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

+ W.P.(CRL) 3461/2016

ANKIT TYAGI & ORS

..... Petitioners

Through: Mr. Sahil Munjal, Adv. with
Ms. Rhea Gandhi, Advocate along
with petitioners in person.

versus

STATE (GNCT OF DELHI) & ANR

..... Respondents

Through: Mr. Sanjay Lao, ASC for the State
with ASI Ram Kishore, PS Zafrabad.
Respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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21.04.2017

1. The second respondent (Ms. Himantika Tyagi) was married to the first petitioner (Ankit Tyagi) as per Hindu rites and ceremonies on 24.04.2012. However, due to some differences, parties started living separately since 12.08.2013. On 21.06.2014, she lodged first information report (FIR No.361/2014) with Police Station Zafrabad, Delhi alleging offences punishable under Sections 498-A/406/34 of Indian Penal Code, 1860 (IPC) and 4 of D.P. Act against her husband (first petitioner), his father Rajesh Tyagi (the second petitioner), his mother Smt. Sushila Tyagi (the third petitioner) and his brother Himanshu Tyagi (the fourth petitioner). The investigation is still pending and a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.PC) is yet to be filed.

2. The first petitioner Ankit Tyagi (husband) was constrained to move an application for bail in the court of sessions, in the course of hearing upon which, the parties on their request were referred to the process of mediation

through mediation centre at Karkardooma Courts, Delhi. The efforts to find amicable resolution through mediation was successful as the parties entered into a settlement which was recorded on 25.02.2015, copy whereof has been submitted (pages 41 to 46) of the paper book. In terms of the said settlement, the first petitioner (husband) has agreed to pay to the second respondent (wife) a sum of Rs.10,00,000/- (Rupees ten lacs only) out of which she has already received an amount of Rs.7,00,000/- (Rupees seven lac only). The balance amount of Rs.3,00,000/- has been paid today by way of Demand Draft No.614095, dated 19.04.2017, drawn on Allahabad Bank, Ghaziabad Ingram Institute as full and final settlement of all her claims arising out of her complaint regarding dowry, *streedhan* and towards maintenance (past and future).

3. It is recorded in the settlement that besides the present case, there are other cases pending between the parties, viz., a case under Section 12 of the Domestic Violence Act filed by the respondent no.2 against the petitioners; a petition under Section 125 Cr.P.C. pending before the court of Principal Judge, Family Courts, Karkardooma Courts, Delhi; a complaint case under Section 156(3) Cr.P.C. filed by the petitioner no.1 (husband) against respondent no.2 (wife), which is pending before concerned court at Ghaziabad, U.P. and a case FIR No.260/2013, PS Sahibabad, under Sections 323/506/509 IPC registered on the complaint of father of respondent no.2 against petitioner no.1.

4. As per the settlement dated 25.02.2015 both the parties had agreed to withdraw all the said cases filed against each other.

5. The parties also resolved to jointly move a petition in this court for having the proceedings arising out of the present FIR quashed.

6. The petition, thus, has been moved in this court invoking Article 226 of the Constitution of India and Section 482 Cr. PC seeking quashing of the FIR No.361/2014, under Sections 498A/406/34 IPC and 4 of D.P. Act, Police Station Zafrabad.

7. By orders dated 02.12.2016 and 18.01.2017, the parties were directed to appear in person. Today, respondent no.2 has appeared in person. She was called upon to give her response by filing an affidavit. The State (first respondent) was also called upon to submit its response. In compliance, a status report of the case has been submitted by SHO, PS Zafrabad while the second respondent has filed an affidavit, her earlier affidavit having already been submitted with the petition, both giving no objection to the prayer in the petition. She has been identified on the affidavit filed today, by the IO/ASI Ram Kishore, who is present in the court today.

8. The petitioners and the second respondent have been heard in person. From their submissions and the pleadings on record, as indeed the documents submitted with the petition, it is established that the parties have entered into the settlement out of their own free will and volition. The amount of Rs.10,00,000/- (rupees ten lacs only) has been received by the second respondent, as confirmed on oath by her through her affidavit.

9. The documents filed further confirm that pursuant to the settlement terms, the parties had also approached the Family Court for dissolution of their marriage by mutual consent under Section 13B of the Hindu Marriage Act, 1955. The first motion petition was allowed by order dated 12.05.2015 while the second motion petition registered as HMA case 01/2016 was allowed vide order dated 21.01.2016 whereby the divorce by mutual consent has been allowed.

10. In writ petition (criminal) 1004/2017, titled *Rakesh & Ors. vs. State*

(NCT of Delhi), while allowing an identical prayer against similar backdrop, this Court by order dated 20.04.2017, concluded thus:-

10. Pertinent to note here that offence under Section 498A IPC is not compoundable. The parties are constrained to move this court for quashing on the basis of amicable resolution arrived at by them in the facts and circumstances noted above.

11. The scope and ambit of the power conferred on this court by Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Articles 226 and 227 of the Constitution of India, in the particular context of prayer for quashing criminal proceedings, was examined by the Supreme Court in B.S. Joshi and Ors. Vs. State of Haryana and Anr., (2003) 4 SCC 675, against the backdrop of catena of earlier decisions. Noting, with reference to the decision in State of Karnataka Vs. L Muniswamy, (1977) 2 SCC 699, that in exercise of this “inherent” and “wholesome power”, the touchstone is as to whether “the ends of justice so require”, and it was observed thus :

“10. ... that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. ...that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

(emphasis supplied)

12. The Supreme Court in B.S. Joshi (supra) further noted as under :-

“What would happen to the trial of the case where the

wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the “negative”. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.”

(emphasis supplied)

13. Holding that “special features in ...matrimonial matters are evident” and that it is “the duty of the court to encourage genuine settlements of matrimonial disputes”, referring to *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojiroo Angre*, (1988) 1 SCC 692, it was further observed that :

“11. ... Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.”

(emphasis supplied)

14. In *Gian Singh Vs. State of Punjab and Anr.* (2012) 10 SCC 303, the Supreme Court contrasted the request for

quashing of criminal proceedings on the basis of settlement with the possibility of compounding of an offence and observed thus :-

“57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.”

(emphasis supplied)

15. The above views in the context of matrimonial disputes resulting in criminal proceedings have been consistently followed over the years, as may be further illustrated by the decision of a bench of three Hon'ble Judges of the Supreme Court in *Jitendra Raghuvanshi and Ors. Vs. Babita Raghuvanshi and Anr.*, (2013) 4 SCC 58, the following observations summarising the philosophy succinctly :-

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal

proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed...”

(emphasis supplied)

16. In a case where criminal proceedings arise essentially out of matrimonial dispute and the parties have decided to bury the hatchet, the court must examine if there is any likelihood of the criminal prosecution resulting in conviction. In fact-situation wherein the matrimonial relation has been brought to an end by mutual consent and the parties are eager to move on with their respective lives seeking closure and if there is nothing to indicate lack of bonafide on the part of any side, denial of the prayer for quashing the criminal case would restore acrimony rather than bring about peace. Allowing continuance of the criminal action would be fruitless and clearly an abuse of judicial process.”

11. The case at hand passes the above muster.

12. In the above facts and circumstances, the petition is allowed. The crime registered by the police vide FIR No.361/2014, under Sections 498A/406/34 IPC and 4 of D.P. Act, registered with Police Station Zafrabad

and the proceedings emanating therefrom are hereby quashed.

13. The petition is disposed of accordingly.

APRIL 21, 2017

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R.K.GAUBA, J.