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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th December, 2018

+ CRL.M.C. 1688/2015 and Crl.M.A. 6087/2015

SANDEEP DUTTA

..... Petitioner

Through: Mr. Animesh Gupta, Advocate
with petitioner in person.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State with SI Sohan Lal, PS
Mehrauli.
Mr. Shambhu Sharan Shukla,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to the petitioner as per Hindu rites and ceremonies on 10.12.1999. The marriage ran into rough weather, this leading to the parties getting locked in litigation, the second respondent (the wife) lodging initially a criminal case vide first information report (FIR) No.665/2000 on 24.10.2000 with Police Station Mehrauli, alleging offences punishable under Sections 406/498-A/34 of Indian Penal Code, 1860 (IPC). In addition to that there were some other cases which have come up in the courts. On 20.03.2002, she lodged another FIR No.146/2002 with Police Station

Mehrauli, alleging offence punishable under Sections 341/323/352/506/307 IPC having been committed by the petitioner. As per the allegations in the said FIR, the parties had come to the court on 20.03.2002 in connection with the hearing of some matter involving them. The petitioner allegedly was stalking her and continued to do so after she had left the court premises right upto IIT gate area, where he (the petitioner) allegedly caught hold of her hand and made her consume some liquid, it statedly being some unwholesome substance, she alleging that it was meant to put her to death and that the petitioner had also extended threats to throw acid on her face, and had committed certain other acts, seeking criminal action against him.

2. It may be mentioned here that the investigation into the FIR No.146/2002 was completed in due course of time and a charge sheet taken eventually to court of sessions, which, however, found that no offence exclusively triable by the said court was made out particularly holding, by order dated 19.09.2005 that there was no case made out for charge for offence under Sections 328/307 IPC being framed. The case was, thus, transferred by the court of sessions to the court of metropolitan magistrate. Concededly, the said case is pending trial in the court of metropolitan magistrate, charges for offences punishable under Sections 341/323/352/506/34 IPC having been framed on 03.09.2011, the matter being for recording of evidence for prosecution.

3. Meanwhile, the parties decided to resolve the dispute amicably. They approached the matrimonial court, then presided over by an additional district judge, by petition for divorce by mutual consent. A copy of the HMA petition No.674/2005 has been submitted, it having been marked during the proceedings in the said court as “C-1”. The said petition presented in July, 2005 was a joint petition submitted both by the petitioner (the husband) and the second respondent (the wife), it containing, *inter alia*, averments to the following effect:-

“6. That all the claims of the petitioner No.2 have been amicably settled with regard to stridhan, jewellery, present, past and future alimony. The petitioner no.1 has agreed to pay a sum of Rs.1 lac to the petitioner no.2, which shall be payable to her once all the proceedings both civil as well as criminal between the parties are quashed/disposed off. Nothing else remains outstanding on this account between the parties. No claim whatsoever remains outstanding on either side. A draft of Rs.1 lac bearing No.671911 drawn on State Bank of India, Mehrauli Branch, New Delhi is being filed herewith, which may be handed over to the petitioner No.2 once all the criminal cases including FIR No.665/2000, P.S. Mehrauli and 146/2002, at P.S. Mehrauli and civil cases are quashed/disposed off. The parties to the present petition have also entertain into a Memorandum of Understanding, which is annexed herewith and is marked as Annexure-B.”

4. The matrimonial court recorded joint statement of both the parties on the basis of said petition, it reading thus:-

“Joint statement of petitioner No.1 Sandeep Dutta and petitioner No.2 Smt. Anu Dutta.

On S.A.

We were married on 10.12.99 at Delhi according to Hindu rites and ceremonies. Marriage was consummated, no child was born out of this wedlock. We are living separately since 1.4.2000 due to indifferent attitude and difference in temperament. Efforts for reconciliation were made by our friends and relatives but it proved futile. There is no cohabitation between us from the date of our separation and even after filling of first motion petition. We have settled all our disputes and claims with regard to istridhan maintenance and permanent alimony present pendant lite, past, and future amicably as per the terms and conditions mentioned in the petition Ex.C1. We shall abide by our statement made in the court and the terms and conditions as mentioned in our petition Ex.C1. Draft of Rs.1 lakh has already been deposited in this court by petitioner no.1. The same will be given to petitioner no.2 after quashing of FIR by Hon'ble High Court. Petitioner No.1 further undertakes to revalidate the draft prior to its expiry. There is no collusion in filing of this petition. Our consent has not been obtained by force and fraud. We are agreed to dissolved (sic) dissolve our marriage by mutual consent as our marriage has been broken down irretrievably."

5. On the above basis, the marriage of the parties was dissolved by decree of divorce by mutual consent granted on 14.10.2005. Concededly, the said order has attained finality.

6. On the basis, *inter alia*, of the aforementioned resolution of the dispute and the grant of decree of divorce by mutual consent, the petitioner and his other relatives, who were also accused in the case arising out of FIR No.665/2000, approached this court by a petition (Crl.M.C. 878/2007) under Section 482 Cr.P.C., seeking quashing of the said case. Crucially, in the averments in the said petition it was, *inter alia*, pleaded thus:-

“3. That brief facts leading to the filing of the present petition are as under:-

A. That the petitioner No.1 and the respondent No.2 were married on 10.12.1999 at New Delhi according to Hindu rites and customs. However, due to some misunderstanding the relationship between the parties became strained.

B. That the respondent No.2 consequently lodged a complaints against the petitioner No.1 and his other family members with P.S. Mehrauli, New Delhi. On the basis of the said complaint of the respondent No.2, case bearing FIR No.665/2000, u/s. 406/498-A/34 I.P.C. was registered against the petitioners No.1,2&3. Subsequently he also lodged another complaint on the basis of which FIR No.146/02, u/s. 341/323/328 /352/506/307 IPC was registered against the petitioner No.1. However, the Ld. Sessions Court vide order dated 19.09.05 held that offences u/s. 308 & 307 IPC were not made out and charges u/s. 341, 323 & 506 were only held to be made out. As these offences are compoundable under Section 320 of the Code of Criminal Procedure, appropriate application is being filed in the concerned court.

C. That the investigations were initiated against the petitioners on the basis of the said FIRs. A copy each of the aforesaid FIRs alongwith its typed as well as translated copy is annexed herewith and marked as Annexure A-1 & A-2 (colly) respectively.

D. That subsequent to the registration of the said FIRs, challans were filed in both the cases. Proceedings pertaining to FIR No.665/2000, u/s. 498/406 IPC are pending against the petitioners in the court of Ms. Ruby Alka Gupta, MM, New Delhi and the case is fixed for 26.02.07. In this case, Late Sh.Satpal Dutta, father of the petitioner No.1 was also an accused but he has since expired on 9.5.2006. A death certificate of Late

Sh. Satpal Dutta is annexed herewith and marked as Annexure-3.

The case FIR No.146/2002, u/s. 341/323/328/352/506 /307 IPC was committed to the court of Sh. Lal Singh, ASJ, New Delhi. The Ld. Sessions Judge vide order dated 19.9.2005 has held that offence u/s. 328 and 307 IPC, triable by the court of sessions, are not made out and as rest of the offences being triable by the metropolitan magistrate, the proceedings now are pending in the court of Sh. V.K. Gautam, MM, New Delhi and the case is now fixed for 09.04.07. A certified copy of the order of the Ld. Sessions Judge dated 19.9.2005 is annexed herewith and marked as Annexure A-4. As the alleged offences are compoundable under the provisions of section 320 of the Code of Criminal Procedure, appropriate application is being moved in the said case.

E. That during the pendency of the proceedings, the differences between the petitioner No.1 and respondent No.2 were resolved and the marriage between the parties has been dissolved by a decree of mutual consent and both are living separately and there are no grievance on either side. A certified copy of the order dated 14.10.05 whereby the marriage has been dissolved by a decree of mutual consent is annexed herewith and marked as Annexure A-5.

F. That the petitioner and respondent no.2 have compromised the matter with the intervention of their counsels and relatives out of their own free will, without any pressure, coercion or threat of any body. The respondent No.2 is now not interested to pursue the said case and is living separately. A draft of Rs.1 lac has already been placed on record by the petitioner no.1 in the court of Sh. V.K. Maheshwari, ADJ, Delhi (Now the said court is presided by Ms. Navidita Anil Sharma, ADJ) during divorce proceedings, which will

be handed over to the respondent No.2 on quashing of the criminal proceedings out of the aforesaid FIRs.... ”

7. The prayer in the said petition, however, was framed in such a way that it requested for quashing of the proceedings arising out of FIR No.665/2000 only, there being no reference to the criminal case arising out of FIR No.146/2002. The restricted prayer was granted by a learned single judge of this court by order dated 21.01.2008, the second respondent having submitted no objection, there being no contest to the averments in the petition to the above effect *vis-à-vis* the other case.

8. The proceedings in the criminal case arising out of FIR No.146/2002 have consequently continued against the petitioner. He has approached this court by the petition at hand seeking quashing of the said case as well, his prime submission being that the resolution on the basis of which the parties had jointly approached earlier for decree of divorce by mutual consent and later quashing of the criminal case in the first FIR had also covered the second case, and continuation of the second case is an abuse of the process of the court.

9. The petition is contested by the second respondent through counsel submitting that since the petition earlier brought under Section 482 Cr.P.C. did not make a prayer *qua* this case, there being no fresh settlement between the parties, the prayer ought not be entertained or allowed.

10. This court does not agree with the above objection. Clearly, the settlement arrived at between the parties leading to the grant of decree

of divorce and the quashing of the first FIR was comprehensive, the parties having referred specifically to all the litigation including the second FIR. The intent of the parties at that stage was to bring an end to all litigation, the second respondent being on record to state that she would have no grievance or claim left against the petitioner on any such count. The insistence on the continuation of the proceedings in the second FIR is, thus, not fair. The continuation would undoubtedly be an abuse of the process of the court.

11. The petition is allowed, the proceedings in the criminal case arising out of case FIR No.146/2002 of Police Station Mehrauli, registered under Sections 341/323/506 IPC are hereby quashed.

12. This disposes of the pending application as well.

DECEMBER 11, 2018

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R.K.GAUBA, J.