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

+ CRL.M.C. 1301/2018

DEVENDER GUPTA

..... Petitioner

Through: Mr. Yogesh Kr. Rana, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI & ORS RespondentS

Through: Mr. Raghuvinder Varma, APP for
State with SI Suresh Chand, PS
Shahdara.

Respondent no. 2 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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14.03.2018

The Investigating Officer of the case is present and has identified the petitioner Devender Gupta arrayed as being the sole accused arrayed in the FIR no. 404/15, PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860. He has also identified the respondent no. 2, Ms. Shilpi Jain being the complainant of the said FIR present in Court today. The proof of identity of the petitioner and of the respondent no. 2 in the form of their Aadhar Cards have been produced in original, photocopies of the same are on the record as Ex. CW1/A and Ex. CW1/B, originals of which have been seen and returned.

He has further stated that there is no other person arrayed as accused in the said FIR. As per the heading of the petition, it is indicated to have been filed seeking quashing of the FIR No. 404/15,

PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860 and it is submitted by the learned counsel for the petitioner that it has been so filed with the said prayer inasmuch as the FIR itself is indicated to be registered under Sections 498-A/406 of the Indian Penal Code, 1860. On the perusal of the FIR, it is indicated that there is only one person named as an accused by the complainant/respondent no.2 and to the similar effect is the statement made by the Investigating Officer in reply to a specific court query, i.e., the deposition made today. Apparently the mention of Section 34 of the Indian Penal Code, 1860 in the FIR is an error. The petition is thus taken up for consideration as one seeking quashing of the FIR No. 404/15, PS Shahdara under Sections 498-A/406 of the Indian Penal Code, 1860 alone.

Vide the present petition, the petitioner seeks quashing of the FIR no. 404/15, PS Shahdara under Sections 498-A/406 of the Indian Penal Code, 1860 submitting to the effect that a settlement has since been arrived at between the petitioner and the respondent no. 2 at the Counselling Cell, Delhi Mediation Centre, Karkardooma Courts, Delhi on 30.07.2016 pursuant to which the marriage between the petitioner and the respondent no. 2 has since been dissolved by a decree of divorce through mutual consent on 05.07.2017 in HMA No. 709/17 and that an amicable settlement has since been arrived at between the parties and pursuant to which as adverted to in Para 8 of the petition of the three children born out of the wedlock between the petitioner and the respondent no. 2, the two sons namely Deepak and Jatin are in the care and custody of the petitioner and the minor

daughter Payal is in the care and custody of the respondent no. 2 and shall live as they are presently living.

The respondent no. 2 on her examination by the Court on oath has affirmed having signed the mediation settlement dated 30.07.2016, copy of which is on the record as Ex. CW2/A. She affirms the receipt of a total sum of Rs. 3,50,000/- by her from the petitioner towards the settlement of all her claims against the petitioner and states that there are now no claims of hers are left against the petitioner. She also affirms the factum of dissolution of her marriage by a decree of divorce through mutual consent with the petitioner on 05.07.2017 as stated by her today in her deposition before this court in HMA No. 709/17 vide the decree of divorce of the Court of the Principal Judge, Family Courts Shahdara, Karkardooma, Delhi, copy of which is on the record as Ex. CW2/B.

The mediation settlement dated 30.07.2016 Ex. CW2/B is on the record and vide Clause 4 thereof states to the effect:-

“4. It is further agreed between the parties that the complainant shall hand over the custody of her two children namely Payal and Deepak to her husband/respondent after completion of their academic year, i.e., in March 2017 and then the custody of all the three children shall remain with the respondent/husband in future and the complainant shall not claim any custody or visitation rights of the children in future.”

according to which the minor children namely Payal and Deepak were to be handed over by the respondent no. 2 to the petitioner after completion of their academic year, i.e., March 2017 qua which it has been stated by the respondent no. 2 that the minor child Payal is in her custody and shall continue to live in her custody and other two minor children namely Deepak and Jatin are in the custody of the petitioner which is also so affirmed on behalf of the petitioner and the learned counsel for the petitioner has also adverted to para 8 of the petition on the record.

The respondent no. 2 has testified to the effect that she has studied till Standard 7th and she does not oppose the prayer made by the petitioner seeking quashing of the FIR nor does she want him to be punished in relation thereto. To similar effect is the statement made by the father of the respondent affirming the factum of the dissolution of the marriage between the petitioner and her daughter/ respondent no. 2 and the settlement of all her claims between the petitioner and the respondent no. 2, i.e., a total sum of Rs. 3,50,000/- has already been paid by the petitioner to the respondent no. 2 and the minor child Payal is stated to be in the custody of the respondent no. 2.

In view of the deposition made by the respondent no. 2 and the statement made by the father of the respondent no. 2, there appears no reason to disbelieve the statement made by the respondent no. 2 that she has arrived at a settlement with the petitioner voluntarily of her own accord without any duress,

coercion or pressure from any quarter and that she does not oppose the prayer made by the petitioner seeking quashing of the FIR in question nor does she want him to be punished in relation thereto.

As the FIR is apparently indicated to have been registered on the basis of a matrimonial discord between the petitioner and the respondent no. 2 which has since been resolved by the decree of divorce dated 05.07.2017 through mutual consent in HMA No. No. 709/17 of the Court of the Principal Judge, Family Courts Shahdara, Karkardooma, Delhi, it is apparent that no useful purpose will be served in continuation of the proceedings. Thus, it is considered appropriate to put a quietus to the litigation between the petitioner and the respondent and for the maintenance of peace and harmony between them and also for the minor children, 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.]”

(emphasis supplied)

and in the case of *Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr.* (2013) 4 SCC 58, wherein the Supreme Court in respect of the matrimonial disputes has specifically held as follows:-

“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 thus considered appropriate in the interest of justice that the prayer made by the petitioner seeking quashing of the FIR no. 404/15, PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom is allowed and FIR no. 404/15, PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner are quashed.

The petition is disposed of.

ANU MALHOTRA, J

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CW-1 SI Suresh Chand, Police Station Shahdara.

ON S.A.

I identify the petitioner Devender Gupta arrayed as being the sole accused in the FIR no. 404/15, PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860. There is no other person arrayed as accused in the said FIR. I also identify the respondent no. 2, Ms. Shilpi Jain being the complainant of the said FIR present in Court today. The proof of identity of the petitioner and of 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 (Original seen and returned).

RO & AC
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ANU MALHOTRA, J

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Statement of CW2 : Ms. Shilpi Jain, d/o Sh. Pawan Kumar Jain, aged 30 years, r/o 1/5296, Gali no. 10, Balbir Nagar Extn., Shahdara, Delhi.

ON S.A.

A settlement has been arrived at between me and the petitioner vide a mediation settlement dated 30.07.2016 at the Counselling Cell, Delhi Mediation Centre, Karkardooma Courts, Delhi which bears my signatures at point A on each page thereof on Ex. CW2/A.

Pursuant to the settlement arrived at between me and the petitioner, the marriage between me and the petitioner has been dissolved by a decree of divorce through mutual consent dated 05.07.2017 in HMA No. 709/17, copy of which is on the record as Ex. CW2/B and pursuant to the said settlement arrived at between me and the petitioner, a total sum of Rs. 3,50,000/- was to be paid to me by the petitioner which has since been paid to me by the petitioner. There are now no claims of mine are left against the petitioner.

As per the mediation settlement dated 30.07.2016 vide Clause 4, it is mentioned to the effect that:-

“4. It is further agreed between the parties that the complainant shall hand over the custody of her two children namely Payal and Deepak to her husband/respondent after completion of their academic year, i.e., in March 2017 and then the custody of all the three children shall remain with the respondent/husband

in future and the complainant shall not claim any custody or visitation rights of the children in future.”

However, the minor child namely Payal is in my custody and my other two children namely Deepak and Jatin, i.e., my two sons are in the custody of the petitioner and shall continue to remain in his custody. (Paragraph 8 of the petition is to the effect as stated by the respondent no. 2 now in her deposition on oath and reads to the effect: *“That it is also agreed between the petitioner and the respondent no. 2 that two children namely Jatin and Deepak shall remain in the care and custody of the petitioner and daughter namely Payal shall remain in the care and custody of the respondent no. 2 and the petitioner and the respondent no. 2 shall have visitation rights with the children once a month as per convenience.”*

I do not oppose the prayer made by the petitioner seeking quashing of the FIR no. 404/15, PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860 nor do I want him to be punished in relation thereto.

I have studied till Standard 7th.

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

ANU MALHOTRA, J

**RO & AC
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CW-3 Pawan Kumar Jain, s/o Sh. Dhanpal Jain, age 57 years, r/o 1/5296, Gali no. 10, Balbir Nagar Extn., Shahdara, Delhi.

ON S.A.

The respondent no. 2 present today in the Court is my daughter. I do not oppose the prayer made by the petitioner seeking quashing of the Fir No. 404/15, PS Shahdara under Sections 498-A/406/34 of the Indian Penal Code, 1860 registered on the complaint of my daughter. A total sum of Rs. 3,50,000/- was to be paid to my daughter by the petitioner pursuant to the mediation settlement dated 30.07.2016 which has since been paid to her by the petitioner. There are now no claims of hers are left against the petitioner. The minor child namely Payal is in the custody of the respondent no. 2. The marriage between the petitioner and my daughter, i.e., the respondent no. 2 has been dissolved by a decree of divorce through mutual consent dated 05.07.2017 in HMA No. 709/17.

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

RO & AC
MARCH 14, 2018.

ANU MALHOTRA, J