

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

% Decided on: 20th September, 2018

+ **W.P. (CRL) 737/2017**

MANOJ KUMAR SHUKLA

... Petitioner

Represented by: Ms.Bharti Sharma, Advocate
versus

THE GOVT. NCT OF DELHI & ANR.

... Respondents

Represented by: Ms.Meenakshi Chauhan, APP
and proxy counsel for
Ms.Richa Kapoor, ASC for the
State with Insp. Vinay Tyagi,
PS Crime Branch.
Mr.Shashi Kumar Shukla,
Advocate for respondent No.2

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition the petitioner seeks quashing of FIR No.236/2013 under Sections 498A/406/34 IPC registered at PS Sagarpur, New Delhi and the proceedings pursuant thereto and also to declare the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'PWDV Act') in Complaint Case No.4996596/2016 at PS Dabri as infructuous.

2. Briefly stated, the facts of the case are that the petitioner and respondent No.2 were married on 24th February, 2006 whereafter differences arose between them resulting in registration of the aforesaid FIR No.236/2013 by respondent No.2 against the petitioner herein. During the course of settlement the parties were referred to mediation. On 2nd September, 2015 the petitioner and respondent No.2 settled their disputes

before the Delhi Mediation Centre on the following terms and conditions:

- “1. The parties have agreed to go for divorce by mutual consent and shall file petition u/s 13B(1) HMA in this regard on or before 07.10.2015.*
- 2. The petitioner Shri Manoj Kumar Shukla has agreed to pay ₹3,80,000/- (Rupees three lacs eighty thousand only) to the complainant Ms.Geeta Pandey as full and final settlement towards stridhan, past, present and future alimony and maintenance for the complainant and the child Master Akshat.*
- 3. The petitioner Shri Manoj Kumar Shukla shall pay ₹1,00,000/- by way of DD/cash out of ₹3,80,000/- to the complainant Ms.Geeta Pandey at the time of recording of the statement in the first motion of divorce petition by mutual consent.*
- 4. The parties shall file petition for second motion for divorce by mutual consent within two months of the expiry of six months from the date of order in the first motion petition.*
- 5. The petitioner Shri Manoj Kumar Shukla shall hand over to the complainant an FDR in the name of minor child Master Akshat For ₹1,40,000/- out of settlement amount of ₹3,80,000/- at the time of recording of the statement in the second motion of the divorce petition.*
- 6. The complainant Ms.Geeta Pandey shall withdraw her petition u/s 12 of DV Act pending before Ms.Charu Gupta, MM, Dwarka, Delhi immediately after recording of statement in the second motion of the divorce petition.*
- 7. It is further agreed that the parties shall go for quashing proceedings arising out of FIR No.236/2013 u/s 498A/406/34 IPC PS Sagarpur, New Delhi registered on the complaint of the complainant Ms.Geeta Pandey who shall cooperate in quashing of the FIR.*
- 8. That the remaining settlement amount of ₹1,40,000/- shall be paid by the petitioner Manoj Kumar Shukla by way of*

DD/cash to the complainant Ms.Geeta Pandey at the time of quashing of FIR.

9. That the complainant Ms.Geeta Pandey shall take the custody of child namely Master Akshat. However, the petitioner Shri Manoj Kumar Shukla shall have visitation rights. The petitioner shall meet the child once in every month on 2nd Saturday at a mutually decided place and time.

10. That it is further agreed by the parties that after receiving full and final payment of ₹3,80,000/-, the parties shall not have any claim of any sort against each other or their family members.”

3. Pursuant to the said settlement, statement of petitioner No.1 and respondent No.2 were recorded for divorce by mutual consent and the petitioner paid a sum of ₹1,00,000/- out of a total sum of ₹3,80,000/- to the respondent No.2 as agreed between the parties. However, before the statement for second motion for divorce by mutual consent could be recorded between the parties, respondent No.2 did not extend her cooperation for the quashing of FIR and recording of statement for second motion for divorce by mutual consent. The respondent No.2 did not receive the balance amount of ₹2,80,000/- and did not withdraw her complaint under Section 12 of the PWDV Act.

4. When the present petition came up before this Court on 18th April, 2018, respondent No.2 was present in Court. She stated that on a re-thinking, she does not want divorce by mutual consent as also quashing of FIR in question. She handed over a cheque for a sum of ₹1,00,000/- to the petitioner however, while accepting the cheque the petitioner raised an objection stating that his name was wrongly mentioned in the said cheque

and left this Court without signing the order sheet. Thus, Court notice was issued to the petitioner, learned counsel for the petitioner and respondent No.2. On the next date of hearing i.e. 27th April, 2018, the petitioner accepted a second cheque bearing No.242775 drawn on Indian Bank for a sum of ₹1,00,000/- in which he filled his name in his own handwriting as Manoj Shukla. It is thus apparent that respondent No.2 has restored the petitioner to status quo ante where the parties were before the mediation settlement.

5. In the decision reported as (2018) 249 DLT 289 Rajat Gupta Vs. Rupali Gupta hearing a batch of contempt petitions, Division Bench of this Court answered the following questions of law framed by the learned Single Judge:

“Question (B): Whether by undertaking before a Court to file a second motion under Section 13B(2) of the Act, 1955 at Section 13B(1) stage or by giving an undertaking to a Court to that effect in a separate court proceedings, a party waives its right to rethink/renege under 13B(2) of the Act, 1955? If yes, whether such right can be waived by a party under Section 13B(2) of the Act, 1955?”

Answer : (a) *The answer to the first limb of Question (B) is no. Notwithstanding any undertaking given by a party before a court to file a Second motion under Section 13B(2) or at the Section 13B(1) stage or in any separate court proceedings, its right to rethink/renege under Section 13B(2) of the Act, cannot be waived for the reason that such a waiver is prescribed by the Statute that keeps a window open for the parties to withdraw their consent at any stage till the decree of divorce is finally granted. The element of mutual consent remains the leitmotif of the said provision and its existence is a salient and recurring*

theme that like warp and weft, weaves its way through the entire process set into motion at the Section 13B(1) stage, followed by the Section 13B(2) stage, till the very end when a decree of divorce is granted. The right of withdrawal of consent in the above proceedings can be exercised at any stage and exercise of such a discretion cannot be treated as being opposed to public policy. Any other interpretation given to the aforesaid provision would negate the underlying aim, object and intent of the said provision. Once a party decides to have a second thought and on reflection, back off, the concerned court cannot compel the defaulting party to give its consent on the basis of an earlier settlement/undertaking.

(b) In view of the answer given to the first limb of Question (B), the second limb of the said question needs no answer.”

6. In view of the fact that the respondent No.2 does not want to go ahead with the settlement, i.e. quashing of FIR in question as well as divorce by mutual consent, no orders can be passed for quashing of the FIR or holding that the complaint under Section 12 of the PWDV Act has become infructuous.

7. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 20, 2018
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