

\$~56

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 547/2018**

ABHISHEK MISHRA & ANR Petitioners
Through: Mr.Brajesh Kumar, Advocate

versus

THE STATE & ANR Respondents
Through: Mr.Kamal Kumar Ghei, APP for State
with SI Sri Gopal, PS Shakarpur
Ms.Deepika, Adv for R-2 with
respondent No.2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **02.02.2018**

Crl. M.A. No.2011/2018(Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

Crl.M.C. 547/2018

Vide the present petition, the petitioners seek quashing of FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur submitting *inter alia* to the effect that a settlement has been arrived at between the petitioners and the respondent No.2 inasmuch as the marriage between the petitioner No.1 and the respondent No.2 has since been dissolved vide a decree of divorce through mutual consent dated 12.12.2017 in HMA No.1278/2017 under Section 13(B) (2) of the Hindu Marriage Act,

1955 and the certified copy of the decree of divorce is EX.CW-2/C and all claims between the petitioners and the respondent No.2 have also been settled through the mediation settlement dated 10.2.2017, at the Delhi Mediation Centre, Karkardooma Courts.

The Investigating Officer of the case is present and has identified the petitioners No.1 and 2 as being the accused chargesheeted in relation to the FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur and also stated that two other persons, *namely*, Anurag Mishra and Vaishali, were named in the FIR as accused but not chargesheeted as there was no evidence found against them inasmuch as they were residing separately from the Petitioners No.1 and 2 and also separately from respondent No.2. The Investigating Officer has also duly identified the respondent No.2, present in the Court today as being the complainant of the FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur. The proofs of identity of the petitioners No.1 and 2 are on the record in the form of Aadhar Cards being Ex.CW-1/A and Ex.CW-1/B and the proof of identity of the respondent no.2 in the form of Aadhar Card being EX.CW-1/C respectively.

The respondent No.2 on her examination on oath by the Court has affirmed having signed her affidavit (EX.CW-2/A) annexed to the petition voluntarily of her own accord without any duress, pressure or coercion from any quarter and also testified to the effect that all she has arrived at a settlement with the petitioners No.1 and 2 at the Delhi Mediation Centre, Karkardooma Courts on 10.2.2017, the

certified copy of which is Ex.CW-2/B voluntarily of her own accord without any duress, pressure or coercion from any quarter. The respondent No.2 testified to the effect that pursuant to the mediation settlement, the marriage between her and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent dated 12.12.2017 in HMA No.1278/2017 under Section 13(B) (2) of the Hindu Marriage Act, 1955. The true copy of which is on the record as EX.CW-2/C. She further testified that there is no child of the wedlock between her and the petitioner No.1. The respondent No.2 has further testified to the effect that pursuant to the settlement she had to receive a total sum of Rs.12,50,000/- of which a sum of Rs.8,50,000/- has been received by her previously and the balance sum of Rs.4,00,000/- has been received by her today in the Court vide a Banker's Cheque bearing No.509611 dated 16.12.2017 drawn on ICICI Bank Limited, the photocopy of which is on the record being EX.CW-2/D in her favour and therefore no claims of her are now left against the petitioners. The respondent No.2 has further testified to the effect that she has studied till B.Sc and works in jewel designing and she does not oppose the prayer made by the petitioners No.1 and 2, *namely*, Abhishek Mishra and Usha Mishra, and that she does not seek that any of the petitioners be punished in relation to the offences punishable under Sections 498A/406/34 IPC and she also does not seek any action against the persons, *namely*, Anurag Mishra and Vaishali Mishra, named as the accused in the FIR in question and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter.

In view of the deposition made by the respondent No.2 and the averments made in the petition learned APP for the State also does not oppose the prayer made by the petitioners seeking quashing of FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakar Pur.

Taking into account the deposition of the respondent No.2 and the factum that she is sufficiently educated there appears no reason to disbelieve her statement that she has arrived at a settlement with the petitioners voluntarily of her own accord without any duress, pressure or coercion from any quarter and in view of the FIR having apparently been registered due to a matrimonial discord which has now since been resolved inasmuch as the marriage between her and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent dated 12.12.2017 in HMA No.1278/2017 under Section 13(B) (2) of the Hindu Marriage Act, 1955 and that she does not oppose the prayer made by the petitioners seeking quashing of the FIR in question and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter and 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 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 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 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 in the interest of justice to put a quietus to the litigation between the parties so that peace and harmony between them is restored to allow the prayer made by the petitioners seeking quashing of the FIR in question and all consequential proceedings emanating therefrom against the petitioners No. 1 and 2, *namely*, (1) Abhishek Mishra and Usha Mishra and also against Anurag Mishra and Vaishali Mishra, named in the FIR in question but not

chargesheeted and the FIR No.1281/2013, Police Station Shakarpur under Sections 498A/406/34 Indian Penal Code, 1860, and all consequential proceedings emanating therefrom are thus quashed against the petitioners.

The petition is disposed of.

ANU MALHOTRA, J

**FEBRUARY 02, 2018/sv
IN THE HIGH COURT OF DELHI: NEW DELHI**

Item No. 56

Crl. M.C. 547/2018

ABHISHEK MISHRA & ANR. Vs. STATE & ANR.

02.02.2018

**CW-1 SI SHRI GOPAL, POLICE STATION SHAKARPUR
ON S.A.**

I identify the petitioners No.1 and 2, *namely*, Abhishek Mishra, and Usha Mishra as the accused and the respondent No.2 Nupur Mishra, the complainant of the FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur present in the Court today. The original Aadhaar Cards of the petitioner No.1 202330119704, Petitioner No.2 792348398165, and the respondent No.2 bearing No.373836176449 have been produced. The photocopies of the same qua the petitioners No.1 and 2 being Ex.CW-1/A and Ex.CW-1/B and of the respondent No.2 being Ex.CW-1/C respectively (Originals seen & returned.).

Apart from the petitioners two other persons, *namely*, Anurag Mishra and Vaishali Mishra have been named as accused in the FIR No.1281/2013,

under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur but have not been charge sheeted as there was no evidence found against them as they had been living separately from the petitioners No.1 and 2 and the respondent No.2.

RO & AC
02.02.2018

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

Item No. 56

CrI. M.C. 547/2018

ABHISHEK MISHRA & ANR. Vs. STATE & ANR.

02.02.2018

CW-2 MS.NUPUR SHARMA, D/O SHRI SUNIL KUMAR SHARMA, AGED 30 YEARS R/O D-1203, RIDGE RESIDENCY, TODAY HOMES, SECOTR 136, NOIDA, GAUTAM BUDDHA NAGAR – 201302, UTTAR PRADESH.

ON S.A.

I have done B.Sc and work in jewel design.

My affidavit dated 25.01.2018 bears my signatures at points A and B on EX.CW-2/A which I have signed voluntarily of my own accord without any duress, pressure or coercion from any quarter.

A mediation settlement has been arrived at between me and the petitioners No.1 and 2 on 10.2.2017 at the Delhi Mediation Centre, Karkardooma Courts, Delhi. The true copy of the mediation settlement dated 10.2.2017 bears my signatures at points A on each page thereof on Ex.CW-2/B which I have signed voluntarily of my own accord without any duress, pressure or coercion from any quarter. Pursuant to the mediation settlement, the marriage between me and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent dated 12.12.2017 in HMA No.1278/2017 under Section 13(B) (2) of the Hindu Marriage Act, 1955. The true copy of which is on the record as EX.CW-2/C. There is no child of the wedlock between me and the petitioner No.1.

Pursuant to the settlement arrived at between me and the petitioners I had to receive a total sum of Rs.12,50,000/- of which a sum of Rs.8,50,000/- has been received by me previously and the balance sum of Rs.4 lac has

been received by me today vide a Banker's Cheque bearing No.509611 dated 16.12.2017 drawn on ICICI Bank Limited in my favour. The photocopy of the same is on the record as EX.CW-2/D. Now there are no claims of mine left against the petitioners no.1 and 2. In view of the settlement arrived at between me and the petitioners, I do not seek any further action against the petitioners No.1 and 2 *namely*, Abhishek Mishra and Usha Mishra (Present in the Court) nor do I seek any action against the persons, *namely*, Anurag Mishra and Vaishali Mishra named as accused in the FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur. I do not oppose the prayer made by the petitioners seeking quashing of the FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur and all proceeding emanating therefrom. In view of the settlement arrived at between me and the petitioners No.1 and 2, I do not seek that the petitioners be punished in relation to the said FIR No.1281/2013, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Shakarpur.

I have stated so voluntarily of my own accord without any duress, pressure or coercion from any quarter.

RO & AC
02.02.2018

ANU MALHOTRA, J