.2015 in the National Women Cell at Delhi in which the respondent No.2 also alleged sexual advances by the petitioner No.2 who is her father-in-law. The aforesaid complaint was not moved nor any action was taken. However, later, a complaint was lodged in the CAW Cell, Kirti Nagar on 27.07.2015 which led to the registration of Paschim Vihar P.S case No.34/2016 dated 16.01.2015 under Sections 498A/354/313/376/34 of the IPC.

It may be noted here that on 14.12.2015, the Family Court, before whom the divorce petition was filed, passed the decree of divorce by way of mutual consent between the parties.

It has been pointed out by Ms.Kamna Vohra, learned Additional Standing counsel that after the registration of FIR No.34/2016, the petitioners did not get the privilege of anticipatory bail in the first instance but later, when a settlement was arrived at between the parties, anticipatory bail was granted to them.

The petitioners request for quashing of the Paschim Vihar P.S case No.34/2016 on the basis of a settlement having been arrived at on 28.03.2017 wherein it has been agreed upon by the petitioners that the draft of Rs.5 lakhs which is still lying with the Family Court and has not been collected/withdrawn by respondent No.2 shall be collected and revalidated, if the validity of that draft has expired. Apart from the aforesaid amount, Rs.1 lakh more towards litigation expenses would be paid to the respondent No.2 on the date when any positive order would be passed by the Court towards quashing of the first information report.

This Court is of the opinion that the dispute between the petitioners and respondent No.2 is out and out a matrimonial dispute and nothing more. Though the allegations under Sections 313 and 376 of IPC have been incorporated in the first information report but from the sequence of events it appears that such allegations were only levelled in a fit of rage by the respondent No.2. Had that not being the case, the respondent No.2 would not have agreed for a divorce by mutual consent, the decree for which was passed on 14.12.2015, which is much after the complaint in the National Women Cell and in the CAW Cell of Kirti Nagar was filed leading to the institution of the present case. It is also submitted on behalf of the petitioners that the respondent No.2, though had become pregnant but aborted while she had made a religious trip to Vaishno Devi. This mishap

was, wrongly attributed to the petitioners by the respondent No.2. This was obviously because the respondent No.2 was not having cordial relations with the petitioners. So far as the allegation of rape against petitioner No.2 is concerned, the averments in the FIR do not at all inspire confidence. This Court has interacted with the respondent No.2 who showed complete willingness and approval of having the case against the petitioners quashed. This could not have been possible if the respondent No.2 would have been subjected to any such sexual misdemeanour.

This Court is in a dilemma. True it is that cases of serious nature ought not to be permitted to be compounded or else any offence of serious nature could be set at naught by the malefactors. However, in the present case, since allegations levelled against the petitioners in the first information report are out of matrimonial discord and that the respondent No.2 had admittedly stayed in the matrimonial home for good ten years, this Court feels that in the interest of justice, more so in the interest of respondent No.2 who is a person of young age and is desirous of opening a new chapter in her life, it would not be appropriate to keep her bound with the first information report lodged by her.

A draft of Rs.1 lakh dated 15.04.2017 drawn on Bank of Baroda has been given to respondent No.2 in the presence of her counsel which has been accepted towards full and final settlement.

Considering the aforesaid factors and taking into account that today, the respondent No.2 has shown absolute lack of rancour as against her in-laws and husband, this Court is inclined to quash the FIR No.34/2016.

The FIR No.34/2016, P.S.Paschim Vihar under Sections 498A/354/313/376/34 IPC and all other proceedings emanating therefrom

are quashed.

The petition is allowed and is disposed of accordingly.

ASHUTOSH KUMAR, J

APRIL 17, 2017

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