

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

CRM-M-41446 of 2017.

Decided on:- February 13, 2019.

Dr. Aseem Garg.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Pushpinder Kaushal, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, D.A.G., Punjab.

Mr. Bipan Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate
for respondent No.3.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of the order dated 23.10.2017 (Annexure P-1) passed by respondent No.2-Punjab State Commission for NRIs, Chandigarh (for short, the Commission) in complaint (Annexure P-10) dated 05.07.2016 filed by respondent No.3, whereby the Commission has made recommendation to State of Punjab, through DGP, Punjab to register a case against the petitioner and his father under the provisions of the Protection of Women from Domestic Violence Act, 2005 as well as Sections 406 and 498-A IPC with a

further direction to complete the investigation expeditiously and to file a police report.

During pendency of present petition, when the parties had shown their inclination to settle the dispute amicably, this Court vide order dated April 25, 2018 directed them to appear before the Mediation and Conciliation Centre of this Court. Pursuant to the aforesaid order, the parties appeared before the Mediator and a report dated July 18, 2018 has been received from the Director, Mediation and Conciliation Centre of this Court, which is based on the report dated July 13, 2018 passed by the Mediator, whereby both the parties have settled their dispute by way of amicable settlement.

Learned senior counsel for the petitioner has argued that as per the terms of settlement, the petitioner was required to make a payment of Rs.80 lakh to respondent No.3-complainant as permanent alimony and compensation. The first instalment of Rs.25 lakh was to be paid by way of a bank draft at the time of presentation of the application for converting the pending divorce petition into petition under Section 13-B of the Hindu Marriage Act, 1955 and thereafter, the second instalment of Rs.30 lakh was to be paid by the petitioner to respondent No.3-complainant by way of a bank draft at the time of second motion statement in the mutual divorce petition.

Learned senior counsel for the petitioner further states that as per the terms and settlement so arrived between the parties, divorce under Section 13-B of the Hindu Marriage Act, 1955 has already been granted by learned District Judge, Mansa vide judgment and decree dated 04.02.2019. He states that as per the terms of settlement, a sum of Rs.55 lakh has already been paid

by the petitioner to respondent No.3 and the remaining amount of Rs.25 lakh is being handed over to learned senior counsel for respondent No.3.

On the other hand, learned senior counsel for respondent No.3 fairly admits the factum of settlement so arrived between the parties and accepts the bank draft of Rs.25 lakh for its onward delivery to respondent No.3.

I have heard learned counsel for the parties.

It is a conceded fact that the matter has been resolved between the petitioner and respondent No.3 during the mediation proceedings which took place before the Mediation and Conciliation Centre of this Court on July 13, 2018. The relevant paragraph No.7 of the settlement so arrived at between the parties, reads as under:

“7. The following settlement has been arrived at between the parties hereto:

- a) The parties have agreed that since they (Dr. Aseem Garg and Dr. Monika Goyal) will not be able to live as husband and wife and have decided to part ways by getting divorce from each other on the basis of mutual consent. It has been agreed that the parties shall file an application in the pending Divorce Petition in the Court at Mansa, for conversion into under Section 13B HMA or file fresh petition under Section 13B of HMA, which application will be filed within a period of two weeks from today i.e. 27.07.2018.*
- b) Both the parties have agreed that the custody and guardianship of the girl child Tulip Garg will remain with the first party/father. The second party has agreed that*

neither she nor her family members will claim the custody/guardianship/visitation rights of the child in future for the welfare of the child under any provision of law. In case any petition is filed by the second party, the first party would have the right to present this settlement and request the Court to reject such claim made by the second party as per the terms settled today i.e. 13.07.2018.

c) The first party has agreed to make the payment of Rs.80,00,000/- (Rupees Eighty Lacs only) to the second party as permanent alimony (past, present and future maintenance) and compensation of all the gift articles including Istridhan of the first party as a full and final settlement of all the disputes between the parties. The second party has further stated that she will not claim from the first party anything after receiving the full settled amount of Rs.80,00,000/- (Rupees Eighty Lacs only). The above-said amount of Rs.80,00,000/- (Rupees Eighty Lacs only) shall be paid by the first party to the second party in three instalments in the following manner:

(i) The first instalment of Rs.25,00,000/- (Rupees Twenty Five Lacs only) will be paid by the first party to the second party by way of Bank Draft at the time of presentation of the application for converting the pending divorce petition under Section 13B of HMA, which will be filed by both the parties within two weeks from today i.e. 27.07.2018.

(ii) It has also been agreed that the second instalment of Rs.30,00,000/- (Rupees Thirty Lacs only) shall be paid by the first party to the second party by way of

Bank Draft at the time of second motion statement in the mutual divorce petition.

(iii) It has further been agreed that the third and final instalment of Rs.25,00,000/- (Rupees Twenty Five Lacs only) shall be paid by the first party to the second party by way of Bank Draft at the time of disposal of the present petition bearing CRM-M-41446 of 2017 before the Hon'ble High Court.

d) The passport and OCI Card of the girl child, which is presently with the second party/wife, will be handed over to the first party at the time of second motion statement in the mutual consent divorce petition.

e) The first party has further stated that there is one joint LIC policy in the name of both the parties and the second party has stated that she will not have any objection if it is closed by the first party or the said amount is given to the first party. She has further agreed that she will submit the necessary document at the time of second motion in the mutual consent divorce petition.

f) It has been agreed by both the parties that they will present the copy of the present settlement in the Courts where the cases filed by them and their family members against each other are pending and will request the Court to permit them to withdraw the cases in view of this present settlement, which will be done by them before the disposal of the Crl. Misc. No.M-41446 of 2017 pending before this Hon'ble High Court.

g) Both the parties have agreed that they and their family members will obey/carry out the present settlement/agreement in all fairness. The first party has

stated that due to the matrimonial dispute he had filed application/appeal/complaint to the Income Tax Department against the brother of the second party and because of which penalty was imposed upon the brother of the second party and her family. It has been agreed by the first party that since now his matrimonial dispute has been settled with the second party, as such, they will complete all necessary formalities as required by the I.T. Department in withdrawing complaint/appeal filed, against the second party and her family members in the Income Tax and Sales Tax Department and will make appropriate statement/affidavit as and when required after recording the first motion statement.

h) It has been further mutually agreed by both the parties that if any complaint/case is pending before any competent court of law/authority, which is not in the knowledge of either of the parties or has escaped their attention shall also be withdrawn by them.”

In view of the amicable settlement so arrived between the petitioner and respondent No.3, this Court finds that the impugned order dated 23.10.2017 (Annexure P-1) passed by the Commission is liable to be set aside.

Accordingly, the present petition is allowed and the impugned order dated 23.10.2017 passed by the Commission is set aside.

At the same time, this Court finds that the order dated 23.10.2017 passed by the Commission is nothing but a direction to the police authority to register an FIR, complete investigation and file a police report, which the Commission has no jurisdiction to issue such like direction. This

Court feels that the Commission has not been assisted properly in the case. Even otherwise, for offences under the Protection of Women from Domestic Violence Act, 2005, no such direction, to register an FIR, can be issued, as only a complaint is required to be filed as per the Act itself and such complaint has already been filed by the respondent no.3, which was pending consideration before the Court. In the case of **Punjab Tourism Development Corporation Ltd. and another Vs. The Punjab State Commission for NRIs and another 2017(2) Law Herald 1701**, this Court has held as under:-

“Having said so we have also perused the order impugned in the writ proceedings and are of the opinion that the Commission did not transgress its powers and after establishing the complaint made before it merely made recommendations to the State of Punjab. Evidently, it was upto the State and its functionaries to accept these recommendations in whole or in part but for reasons best known to them they missed the plain language of the Commission to rush this Court in writ proceedings. The learned Single Judge in this regard has observed as follows :-

“...The interest of an NRI is to be safeguarded and protected by recommending suitable relief for the complainant. The NRI Commission thus has not exceeded jurisdiction in ordering refund of the amount deposited by the complainant along with interest.”

Though the last paragraph of the order of the Commission does reflect that the Commission has recommended the State Government to register a case but the later part of the order shows that there is a direction to the police to investigate the matter expeditiously and file a police report,

leaving no other option for the police department except to register an FIR against the petitioner. Thus, this Court finds that the Commission has exceeded its jurisdiction.

February 13, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No