

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.31303 of 2017
Date of decision: 12th April, 2019

Deepak Sharma & others

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Lekh Raj Sharma, Advocate for the petitioners.

Mr. A.S. Sandhu, Addl. Advocate General, Punjab
for respondent No.1/State.

Ms. Amandeep Kaur, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

A case by way of FIR No.211 dated 10.06.2014 under Sections 498A, 406, 506, 323, 148, 149, 120B, 313, 511 IPC pertaining to Police Station Tarn Taran was got registered by respondent No.2 Deepti Sharma against her husband and the family of husband on the basis of allegations which are well spelled out in the FIR (Annexure P1) and which need not be reiterated here. The petitioners, husband Deepak Sharma, mother-in-law Veena, sister-in-law Nidhi, father-in-law Hans Raj and Prem Kumar have invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking quashment of this FIR and consequential proceedings arising therefrom on the basis of compromise before the Lok Adalat where the petitioners claimed that half of the settled amount has

been received by the wife and she has subsequently resiled from the same.

Heard Mr. Lekh Raj Sharma, Advocate for the petitioners; Mr. A.S. Sandhu, Addl. Advocate General, Punjab representing respondent No.1/State; Ms. Amandeep Kaur, Advocate on behalf of respondent No.2 and perused the records.

The contentions of learned counsel for the petitioners Mr.Lekh Raj Sharma, Advocate are not at all substantiated in entirety. The statement of Deepti Sharma (Annexure P2) and that of Deepak Sharma (Annexure P3) made on 12.11.2016 before the learned Presiding Officer, National Lok Adalat-cum-Additional District Judge, Tarn Taran are reproduced as below respectively to lay emphasis:-

“With the intervention of the Lok Adalat. I have agreed to take divorce from Deepak Sharma through mutual consent by filing a separate petition under Section 13-B of the Hindu Marriage Act, 1955.

*RO&AC
Deepti Sharma”*

“With the intervention of the Lok Adalat. I have agreed to take divorce from Deepti Sharma through mutual consent by filing a separate petition under Section 13-B of the Hindu Marriage Act, 1955, by giving her a sum of rupees 04,00,000/- in lieu of the full and final settlement and the maintenance. In view of the compromise I have hereby withdrawn the present petition with a liberty to file a separate

petition under Section 13-B of the Hindu Marriage Act, 1955.

*RO&AC
Deepak Sharma”*

A perusal of both the statements shows that the wife Deepti Sharma has agreed to take divorce from the husband Deepak Sharma through mutual consent by filing a separate petition under Section 13-B of the Hindu Marriage Act, 1955; whereas the husband has stated in his stand that he has agreed to take divorce from Deepti Sharma through mutual consent by way of a separate petition under Section 13-B of the Hindu Marriage Act by giving her a sum of Rs.04,00,000/- in lieu of the full and final settlement and the maintenance; and in view of the compromise he has withdrawn the present petition with liberty to file separate petition under Section 13-B of the Hindu Marriage Act. Thus, critically evaluating the same shows that it was the settlement in respect of a divorce petition under Section 13B of the Hindu Marriage Act, 1955 which has been brought about between the parties and which is corroborated from the orders of the National Lok Adalat dated 12.11.2016 (Annexure P4) which are reproduced as under:-

“Present: Parties with their counsels.

File taken up today during the National Lok Adalat. Parties have compromised the matter. Statement of both the parties recorded. In view of the statement of petitioner the present petition stands dismissed as withdrawn. To come up on 15.11.2016 for consigning the same in judicial record room.”

Order dated 16.11.2016 (Annexure P5) of the learned District Judge, Tarn Taran reads as follows:-

*“Present: Sh.Pankaj Joshi, Advocate, counsel for petitioner.
Mr. Satinderpal Sokhey, Advocate, counsel for respondent.*

File received from the National Lok Adalat and taken up today as I was on leave on 15.11.2016.

Heard. In view of the statement of the petitioner and the respondent recorded before the Lok Adalat on 12.11.2016, this petition is hereby dismissed as withdrawn. File be consigned to the record room.

Pronounced.”

Even from this order, it stands emphatically clear that it was the petition for divorce which was dismissed as withdrawn. How or by what means learned counsel for the petitioners claims that a full and final settlement has come about between the husband and the wife, which includes the present criminal prosecution of the accused, could not be answered by learned counsel for the petitioners. Furthermore, the other highlight of the averments of the counsel is the statement of husband Deepak Sharma (Annexure P6) made on 05.12.2016, which too needs to be reproduced and reads as follows:-

“My marriage was solemnized with the other petitioner according to Hindu rites and ceremonies on 9.9.2013 at Tarn Taran. The marriage was cohabited and out of our wedlock one female child namely Sunaina was born.

Due to temperamental differences we could not pull on together and despite efforts of our relations and respectables we could not reconcile our differences and now we have decided to get our marriage dissolved by way of mutual consent. There are no chances of our living together in future also. We are living separately from each other for the last more than one year.

As agreed upon between us, I will pay 4,00,000/- to petitioner No.2 towards her permanent alimony. Today I have paid rupees 2,00,000/- through demand draft No.743781 dated 30.11.2016 to petitioner No.2 Deepti Sharma and remaining Rs.2,00,000/- shall be paid by me to her on the second statement. The child namely Sunaina will remain in the custody of petitioner No.2. We shall be bound by the terms and conditions of our petition and in view thereof, our marriage may be dissolved accordingly by way of mutual consent.”

Therefore from this, it is much evident that this was settlement of payment of Rs.2.00 lacs in the divorce petition by mutual consent to set off claim of permanent alimony which pertains to the first motion of mutual divorce petition and whereby the husband had undertaken to pay balance amount of Rs.2.00 lacs by the second motion. To the specific query of the Court, learned counsel for the petitioners could not show any actual payment having been made to the wife by the husband in this divorce petition as agreed by the parties. The most important is the order of learned Additional District Judge, Tarn Taran

dated 25.07.2017 (Annexure P8) which is also reproduced to lay emphasis as under:-

*“Present: Petitioner Deepak Sharma along with Sh.Pankaj Joshi, Advocate.
Petitioner Deepti Sharma along with Sh.S.P. Lehri, Advocate.*

This petition was fixed for recording the statements of the petitioners on second motion. Today petitioner No.2 Deepti Sharma has come present and made a statement that she does not want to take divorce from petitioner No.1 Deepak Sharma and withdraws her consent dated 5.12.2016. Further petitioner No.1 Deepak Sharma has come present and moved an application along with photocopy of bank draft of Rs.2 lacs for placing on record as per statement dated 5.12.2016. Their statements in that regard, recorded separately.

It being a petition under Section 13-B of HMA, 1955 without consent of petitioner No.2 Deepti Sharma, it cannot proceed further. Accordingly, in view of statement of petitioner No.2 Deepti Sharma, this petition cannot proceed further and is hereby dismissed.”

From this, it is clear that the wife had given a statement that she does not want to take divorce from her husband and withdraws her consent earlier given on 05.12.2016 and in view of this withdrawal of the consent of the wife, the same was dismissed by the Court and which is corroborated from the statement of Deepti Sharma wife made on 25.07.2017 (Annexure P9), which reads as follows:-

“Stated that I do not want divorce and I want to withdraw my consent dated 5.12.2016.”

Though, Mr. Lekh Raj Sharma learned counsel for the petitioners has sought to lay emphasis on the fact that Rs.2.00 lacs stood paid and a draft of Rs.2.00 lacs was placed on the record through application (Annexure P10) on 25.07.2017 but the counsel could not bring about if this amount was withdrawn by the wife. Moreover, neither any full and final settlement agreement has been shown to the Court regarding the withdrawal of the present criminal case which is quite separate and distinct from divorce proceedings which were earlier pending between the two sides. Though with much fanfare, learned counsel for the petitioner has sought to place reliance on ‘**Sandip Somany vs. State of Haryana**’ (P&H) Law Finder Doc Id # 761349 (CRM-M No.8431 of 2014 decided on 23.02.2016), and ‘**Ranji v. State of Haryana**’ (P&H) Law Finder Doc Id # 772096 (CRM-M No.41402 of 2014 decided on 29.02.2016).

Since there is neither prima facie established proof brought to the notice of the Court as to any compromise agreement pertaining to all the litigation arising out of this wedlock due to matrimonial disaccord between the parties and withdrawal of all the civil and criminal cases so filed against each other, nor that the husband had in pursuance of this settlement paid full and final amount to the wife. Though, Hon’ble the Supreme Court in ‘**Ruchi Agarwal vs. Amit Kumar Agarwal & others**’ 2004(4) RCR(Criminal) 949 (SC), had quashed the criminal

proceedings against accused husband, but it was observed by their Lordships that where a party having received the relief which she wanted without contest on the basis of the terms of the compromise, the wife cannot back out of such a settlement. However, over here, as has been detailed and discussed above, neither any evidence that the wife after having received monetary compensation as full and final settlement of this dispute, has refused to do so much less any such terms of settlement has been proved before the Court to the hilt to the satisfaction of the Court. No doubt, the Court in exercise of inherent jurisdiction under Section 482 Cr.P.C. has powers to make *ex-debito justitiae* on one hand and to punish for its contempt on the other, and if a jurisdiction exists in a Court, the Court needs to exercise that power effectively; but sad to observe that none of the foregoing wantings could be established by the petitioners for this Court to exercise its extraordinary jurisdiction by virtue of inherent powers under Section 482 Cr.P.C. Thus, this Court does not come across any such eventuality which could impel it to invoke its powers under this inherent jurisdiction and the petition being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 12, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No