

\$~74

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 481/2018 & CRL.M.A. 1813/2018**
AMIT KUMAR Petitioner
Through: Mr. Tripurari Jha, Adv.

versus

STATE(NCT OF DELHI)& ANR Respondent
Through: Mr. Sanjeev Sabharwal, APP for
State with SI Devendra, PS Dabri.
Mr. Dilip Kumar, Adv. for R-2 with
R-2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **31.01.2018**

CRL.M.A. 1813/2018 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 481/2018

Vide the present petition, the petitioner seeks quashing of FIR No.30/2014, registered at PS Dabri, under Sections 498A/406 Indian Penal Code, 1860 and all consequential proceedings emanating therefrom submitting to the effect that the petitioner and the respondent no.2 are since living together w.e.f 20.04.2015 and the matrimonial discord between them has already been resolved.

The substituted Investigating Officer of the case present today in Court has identified the petitioner no. 1 Shri Amit Kumar as being the accused arrayed in the FIR No.30/2014, registered at PS Dabri, under Sections 498A/406 Indian Penal Code, 1860 and has also identified the respondent no.2 Ms. Subrana Ghosh present today in Court as being the

complainant of the FIR in question. The proofs of identity of the petitioner and the respondent no. 2 in the form of photocopies of their Aadhar Cards are on the record as Ex. CW1/A and Ex. CW1/B respectively. (Originals 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 mediation settlement dated 08.04.2015 arrived at the Mediation Centre, Dwarka, certified copy of which is on the record as Ex. CW2/B voluntarily of her own accord without any duress or coercion from any quarter. The respondent no.2 has further testified to the effect that w.e.f. 20.04.2015, she is living with the petitioner and that there are no problems now between her and the petitioner and that furthermore there are two children born of the wedlock between her and the petitioner one of them named named Arnav and the other named Aarav who is 6 months of age, both children are also living with her and the petitioner. She has further testified to the effect that she intends to live with the petitioner and does not oppose the prayer made by the petitioner seeking quashing of the FIR in question and does not want the petitioner to be punished in relation to the offences punishable under Section 498A/406 Indian Penal Code, 1860. The respondent no.2 has further testified to the effect that she is a graduate.

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 the petitioner and the respondent no.2 are living together w.e.f. 20.04.2015 and taking into account the non-opposition on behalf of the State and the mediation settlement dated 08.04.2015 arrived at between the petitioner and the respondent no.2, copy of which is on the record as Ex. CW2/B, the factum of the birth of a child much after the registration of the FIR in question. It is apparent that the matrimonial discord between the petitioner and the respondent no.2 has since been resolved, and thus 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 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 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)

for maintenance of peace and harmony between the petitioner and the respondent no.2, it is considered appropriate to allow the prayer made by the petitioner seeking quashing of FIR No.30/2014, registered at PS Dabri, under Sections 498A/406 Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioner.

In view thereof the FIR No.30/2014, registered at PS Dabri, under Sections 498A/406 Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioner Mr. Amit Kumar are quashed.

ANU MALHOTRA, J

JANUARY 31, 2018

vm

74

CRL.M.C. 481/2018

AMIT KUMAR

Vs. STATE(NCT OF DELHI)& ANR

Statement of CW1 : SI Devendra, PS Dabri, Delhi.

ON S.A.

I identify the petitioner no. 1 Shri Amit Kumar, s/o Shri as being the sole accused arrayed in FIR No.30/2014, registered at PS Dabri, under Sections 498A/406 Indian Penal Code, 1860 and I also identify the respondent no.2 Ms. Subrana Ghosh present today in Court. The proofs of identity of the petitioner and the respondent no. 2 in the form of photocopies of their Aadhar Cards are on the record as Ex. CW1/A and Ex. CW1/B respectively. (Originals seen and returned.)

Apart from the petitioner no. 1 there is no other person arrayed as an accused in the said FIR.

ANU MALHOTRA, J

RO & AC

JANUARY 31, 2018

74

CRL.M.C. 481/2018

AMIT KUMAR

Vs. STATE(NCT OF DELHI)& ANR

Statement of CW2 : Smt. Subrana Ghosh, w/o Shri Amit Kumar, aged 34 years, r/o B-6, Nari Niketan Staff Complex, New Delhi.

ON S.A.

My affidavit annexed to the petition bears my signature thereon at points-A & B on Ex.CW2/A. The certified copy of the mediation settlement dated 08.04.2015 also bears my signature thereon at point-A on each page thereof on Ex. CW2/B, I have signed both these documents voluntarily of my own accord without any duress or coercion from any quarter.

W.e.f. 20.04.2015, I am living with the petitioner along with my minor child named Arnav and also with minor child named Aarav who is 6 months of age. There are no problems now between me and the petitioner and I thus do not oppose the prayer made by the petitioner seeking quashing of the FIR No.30/2014, registered at PS Dabri, under Sections 498A/406 Indian Penal Code, 1860 registered on my complainant.

I am a graduate and I have made this statement voluntarily of my own accord without any duress or coercion from any quarter.

ANU MALHOTRA, J

RO & AC

JANUARY 31, 2018