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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5376/2017 CRL.M.A. 21014/2017**
DANISH Petitioner

Through Mr. Atul Sharma, Mr. Gagan
Kr. Singhal, Advs.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondent
Through Mr. Sanjeev Sabharwal, APP for State
with SI Vijay Kumar PS Farsh Bazar.
R-2 with counsel (appearance not
given)

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **19.12.2017**

Vide the present petition, the petitioner seeks quashing of the FIR No. 174/05, PS Farsh Bazar, under Sections 498A/406/34 of the Indian Penal Code, 1860 in view of her stated settlement arrived at between the parties.

Learned APP for the State submits that there is no decree of divorce on the record.

Placed on record is Annexure-P2 to the petition, which is the mediation settlement dated 31.10.2017 and vide para 4, it has been agreed to the effect that after taking divorce, as agreed herein above, the quashing petition shall be filed by the respondent / husband on or before 15.11.2017 and the complainant / wife undertakes to cooperate with the respondent / husband in quashing proceedings in all manners.

A perusal of the petition indicates that vide para 2 thereof it has been
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mentioned that the matter had been referred to Mediation Centre, Karkardooma Court, Delhi and the same has been compromised between both the parties vide settlement dated 31.10.2017. Copy of which is annexed herewith and marked as Annexure A2 (Colly) of which para 4 has already been adverted to hereinabove.

A bare perusal on the petition on record indicates that there is no averment whatsoever of any dissolution of marriage so far between the petitioner and the respondent no. 2 and as per the terms of the settlement annexed as Annexure-A-2 (Colly) placed on record shows that the quashing of the petition was to be filed after the dissolution of the marriage i.e. after taking of divorce through mutual consent. Furthermore as submitted on behalf of the State vide para 5 & 6 of the mediation settlement dated 31.10.2017 it has been detailed as under : -

“5. It is agreed between the parties that the custody of both the children namely Arish & Isha shall remain with their mother and respondent / husband shall not claim their custody rights in future.

6. It is agreed between the parties that the respondent / wife shall be free to meet both the children Arish & Isha twice a month as per the convenience of the children.”

and it has thus been submitted on behalf of the State that the said averment in relation to the visitation of the mother qua both the children Arish & Isha twice a month as per the convenience of the children is contrary to para 5 of the said settlement in as much as per the para 5 of the said mediation settlement the custody of both the

children namely Arish and Isha shall remain with their mother i.e. respondent no. 2 and the husband shall not claim their custody rights in future which submission is apparently correct in relation to para 5 & 6 of the mediation settlement dated 31.10.2017 being contrary.

In view thereof, the learned counsel for the petitioner seeks permission to withdraw the petition seeking liberty to file it afresh in accordance with law. In view of the submissions made on behalf of the petitioner and no opposition on behalf of the respondents no. 1 & 2 and on behalf of the State to the withdrawal of the petition to file it afresh in accordance with law, the petition is thus hereby dismissed as withdrawn with liberty granted as prayed.

Further in view of the para 5 & 6 of the mediation settlement dated 31.10.2017 arrived at Karkardooma Courts, Delhi clauses of which has been referred hereinabove and are reproduced again as under : -

“5. It is agreed between the parties that the custody of both the children namely Arish & Isha shall remain with their mother and respondent / husband shall not claim their custody rights in future.

6. It is agreed between the parties that the respondent / wife shall be free to meet both the children Arish & Isha twice a month as per the convenience of the children.”

which are wholly in contradiction in relation to the custody of the minor children, copy of the mediation settlement and the copy of the order of this Court be sent to the Judge, Incharge, Delhi Mediation

Centre, Karkardooma Court, Delhi to take into account that the Mediators are apprised that the terms of the settlement recorded are not in contrast and not contrary to terms agreed upon between the parties and that the mediation settlement is perused before signatures of the parties on the mediation settlements are taken and before the Judge Incharge of the Mediation Centre / Mediator signs the same.

Copy of this order be also sent to the all the Judge Incharges of the Delhi Mediation Centre at the District Courts at Tis Hazari Courts, Rohini Courts, Saket Courts, Karkardooma Courts, Patiala House Courts, Dwarka Courts for adherence and compliance through the Registrar General, High Court of Delhi, New Delhi.

Copy of the order be given *Dasti*, as prayed.

ANU MALHOTRA, J

DECEMBER 19, 2017/MK