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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1957/2018

VIJAY & ORS

..... Petitioners

Through: Mr. R.K. Singh & Mr. Beauty Singh,
Advocates.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Mr. Hirein Sharma, APP for State
with W/SI Anita, PS Najafgarh.
Mr. S.D. Sah, Adv along with R-2 in
person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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18.04.2018

Vide the present petition, the petitioners seek quashing of the FIR no.434/2016, PS Najafgarh under Sections 498-A/406/34 of the Indian Penal Code submitting to the effect that a settlement has been arrived at between the petitioners and that all claims between them have been settled and the disputes have amicably resolved between the petitioners and the respondent no. 2.

The Investigating Officer of the case is present today and has identified the petitioner no. 1 Vijay, petitioner no. 2 Ashok Kumar Srivastava, petitioner no. 3 Pushpa Srivastava, petitioner no. 4 Ravi Kumar and petitioner no. 5 Anshika Srivastava as being the five accused arrayed in the FIR no.434/2016, PS Najafgarh under

Sections 498-A/406/34 of the Indian Penal Code, 1860. He has also identified the respondent no. 2 Ms. Swati as being the complainant of the said FIR. The proof of identity of the petitioner nos. 1 to 5 and of the respondent no. 2 have been produced in originals, photocopies of the same are on the record as Ex. CW1/A to Ex. CW1/F, originals of which have been seen and returned.

The respondent no. 2 in her deposition on oath by the Court has affirmed having sworn her affidavit Ex. CW2/D voluntarily of her own accord without any duress, coercion or pressure from any quarter and has stated 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 in view of the settlement arrived at between her and the petitioners on 05.05.2017 at the Counselling Cell, Family Courts, Dwarka Courts, which document is on the record as Ex. CW2/A and that she has signed this document voluntarily of her own accord. She has testified to the effect that in terms of the settlement arrived at between her and the petitioners, 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) of the HMA vide a decree dated 15.01.2018 of the Court of Principal Judge, Family Courts South West in HMA no. 113/18, copy of which decree is on the record as Ex. CW2/B. 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. 4,00,000/- had been agreed to be paid to her by the

petitioners, out of which a sum of Rs. 3,00,000/- has been received by her previously and a balance sum of Rs. 1,00,000/- has been handed over to her now today in the court by the petitioners vide a demand draft bearing no. 509771 dated 30.01.2018 drawn on the Syndicate Bank in her name, i.e., Swati Jauhari, copy of which is on the record as Ex. CW2/C and also stated that there are now no claims of hers left against the petitioners. She has further stated that in terms of the settlement arrived at between her and the petitioner no. 1, the minor child born out of the wedlock between her and the petitioner no. 1 is in her custody and shall continue to remain in her custody.

The respondent no. 2 has testified to the effect that all the disputes between her and the petitioners have been resolved and that all claims between them have been settled and states that she is a graduate. There appears no reason to disbelieve her statement that she has arrived at a settlement with the petitioners voluntarily. In view thereof, for maintenance of peace and harmony between the petitioners and the respondent no. 2 and for the well being of the minor child and the respondent no. 2, 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)

The FIR no.434/2016, PS Najafgarh under Sections 498-A/406/34 of the Indian Penal Code, 1860 against the petitioners all consequential proceedings emanating therefrom are thus quashed.

ANU MALHOTRA, J

**APRIL 18, 2018
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CRL.M.C. 1957/2018

VIJAY & ORS.

Vs. STATE & ANR.

Statement of CW1 : W/ASI Anita, PS Najafgarh.

ON S.A.

I identify the petitioner no. 1 Vijay, petitioner no. 2 Ashok Kumar Srivastava, petitioner no. 3 Pushpa Srivastava, petitioner no. 4 Ravi Kumar and petitioner no. 5 Anshika Srivastava as being the five accused arrayed in the FIR no.434/2016, PS Najafgarh under Sections 498-A/406/34 of the Indian Penal Code, 1860. I also identify the respondent no. 2 Ms. Swati being the complainant of the said FIR. The proof of identity of the petitioner nos. 1 to 5 and of the respondent no. 2 have been produced in originals, photocopies of the same are on the record as Ex. CW1/A to Ex. CW1/F (Originals seen and returned.)

ANU MALHOTRA, J

RO & AC

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VIJAY & ORS.

Vs. STATE & ANR.

Statement of CW2 : Swati, d/o Late Sh. Lal Bhadur Jauhari, age 32 years, r/o H. NO.8 , Gali no. 1, Nagli Vihar, Najafgarh, New Delhi.

ON S.A.

I do not oppose the prayer made by the petitioners seeking quashing of the FIR no.434/2016, PS Najafgarh under Sections 498-A/406/34 of the Indian Penal Code, 1860 nor do I want the petitioners to be punished in relation thereto in view of the settlement arrived at between me and the petitioners on 05.05.2017 at the Counselling Cell, Family Courts, Dwarka courts, which document bears my signatures as visible at point A on each page thereof on Ex. CW2/A. In terms of the settlement arrived at between me and the petitioners, 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) of the HMA vide a decree dated 15.01.2018 of the Court of Principal Judge, Family Courts South West in HMA no. 113/18, copy of which decree is on the record as Ex. CW2/B.

In terms of the settlement arrived at between me and the petitioners, a total sum of Rs. 4,00,000/- had been agreed to be paid to me by the petitioners, out of which a sum of Rs. 3,00,000/- has been received by me previously and a balance sum of Rs. 1,00,000/- has been handed over to me now today in the court by the petitioners vide a demand draft bearing no. 509771 dated 30.01.2018 drawn on the Syndicate Bank in my name, i.e., Swati Jauhari, copy of which is on the record as Ex. CW2/C. There are now

no claims of mine left against the petitioner. In terms of the settlement arrived at between me and the petitioner no. 1, the minor child born out of the wedlock between me and the petitioner no. 1 is in my custody and shall remain continue in my custody.

My affidavit annexed to the petition bears my signature thereon at points A & B on Ex. CW2/D which I have signed voluntarily of my own accord.

I am a graduate.

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

ANU MALHOTRA, J

**RO & AC
APRIL 18, 2018**