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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 25/2018**
SHITIZ KUMAR & ORS Petitioner
Through: Mr. Vishesh Wadhwa, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondent
Through: Mr. Sanjeev Sabharwal, APP for
State with ASI Balwant Singh, PS
CAW Nanak Pura.
Mr. Baldev Raj, Adv. for R-2 with
R-2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

12.02.2018

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Vide the present petition, the petitioner seeks quashing of FIR No.86/2014, registered at PS CAW Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 and all consequential proceedings emanating therefrom submitting to the effect that the petitioner and the respondent no.2 have arrived at a settlement.

The Investigating Officer of the case present today in Court has identified the petitioner no. 1 Shri Shitiz Kumar, s/o Shri Nirmal Kumar, petitioner no.2 Shri Nirmal Kumar, s/o Shri Sunder Lal, petitioner no.3 Shri Veena, w/o Shri Nirmal Kumar and petitioner no.4 Shri Akshat Kumar, s/o Shri Nirmal Kumar as being the accused arrayed in FIR No.86/2014, registered at PS CAW Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 and has also identified the respondent no.2 Ms. Jyoti

Kataria present today in Court as being the complainant thereof.

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The proofs of identity of the petitioner nos. 1 to 4 in the form of copies of their Election Commission I-Card and of the respondent no. 2 in the form of photocopy of her Aadhar Card are on the record as Ex.CW1/A to Ex. CW1/E respectively, originals of which have been seen and returned.

The respondent no.2 in her examination on oath by the Court has testified to having sworn her affidavit annexed to the petition as Ex.CW2/A and has further testified to the effect that she has also signed the Memorandum of Understanding executed between her and the petitioner no.1, copy of which is on the record as Ex. CW2/B (originals of which have been seen and returned) voluntarily of her own accord without any duress or coercion from any quarter. The respondent no.2 has further testified to the effect that there is no child born of the wedlock between her and the petitioner no.1 and the marriage between her and the petitioner no.1 has been dissolved vide decree of divorce through mutual consent under Section 13(B)(2) of the Hindu Marriage Act, 1955 vide decree dated 08.09.2017 of the Court of the Additional Principal Judge, Family Court (West), THC, New Delhi in HMA No. 640/17 and in terms of the settlement arrived at between her and the petitioners, a total sum of Rs. 21 lacs was to be paid by the petitioners in four instalments of Rs. 5.25 lacs each, of which three instalments have been received by her previously and the fourth instalment of Rs. 5.25 lac has been handed over to her by the petitioner today in Court and that there are no claims of hers left against the petitioners. She has further testified to the effect that she does not oppose the prayer made by the petitioners seeking quashing of the FIR No.86/2014, registered at PS CAW

Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 nor does she want the petitioner nos. 1, 2, 3 & 4 to be punished in relation thereto.

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Learned APP for the State submits that in the circumstances of the case, there is no opposition to the prayer made by the petitioner seeking quashing of the FIR in question.

In view of the deposition of the respondent no.2, there being no reason to disbelieve her statement that she has made her statement voluntarily of her own accord without any duress, coercion or pressure from any quarter and that all claims between the petitioners and the respondent no.2 having been settled, the marriage between the respondent no.2 and the petitioner no.1 having been dissolved vide decree of divorce through mutual consent, certified copy of which is Ex. CW2/C and taking into account the non-opposition on behalf of the State and the level of education of the respondent no.2 and the deposition of the respondent no.2 that she does not oppose the prayer made by the petitioner and that there being no reason to disbelieve her statement that she has arrived at a settlement with the petitioners, for maintenance of peace and harmony between the petitioners and the respondent no.2, in view of the observations in the verdict of the Hon'ble Supreme Court in ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303, to the effect : -

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain

crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the

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victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.” [Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]”

and in view of the observations in the verdict of the Hon’ble Supreme Court in *Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr.* (2013) 4 SCC 58, to the effect : -

“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

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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)

it is considered appropriate to allow the prayer made by the petitioner seeking quashing of FIR No.86/2014, registered at PS CAW Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioner.

In view thereof the FIR No.86/2014, registered at PS CAW Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioner no. 1 Shri Shitiz Kumar, petitioner no.2 Shri Nirmal Kumar, petitioner no.3 Shri Veena and petitioner no.4 Shri Akshat Kumar are quashed.

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Vs. THE STATE GOVT OF NCT OF DELHI & ANR

Statement of CW1 : ASI Balwant Singh, PS CAW Nanak Pura, Delhi.

ON S.A.

I identify the petitioner no. 1 Shri Shitiz Kumar, s/o Shri Nirmal Kumar, petitioner no.2 Shri Nirmal Kumar, s/o Shri Sunder Lal, petitioner no.3 Shri Veena, w/o Shri Nirmal Kumar and petitioner no.4 Shri Akshat Kumar, s/o Shri Nirmal Kumar as being the accused arrayed in FIR No.86/2014, registered at PS CAW Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 and I also identify the respondent no.2 Ms. Jyoti Kataria present today in Court as being the complainant thereof. The proofs of identity of the petitioner nos. 1 to 4 in the form of copies of their Election Commission I-Card and of the respondent no. 2 in the form of photocopy of her Aadhar Card are on the record as Ex.CW1/A to Ex. CW1/E respectively. (Originals seen and returned.)

ANU MALHOTRA, J

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SHITIZ KUMAR & ORS

Vs. THE STATE GOVT OF NCT OF DELHI & ANR

Statement of CW2 : Smt. Jyoti Kataria, d/o Shri Prem Kumar Kataria, aged 41 years, r/o D-50/2, 2nd Floor, Tagore Garden, New Delhi.

ON S.A.

My affidavit annexed to the petition bears my signatures thereon at points-A & B on Ex.CW2/A. A Memorandum of Understanding executed between me and the petitioner no.1 bears my signature thereon at point-A on Ex. CW2/B original of which have been seen and returned. I have signed both these documents voluntarily of my own accord without any duress, pressure or coercion from any quarter.

The marriage between me and the petitioner no.1 has been dissolved vide decree of divorce through mutual consent under Section 13(B)(2) of the Hindu Marriage Act, 1955 vide decree dated 08.09.2017 of the Court of the Additional Principal Judge, Family Court (West), THC, New Delhi in HMA No. 640/17, certified copy of which is on the record Ex. CW2/C. Pursuant to the said settlement, a total sum of Rs. 21 lacs was to be paid by the petitioners in four instalments of Rs. 5.25 lacs each, of which three instalments have been received by me previously and the fourth instalment of Rs. 5.25 lac has been handed over to me by the petitioner today in Court during the course of proceedings in Crl. M.C. 24/2018 vide which the petitioner nos. 1 & 2 thereof had sought quashing of FIR No.160/2014, PS Rajouri Garden under Sections 354A/509/34 of the Indian Penal Code, 1860 which prayer has been allowed. There are no claims of mine left against the

petitioners now.

There is no child born of the wedlock between me and the petitioner no.1. I do not oppose the prayer made by the petitioners seeking quashing of the FIR No.86/2014, registered at PS CAW Nanak Pura, under Sections 498A/406/34 Indian Penal Code, 1860 in view of the settlement arrived at between me and the petitioners nor do I want the petitioner nos. 1, 2, 3 & 4 to be punished in relation thereto.

I am an M.Sc., B. Ed. and I teach.

I have made this statement voluntarily of my own accord without any duress, pressure or coercion from any quarter.

ANU MALHOTRA, J

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FEBRUARY 12, 2018**