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

+ CRL.M.C. 4760/2017

MOHD AFTAB & ANR

..... Petitioners

Through: Mr. Abhimanyu, Advocate.
versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents

Through: Mr. KamalKr. Ghei, APP for State
with SI Santosh Kumar, PS Pandav
Nagar.
Mr.ARpit Jain, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **28.02.2018**

Vide the present petition, the petitioners seek quashing of the FIR No. 127/2004 registered at PS Pandav Nagar, under Sections 498A/406/34 Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the parties and that the marriage between the petitioner no. 1 and the respondent no. 2 has been dissolved vide a Talaknama and a sum of Rs. 16501/- had been paid to the respondent no. 2.

Vide the proceedings dated 21.12.2017, it was considered essential to direct the Investigating Officer to verify the factum of the divorce between the petitioner no. 1 and the respondent no. 2 in relation to which a verification report under the signatures of the SHO, PS Pandav Nagar dated 22.02.2018 has been submitted by the State which verifies the factum of divorce between the petitioner no. 1

and the respondent no.2 on 31.03.2003 at Village Padiya, Distt. Gaya (Bihar) in the presence of her late father and witnesses of both sides. As per the said report, the talaknama has been duly signed by the complainant and the petitioner Aftab Hussain and witnesses and it has been stated by the Maulvi that a sum of Rs. 16501/- had been paid to the complainant. The divorce took place on 31.03.2003 as per Muslim Rituals.

The Investigating Officer of the present case is present today and in reply to a specific court query has testified to the effect that he himself verified the factum of divorce between the petitioner no. 1 and the respondent no. 2. He has identified the petitioner no. 1 Mohammad Aftab and petitioner no.2 Most. Saeeda Bagum as being the accused arrayed in FIR No. 127/2004 registered at PS Pandav Nagar, under Sections 498A/406/34 Indian Penal Code, 1860. He has also identified the respondent no. 2 being the complainant of the said FIR present today in the Court.

On behalf of the petitioner no. 1 has been produced proof of identity in the form of Election Commission Card bearing no. RBX1081199, photocopy of which is annexed as Ex. CW1/A at page 3 of the petition in which the name of the name of the Election Commission Card holder is mentioned as Altaf Ansari s/o Mussarat Ansari qua which it has been submitted on behalf of the petitioner no. 1 that the same would be got rectified in as much as it has been submitted that the photograph on the same is that of the petitioner no.1.

The respondent no. 2 in reply to a specific court query has also

identified the person present in the court as being the petitioner no. 1 who is her spouse. In view thereof, the proceedings have further been conducted in relation to the present matter. The testimony of the respondent no. 2 has been recorded on oath through which she affirms the factum of divorce between her and the petitioner no. 1 on 31.03.2003 and she testifies to having received a sum of Rs. 16501/- by her from the petitioners and states that the child born out of the wedlock is in the custody of the petitioner no. 1. She has also stated that there are now no claims of hers left against the petitioners. She further affirms 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. She has further stated that she does the stitching work. She has stated that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter.

On behalf of the State in the circumstances of the case there is no opposition to the prayer made by the petitioners seeking quashing of the FIR no. 127/2004 registered at PS Pandav Nagar, under Sections 498A/406/34 Indian Penal Code, 1860.

In view of the testimony of the respondent no. 2, the identification of the petitioners and the respondent no. 2 by the Investigating Officer and the settlement having been arrived at as indicated by the verification report submitted by the SHO, PS Pandav Nagar and also verification of the factum of divorce between the petitioners and the respondent no. 2, it is considered appropriate to put

a quietus the litigation between the parties, 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.]”

(emphasis supplied)

and in the case of *Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. (2013) 4 SCC 58*, wherein the Supreme Court in respect of the matrimonial disputes has specifically held as follows:-

“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 thus considered appropriate in the interest of justice that the prayer made by the petitioners seeking quashing of the FIR no. 127/2004 registered at PS Pandav Nagar, under Sections 498A/406/34 Indian Penal Code, 1860 and all consequential proceedings emanating therefrom is allowed and thus the FIR no. 127/2004 registered at PS Pandav Nagar, under Sections 498A/406/34 Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioners are thus quashed.

The petition is disposed of.

The copy of the order be given dasti, as prayed.

ANU MALHOTRA, J

FEBRUARY 28, 2018
NC

Statement of CW1 : SI Santosh Kumar, PS Pandav Nagar.

ON S.A.

I identify the petitioner no. 1 Mohammad Aftab and petitioner no.2 Most. Saeeda Bagum as being the accused arrayed in FIR No. 127/2004 registered at PS Pandav Nagar, under Sections 498A/406/34 Indian Penal Code, 1860. I also identify the respondent no. 2 being the complainant of the said FIR present today in the Court. It has been verified by me that the marriage between petitioner no. 1 and the respondent no. 2 has been dissolved and the status report in relation thereto dated 22.02.2018 under the signatures of the SHO Insp. Naveen Chandra, PS Pandav Nagar and the marriage between the petitioner no. 1 and the respondent no. 2 has been dissolved on 31.03.2003 at Village Padiya, Distt. Gaya (Bihar) in the presence of her late father and witnesses and a total sum of Rs. 16501/- had been paid to the complainant. The proof of identity in the form of Election Commission Card of the petitioner no. 1 bearing no. RBX1081199 has been produced, photocopy of which is annexed as Ex. CW1/A at page 3 of the petition (the name of the petitioner no. 1 as per memo of parties is Mohammad Aftab and mentioned as Altaf Ansari s/o Mussarat Ansari in his identity card).

Learned counsel for the petitioner however submits that the person is the same as the petitioner no. 1 Mohammad Aftab. As the Investigating Officer has identified the petitioner no. 1 and the respondent no. 2 also affirms in reply to a specific Court query that the person present before the

Court is the person named Mohammad Aftab, further proceedings have been conducted. It is submitted on behalf of the petitioner no. 1 that the present Election Commission Card would be got rectified from the Election Commission of India. The photocopy of the Aadhar Card of the petitioner no. 2 is on the record as Ex.CW1/B. (Original seen and returned).

ANU MALHOTRA, J

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Statement of CW2 : Most. Amina Khatoon, d/o Mohd. Asgar Ali, aged 41 years, r/o 285/B, Harijan Basti, Partap Ganj village, Delhi.

ON S.A.

The FIR no.127/2004, PS Pandav Nagar had been registered on my complaint under Sections 498A/406/34 of the Indian Penal Code, 1860 against the petitioner nos. 1 & 2, i.e, Mohammad Aftab and Most. Saeeda Bagum. The marriage between me and the petitioner no. 1 has since been dissolved in the year 2003.

My affidavit annexed to the petition bears my signature thereon at points-A & B on Ex.CW2/A. The copy of the mediation settlement bears my signatures at point A in Ex. CW2/B. I have signed both these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter. A sum of Rs. 16501/- has been received by me from the petitioners. There are now no claims of mine left against the petitioners.

I have studied upto 10th Standard and do work of stitching. I do not oppose the prayer made by the petitioners seeking quashing of the FIR in question nor do I want them 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

**RO & AC
FEBRUARY 28, 2018**