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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5014/2017**
GULFAM & ORS Petitioner

Through: Mr. Yashaswi S.K. Chocksey, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondent
Through: Mr. Izhar Ahmad, APP for State with
W/ASI Kamlesh, PS Kanjhawla.
Mr. Faiz Ahmad, Adv. for R-2 with
R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **26.02.2018**

Vide the present petition, the petitioner seeks quashing of FIR No.45/2014, registered at PS Kanjhawla, under Sections 498A/406/34 Indian Penal Code, 1860 and all consequential proceedings emanating therefrom submitting to the effect that the petitioners and the respondent no.2 have arrived at a settlement.

Vide the proceedings dated 30.11.2017 in view of the averments made in the petition, the Investigating Officer was directed to ascertain the aspect of existence of Talaqnama between the petitioner no.1 and the respondent no.2, which aspect has since been verified by the Investigating Agency and a status report in relation thereto on the signature of Inspr. Nageen Kaushik, SHO, PS Kanjhawla is on the record to the effect that there was a divorce between the petitioner no. 1 and the respondent no.2 on 25.06.2013 also attested by the

respondent no.2 who is now living with her father. The father of the

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respondent no.2 Mr. Mohd. Hanif is also present and in reply to a specific Court query, he submits that he does not oppose the prayer made by the petitioner seeking quashing of the FIR in question.

The Investigating Officer of the case present today in Court has identified the petitioner no. 1 Shri Gulfam, s/o Shri Ahsan, petitioner no.2 Mr. Ahsan, petitioner no.3 Mrs. Jamila, w/o Shri Ahsan, petitioner no.4 Shri Irfan, s/o Shri Ahsan, petitioner no.5 Smt. Sammo, w/o Shri Irfan, petitioner no.6 Shri Gulzar, s/o Shri Ahsan, petitioner no.7 Shri Izrar, s/o Ahsan, petitioner no.8 Ms. Guddi as being the accused arrayed in FIR No.45/2014, registered at PS Kanjhawla, under Sections 498A/406/34 Indian Penal Code, 1860 and has also identified the respondent no.2 Ms. Nazma present today in Court as being the complainant thereof. The proofs of identity of the petitioner nos. 1 to 8 and of the respondent no. 2 in the form of photocopies of their Aadhar Cards are on the record as Ex. CW1/A and Ex. CW1/I respectively, originals of which have been seen and returned.

The respondent no.2 in her examination on oath by the Court has testified to having sworn her affidavit annexed to the petition as Ex.CW2/A and has further testified to the effect that she has also signed the mediation settlement dated 18.07.2017 arrived at between her and the petitioners at the Delhi Mediation Centre, Rohini District Courts, Delhi as Ex. CW2/B voluntarily of her own accord without any duress or coercion from any quarter. The respondent no.2 has further testified to having signed the statement made by her to the Investigating Officer during the course of proceedings in the present petition i.e. Ex. CW2/C verifying the factum of the

divorce between her and the petitioner no.1. The respondent no.2 has further testified to the effect that pursuant to the settlement arrived at between her and

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the petitioners, four children born of the wedlock between her and the petitioner no.1 are in the custody of the petitioner no.1.

She has further testified to the effect that pursuant to the settlement arrived at between her and the petitioners, a total sum of Rs. 4.35 lakhs was to be paid to her by the petitioners, of which a sum of Rs. 3.25 lakhs has been received by her previously and the balance sum of Rs. 1.10 lakhs has been handed over to her by the petitioners today in Court in the form of a Manager's Cheque bearing no. 022870 dated 12.02.2018 in her favour drawn on the HDFC Bank, photocopy of which is on the record as Ex. CW2/D and she has further stated that there are no claims of hers left against the petitioners now. She has further testified to the effect that she does not oppose the prayer made by the petitioners seeking quashing of the FIR No. 45/2014, PS Kanjhawala and does not want the petitioners to be punished in relation thereto and that she has made her statement voluntarily of her own accord without any duress, coercion or pressure from any quarter.

Learned APP for the State submits that in view of the settlement arrived at between the parties, there is no opposition to the prayer made by the petitioners seeking quashing of the FIR in question.

In view of the deposition of the respondent no.2, verification conducted by the Investigating Agency during the course of present proceedings in relation to the factum of the divorce between the petitioner no.1 and the respondent no.2 on 25.06.2017 which is also accepted by the respondent no.2

and the submission made by the father of the respondent no.2 in reply to a specific Court query and taking into account the non-opposition on behalf of the State, for maintenance of peace and harmony between the petitioners and the respondent no.2, in view of the observations in the verdict

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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.***
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(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 petitioner seeking quashing of in FIR No.45/2014, registered at PS Kanjhawla, under Sections 498A/406/34 Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom against the petitioners.

In view thereof the in FIR No.45/2014, registered at PS Kanjhawla, under Sections 498A/406/34 Indian Penal Code, 1860 and all the

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consequential proceedings emanating therefrom against the petitioner no. 1 Shri Gulfam, s/o Shri Ahsan, petitioner no.2 Mr. Ahsan, petitioner no.3 Mrs. Jamila, w/o Shri Ahsan, petitioner no.4 Shri Irfan, s/o Shri Ahasn, petitioner no.5 Smt. Sammo, w/o Shri Irfan, petitioner no.6 Shri Gulzar, s/o Shri Ahsan, petitioner no.7 Shri Izrar, s/o Ahsan, petitioner no.8 Ms. Guddi are quashed.

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Statement of CW1 : W/ASI Kamlesh, PS Kanjhawla, Delhi.

ON S.A.

I identify the petitioner no. 1 Shri Gulfam, s/o Shri Ahsan, petitioner no.2 Mr. Ahsan, petitioner no.3 Mrs. Jamila, w/o Shri Ahsan, petitioner no.4 Shri Irfan, s/o Shri Ahasn, petitioner no.5 Smt. Sammo, w/o Shri Irfan, petitioner no.6 Shri Gulzar, s/o Shri Ahsan, petitioner no.7 Shri Izrar, s/o Ahsan, petitioner no.8 Ms. Guddi as being the accused arrayed in FIR No.45/2014, registered at PS Kanjhawla, under Sections 498A/406/34 Indian Penal Code, 1860. I also identify the respondent no.2 Ms. Nazma present today in Court as being the complainant thereof. The proofs of identity of the petitioner nos. 1 to 8 and of the respondent no. 2 in the form of photocopies of their Aadhar Cards are on the record as Ex. CW1/A and Ex. CW1/I respectively. (Originals seen and returned.)

Apart from the petitioner no.1 to 8, there are no other persons arrayed as accused in the said FIR.

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GULFAM & ORS

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Statement of CW2 : Ms. Najma, d/o Mohd. Hanif, aged 36 years, r/o G-190, Mir Vihar, Mubarakpur Dabas, Delhi.

ON S.A.

My affidavit annexed to the petition bears my signatures thereon at points-A & B on Ex.CW2/A. The mediation settlement dated 18.07.2017 arrived at between me and the petitioners at the Delhi Mediation Centre, Rohini District Courts, Delhi, copy of which bears my signatures thereon at point-A on Ex. CW2/B. The statement made by me to the Investigating Officer during the course of proceeding in the present petition bears my signature at point-A on Ex. CW2/C. I have signed all these documents voluntarily of my own accord without any duress, pressure or coercion from any quarter.

The marriage between me and the petitioner no.1 has since been dissolved vide a Talaq on 25.06.2013. Four children born of the wedlock between me and the petitioner no.1 are in the custody of the petitioners.

Pursuant to the settlement arrived at between me and the petitioners, a total sum of Rs. 4.35 lakh was to be paid by the petitioners, of which a sum of Rs. 3.25 lakh has been received by me previously and the balance sum of Rs. 1.10 lakh has been handed over to me by the petitioners today in Court in the form of a Manager's Cheque bearing no. 022870 dated 12.02.2018 in my favour drawn on the HDFC Bank, photocopy of which is on the record as Ex. CW2/D. There are no claims of mine left against the petitioners now.

I have studied upto standard 6th.

I do not oppose the prayer made by the petitioners seeking quashing of the FIR No.45/2014, registered at PS Kanjhawla, under Sections 498A/406/34 Indian Penal Code, 1860 in view of the settlement arrived at between me and the petitioner no. 1 Shri Gulfam, petitioner no.2 Mr. Ahsan, petitioner no.3 Mrs. Jamila, petitioner no.4 Shri Irfan, petitioner no.5 Smt. Sammo, petitioner no.6 Shri Gulzar, petitioner no.7 Shri Izrar, petitioner no.8 Ms. Guddi nor do I want the petitioner nos. 1 to 8 to be punished in relation thereto.

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

ANU MALHOTRA, J

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