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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 5370/2017

SAURABH KASHYAP & ANR

..... Petitioner

Through Mr. S.S. Hora, Mr. Z. Ahmad, Advs.

versus

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

Through Mr. Sanjeev Sabharwal, APP for State
with W/SI Anupama Rathi, PS Kirti
Nagar.

Mr. Ajay Katyal, Adv. for R2 with R2
in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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06.02.2018

Vide the present petition, the petitioner no. 1 Saurabh Kashyap s/o Late Sh. Dharam Pal Kashyap and the petitioner no. 2 Smt. Sunita Kashyap w/o Late Sh. Dharam Pal Kashyap seek quashing of the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 submitting *inter alia* to the effect that a settlement has been arrived at between the petitioners and the respondent no. 2 and all disputes between the petitioner and the respondent no. 2 have since been resolved.

The Investigating Officer of the case has identified the petitioner no. 1 Saurabh Kashyap s/o Late Sh. Dharam Pal Kashyap and the petitioner no. 2 Smt. Sunita Kashyap w/o Late Sh. Dharam Pal Kashyap as being the

accused in relation to the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860. He has also identified the respondent no. 2 Neha Kashyap @ Neha Behl d/o Sh. Madan Mohan Behl present today in the court i.e. the complainant of the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860. Photocopies of the proof of identity of the petitioners no. 1 to 2 and the respondent no. 2 are Ex. CW1/A to Ex. CW1/C respectively, originals of which have been seen and returned.

The respondent no. 2 on her examination by the Court on oath has testified to having sworn her affidavit as Ex.CW2/A annexed to the petition and has also testified to having signed the mediation settlement dated 01.09.2016 arrived at between the parties at Delhi Mediation Centre, Tis Hazari Courts, Delhi, copy of which is on record as Ex.CW2/B. The respondent no. 2 has testified to the effect that in view of the settlement arrived at between herself and the petitioners, a total sum of Rs.4,50,000/- was to be paid by the petitioners to her and out of which she has already received a sum of Rs.3,00,000/- previously from the petitioners and the balance sum of Rs.1,50,000 has been received by her today in the Court vide Banker's cheque bearing no. 314206 dated 30.01.2018 drawn on State Bank of India, copy of which is on record as Ex.CW2/C. She has further testified to the effect that the marriage between herself and the petitioner no. 1 has since been dissolved vide a decree of divorce dated 11.09.2017 of the Court of the Additional Principal Judge, Family Court (West), Tis Hazari Courts, New Delhi in HMA No. 650/17 under Sections 13B(2) of the Hindu Marriage Act, 1955, certified copy of which is on record as Ex.CW2/D and

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that she has also received the gold and diamond jewellery in terms of the settlement. She has further testified to the effect that now there are no claims of hers left against the petitioners in relation to the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 and that the minor child born out of the wedlock between herself and the petitioner no. 1 shall remain in the custody of the petitioner no. 1 and that she has studied till 12th standard and she previously used to work in a boutique. She further testified to the effect that she does not want that the petitioners no. 1 to 2 named above to be punished and she has no opposition to the quashing of the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom.

Learned APP for the State also in the circumstances of the case does not oppose the prayer made by the petitioners seeking quashing of the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 in view of the settlement arrived at between the parties.

In view of the dissolution of the marriage between the petitioner no. 1 and the respondent no. 2 vide a decree of divorce dated 11.09.2017 of the Court of the Additional Principal Judge, Family Court (West), Tis Hazari Courts, New Delhi in HMA No. 650/17 under Sections 13B(2) of the Hindu Marriage Act, 1955 and the factum that all claims between the petitioners and the respondent no. 2 have since been settled, there appears no reason to disbelieve the statement made by the respondent no. 2 that she has arrived at the settlement voluntarily of her own accord without any duress or coercion

from any quarter and as the matrimonial discord between the petitioner and the respondent no.2 has been resolved, thus to maintain peace and harmony 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. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom is allowed and thus the FIR No. 586/15, registered at PS Kirti Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner no. 1 Saurabh Kashyap s/o Late Sh. Dharam Pal Kashyap and the petitioner no. 2 Smt. Sunita Kashyap w/o Late Sh. Dharam Pal Kashyap are quashed.

The petition is disposed of.

ANU MALHOTRA, J

FEBRUARY 06, 2018/MK