

1. **FAO No. 1677 of 2018 (O&M)**
Date of Decision: 19.3.2019

Vs.

2. CRM-M-32047 of 2018 (O&M)

Vs.

State of Haryana and another Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Jagjot Singh, Advocate
for the appellant (in FAO-1677-2018).

Mr. A.S.Khosa, Advocate
for the respondent (in FAO-1677-2018) and
for the petitioners (in CRM-M-32047-2018).

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of FAO No. 1677 of 2018 titled 'Nitin Sharma versus Shalu Sharma' which has arisen from the dismissal of a petition filed under Section 13-B of the Hindu Marriage Act, 1955 (*Act* for short) by both the parties as the respondent-wife had resiled from giving her consent while recording her statement at the second motion stage and a Criminal Miscellaneous No. M-32047 of 2018 titled 'Shalu Sharma and others versus State of Haryana and another', in which the petitioners herein

have prayed for invoking the powers of the this Court under the Code of

Criminal Procedure, 1973 ('Cr.P.C.' for short) for quashing of FIR No. 653 dated 22.6.2018, under Sections 420, 417, 415, 406, 405, 506, 209, 199, 120-B IPC, Police Station Faridabad Central, District Faridabad, registered by Nitin Sharma primarily on account of breach of trust on the part of the respondent herein, who had though taken ₹ 6.5 lakhs from him on the assurance that she would co-operate in the proceedings initiated under Section 13-B of the Act but had resiled at the time of recording of statement at the second motion stage. The criminal miscellaneous petition came up for hearing on 31.7.2018 in which the following order was passed:-

“Learned counsel for the petitioner submits that matrimonial dispute between the parties is pending and this petition may also be taken up with FAO No. 1677 of 2018.

List with FAO No. 1677 of 2018.”

In this manner, the said criminal miscellaneous tagged with the matrimonial appeal is being disposed of by us.

While taking the facts from the matrimonial appeal bearing No. FAO-1677-2018, it is observed that the parties to the *lis* got married on 3.2.2014 as per Hindu rites and ceremonies and were blessed with a male child, namely, Neel, who was born on 19.9.2015. The parties have been living separately with effect from 25.5.2016 due to temperamental differences and ultimately decided to dissolve their marriage by way of decree of divorce by mutual consent. They had filed a petition under Section 13-B of the Act before the Family Court at Faridabad on 31.5.2017. It was decided that appellant Nitin Sharma would pay a sum of ₹ 12.5 lakhs to respondent Shalu Sharma along with her jewellery and their son would stay with the mother. All was well till the statement at the first motion was

recorded because at that time, part payment of ₹ 6.5 lakhs was made by Nitin Sharma to Shalu Sharma. However, at the stage of recording of statement of second motion, which was fixed for 5.12.2017 and later on 18.12.2017 and then on 10.1.2018, respondent Shalu Sharma appeared and refused to give her consent for the purpose of dissolution of marriage by a decree of divorce by mutual consent. In view thereof, the petition filed by both of them under Section 13-B of the Act was dismissed by the Family Court vide the impugned order dated 10.1.2018. Aggrieved against the said judgment and decree, the present matrimonial appeal has been filed by the husband. Since the respondent-wife did not allegedly return the amount of ₹ 6.5 lakhs, received by her in the aforesaid proceedings, therefore, the husband registered FIR No. 31 dated 22.6.2018 (*supra*). The respondent-wife has challenged the said FIR by way of Criminal Miscellaneous No. M-32047 of 2018 which has been tagged along with this matrimonial appeal.

On 17.12.2018, this Court had passed the following order:-

“Learned counsel for the appellant-husband has submitted that both the parties had filed the petition under Section 13-B of the Hindu Marriage Act, 1955. At the stage of recording first motion statement, husband had paid ₹ 6,50,000/- to the respondent-wife but at the stage of recording second motion statement, respondent-wife had resiled from recording the statement.

Learned counsel for the respondent-wife has submitted that the amount of ₹ 6,50,000/- would be returned to the appellant-husband on the next date of hearing.

Learned counsel for the appellant prays for time to seek instructions whether the appellant would accept the amount of

he would argue the case on merits.

On his request, adjourned 07.03.2019.”

Thereafter on 7.3.2019, following order was passed by this Court:-

“On the last date of hearing, learned counsel for the appellant had prayed for an adjournment in order to seek instruction whether he would accept the amount of ₹ 6,50,000/-. Pursuant thereto, learned counsel for the appellant has submitted that the appellant would accept the said amount.

Learned counsel for the respondent is directed to bring ₹ 6,50,000/- by way of a demand draft drawn in the name of the appellant on the next date of hearing.

Adjourned to 19.03.2019.

Photocopy of this order be placed on the file of the connected case.”

Today, counsel appearing on behalf of respondent-Shalu Sharma has returned ₹ 6.5 lakhs by way of draft to the counsel for the appellant-husband, as promised earlier. In view thereof, the appellant-husband has prayed for withdrawal of the matrimonial appeal bearing FAO No. 1677 of 2018 which is hereby dismissed as withdrawn.

In so far as the Criminal Miscellaneous is concerned, counsel for the respondent-wife has submitted that the said FIR was registered only on account of non-payment of ₹ 6.5 lakhs by her, therefore, the said FIR may also be quashed as it would be an exercise in futility on the part of the prosecution agency because the appellant-husband is not going to support the prosecution case.

Learned counsel for appellant-husband Nitin Sharma has also

made the same prayer for the purpose of quashing of the FIR in view of the

changed circumstances.

Since there is a compromise between the parties and the issue regarding return of ₹ 6.5 lakhs by the respondent-wife to the appellant-husband has been sorted out, therefore, it would be an unnecessary exercise on the part of the prosecution agency to investigate in FIR No. 653 dated 22.6.2018 as there would be more agony and embarrassment to the parties during the course of the proceedings.

Accordingly, keeping in view the facts and circumstances, which are peculiar in its nature, the Criminal Miscellaneous No. M-32047 of 2018, filed at the instance of Shalu Sharma and others, is hereby allowed. FIR No. 653 dated 22.6.2018 registered under Sections 420, 417, 415, 406, 405, 506, 209, 199, 120-B IPC at Police Station Faridabad Central, District Faridabad, is hereby quashed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

March 19, 2019
Gurpreet

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No