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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5330/2017**

AVIRAL JAIN & ORS Petitioners
Through: Mr.I.A. Alvi, Advocate

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents
Through: Mr.Sanjeev Sabharwal, APP for State
With SI Robin Singh, PS Civil Lines.
Mr.Ravi Verma, Adv for R-2 with
R-2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **13.02.2018**

Crl.M.A. No. 20865/2017 (Exemption)

Exemption allowed, subject to just exceptions.

Crl.M.C. No.5330/2017

Vide the present petition, the petitioners No. 1 to 5, *namely*, (1) Aviral Jain, (2) Smt. Manju Jain, (3) Arun Jain, (4) Palak Jain and (5) Deepak Jain seek quashing of the FIR No.78/16, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Civil Lines, submitting *inter alia* to the effect that a settlement has been arrived at between the petitioners and the respondent No.2 and 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 23.11.2017 under Section 13 B (2) of the Hindu Marriage Act, 1955 in HMA No. 1363/2017 of the Principal Judge, Family Courts, Central District, Tis Hazari Courts, Delhi and the copy of the decree of divorce is Ex.CW-2/D and all claims between the petitioners and

the respondent No.2 have also been settled.

The Investigating Officer of the case is present and has identified the petitioners No. 1 to 5, *namely*, (1) Aviral Jain, (2) Smt. Manju Jain, (3) Arun Jain, (4) Palak Jain and (5) Deepak Jain as being the accused and the respondent No.2 as being the complainant of the FIR in question present in the Court today. The proofs of identity of the petitioners No.1 to 5 are on the record in the form of the photocopies of the Election Commission Identity Cards, being Ex.CW-1/A, Ex.CW-1/B, Ex.CW-1/C, Ex.CW-1/D and Ex.CW-1/E, and the proof of identity of the respondent no.2 in the form of Election Commission Identity Card being EX.CW-1/F respectively, originals of which have been seen and returned.

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 to having signed the Mediation Settlement dated 11.10.2017 arrived at the Mediation Centre, THC, Delhi Ex. CW2/B and Memorandum of Understanding/ settlement deed annexed to the petition Ex. CW2/C voluntarily of her own accord without any duress, pressure or coercion from any quarter and also testified to the effect that all claims with the petitioners have been settled and the marriage between her and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent dated 23.11.2017 under Section 13 B (2) of the Hindu Marriage Act, 1955 in HMA No. 1363/2017 of the Principal Judge, Family Courts, Central District, Tis Hazari Courts, Delhi, the certified copy of which is on the record as EX.CW-2/D. The respondent No.2 has further testified to the effect that pursuant to the mediation settlement deed dated 11.10.2017

EX.CW-2/B a total sum of Rs. 33.50 Lakh, her jewellery and dowry articles were to be paid by the petitioners to her of which a sum of Rs.4,50,000/- has been received by her previously and the balance sum of Rs.7,00,000/- and Rs.16.50 lakhs and her jewellery and dowry articles have been received by her previously and the balance sum of Rs.10 lakhs has been handed over to her today in the Court vide a Demand Draft bearing No.506475 dated 07.02.2018 drawn on the ICICI Bank, the copy of which is EX.CW-2/E, in her favour and therefore no claims of hers are now left against the petitioners. The respondent No.2 has further testified to the effect that the minor child born of the wedlock between her and the petitioner No.1, in terms of the settlement deed/Memorandum of Understanding, is living with the petitioner No.1 and shall continue to live with the petitioner No.1. The respondent No.2 has further testified to the effect that she is a Chartered Accountant and she does not oppose the prayer made by the Petitioners No. 1 to 5, *namely*, (1) Aviral Jain, (2) Smt. Manju Jain, (3) Arun Jain, (4) Palak Jain and (5) Deepak Jain and that she does not seek that any of the petitioners be punished in relation to the offences punishable under Sections 498A/406/34 IPC and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter.

In view of the deposition made by the respondent No.2 and the averments made in the petition, learned APP for the State also does not oppose the prayer made by the petitioners seeking quashing of FIR No.78/16, under Sections 498A/406/34 Indian Penal Code, 1860, Police Station Civil Lines.

Taking into account the deposition of the respondent No.2 and

the factum that she is sufficiently educated, there appears no reason to disbelieve her statement that she has arrived at a settlement with the petitioners voluntarily of her own accord without any duress, pressure or coercion from any quarter and in view of the FIR having apparently been registered due to a matrimonial discord which has now since been resolved vide the dissolution of marriage between the petitioner No.1 and the respondent No.2 vide a decree of divorce through mutual consent dated 23.11.2017 under Section 13 B (2) of the Hindu Marriage Act, 1955 in HMA No. 1363/2017 of the Principal Judge, Family Courts, Central District, Tis Hazari Courts and the factum that the respondent no. 2 does not oppose the prayer made by the petitioners seeking quashing of the FIR in question and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter and 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 to allow the prayer made by the petitioners seeking quashing of the FIR in question and all consequential proceedings emanating therefrom against the petitioners No. 1 to 5, *namely*, (1) Aviral Jain, (2) Smt. Manju Jain, (3) Arun Jain, (4) Palak Jain and (5) Deepak Jain is allowed and thus the FIR No.78/16, Police Station Civil Lines under Sections 498A/406/34 Indian Penal Code, 1860, and all consequential proceedings emanating therefrom against the petitioners No.1 to 5 are quashed.

The petition is disposed of.

ANU MALHOTRA, J

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AVIRAL JAIN & ORS

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

Statement of CW1 : SI Robin Singh, PS Civil Lines, Delhi.

ON S.A.

I identify the petitioner no. 1 Shri Aviral Jain, s/o Shri Arun Jain, petitioner no.2 Smt. Manju Jain, w/o Shri Arun Jain, petitioner no.3 Shri Arun Jain, s/o Shri P.P. Jain, petitioner no.4 Ms. Palak Jain, w/o Shri Deepak Jain and petitioner no.5 Shri Deepak Jain, s/o Shri Satender Jain as being the accused arrayed in FIR No.78/2016, registered at PS Civil Lines, under Sections 498A/406/34 Indian Penal Code, 1860. I also identify the respondent no.2 Ms. Sakshi Jain present today in Court as being the complainant thereof. The proofs of identity of the petitioner nos. 1 to 5 and of the respondent no. 2 in the form of photocopies their Election Commission I-Card are on the record as Ex. CW1/A and Ex. CW1/F respectively. (Originals seen and returned.)

ANU MALHOTRA, J

RO & AC

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CRL.M.C. 5330/2017

AVIRAL JAIN & ORS

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

Statement of CW2 : Smt. Sakshi Jain, d/o Shri Deepak Jain, aged 30 years, r/o C-16, BM Rohtagi Apartments-1, Ram Kishore Road, Civil Lines, Delhi-110054.

ON S.A.

My affidavit annexed to the petition bears my signature thereon at points-A & B on Ex.CW2/A. The mediation settlement dated 11.10.2017 arrived at between me and the petitioners arrived at the Mediation Centre, Tis Hazari Courts, Delhi bears my signature thereon at point-A along with Memorandum of Understanding/settlement deed annexed thereto, copies of which are on the record as Ex.CW2/B and CW2/C respectively. I have signed all these documents voluntarily of my own accord without any duress, pressure or coercion from any quarter.

I do not oppose the prayer made by the the petitioner no. 1 Shri Aviral Jain, petitioner no.2 Smt. Manju Jain, petitioner no.3 Shri Arun Jain, petitioner no.4 Ms. Palak Jain and petitioner no.5 Shri Deepak Jain seeking quashing of the FIR No.78/2016, registered at PS Civil Lines, under Sections 498A/406/34 Indian Penal Code, 1860 in view of the settlement arrived at between me and the petitioners nor do I want the petitioner nos. 1 to 5 to be punished in relation thereto

The marriage between me and the petitioner no.1 has been dissolved vide decree of divorce through mutual consent under Section 13(B)(2) of the Hindu Marriage Act, 1955 vide decree dated 23.11.2017 of the Court of the Principal Judge, Family Court, Central District, THC, New Delhi in HMA No. 1363/2017, copy of which is on the record as Ex. CW2/D.

A settlement has been arrived at between me and the petitioners and pursuant to the same a sum of Rs. 33.50 lakh and my jewellery & dowry articles were to be paid and handed over to me by the petitioners, of which a sum of Rs. 7 lakh and 16.50 lakh and my jewellery and dowry articles have been received by me previously and the balance sum of Rs. 10 lakh has been handed over to me by the petitioner today in Court in the form of a demand draft bearing no. 506475 dated 07.02.2018 in my favour drawn on ICICI Bank, copy of which is on the record as Ex. CW2/E. There are no claims of mine left against the petitioners now. The minor child born of the wedlock between me and the petitioner no.1, in terms of the settlement is living with the petitioner no.1 and shall continue to live with the petitioner no.1.

I am a Chartered Accountant,

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 13, 2018**