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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1902/2018
SAURABH AGARWAL & ORS Petitioner
Through: P-1 to 3 in person with Mr. Vikas
Kumar Sharma, Advocates.
versus

STATE OF NCT OF DELHI & ANR Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State with ASI Hukum Chand, PS
GTB Enclave.
Mr. Shashank Singh, Adv for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **04.05.2018**

CRL.M.A. 8244/2018

In terms of the directions dated 02.05.2018, a status report of verification of the identity of the petitioners and of the respondent no. 2 has been submitted under the signatures of Insp. Ajay Kumar Singh, SHO/PS GTB Enclave, Delhi.

In view thereof, the prayer made in CRL.M.A.8244/18, an application seeking preponement of the date of hearing in the matter in view of the submissions made on behalf of the applicant/petitioner no. 1 to the effect that after getting the copy of decree of divorce he had applied for the change of his marital status and residential address in his passport for which Passport Office needed the quashing of the FIR in question, the prayer made for preponement of date of hearing from CRL.M.C. 1902/2018 Page 1 of 6
the date 03.07.2018 is allowed and the matter is thus taken up.

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Vide the present petition, the petitioner no. 1 Saurabh Agarwal, petitioner no. 2 Ambrish Narain and petitioner no. 3 Nirmala Agarwal seek quashing of the FIR No. 106/12, PS GTB Enclave, under Sections 498-A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 submitting to the effect that a settlement has since been arrived at between the parties.

The Investigating Officer of the case has identified the petitioner no. 1 Saurabh Agarwal, petitioner no. 2 Ambrish Narain and petitioner no. 3 Nirmala Agarwal as being the three accused arrayed in the FIR No. 106/12, PS GTB Enclave, under Sections 498-A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961. He has also identified the respondent no.2, Smt. Preetika Chawla present today in Court as being the complainant of the said FIR. The petitioner no. 2 and petitioner no. 3 have produced their original passports bearing nos. L7048186 and L7048434 respectively and the respondent no. 3 has produced her original driving licence, photocopies of the same be placed on the record. The proof of identity of the petitioner no. 1 is on the record as Ex. CW1/A, original of which has been seen and returned.

The respondent no. 2 in her deposition on oath on examination by the Court has affirmed having sworn her affidavit Ex. CW2/A annexed to the petition in support of the averments made in the petition and has also testified to having signed the memorandum of settlement

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dated 05.03.2017 arrived at between her and the petitioner no. 1 voluntarily of her own accord without any duress, coercion or pressure from any quarter. She has further stated that in terms of the settlement arrived at between her and the petitioners, a house bearing no. 68, Second Floor, M2K Whitehouse, Sector 57, Gurgaon, Haryana is in her possession and is now got registered in her name and also stated that in terms of the settlement arrived at between her and the petitioners, a total sum of Rs. 2,00,000/- was to be paid to her by the petitioners which has since been paid to her today vide a demand draft bearing no. 000410 dated 12.03.2018 in her name drawn on the Axis Bank Ltd, photocopy of the same be placed on the record.

The respondent no. 2 has further testified to the effect that the marriage between her and the petitioner no.1 has since been dissolved by a decree of divorce through mutual consent under Section 13(B)(2) in HMA no. 1313/17 dated 22.11.2017 vide a decree of the Court of the Principal Judge, Family Court Shahdara KKD Courts Delhi, certified copy of which is on the record as Ex.CW2/C and she further stated that in terms of the settlement arrived at between her and the petitioner no. 1, the minor child namely Suhani born out of the wedlock between her and the petitioner no. 1 is in her custody and shall continue to remain in her custody. She has further testified to the effect that she does not oppose the prayer made by the

petitioners

seeking quashing of the FIR in question nor does she want them to be punished in relation thereto and further states that she is a graduate and

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work in a private company.

On behalf of the State, there is no opposition to the prayer made by the petitioners seeking quashing of the FIR in question in the circumstances of the case.

In view of the testimony of the respondent no. 2, there appears no reason to disbelieve her statement that she has arrived at a settlement with the petitioner voluntarily. Taking into account the factum that the respondent no. 2 is well educated and capable of understanding the implications of the statement made by her, for maintenance of peace and harmony between the parties and for the well being of the minor child and of the respondent no. 2, 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

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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,

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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)

In view thereof, the FIR No. 106/12, PS GTB Enclave, under Sections 498-A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 and all consequential proceedings emanating therefrom are thus quashed.

The petition is disposed of.

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SAURABH AGARWAL & ORS.

Vs. STATE & ANR

Statement of CW1 : ASI HUKUM CHAND, PS GTB ENCLAVE.

ON S.A.

I identify the petitioner no. 1 Saurabh Agarwal, petitioner no. 2 Ambrish Narain and petitioner no. 3 Nirmala Agarwal as being the three accused arrayed in the FIR No. 106/12, PS GTB Enclave, under Sections 498-A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961. I also identify the respondent no.2, Smt. Preetika Chawla present today in Court as being the complainant of the said FIR. The petitioner no. 2 and petitioner no. 3 have produced their original passports bearing nos. L7048186 and L7048434 respectively and the respondent no. 3 has produced her original driving licence, photocopies of the same be placed on the record. The proof of identity of the petitioner no. 1 is on the record as Ex. CW1/A. (Original seen and returned.)

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RO & AC

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ON S.A.

My affidavit annexed to the petition bears my signatures thereon at point A & B on Ex. CW2/A. The MOU dated 05.03.2017 executed between me and the petitioner no. 1 bears my signatures as visible at point A on Ex. CW2/B. I have signed both these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter.

I do not oppose the prayer made by the petitioners seeking quashing of the FIR No. 106/12, PS GTB Enclave, under Sections 498-A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 nor do I want the petitioners to be punished in relation thereto in view of the settlement arrived at between me and the petitioners. In terms of the settlement arrived at between me and the petitioners, a house bearing no. 68, Second Floor, M2K Whitehouse, Sector 57, Gurgaon, Haryana is in my possessions and is now registered in my name. In terms of the settlement arrived at between me and the petitioners, a total sum of Rs. 2,00,000/- was to be paid to me by the petitioners which has since been paid to me today vide a demand draft bearing no. 000410 dated 12.03.2018 in my name drawn on the Axis Bank Ltd, (photocopy of the same be placed on the record.)

The marriage between me and the petitioner no.1 has since been dissolved by a decree of divorce through mutual consent under Section 13(B)(2) in HMA no. 1313/17 dated 22.11.2017 vide a decree of the Court of the Principal Judge, Family court Shahdara KKD Courts Delhi, certified copy of which is on the record as Ex.CW2/C. In terms of the settlement arrived at between me and the petitioner no. 1, the minor child namely Suhani born out of the wedlock between me and the petitioner no. 1 is in my custody and shall continue to remain in my custody.

I am a graduate and I work.

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

RO & AC
MAY 04, 2018

ANU MALHOTRA, J