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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 5118/2019

ARIF SAIFI & ORS.

..... Petitioners

Through: Petitioners in person with Mr. Aman
Usman & Mr. Noor Alam, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for State
with ASI Vijay Pal Singh, CWC
Nanakpura.
R-2 in person with Mr. M. Naushad,
Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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27.01.2020

Vide the present petition, the petitioners seek the quashing of the FIR No.130/2015, PS Crime (Women) Cell Nanakpura registered under Sections 498A/406/34 of the Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the parties and no useful purpose would be served by the continuation of the proceedings in the present FIR with it having been submitted to the effect that all claims of the respondent no.2 have been settled pursuant to the settlement arrived at between the parties and that the marriage between the petitioner no.1 and the respondent no.2 has since been dissolved vide a talaq dated 12.02.2016.

The Investigating Officer of the case is present and has identified the petitioner nos. 1 to 3 i.e. petitioner no.1 Arif Saifi, petitioner no.2

Rahisuddin Saifi and petitioner no.3 Jhafri Khatoon present today in Court as being the accused arrayed in the FIR No.130/2015, PS Crime (Women) Cell Nanakpura registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and he has also identified the respondent no.2 Ms. Parveen Saifi as being the complainant of the said FIR. The Investigating Officer has also testified to the factum of the dissolution of marriage between the petitioner no.1 and the respondent no.2 as per the status report dated 14.10.2019 placed on record under the signatures of the Insp. Seema Singh, SHO, PS CWC, Delhi stating *inter alia* to the effect that the talaq was given on 12.02.2016 and a sum of Rs.17,875/- was also received by the complainant as dower and that she accepted that the full and final settlement in the sum of Rs.10,00,000/- (Rupees Ten Lacs) and the keys of the car of the make Swift in terms of the settlement between her and the petitioners.

In as much as, vide the settlement dated 29.06.2019 arrived at between the petitioner no.1 and the respondent no.2 at the Delhi Mediation Centre, Saket Courts, New Delhi as Clause 8 read to the effect:-

“8. It is further agreed that first party will not claim any maintenance/ any claim for herself and for both minor children in future after receiving the whole settlement amount alongwith vehicle and second party will not claim the custody of minor children as second party/ husband has already surrendered the visitation rights.”,

and thus, it had been stipulated to the effect that the respondent no.2 i.e. the wife would not claim any maintenance / any other claim for herself **and for both minor children in future** after receiving the whole settlement amount alongwith a vehicle and that the second party i.e. the petitioner no.1 herein

would not claim the custody of the minor children as second party/ petitioner no.1 herein had already surrendered the visitation rights **for both minor children in future.**

Learned counsel for the petitioners and the petitioners vide order dated 11.10.2019 were apprised of the factum that the respondent no.2 could not give up the claims of the minor children for maintenance or otherwise in terms of the verdict of the Hon'ble Supreme Court in "**Ganesh V. Sudhir Kumar Shrivastava & Ors.**"; Civil Appeal Nos. 4031-4032/2019 arising out of SLP(C) Nos. 32868-32869/2018, a verdict dated 22.4.2019 as adhered to and followed by this Court in "**Rakesh Jain & Ors. v. State and Anr.**" in Crl.M.C. No. 2935/2019 and pursuant thereto, the proceedings were taken up on the date 14.10.2019 and vide the said order in view of the directions in "**Rakesh Jain & Ors. v. State and Anr.**" with directions thereby to the Co-ordinator of the Delhi High Court Mediation and Conciliation Centre and Judges Incharge of the Mediation Centre of the District Courts of Delhi to adhere to the law at the time of working out the settlement between the spouses specifically in relation to the rights of the child of the parties concerned, which judgment has already since been circulated to all the Judges Incharge of the Mediation Centres and to the Co-ordinator of the Delhi High Court Mediation and Conciliation Centre for compliance, the petitioner no.1 and the respondent no.2 were directed to appear before the Judge Incharge of the Mediation and Conciliation Centre, Saket with the report of the Mediation Centre being returnable for the date 14.11.2019, the report of the Mediation Centre has since been received dated 23.11.2019 as per which the terms thereof, are to the effect:-

“1. The total settlement amount between both the parties is Rs.10,00,000/- (Rupees ten lakh only) for all purposes.

2. It is agreed between the parties that second party shall pay an amount of Rs.5 lakh by way of DD in the name of Children for the welfare and maintenance/ permanent alimony for both the children i.e. Sania and Sana and further a sum of Rs. 5 lakh by way of DD for the maintenance- past, present and future and permanent alimony, stridhan of second party, out of which Rs. 2 Lakh have already been received by the second party as stated in para no.4 herein-above. The balance amount of Rs. 8 lakh shall be paid by first party by way of demand draft at the time of quashing of the FIR qua all the accused persons bearing No.130/2015 PS Nanak Pura under Section 498-A/406/34 IPC before the Hon’ble High Court of Delhi in Crl.M.C. No.5118/19.

3. It is further agreed between the parties that after receiving the entire amount of Rs.10,00,000/- (Rupees ten lakh only) and swift desire car by the First Party from the Second Party, both the parties will not claim/demand anything in future after receiving the whole settlement amount and after quashing of the FIR.

4. It is also agreed between the parties that the permanent custody of the minor children namely, Saniya and Sana shall remain with the complainant/ wife. It is also agreed that the first party shall be fully responsible for the welfare and care of minor children.

5. It is agreed by the parties that they will not file any civil/ criminal case pertaining to their marriage and/or with regard to the movable or immovable property/ properties.”

The said settlement document placed on the record as Ex.CW2/D and in terms thereof, the petitioner no.1 has handed over the sum of Rs.5,00,000/- through the demand drafts for the sums of Rs.2,50,000/- each

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in the name of the minor children namely Saniya Saifi and Sana Saifi, photocopies of the said demand drafts are placed on record as Ex.CW2/E and Ex.CW2/F and a further sum of Rs.3,00,000/- has been handed over to the respondent no.2 vide another demand draft, copy of which is on the record as Ex.CW2/G which is in the name of the respondent no.2. The total settled sum as per the mediation settlement is the sum of Rs.10,00,000/-, a sum of Rs.2,00,000/- is stated to have been received by the respondent no.2 previously along with the keys of the vehicle i.e. a car of the make Swift bearing No.DL3CBB 7024 as testified by the respondent no.2 as well as also observed in the mediation settlement Ex.CW2/D as having been handed over to the respondent no.2 on 10.07.2019.

The respondent no.2 has stated to the effect that she has signed the documents i.e. the affidavit in support of the averments and the mediation settlement arrived at the Mediation Centre, Saket between her and the petitioner no.1 voluntarily of her own accord without any duress, coercion or pressure from any quarter and that she does not oppose the prayer made by the petitioners seeking the quashing of the FIR No.130/2015, PS Crime (Women) Cell Nanakpura registered under Sections 498A/406/34 of the Indian Penal Code, 1860 nor does she want the petitioners to be punished in relation thereto and that she has so stated voluntarily of her own accord without any duress, coercion or pressure from any quarter. The respondent no.2 has further stated that she has studied till Standard X and has understood the implications of the statement made by her.

On behalf of the State, there is no opposition to the prayer made by the petitioners seeking the quashing of the FIR in question in view of the

settlement arrived at between the parties.

In view of the deposition of the respondent no.2 and the dissolution of the marriage between the petitioner no.1 and the respondent no.2 and in as much as all the claims of the respondent no.2 stand settled by the mediation settlements placed on record as testified by the respondent no.2 also, and the statement made by the respondent no.2 that she does not oppose the prayer made by the petitioners seeking the quashing of the FIR in question and in as much as, the FIR has apparently emanated from a matrimonial discord between the parties which has since been resolved by the dissolution of the marriage between the petitioner no.1 and the respondent no.2, for maintenance of peace and harmony between the parties and for the well being of the respondent no.2 and the minor children, it is considered appropriate to put a quietus to the litigation between the parties in terms of the verdict of the Hon'ble Supreme Court in **Narender Singh & Ors. V. State of Punjab**; (2014) 6 SCC 466 wherein it has been observed vide paragraph 31(IV) to the effect:-

“31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under [Section 482](#) of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

- (I)*
- (II)*
- (III)*
- (IV) On the other, those criminal cases having*

overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

.....”

and in view of the observations 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.]”

and in view of the verdict of the Hon’ble Supreme Court in *Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr.* (2013) 4 SCC 58, to the effect : -

“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),

In view thereof, the FIR No.130/2015, PS Crime (Women) Cell Nanakpura registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner nos. 1 to 3 i.e. petitioner no.1 Arif Saifi, petitioner no.2 Rahisuddin Saifi and petitioner no.3 Jhafri Khatoon are thus quashed.

It is made expressly clear that Clause 4 of the mediation settlement dated 23.11.2019 shall not be an embargo to the minor children born of the wedlock between the petitioner no.1 and the respondent no.2 seeking their claims against the petitioners qua maintenance or otherwise in accordance with law.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 27, 2020

‘neha chopra’

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 5118/2019

ARIF SAIFI AND ORS.Vs. STATE & ANR.

27.01.2020

CW-1 ASI Vijay Pal Singh, PS CAW Cell, Nanakpura.

ON S.A.

I identify the petitioner nos. 1 to 3 i.e. petitioner no.1 Arif Saifi, petitioner no.2 Rahisuddin Saifi and petitioner no.3 Jhafri Khatoon present today in Court as being the accused arrayed in the FIR No.130/2015, PS Crime (Women) Cell Nanakpura registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and I also identify the respondent no.2 Ms. Parveen Saifi as being the complainant of the said FIR.

The divorce between the petitioner no.1 and the respondent no.2 has since been verified. It has been reported vide the status report dated 14.10.2019 under the signatures of the Insp. Seema Singh, SHO, PS CWC, Delhi that the petitioner no.1 had given a divorce to the respondent no.2 on 12.02.2016 and that the respondent no.2 had also received a cheque for a sum of Rs.17,875/- towards dower and that she had accepted that the full and final settlement in the sum of Rs.10,00,000/- (Rupees Ten Lacs) and a car of the make Swift had been made between her and the petitioners.

RO & AC
27.01.2020

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 5118/2019

ARIF SAIFI AND ORS.Vs. STATE & ANR.

27.01.2020

CW-2 Ms. Parveen Saifi, d/o Sh. Rahis Khan, age 29 years, r/o Block L-1A, 33/17/10, Sangam Vihar, Delhi.

ON S.A.

I have brought my original proof of identity, photocopy of which is on the record as Ex.CW2/A.

My affidavit dated 09.10.2019 bears my signatures at points A & B on Ex.CW2/B. The agreement dated 29.06.2019 arrived at between me and the petitioner no.1 at the Delhi Mediation Centre, Saket Courts, New Delhi also bears my signatures as visible at point A on Ex.CW2/C. The reworked mediation settlement dated 23.11.2019 has been arrived at between the petitioner no.1 and the respondent no.2 at Delhi Mediation Centre, Saket Courts, New Delhi also bears my signatures as visible at point A on Ex.CW2/D, I have signed all these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter.

In terms of the settlement that has been arrived at between me and the petitioner no.1 vide a settlement dated 29.06.2019 i.e. Ex.CW2/C being copy thereof and the settlement dated 23.11.2019 i.e. Ex.CW2/D being copy thereof, it has been agreed between the petitioner no.1 and myself that a total sum of Rs.10,00,000/- is to be paid to me by the petitioner no.1 towards all the claims that have been agreed between us, of which a sum of Rs. 2,00,000/- has been received by me previously, a sum of Rs.5,00,000/- has

been paid by the petitioner no.1 in the name of two minor children in the form of demand drafts i.e. in the name of Saniya Saifi and Sana Saifi which have now been handed over to me by the petitioner no.1 vide demand drafts bearing No.871045 and 871044 both dated 24.01.2020 for the sum of Rs.2,50,000/- each both drawn on the Federal Bank, photocopies of which are on the record as Ex.CW2/E and Ex. CW2/F and a sum of Rs.3,00,000/- has now been handed over to me by the petitioner no.1 vide a demand draft bearing No.871043 dated 24.01.2020 drawn on the Federal Bank in my favour, photocopy of which is on the record as Ex.CW2/G. I have also received the keys of the vehicle i.e. a car of make Swift bearing No.DL3CBB 7024 from the petitioner no.1.

In view of the settlement arrived at between me and the petitioner no.1, I do not oppose the prayer made by the petitioners seeking the quashing of the FIR No.130/2015, PS Crime (Women) Cell Nanakpura registered under Sections 498A/406/34 of the Indian Penal Code, 1860 nor do I want the petitioners to be punished in relation thereto.

I have studied till Standard X.

I have made my statement after understandings the implications thereof voluntarily of my own accord without any duress, coercion or pressure from any quarter.

RO & AC
27.01.2020

ANU MALHOTRA, J