

\$~38

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

+ **W.P.(CRL) 3222/2017**

RAHUL DHAMMI & ORS

..... Petitioner

Represented by: Mr. Suneel Kumar, Adv. with
P-1 in person.

versus

STATE NCT OF DELHI & ANR

..... Respondent

Represented by: Ms. Richa Kapoor, ASC with
Insp. Madan Mohan PS
Maurya Enclave.
Mr. Kunal Yadav, Adv. for
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

15.01.2018

%

1. By this petition the petitioners had sought quashing of FIR No.192/2016 under Sections 498A/406/34 IPC registered at PS Maurya Enclave on the ground that parties had settled the matter. The settlement between the parties on which reliance is placed was made a part of the petition for first motion for divorce by mutual consent under Section 13(b)(1) of The Hindu Marriage Act.

2. The terms of settlement noted between the parties in Paras 8 to 17 of the said joint petition are as under:

“8. *That the parties have arrived on the following terms and conditions:*

a. *That it is agreed between the parties that the*

marriage should be dissolved by way of mutual consent by filing the divorce petition under Section 13(b)(1) and 2 of Hindu Marriage Act, 1955 before the Family Court and both the parties shall co-operate with each other in obtaining divorce by mutual consent by making the statement in this regard in the concerned court.

- b. It is agreed by the petitioner No.1 that she was never subjected to any kind of harassment or domestic violence such as physical, verbal, emotional, sexual or economic or any harassment of whatsoever nature by the petitioner No.2 or his family and relatives whether before or after the marriage to the petitioner No.2. It is further agreed by the petitioner No.1 that she was never demanded dowry by the petitioner No.2 and/or no demand of whatsoever nature was made by the petitioner No.2, his parents or any of his relatives both any time before or after the marriage.*
 - c. It is agreed that a following articles as detailed in annexure A1 (Articles in possession of petition No.1) & A2 (Articles in possession of petition No.2) shall be exchanged by petitioner No.1 & 2 at the time of the recording of the first motion under Section 13B(1) of HMA.*
- 9. That it is mutually agreed between the parties that henceforth, the petitioner No.1 (wife) shall not have/ or would claim any right, title or interest in the property/ assets of the petitioner No.2 (husband) or his family. The petitioner No.1 is a qualified working woman, and undertakes that she shall not claim any kind of maintenance or alimony (permanent or otherwise) for past, present or future from petitioner No.2 and all issues, controversies or disputes pertaining to istridhan, past, present and future alimony and maintenance have been amicably settled by both the parties. In the same terms, the petitioner No.2 (husband) also undertakes not*

to claim any right, claim or interest in the property/ assets of petitioner No.1 and further shall not claim any kind of maintenance from the petitioner No.1.

- 10. That the parties also declare that they shall not file any litigation whether civil or criminal against each other or against each other's family or relatives via self, relatives or in collusion with any 3rd party in the future on any pretext whatsoever. In any case litigation is filed by any party against the other party, then the party filing the case shall be liable for this wholly and severely and the litigation shall be treated as null and void.*
- 11. It is agreed and desired by petitioner No.1 that the FIR No.192/2016 be quashed before the 13 B(2) of the Hindu Marriage Act 1955 (hereinafter referred as second motion). The petitioner No.1 further undertakes to cooperate and make the necessary statement before the Hon'ble High Court of Delhi or any other Court as and when directed by the Hon'ble High Court of Delhi during the pendency of the quashing petition to be filed under Section 482 Cr.P.C.*
- 12. That it is further agreed between the parties that the petitioner No.2 will withdraw police complaint filed against the petitioner No.1 titled "Physical assault and Verbal abuse by Ms. Tanu Gera and her mother" in Prashant Vihar police station on 21st November, 2015 within one week of the quashing of above mentioned FIR.*
- 13. That both the parties further undertake to live their life peacefully without interfering in the life of each other as the present compromise is for the betterment of future.*
- 14. That as stated above, the above named parties are living separately since 29.06.2015 and more than 1.5 years have elapsed since the parties started living separately and there is no hope of their living together or of any other reconciliation between the parties and as such they have agreed for dissolution of their marriage on their own free will and mutual consent. The consent has not been given by either party by fear, force, fraud, coercion*

or undue influence.

15. *That the present petition has been filed without any undue influence, force, pressure, threats, fraud and coercion from any whatsoever.*
16. *It is stated that the parties have no claims, dues and disputes against/ with each other in any manner whatsoever with regard to their marriage.*
17. *That there is no connivance or malafide intent between the present petitioners and it is hereby agreed that the petitioners will part ways in an amicable and peaceful manner.”*

3. Statement for first motion for divorce by mutual consent between the parties was recorded on 1st July, 2017 and after six months thereof the parties were supposed to file the statement for second motion. When the petition for recording of the statement for second motion for divorce by mutual consent was not being filed, the respondent No.2 filed an application before this Court being Crl.M.A. 20151/2017 stating that the statement for second motion for divorce by mutual consent be recorded before quashing of the FIR.

4. Now it appears and is evident from the statement of learned counsel for the petitioner and the petitioner No.1 present in Court that petitioner No.1 does not wish to proceed with the recording of the statement for second motion for divorce by mutual consent on the ground that in the terms of settlement respondent No.2 has admitted that there was no cruelty committed by the petitioner or his family members or relatives on her.

5. Learned counsel for the petitioner states that in Para 11 of the settlement noted above it was categorically stated that the quashing of FIR would take place before recording of the statement for second motion. This

Court suggested to the petitioner No.1 that quashing of FIR can be fixed for the same day as the statement for second motion, however this was also not agreeable to the petitioner No.1. It is apparent that now the petitioner No.1 has second thought on going ahead with the recording of statement for second motion.

6. Faced with this situation, the petitioner No.1 who is present in Court states that he does not wish to go ahead with the divorce by mutual consent. Thus the fear of the respondent No.2 that after the FIR is quashed, the petitioner No.1 would not come forward for the second motion for divorce by mutual consent appears to be well founded.

7. As the petitioner No.1 does not wish to go ahead with the divorce by mutual consent, the quashing of the FIR on the basis of settlement cannot be granted. The writ petition is accordingly dismissed.

8. Needless to note that in view of the settlement agreement not being proceeded with, the parties will not be bound by their earlier statements and the same will not be treated as admissions on behalf of any of the parties.

CrI.M.A. 20151/2017 (by R-2)

Dismissed as infructuous.

MUKTA GUPTA, J.

JANUARY 15, 2018
‘ga’