

\$~2

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

+ **CRL.M.C. 1296/2018**

MOHD IMTIYAZ & ORS Petitioner

Through: Mr. Vivek Sharma, Advocate

versus

THE STATE & ANR Respondent

Through: Ms. Anupriya Yadav, Advocate
Mr. Mr. Panna Lal Sharma, APP for State
ASI Devender Singh, PS Harsh Vihar

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **12.04.2018**

CRL. M.A 4737/2018

This is an application seeking exemption from filing the certified copies of the annexures. The application is allowed subject to all just exceptions.

CRL.M.C. 1296/2018

Vide the present petition, the petitioners seek quashing of the FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceeding emanating therefrom submitting to the effect that a settlement has been arrived at between the petitioners and the respondent no. 2 pursuant to a mediation settlement dated 13.7.2018 arrived at the Delhi High Court Mediation and Conciliation Centre and that the marriage between the petitioner no. 1 and the respondent no. 2 has since been dissolved on 25.06.2016 and the written talaknama recording the factum of the divorce dated 08.08.2017.

The Investigating Officer of the instant case is present today in the Court and has identified the petitioner no. 1 Sh. Mohd. Imtiyaz s/o Sh. Sahabuddin, the petitioner no. 2 Sh. Sahabuddin s/o Sh. Alisher, the petitioner no. 3 Smt. Sabra w/o Sh. Sahabuddin, the petitioner no. 4 Sh. Mohd. Shahid s/o Sh. Sahabuddin, the petitioner no. 5 Smt. Seema d/o Sahabuddin as being the five accused persons arrayed in the FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860. He has also identified the complainant of the said FIR, respondent no. 2 who is present in Court today. The proof of identity of the petitioners no. 1 to 5 and of the respondent no. 2 in the form of their Aadhar Cards, are on record as Ex.CW1/A to Ex.CW1/E respectively, originals of which have been seen and returned.

The respondent no.2 in her deposition on oath by this court has affirmed having signed the mediation settlement dated 13.07.2017 which has been arrived at the Delhi High Court Mediation and Conciliation Centre, copy of which is on the record as EX CW2/A. She has further testified to the factum of the dissolution of the marriage between her and the petitioner no. 1 on 25.06.2016 qua which the talaknama dated 08.08.2017 recorded the factum of the divorce. She has further affirmed having sworn her affidavit Ex. CW2/C. She has further testified to the effect that in terms of the settlement arrived at between her and the petitioners a total sum of Rs.3,00,000/- was payable to her by the petitioners of which Rs.2,00,000/- has already been received by her and the balance sum of Rs.1,00,000/- has been handed over to her by the petitioners vide D.D.

No. 004647 dated 11.04.2018 drawn on the Punjab National Bank, which is in her favour, photocopy of which is on the record as Ex.CW2/D and also stated that there is one child namely Mohd. Ayan, born of the wedlock between her and the petitioner no. 1 who is in her custody and shall continue to remain in her custody in view of the settlement arrived at between her and the petitioners. She has further stated that she has studied till Standard 8th and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter. She has further stated that she does not oppose the prayer made by the petitioners No.1 to 5 namely, petitioner no. 1 Sh. Mohd. Imtiyaz s/o Sh. Sahabuddin, the petitioner no. 2 Sh. Sahabuddin s/o Sh. Alisher, the petitioner no. 3 Smt. Sabra w/o Sh. Sahabuddin, the petitioner no. 4 Sh. Mohd. Shahid s/o Sh. Sahabuddin, the petitioner no. 5 Smt. Seema d/o Sahabuddin as being the five accused persons arrayed in the FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860., nor does she want the petitioners to be punished in relation thereto in view of the settlement arrived at between her and the petitioners.

On behalf of the State, there is no opposition to the prayer made by the petitioners seeking quashing of the FIR in question in view of the settlement arrived at between the parties.

In view of the deposition of the respondent no. 2, 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. In view thereof for

maintenance of peace and harmony between the petitioners and the respondent no. 2 and for the well being of the respondent no. 2 herself, it is considered appropriate to put a quietus to the litigation between the parties 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)

it is considered appropriate to allow the prayer made by the petitioners seeking quashing of FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioners. In view thereof the FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioners are quashed.

The petition is disposed of.

ANU MALHOTRA, J

APRIL 12, 2018

NK

2

CRL.M.C. 1296/2018
MOHD. IMTIYAZ & ORS
v. STATE & ANR

Statement of CW1 : Investigating Officer ASI Devender Singh, PS Harsh Vihar, previously posted at PS Gokul Puri.

ON S.A.

I identify the petitioner no. 1 Sh. Mohd. Imtiyaz s/o Sh. Sahabuddin, the petitioner no. 2 Sh. Sahabuddin s/o Sh. Alisher, the petitioner no. 3 Smt. Sabra w/o Sh. Sahabuddin, the petitioner no. 4 Sh. Mohd. Shahid s/o Sh. Sahabuddin, the petitioner no. 5 Smt. Seema d/o Sahabuddin as being the five accused persons arrayed in the FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860. I also identify the complainant of the said FIR, respondent no. 2 who is present in Court today. The proof of identity of the petitioners no. 1 to 5 and of the respondent no. 2 in the form of their Aadhar Cards, are on record as Ex.CW1/A to Ex.CW1/E respectively. (originals seen and returned).

**RO & AC
APRIL 12, 2018/Nk**

ANU MALHOTRA, J

2

CRL.M.C. 1296/2018
MOHD. IMTIYAZ & ORS
v. STATE & ANR

**Statement of CW2 : Kesar Jahan d/o Kari Mohd. Irshad, r/o- Gali No. 9
Old Mustafabad, Delhi-110094 aged 25 years
ON S.A.**

I do not oppose the prayer made by the petitioners No.1 to 5 namely, petitioner no. 1 Sh. Mohd. Imtiyaz s/o Sh. Sahabuddin, the petitioner no. 2 Sh. Sahabuddin s/o Sh. Alisher, the petitioner no. 3 Smt. Sabra w/o Sh. Sahabuddin, the petitioner no. 4 Sh. Mohd. Shahid s/o Sh. Sahabuddin, the petitioner no. 5 Smt. Seema d/o Sahabuddin as being the five accused persons arrayed in the FIR No.1215/2014, PS Gokulpuri under Sections 498A/406/34 of the Indian Penal Code, 1860., nor I do want the petitioners to be punished in relation thereto in view of the settlement arrived at between me and the petitioners during the course of the mediation proceedings dated 13.07.2017 at Delhi High Court Mediation and Conciliation Centre which bears my signatures thereto on each page thereof at point A on EX CW2/A. The marriage between me and the petitioner no. 1 has since been dissolved by the talaknama dated 08.08.2017 recording the factum of the divorce which took place on 25.06.2016 bears my signatures on each page. My affidavit annexed to the petition bears my signatures at point A & B which is EX CW2/C which I have signed voluntarily of my own accord without any duress, pressure or coercion from any quarter.

In terms of the settlement arrived at between me and the petitioners a total sum of Rs.3,00,000/- was payable to me by the petitioners of which

Rs.2,00,000/- has already been received by me and the balance sum of Rs.1,00,000/- has been handed over to me by the petitioners vide D.D. No. 004647 dated 11.04.2018 drawn on the Punjab National Bank, which is in my favour, photocopy of which is on record as Ex.CW2/D. There is one child namely Mohd. Ayan, born out of the wedlock between me and the petitioner no. 1 who is in my custody and shall continue to remain in my custody in terms of the settlement between me and the petitioners. I have studied till Class VIII. I have made this statement voluntarily of my own accord without any duress, pressure or coercion from any quarter.

RO & AC
APRIL 12, 2018/Nk

ANU MALHOTRA, J