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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2766/2018 & CRL.M.A. 9871-9872/2018**
ROHIT KUMAR BAROLIA & ORS Petitioner
Through Counsel for the petitioner (appearance
not given) with petitioners in person.
versus

STATE & ANR Respondent
Through Mr. Raghuvinder Varma, APP for
State with ASI Vijay Kumar PS
Mianwali.
Ms. Neena Malhotra, Adv. for R2
with R2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **22.05.2018**

Vide the present petition, the petitioner no. 1 Mr. Rohit Kumar Barolia, the petitioner no. 2 Mr. Khem Chan Barolia, the petitioner no. 3 Smt. Shakuntala, the petitioner no. 4 Smt. Mitali and the petitioner no. 5 Mr. Akshay Kumar seek quashing of FIR No. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860 on the complaint of the respondent no. 2 i.e. the complainant thereof submitting to the effect that all disputes between the petitioners and the respondent no. 2 have been amicably resolved and no useful purpose would be served by continuing with the proceedings in relation to the said FIR.

The Investigating Officer has identified the petitioners as being the accused of the said FIR and the respondent no. 2 present today in the Court

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as being the complainant of the said FIR. The proof of identity in the form of Aadhar cards of the petitioners no. 1 to 5 and of the respondent no. 2 have been produced in original, photocopies of which are Ex. CW1/A to Ex. CW1/F respectively (original of which have been seen and returned).

At the outset, a submission has been made on behalf of the State that investigation in the matter was pending qua which the Investigating Officer has made a statement to the effect that the investigation was pending only in relation to the aspect of the mediation settlement between the parties. Vide the present petition, it has been submitted that the settlement has been arrived at between the parties.

The respondent no.2 in her examination on oath by the Court has testified that she does not oppose the prayer made by the petitioners no. 1 to 5 seeking quashing of the FIR No. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860 nor does she want the petitioners to be punished in relation thereto, in view of the settlement arrived at between them. She has testified to having sworn her affidavit annexed to the petition as Ex.CW2/A which she states she has signed these documents voluntarily of her own accord without any duress or coercion from any quarter. The respondent no. 2 has also testified to the effect that the marriage between the respondent no. 2 and the petitioner no. 1 has been dissolved vide the decree of divorce through mutual consent under Section 13 B(2) of the Hindu Marriage Act, 1955 vide decree dated 03.04.2018 in HMA No. 1166/2018 of the Court of the before the Principal Judge, Family Courts (West), Tis Hazari Courts, Delhi, the copy of which is

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on record as Ex.CW2/B. *Inter alia* she has stated that in terms of the settlement arrived at between her and the petitioners, the minor child born of the wedlock between her and the petitioner no. 1 is now in the custody the petitioner no. 1 and shall remain in the custody of the petitioner no. 1 and that in terms of the settlement arrived at between her and the petitioners, a total sum of Rs.15 lakhs was to be paid to her and she has received a sum of Rs.10 lakhs previously from the petitioners and the balance sum of Rs.5 lakhs has been handed over to her vide Bankers Cheque No. 194699 dated 18.05.2018 for a sum of Rs.5 lakhs drawn on State Bank of India, photocopy of which is on record as Ex.CW2/C. She has stated that now there are no claims of hers left against the petitioners and she has done B.A., B.Ed and previously she used to teach.

The learned APP for the State submits that in the circumstances of the case, there is no opposition to the prayer made by the petitioner 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 that she has arrived at the settlement voluntarily of her own accord without any duress, coercion or pressure from any quarter and that all the disputes between the petitioners and the respondent no. 2 have apparently been resolved and the FIR in question has apparently been registered on the basis of a matrimonial discord which has since been dissolved vide the decree of divorce through mutual consent under Section 13 B(2) of the Hindu Marriage Act, 1955 vide decree dated 03.04.2018 in

HMA No. 1166/2018 of the Court of the before the Principal Judge, Family Courts (West), Tis Hazari Courts, Delhi, the copy of which is on record as Ex.CW2/B, it is considered essential to put *a quietus* to the litigation in view of the observations in the verdict of the Hon'ble Supreme Court 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. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioner. In view thereof, the FIR No. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioner no. 1 Mr. Rohit Kumar Barolia, the petitioner no. 2 Mr. Khem Chan Barolia, the petitioner no. 3 Smt. Shakuntala, the petitioner no. 4 Smt. Mitali and the petitioner no. 5 Mr. Akshay Kumar are quashed.

The petition is disposed of.

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Statement of CW1 : ASI Vijay Kumar, PS Mianwali Nagar, Delhi.**ON S.A.**

I identify the petitioner no. 1 Mr. Rohit Kumar Barolia, the petitioner no. 2 Mr. Khem Chan Barolia, the petitioner no. 3 Smt. Shakuntala, the petitioner no. 4 Smt. Mitali and the petitioner no. 5 Mr. Akshay Kumar as being the accused in relation to the FIR No. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860. The petitioners no. 1 to 5 are the only accused arrayed in the said FIR. I also identify the respondent no. 2 Ms. Shikha Sain d/o Sh. Kanwar Sain present today in the court i.e. the complainant of the FIR No. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860. There is no other investigation pending except that the complainant put forth that there were mediation proceedings pending. Photocopies of the proof of identity in the form of Aadhar cards of the petitioners no. 1 to 5 and of the respondent no. 2 are Ex. CW1/A to Ex. CW1/F respectively (original seen and returned).

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Statement of CW2: Ms. Shikha Sain d/o Sh. Kanwal Sain, aged 33 years, r/o 63-B, Buddha Apartment, Paschin Vihar, Delhi.

ON S.A.

I do not oppose the prayer made by the petitioner no. 1 Mr. Rohit Kumar Barolia, the petitioner no. 2 Mr. Khem Chan Barolia, the petitioner no. 3 Smt. Shakuntala, the petitioner no. 4 Smt. Mitali and the petitioner no. 5 Mr. Akshay Kumar in the petition seeking quashing of the FIR No. 248/2016, registered at PS Mianwali Nagar, under Sections 498A/406/34 of Indian Penal Code, 1860 nor I do want the petitioners to be punished in relation thereto. My affidavit annexed to the petition bears my signature thereon at points-A and B on Ex.CW2/A, which I have signed voluntarily of my own accord without any duress, pressure or coercion from any quarter. The marriage between the respondent no. 2 and the petitioner no.1 has since been dissolved vide the decree of divorce through mutual consent under Section 13 B(2) of the Hindu Marriage Act, 1955 vide decree dated 03.04.2018 in HMA No. 1166/2018 of the Court of the before the Principal Judge, Family Courts (West), Tis Hazari Courts, Delhi, the copy of which is on record as Ex.CW2/B. In terms of the settlement arrived at between me and the petitioners, the minor child born of the wedlock between me and the petitioner no. 1 is now in the custody the petitioner no. 1 and shall remain in the custody of the petitioner no. 1. In terms of the settlement arrived at between me and the petitioners, a total sum of Rs.15 lakhs was to be paid to me and I have received a sum of Rs.10 lakhs previously from the petitioners

and the balance sum of Rs.5 lakhs has been handed over to me vide Bankers Cheque No. 194699 dated 18.05.2018 for a sum of Rs.5 lakhs drawn on State Bank of India, photocopy of which is on record as Ex.CW2/C. Now there are no claims of mine left against the petitioners. I have done B.A., B.Ed and previously used to teach. I have made this statement voluntarily of my own accord without any duress or coercion from any quarter.

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