

**CRM-M -32813 of 2017**

Date of decision : February 25, 2019

Rishi Ahuja

....Petitioner

Versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN****Present:** Mr. Prateek Rathee, Advocate  
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

**ARVIND SINGH SANGWAN J.**

Prayer in this petition is for quashing of FIR No.106 dated 28.3.2016 under Section 406 IPC, Police Station Sushant Lok, District Gurugram (Annexure P-1); final report/challan dated 1.3.2017 (Annexure P-2) filed under Section 406 IPC and the subsequent proceedings arising out of the same FIR pending in the trial Court.

As per the allegations in the FIR registered by respondent No.2- Ekta Ahuja, wife of Rishi Ahuja, it is stated that she has one Honda Brio car No.HR-26-CE-8850 and about 1-1½ years ago her husband, i.e. petitioner had taken the same without her consent and is not returning it back despite demand and can use the same in criminal activity. It is further stated that her husband is a clever person and he can go to any extent and she want her car to be returned back. Legal action be taken.

Thereafter, the present FIR was registered. During the pendency

of the anticipatory bail, the petitioner offered some money in lieu of the car and on 5.9.2016, the Additional Sessions Judge, recorded the following statement of the respondent-complainant :-

*“Statement of Ekta d/o G.S. Sobti r/o J-503, Wembley Estate, Sector-50, Gurgaon on S.A.*

*Stated that I received the demand draft bearing No.003318 dated 26.8.2016 amounting to Rs.1,79,000/- drawn on HDFC Bank, Cyber City-II Branch, Gurgaon from Rishi Ahuja. I will not be responsible for any mishap or misuse of car in question that might have been committed by Rishi Ahuja or any other person. Since Rishi Ahuja has paid entire sum of Rs.5,00,000/- to me so I shall have no right over vehicle in question. However, Rishi Ahuja shall be liable for all liabilities relating to car in question. I also assist Rishi Ahuja for completion of formalities required for transferring vehicle in question like signing the NOCs in the name of the person whose in the possession of the car in question.*

*RO&AC  
Sd/-*

*Sd/-  
R.K. Mehta  
ASJ/Gurgaon/5.9.2016”*

It appears that, thereafter, the anticipatory bail application was allowed as the matter was amicably settled between the parties and entire sum of Rs.5.00 lacs was paid to the complainant.

While issuing notice of motion, it was noticed that since the FIR is registered as an outcome of a matrimonial dispute between the parties, there is a possibility of some amicable settlement and the case was referred to the Mediation and Conciliation Centre of this Court. However, no

settlement could be arrived at between the parties as per the report of the Mediator.

Counsel for the petitioner has submitted that from bare perusal of the FIR, no offence punishable under Section 406 IPC is made out as there was no *mens rea* on the part of the petitioner and the allegation in the FIR are that 1-1½ years ago, the petitioner has taken the car of the complainant and was not returning it back and the petitioner has already paid the entire sum of Rs.5.00 lacs, i.e. the agreed value of the car to respondent No.2-complainant who had acknowledged the same and suffered a statement before the Court of Additional Sessions Judge, Gurgaon on 5.9.2016. However, later on, on account of the other matrimonial dispute between the parties she has back out and is not adhering to the settlement between the parties.

Reply by way of affidavit of Assistant Commissioner of Police, DLF, Gurugram is on record and as per the reply, after a complete investigation, the report under Section 173 Cr.P.C. was presented before the trial Court and the case was then fixed for framing of the charges.

Learned State counsel, on instructions from the Investigating Officer, has submitted that now the charges have been framed and the case is fixed for prosecution evidence. It is further stated in the affidavit that *prima facie* offence under Section 406 IPC is made out from the FIR.

As per the reply by way of affidavit of counsel for respondent No.2 is also filed in which it is stated that the petitioner has withdrawn from the matrimonial alliance of the complainant and is residing in Bangalore and

the settlement was only for the purpose of anticipatory bail. It is further stated in the reply that the petitioner got married to respondent No.2 with an intention to take the alimony money from her which she has received from her ex-husband Gaurav Dewan and after receiving the amount, he has withdrawn from the matrimonial alliance.

It is further submitted that the petitioner is involved in 27 complainants in the Saket Court. However, the counsel for respondent No.2 could not dispute that the amount of Rs.5.00 lacs has been received by respondent No.2 by way of draft as the market value of the car.

Counsel for the petitioner has relied upon judgments of the Hon'ble Supreme Court in Mohd. Shamim Vs. Smt. Nahid Begum, 2005(1) RCR (Criminal) 697 and Ruchi Agarwal Vs. Amit Kumar Agrawal, 2004(4) RCR (Criminal) 949(SC), wherein it has been held that where the wife after entering into settlement and accepting money from the husband has backed out, considering the conduct of the wife continuation of the proceeding will be misuse of process of law and the FIR was quashed.

After hearing counsel for the parties, I find that though it appears that more than one litigation arising out of a matrimonial dispute between petitioner and respondent No.2 are pending. However, in the present FIR, which was registered on the basis of compromise that the petitioner-husband is not returning the car for the last 1-1½ years, the petitioner has paid the market value of the car, i.e. Rs.5.00 lacs and respondent No.2-wife has duly accepted the same. Therefore, finding that respondent No.2, despite having been received the entire amount is still

contesting the FIR, I find that it is a fit case where the FIR deserves to be quashed in the light of the judgment of the Hon'ble Supreme Court passed in Mohd. Shamim's and Ruchi Agarwal's case(s) (supra)

Accordingly, the petition is allowed and the FIR No.106 dated 28.3.2016 under Section 406 IPC, Police Station Sushant Lok, District Gurugram is quashed.

**February 25, 2019**  
*satish*

**( ARVIND SINGH SANGWAN )**  
**JUDGE**

Whether speaking/reasoned : Yes / No  
Whether reportable : Yes / No