

\$~7

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

+ **CRL.M.C. 1291/2019**

MUKESH BOTALIYA Petitioner

Through: Mr.Vikas Tomar, Advocate

versus

STATE & ANR Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
With SI Shiv Ram PS Amar Colony
Respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **07.01.2020**

Pursuant to the proceedings dated 26.8.2019, the amended memo of parties has been submitted on record by the petitioners incorporating the name of petitioner No.2.Devender Batoliya.

Vide the present petition, the petitioners seek quashing of the FIR No.732/2015, PS Amar Colony 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 during the course of mediation proceedings on 24.7.2018 at the Mediation Centre, Saket Courts, New Delhi pursuant to which all claims and disputes between the parties have been amicably resolved and that the marriage between the petitioner and the respondent No.2 has since been dissolved vide a decree of divorce through

CRL.M.C. 1291/2019

page 1 of 6

mutual consent. It has thus been submitted on behalf of the petitioners that no useful purpose would be served by the continuation of the proceedings in relation to the FIR in question.

On behalf of the SHO PS Amar Colony, SI Shiv Ram is present and has identified the petitioners on the basis of the identity proofs brought by them and has also identified the respondent No.2, present in the Court today as being the complainant of the FIR in question.

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 joint statement dated 17.11.2018 during the course of the proceedings in HMA No.75/2018 of the Court of the Principal Judge, Family Courts, South-East, Saket, copy of which is on the record as Ex.CW-2/B.

She has stated that in terms of the settlement arrived at between the petitioner No.1 and herself a total sum of Rs.12,50,000/- was agreed to be paid to her towards all her claims and she has since received the entire sum of Rs.12,50,000/- with the sum of Rs.10,00,000/- having been paid to her during the course of the proceedings under Section 13-B(1) and 13-B(2) of the Hindu Marriage Act, 1955, and the balance sum of Rs.2,50,000/- having been handed over to her vide a demand draft bearing No. 107713 dated 23.8.2019 in her favour on 26.8.2019 during the course of the present proceedings and that there are now no claims of hers left against the petitioners. She has further stated that the marriage between her and petitioner No.1 has since been dissolved vide a decree of divorce through

mutual consent under 13-B(2) of the HMA dated 17.11.2018 in HMA No.75/2018 of the Court of the Principal Judge, Family Courts, South East, Saket Courts, New Delhi copy of which is on the record as EX.CW-2/C. She states that there are now no claims of hers left against the petitioners and she does not oppose the prayer made by the petitioners seeking quashing of the FIR No. 732/2015, PS Amar Colony, registered under Sections 498-A/406/34 of the Indian Penal Code, 1860, nor does she want the petitioners to be punished in relation thereto. She further stated that she has made her statement voluntarily of her own accord without any duress or coercion from any quarter. Inter alia, she stated that she is a graduate and had been working previously.

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 and the deposition of the respondent No.2.

There appears no reason to disbelieve the statement made by the respondent no.2 that she has arrived at a settlement with the petitioner no.1 voluntarily of her own accord without any duress pressure or coercion from any quarter. In view of the statement made by the respondent no.2 and the non-opposition on behalf of the State 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 no. 1 in as much as the respondent no.2 has categorically stated that there are no claims of hers left against the petitioners, 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. 732/2015, PS Amar Colony, registered under Sections 498-A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioners are quashed.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 07, 2020

SV

Item No.7

CRL.M.C. 1291/2019

MUKESH BOTALIYA V. STATE & ANR.

07.01.2020

**CW-1 SI SHIV RAM PS AMAR COLONY
ON S.A.**

I have been deputed by the SHO Police Station Amar Colony to appear in relation to FIR No. 732/2015 registered at PS Amar Colony, under Sections 498A/406/34 of the Indian Penal Code, 1860. I identify the petitioners No.1 and 2 as per the amended memo of parties dated 23.9.2019 on the basis of the proofs of identity brought by them. I identify the respondent No.2 present in the Court today as being the complainant of the FIR.

ANU MALHOTRA, J.

RO & AC

Item No.7

CRL.M.C. 1291/2019

MUKESH BOTALIYA V. STATE & ANR.

07.01.2020

CW-2 MS LATA RAJORA D/O SH. RAM SINGH RAJORA R/O H. NO. 204/11-B, AMRITPURI, EAST OF KAILASH, NEW DELHI-110065, AGED 42 YEARS. ON S.A.

I have brought my original proof of identity i.e. Aadhar Card. The photocopy of the same is EX.CW-2/A.

In view of the settlement arrived at between me and the petitioner No.1 at the Mediation Centre, Saket Courts on 24.7.2018 as incorporated in the proceedings in HMA No.75/2018 of the Court of the Principal Judge, Family Court, South-East, Saket, New Delhi and the joint statement made by me and the petitioner No.1 on 17.11.2018 on which I identify my signatures at point A on Ex. CW-2/B. In terms of the said settlement arrived at between and the petitioner No.1 a total sum of Rs.12,50,000/- was agreed to be paid to me and I have since received the entire sum of Rs.12,50,000/- with the sum of Rs.10,00,000/- having been paid to me during the course of the proceedings under Section 13-B(1) and 13-B(2) of the Hindu Marriage Act, 1955, and the balance sum of Rs.2,50,000/- having been handed over to me vide a demand draft bearing No. 107713 dated 23.8.2019 on 26.8.2019 during the course of the present proceedings. There are now no claims of mine left against the petitioners and the marriage between me and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent under Section 13-B of Hindu Marriage Act, dated 17.11.2018 in HMA No. 75/2018 of the Court of the Principal Judge, Family Courts, South East, Saket, New Delhi. The copy of the decree of divorce on

record is Ex.CW-2/C. In view of the settlement arrived at between me and the petitioner No.1

I do not oppose the prayer made by the petitioners no. 1 and 2 in the petition seeking quashing of the FIR No.732/2015, registered at PS Amar Colony, under Sections 498A/406/34 of the Indian Penal Code, 1860 nor do I want the petitioners to be punished in relation thereto in view of the settlement arrived at between me and the petitioner No.1.

I am a graduate and used to work previousl. I have made my statement after understanding the implications of the statement. I have made this statement voluntarily of my own accord without any duress or coercion from any quarter.

ANU MALHOTRA, J.

RO & AC