

\$~72

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 983/2020 & CRL.M.A. 3999/2020**
SH. MANISH KUMAR SHARMA Petitioner
Through: Mr. Parmil Kumar, Adv.

versus

STATE & ANR. Respondents
Through: Mr. Ashok Kr. Garg, APP for State
with ASI Deval, PS Jafrabad.
Mr. Lokesh Kumar, Adv. for R-2 with
R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **24.02.2020**

CRL.M.A. 3999/2020 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 983/2020

Vide the present petition, the petitioner seeks quashing of the FIR No.04/2018, PS Jafrabad registered under Sections 323/341/352/498A/509 of the Indian Penal Code, 1860 submitting to the effect that a settlement dated 20.04.2019 has been arrived at between the parties at the Delhi Mediation Centre, KKD Courts and the marriage between the petitioner and the respondent no.2 has been dissolved vide a decree of divorce through mutual consent and no useful purpose would be served by the continuation of the proceedings in relation to the FIR in question.

The Investigating Officer of the case has identified the petitioner present today in Court as being the accused arrayed in the FIR in question

and has also identified respondent no.2 present in Court today as being the complainant of the said FIR.

The respondent no.2 has produced her original proof of identity, copy of which is on the record as Ex.CW2/A. The respondent no.2 in her examination on oath by the Court has affirmed having signed her affidavit Ex.CW2/B and the settlement arrived at between the petitioner and the respondent no.2 Ex.CW2/C voluntarily of her own accord without any duress, coercion or pressure from any quarter.

She has further stated that in terms of the settlement arrived at between her and the petitioner, the marriage between her and the petitioner has since been dissolved vide a decree of divorce dated 06.01.2020 through mutual consent under Section 13B(2) of the HMA in HMA Petition No.894/2019, copy of which is on the record as Ex.CW2/E. She has further stated that in terms of the settlement arrived at between her and the petitioner, a total sum of Rs.5,25,000/- has been agreed to be paid to her by the petitioner, of which, she has received the sum of Rs.4,25,000/- previously from the petitioner and the balance sum of Rs.1 lakh has now been handed over to her by the petitioner vide a Manager's Cheque bearing no.170234 dated 17.02.2020 drawn on the HDFC Bank in her favour, copy of which is on the record as Ex.CW2/D and that there are no claims of hers left against the petitioner now and that she has thus no opposition to the prayer made by the petitioner seeking quashing of the FIR No.04/2018, PS Jafrabad registered under Sections 323/341/352/498A/509 of the Indian Penal Code, 1860 nor does she want the petitioner to be punished in relation thereto.

She has further stated that there are two children born of the wedlock between her and the petitioner named Vridhi Sharma and Chetanya Sharma and that in terms of the settlement arrived at between her and the petitioner, the son Chetanya Sharma is in the custody of the petitioner and the daughter Vridhi Sharma is in her custody.

There appears no reason to disbelieve the statement made by the respondent no.2 that she has arrived at a settlement with the petitioner voluntarily in as much as the FIR in question has emanated from a matrimonial discord which has since been resolved vide dissolution of the marriage between the respondent no.2 and the petitioner in as much as the respondent no.2 has categorically stated that there are no claims of hers left against the petitioner, it is considered appropriate to put a quietus to the litigation and disputes between the parties for maintenance of peace and harmony between them as also for the well being of the respondent no.2, 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),

the FIR No.04/2018, PS Jafrabad registered under Sections 323/341/352/498A/509 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner are quashed.

The petition is disposed of.

It is essential however to observe that as laid down by the Hon'ble Supreme Court in Civil Appeal 4031-4032/2019 arising out of SLP (C) Nos.32868-32869/2018 titled as ***Ganesh Vs. Sudhirkumar Shrivastava & Ors.*** vide the verdict dated 22.04.2019, it is not open to the mother to give up the rights of the minor child born of the wedlock between her and since divorced petitioner qua maintenance or otherwise. In as much as vide clause 4 of the said settlement dated 20.04.2019, it has been stipulated between the parties to the effect:

“It is agreed between the parties that the husband shall pay a total amount of Rs.5,25,000/- (Rs. Five Lakh Twenty Five Thousand only) to the wife towards full and final settlement which includes maintenance of wife and minor daughter (present, past and future), permanent alimony, istridhan, dowry articles etc.”

The said term is not in consonance with law as laid down by the as adhered to by the Hon'ble Supreme Court in ***Ganesh Vs. Sudhirkumar Shrivastava & Ors. (supra)*** as adhered to by this Court in ***Rakesh Jain & Ors. vs. State & Anr.*** in CRL.M.C. 2935/2019 dated 06.09.2019.

In the circumstances, it is made expressly clear that the settlement agreement dated 20.04.2019 arrived at at the Delhi Mediation Centre, copy of which is on the record as Ex.CW2/C and the quashing of the FIR in

question against the petitioner shall not amount to any embargo on the minor child Vridhi Sharma seeking her claims against the petitioner qua maintenance or otherwise.

ANU MALHOTRA, J

FEBRUARY 24, 2020

vm

IN THE HIGH COURT OF DELHI: NEW DELHI

72

CRL.M.C. 983/2020

SH. MANISH KUMAR SHARMA Vs. STATE & ANR.

24.02.2020

CW-1 ASI Deval, PS Jafarabad.

ON S.A.

I identify the petitioner Mr. Manish Kumar Sharma as being the sole accused arrayed in the FIR No.04/2018, PS Jafrabad registered under Sections 323/341/352/498A/509 of the Indian Penal Code, 1860. I identify the respondent no.2 Ms. Anita Sharma as being the complainant of the said FIR.

RO & AC

24.02.2020

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

72

CRL.M.C. 983/2020

SH. MANISH KUMAR SHARMA Vs. STATE & ANR.

24.02.2020

CW-2 Ms. Anita Sharma, d/o Mr. Jai Bhagwan, aged 32 years, r/o H.No.D-129, Nathu Colony, School Block, Shahdara, Delhi.

I have brought my original proof of identity, copy of which is on the record as Ex.CW2/A. My affidavit annexed to the petition in support of the averments made in the petition bears my signatures at points A & B thereon on Ex. CW2/B. A settlement has since been arrived at between me and the petitioner at the Delhi Mediation Centre, KKD Courts on 20.04.2019 and copy of the same bears my signature thereon at point A on Ex.CW2/C. 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 arrived at between me and the petitioner, the marriage between me and the petitioner has since been dissolved vide a decree of divorce dated 06.01.2020 through mutual consent under Section 13B(2) of the HMA in HMA Petition No.894/2019, copy of which is on the record as Ex.CW2/E.

In terms of the settlement arrived at between me and the petitioner, a total sum of Rs.5,25,000/- has been agreed to be paid to me by the petitioner, of which, I have received the sum of Rs.4,25,000/- previously from the petitioner and the balance sum of Rs.1 lakh has now been handed over to me by the petitioner vide a Manager's Cheque bearing no.170234 dated 17.02.2020 drawn on the HDFC Bank in my favour, copy of which is

on the record as Ex.CW2/D. There are no claims of mine left against the petitioner now and I have thus no opposition to the prayer made by the petitioner seeking quashing of the FIR No.04/2018, PS Jafrabad registered under Sections 323/341/352/498A/509 of the Indian Penal Code, 1860 nor do I want the petitioner to be punished in relation thereto.

There are two children born of the wedlock between me and the petitioner named Vridhi Sharma and Chetanya Sharma and the son Chetanya Sharma is in the custody of the petitioner and the daughter Vridhi Sharma is in my custody.

I have studied upto standard 10th.

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

RO & AC
24.02.2020

ANU MALHOTRA, J