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

+ **CRL.M.C. 5290/2017**

MAYANK BANSAL & ORS

..... Petitioners

Through: Ms. Geeta Luthra, Sr. Advocate with
Mr. Pranav Vashishtha, Advocate
Along with petitioner nos. 1-3, 5 & 6
in person.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondents

Through: Mr. Izhar Ahmad, APP for State
SI Rama Saroha, PS:Model Town
R-2, present in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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24.04.2018

Petitioner nos. 1 to 6 are present in person, except petitioner no.4. It is stated by learned Senior counsel for the petitioner assisted by the counsel for the petitioner that due to some difficulty, petitioner no.4 is unable to be present in Court.

The APP is present with the Investigating Officer. Proofs of identity of petitioners no. 1 to 6 and of the respondent no. 2 are placed on the record.

The Investigating Officer who is present in Court has identified the photograph of the petitioner no. 1.

The respondent no.2 in her statement has testified to the effect that she has arrived at a settlement voluntarily before the Delhi High Court Mediation and Conciliation Centre on 28.2.2017, the terms of which are exhibited as CW-2/B.

In terms of the settlement arrived at between the petitioner and the respondent no.2, the marriage between them has been dissolved by way of decree of divorce by mutual consent on 31.10.2017, in HMA No. 1372/2017 by the Court of the Principal Judge, Family Courts, North District, Delhi, true copy of which decree sheet is annexed as Ex.CW-2/C.

In terms of the said settlement, a total sum of Rs. 40 lacs was to be given to the respondent no.2 by the petitioners, out of which Rs. 25 lacs has been paid to the respondent no. 2 previously and a balance sum of Rs. 15 lacs has been given to the respondent no.2 today in Court vide DD bearing No. 011869 dated 21.4.2018 drawn on the IDBI Bank, photocopy of which is exhibited as Ex. CW-2/D.

The respondent no. 2 submits that there are now no claims of hers left against the petitioners. Respondent no. 2 has further submitted to the effect that she has done LL.M. and works as an Assistant (Judicial) in the NGT (National Green Tribunal).

There appears no reason to disbelieve her statement that she had arrived at the settlement with the petitioners, without any threat, duress, fear or coercion. She further submits that she has no opposition to the petitioners seeking quashing of the FIR in question

and that she does not want any of the petitioners to be punished in relation thereto.

FIR qua Sections 498-A/406/420/34 of the Indian Penal Code, 1860

On behalf of the State, to the extent that the FIR is registered under Sections 498-A/420/406/34 of the Indian Penal Code, 1860, there is no opposition to the prayer of the petitioners seeking the quashing of the same.

As the FIR No. 432/2016 under Sections 498A/420/406/34 IPC registered at PS Model Town is apparently registered on the basis of a matrimonial discord between the petitioner and the respondent no. 2, which has since been resolved by dissolution of the marriage between the petitioner no. 1 and the respondent no. 2, for maintenance of peace and harmony between the parties, it is considered appropriate 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 petitioner seeking quashing of FIR No. 432/2016 under sections 498A/420/406/34 Indian Penal Code, 1860 registered at Police Station Model Town, and all the consequential proceedings emanating therefrom against the petitioner nos. 1 to 6.

FIR qua Section 377 of the Indian Penal Code, 1860

The submission made vehemently and categorically on behalf of the State is that in relation to the offence punishable under Section 377 of the Indian Penal Code, 1860, in view of the verdict of the

Supreme Court in ***Narender Singh and Others, vs. State Of Punjab and Another***, CrI. A. 686/2014, the said offence punishable under Section 377 cannot and ought not to be quashed. It has been submitted further on behalf of the State that the prosecutrix in her statement under Section 164 of the Code of Criminal Procedure, 1973 has supported the allegations in relation to the commission of the offence punishable under section 377 of the Indian Penal Code, 1860 submitting inter alia to the effect with reference to the observations of the Supreme Court in para 15 (vi) to the effect that in relation to serious offences, the offence ought not to be quashed despite the parties having settled the matter as there is a public interest which over rides any settlement. Reliance was also placed on behalf of the State on the verdict of the ***High Court of Bombay in Bharat Kumar S. Gupta Vs. State of Maharashtra***, CrI. Application No. 666/2016, wherein the verdict of the Apex Court in ***Gian Singh Vs. State of Punjab & Others, (2012) 10 SCC 303*** has been referred to and it is observed to the effect *inter alia* that such offences are not private in nature and have a serious impact on society and that an offence under Section 377 not to be quashed.

Reliance was also placed on behalf of the State on a verdict of this Court in ***Shamshad & Others Vs. State & Another in WP(CRL) 764/2018*** titled dated 22.3.2018 which was in relation to a petition qua FIR No. 88/2016 PS Bhajanpura under Section 376/377/506/34 Indian Penal Code, 1860 whereby the prayer made by the petitioners therein seeking quashing of the FIR despite settlement arrived at in

view of the statement under Section 164 of the respondent no.2 therein was declined.

Reliance was also placed on behalf of the State on the verdict of the Apex Court in **Crl.A.No.1723/2017 in Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. vs. State of Gujarat and Anr.** whereby the prayer made vide the petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the offences punishable under Section 384/467/468/471/120-B/506(II) of the Indian Penal Code, 1860 was declined.

During the course of the submissions, the respondent no.2 has placed reliance on the verdict of the ***High Court of Rajasthan in S.B. CRIMININAL MISC. PETITION No.4529/2015 in the case of Mukesh Mehra & Others Vs. State of Rajasthan & Another*** to contend that the settlement be accepted in relation to the offences punishable under Sections 498-A/406/420/34 of the Indian Penal Code, 1860 **alone**, which is strongly opposed on behalf of the petitioners submitting that the settlement is in *toto* as per the settlement agreement copy of which is Ex. CW-2/3.

A catena of verdicts was relied upon on behalf of the petitioners in support of the submission that the offence punishable under Section 377 of the Indian Penal Code, 1860 in the facts and circumstances of the instant case can be quashed as the matter related to a matrimonial dispute between the petitioner no.1 and the respondent no. 2. Chiefly, reliance was placed on behalf of the petitioners on ***Wasim Anwar Vs.***

State of NCT of Delhi & Another, (2018) SCC On Line SC 316, in which leave was granted by the Hon'ble Supreme Court against a verdict of this Court in **Crl.A.No.703/2017** whereby a petition seeking quashing under Section 377 of the Indian Penal Code, 1860 under Section 482 of the Code of Criminal Procedure, 1973 was not permitted in view of the verdict of the Apex Court in Narender Singh and State of Punjab.

The verdict of the Apex Court in the said judgment in ***Wasim Anwar vs. State of NCT of Delhi*** (supra) vide which petition, the judgment of this Court in Crl.A.703/2017 had been assailed makes specific observations to the effect that the dispute between the parties was a matrimonial discord in nature and that the parties had settled the dispute in the Family Court and that the settlement of the Family Court formed part of the judgment in the form of decree of divorce between the parties.

Taking the said aspect into consideration, it was observed to the effect:

“Since the parties have settled the disputes amongst themselves and they are at peace, we do not find any reason for continuing the criminal case. Be it noted that even if the parties are sent to trial, the same is only to end up in acquittal in view of the settlement and the submission made by the defacto complainant before this Court. In the above circumstances, the appeal is allowed and the judgment dated 20.2.2017 passed by the High Court is set aside. FIR No. 258/2014 on the file of police station Jafarabad, Delhi is quashed.”

Thus as the parties in the said case had settled the disputes amongst themselves, it was held that there was no reason to continue with the criminal case in view of the settlement made before the Family Court, Counsellor, Saket.

Reliance was also placed on behalf of the petitioners on the verdict of this Court in **Anil Kumar Garg & Ors. vs. State & Anr. in WP (Crl.) 2159/2017**, a verdict dated 11.09.2017 in similar circumstances whereby permission for quashing an FIR 409/2016, PS Vikaspuri u/s 498A/406/377/351/354(A) of the Indian Penal Code, 1860 was granted in view of the disputes having been amicably resolved, vide dissolution of the marriage between the spouses through mutual consent.

In the facts and circumstances of the present case as the dispute between the petitioner no.1 and respondent no.2 was apparently due to a matrimonial discord which has since been resolved by dissolution of marriage between the petitioner no.1 and respondent no.2 amicably vide a decree of divorce by mutual consent, the attested copy of which has been exhibited as Ex. CW-2/C which is placed on record, which settlement has been arrived at pursuant to mediation proceedings in the Delhi High Court Mediation and Conciliation Centre as referred to it by this Court in Bail Application No. 2057/2016, in view of the verdict of the Apex Court in Wasim Anwar (Supra), it is considered appropriate as the dispute in the instant case was matrimonial in nature, that the prayer made seeking the quashing of the FIR in

question qua the offence punishable under Section 377 of the Indian Penal Code, 1860 also, despite the prayer having not been so granted in W.P.(Crl.)764/2018 in the peculiar facts of the said case, be granted. In view thereof, for maintenance of peace and harmony between the petitioner and the respondent no. 2 and for the well being of the respondent no. 2 herself, it is considered appropriate to put a quietus to the litigation between the parties.

In view thereof, the FIR No. 432/2016 under sections 498A/420/406/34 Indian Penal Code, 1860 registered at PS Model Town and Under Section 498A read with section 34 of the Indian Penal Code, 1860 against petitioners no.1 to 6 and keeping in view the statement of the respondent no. 2 also qua the offence punishable under Section 377 of the FIR No. 432/2016 against the petitioner no.1 as also all the consequential proceedings emanating therefrom against the petitioner nos. 1 to 6 are thus quashed.

The petition stands disposed of.

ANU MALHOTRA, J

APRIL 24, 2018/P

Item no. 93
CRL. MC No. 5290/2017

24.4.2018

MAYANK BANSAL AND ORS. VS. STATE AND ANR.

STATEMENT OF SI MS. RAMA SAROHA, PS: MODEL TOWN, DELHI ON S.A.

I identify the petitioner nos. 1 to 6, Mayank Bansal, Rakesh Bansal, Smt. Rani Bansal, Varun Garg, Ms. Shruti Garg (petitioner no.4 - Ms. Shipra Bansal is not present), as being accused arrayed in FIR No. 432/2016 under Sections 498A/420/406/377/34 Indian Penal Code, 1860 registered at PS Model Town, for the offences alleged under Section 377 of the Indian Penal Code, 1860 against the petitioner no.1 alone. The petitioner no. 4 is not present.

I identify the respondent no.2, Eliza Gupta as being the complainant of the said FIR. I identify the photograph of petitioner no.4, Ms. Shipra Bansal, which is placed on the record and exhibited as ex. CW-1/A. Proofs of identify of the other petitioners have been produced (original seen and returned) and photocopies thereof are annexed as Ex. CW-1/B to CW-1/D.

R.O. & A.C.

ANU MALHOTRA, J.

24.4.2018

Item no. 93
CRL. MC No. 5290/2017

24.4.2018

MAYANK BANSAL AND ORS. VS. STATE AND ANR.

STATEMENT OF MS. ELIZA GUPTA, AGED 30 YEARS, D/O. ANIL GUPTA, R/O. K-1, MODEL TOWN-III, DELHI – 110 009, ON S.A.

My affidavit in support of the petition bears my signatures at points A and B on exhibits CW-2/A. A settlement has been arrived at between me and the petitioner on 28.2.2017 before the Delhi High Court Mediation and Conciliation Centre, Delhi High Court, and the said settlement agreement bears my signatures thereon on each page thereof as is also visible on page 63 of the petition which is the last page of the said settlement at point A and exhibited as ex. CW-2/B.

I have signed the affidavit and the settlement documents voluntarily of my own free will, accord and without any pressure, fear, threat, duress or coercion from any quarter. I do not oppose the prayers made by the petitioner nos. 1 to 6 seeking quashing of the FIR No. 432/2016 under Sections 498A/420/406/377/34 Indian Penal Code, 1860 registered at PS Model Town, or for the offence alleged under Section 377 of the Indian Penal Code, 1860 against the petitioner no.1, in terms of the settlement arrived at between me and the petitioners, and since the marriage between the petitioner no.1 and myself has been dissolved by way of a decree of divorce by mutual consent on 31.10.2017, in HMA No. 1372/2017 from the Court of Principal Judge, Family Courts, North District, Delhi, the attested copy thereof is exhibited as Ex. CW-2/B.

In terms of the said settlement, a total sum of Rs. 40 lacs was to be given to me by the petitioners, out of which Rs. 25 lacs have been received and the balance sum of Rs. 15 lacs has been given to me today in Court vide bearing DD No. 011869 dated 21.4.2018 drawn on IDBI Bank, photocopy of which is exhibited as Ex. CW-2/D. There are no claims of mine left against the petitioner.

I have done LL.M. and am working as an Assistant (Judicial) in the NGT (National Green Tribunal).

I have given my statement voluntarily and I want to start life afresh.

R.O. & A.C.

ANU MALHOTRA, J.

24.4.2018