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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 184/2018**

KAMAL KISHOR & ORS Petitioners
Through: Mr.Dileep Kumar, Advocate

versus

STATE OF NCT DELHI & ANR Respondents
Through: Mr.Izhar Ahmad, APP for State with
ASI Neeraj, PS Dabri
Mr.Prashant Tanwar, Adv for R-2
with respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **15.01.2018**

Crl.M.A. No.747/2018 (for exemption)

This is an application filed on behalf of the petitioners seeking exemption from filing the certified copies of the annexures.

The exemption is allowed subject to just exceptions.

Crl.M.A. No. 749/2018 (for condonation of delay)

This is an application filed on behalf of the petitioners seeking condonation of delay in refiling the petition.

For the reasons stated in the application, the application is allowed and the delay in refiling the petition is condoned.

Crl.M.C. No.184/2018 and Crl.M.A. No. 748/2018

Vide the present petition, the petitioners seek quashing of FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri submitting *inter alia* to the effect that a settlement has been arrived at between the petitioners and the

respondent No.2 vide a memorandum of understanding dated 21.11.2016 (EX.CW-2/B) executed between the petitioners and the respondent No.2. whereby the marriage between the petitioner No.1 and the respondent No.2 has since been dissolved vide a decree of divorce through mutual consent dated 1.9.2017 under Section 13 B (2) of the Hindu Marriage Act, 1955 in HMA No.2585/2017 of the Judge, Family Courts, Dwarka and the certified copy of the decree of divorce is Ex.CW2/C.

The Investigating Officer of the case is present and has identified the petitioners and the respondent No.2 present in the Court today. Proofs of identity have been produced by the petitioners No.1 to 3 as being the accused arrayed in the FIR in question and the respondent No.2 present in the Court. The proofs of identity of the petitioners No.1 to 2 are on the record in the form of Aadhar Cards, petitioner No.3 in the form of Election Commission Identity Card being Ex.CW-1/A, Ex.CW-1/B and Ex.CW-1/C and the proof of identity of the respondent no.2 in the form of Election Commission Identity Card being EX.CW-1/D respectively.

The respondent No.2 on her examination on oath by the Court has affirmed having signed her affidavit (EX.CW-2/A) annexed to the petition and also testified to having signed the settlement agreement (EX.CW-2/B) at the Counselling Cell, Family Courts Dwarka dated 21.11.2016 executed between her and the petitioners voluntarily of her own accord without any duress, coercion or pressure from any quarter. She further testified to the effect that pursuant to the settlement arrived at between her and the petitioners,

a sum Rs. 6,00,000/- (Rs.Six lakhs only) and the Maruti-800 bearing No. DL-7CK047 as detailed in EX.CW-2/B have already been received by her previously and the balance sum of Rs.1,50,000/- (Rs.One Lakh Fifty Thousand only) has been received by her today in Court vide a banker's cheque bearing No. 229499 dated 13.11.2017 in her favour drawn on the State Bank of India, the photocopy of which is on the record as Ex.CW-2/D and now there are no claims of hers left against the petitioners. She further testified to the effect that as per the settlement the custody of the two minor children, *namely*, Tanishka and Rishabh born out of the wedlock shall continue to remain with her.

Learned APP for the State also, in the facts and circumstances, does not oppose the prayer made by the petitioners seeking quashing of FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri.

In view of the statement made by the respondent No.2 duly identified by the Investigating Officer of the case and the record and the factum that the respondent No.2 has studied till standard Xth and the non-opposition on behalf of the State, there appears no reason to disbelieve the statement made by the respondent No.2 that she has arrived at the settlement with the petitioners voluntarily of her own accord without any duress, coercion or pressure from any quarter and that she does not seek the continuance of the FIR against the petitioners as apparently the FIR is indicated to have been registered due to a matrimonial discord which has since been resolved vide a decree of divorce through mutual consent dated 1.9.2017 under

Section 13 B (2) of the Hindu Marriage Act, 1955 in HMA No.2585/2017 of the Judge, Family Courts, Dwarka, 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 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 in the interest of justice to put a quietus to the litigation between the parties so that peace and harmony between them is restored.

In view thereof the prayer made by the petitioners seeking quashing of the FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri and all consequential proceedings emanating therefrom against the petitioners No.1, 2 and 3 i.e. Shri Kamal Kishor, Smt. Kaushalya and Shri Ram Kishor is thus allowed and the FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri and all consequential proceedings emanating therefrom are thus quashed against the petitioners.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 15, 2018/sv

IN THE HIGH COURT OF DELHI: NEW DELHI

Item No. 82

Crl. M.C. 184/2018

KAMAL KISHOR & ORS. Vs. STATE & ANR.

15.01.2018

**CW-1 ASI NEERAJ POLICE STATION DABRI
ON S.A.**

I identify the petitioners No.1, 2 and 3, *namely*, Kamal Kishor, Kaushalya and Ram Kishore as the accused and the respondent No.2 Bharti, the complainant of the FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri present in the Court today. The original Aadhaar Cards of the petitioners No.1 No.223632942755, Petitioner No.2 787826624534, and Election Commission Identity Card of Petitioner No.3 bearing No. TAX0188912 and the Election Commission Identity Card of the respondent No.2 bearing No.ABL1296227 have been produced, the photocopies of the same qua the petitioners No.1 to 3 being Ex.CW-1/A, Ex.CW-1/B and Ex.CW-1/C and of the respondent No.2 being Ex.CW-1/D respectively (Originals seen & returned.).

RO & AC

15.01.2018

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

Item No. 82

Crl. M.C. 184/2018

KAMAL KISHOR & ORS. Vs. STATE & ANR.

15.01.2018

CW-2 STATEMENT OF MS. BHARTI D/O BABU LAL, AGED 29 YEARS, R/O L-115A, CHANAKYA PLACE-II, C-I, JANAKPURI

On S.A.

I have studied till standard Xth.

My affidavit dated 18.11.2017, bears my signatures at points A and B on Ex.CW-2/A.

A settlement has been arrived at between me and the petitioners No. 1 to 3, *namely*, Kamal Kishor, Kaushalya and Ram Kishore on 21.11.2016 at the Counselling Cell, Family Courts Dwarka, the photocopy of which bears my signatures thereon on each page thereof on EX.CW-2/B. I have signed the said document voluntarily of my own accord without any duress, coercion or pressure from any quarter.

The marriage between me and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent vide decree dated 1.9.2017 under Section 13 B (2) of the Hindu Marriage Act, 1955 in HMA No.2585/2017 of the Judge, Family Courts, Dwarka, certified copy of which decree of divorce is Ex.CW-2/C.

Pursuant to the settlement arrived at between me and the petitioners, I have already received a sum of Rs.6,00,000/- and the Maruti-800 bearing No.DL-7CK047 as detailed in EX.CW-2/B. Pursuant to the settlement the custody of the two minor children, *namely*, Tanishka and Rishabh born out of the wedlock shall continue to remain with me. As per the settlement a sum of Rs.1,50,000/- has been received by me today from the petitioners

vide a banker's cheque bearing No.229499, dated 13.11.2017 drawn on the State Bank of India, Trilokpuri Branch, New Delhi. The photocopy of the demand draft is Ex.CW-2/D(original seen and returned).

In view of the settlement arrived at between me and the petitioners, I do not seek any further action against the petitioners No.1, 2 and 3, *namely*, Kamal Kishor, Kaushalya and Ram Kishore and I do not seek the petitioners to be punished in relation to the FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri. There are now no claims of mine left against the petitioners I thus do not oppose the prayer made by the petitioners No.1, 2 and 3, *namely*, Kamal Kishor, Kaushalya and Ram Kishore vide the present petition CrI.M.C. No.184/2018 seeking quashing of FIR No.583/2013, under Sections 34/406/498A Indian Penal Code, 1860, Police Station Dabri.

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

RO & AC
15.01.2018

ANU MALHOTRA, J