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

+ CRL.M.C. 1128/2020

RADHEY SHYAM

..... Petitioner

Through

Mr.Rakesh Gupta, Advocate

versus

STATE & ANR

..... Respondents

Through

Ms.Neelam Sharma, APP for State
with SI Sahansar Vir, PS Krishna
Nagar

Mr.Harmesh Kumar, Advocate along
with Respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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28.02.2020

Vide the present petition, the petitioner seeks the quashing of the FIR No.360/2016, PS Krishna Nagar 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 at the Delhi Mediation Centre, Karkardooma Courts and the marriage between the Petitioner and the Respondent No.2 has since been dissolved by a decree of divorce through mutual consent under Section 13B(2) of HMA No.1490/19 dated 21.10.2019 of the Court of Principal Judge, Family Courts, East District, the certified copy of which decree is on the record as Ex.CW2/D and that 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 in Court today as being the sole accused

chargesheeted in relation to the allegations under Sections 498A/406 of the Indian Penal Code, 1860 qua FIR No.360/2016 PS Krishna Nagar with all other 6 accused persons having been arrayed in column No.12 of the chargesheet and has also identified Respondent no.2 Mrs. Trishla 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 annexed to the petition Ex.CW2/B and the mediation settlement Ex.CW2/C voluntarily of her own accord without any duress, coercion or pressure from any quarter. She has further stated that the marriage between her and the Petitioner has since been dissolved vide a decree of divorce under Section 13B(2) of HMA No.1490/19 dated 21.10.2019 of the Court of Principal Judge, Family Courts, East District, the certified copy of which decree is on the record as Ex.CW2/D.

She states that there is a child named Bhawna born out of the wedlock between her and the Petitioner and that the child is in her custody. She further states that in terms of the settlement arrived at between her and the Petitioner, a total sum of Rs.2,20,000/- had been agreed to be paid to her by the petitioner towards all her claims of which a sum of Rs.1,60,000/- has been received by her previously during the proceedings under Section 13B(1) and 13B(2) of the Hindu Marriage Act, 1955 and the balance sum of Rs.60,000/- has been

handed over to her by the petitioner today during the course of present proceedings vide a Demand Draft No.195724 dated 27.02.2020 drawn on Punjab & Sind Bank in her favour, copy of which is Ex.CW2/E and states that there are now no claims of hers left against the petitioners, and thus, she does not oppose the prayer made by the petitioner seeking quashing of the FIR No.360/2016 PS Krishna Nagar, registered under Sections 498A/406/34 of the Indian Penal Code, 1860, nor does she want the petitioner to be punished in relation thereto and states that she has so stated voluntarily after understanding the implications of her statement made by her.

On behalf of the State and in view of the testimony of the Respondent No.2 and the settlement arrived at between the parties, there is no opposition to the prayer made by the petitioner seeking the quashing of the FIR in question except qua the averments in para 2 of the mediation settlement dated 25.09.2018, copy of which is on the record as Ex.CW2/C.

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 Petitioner and the Respondent no.2, it is considered appropriate to put a quietus to the litigation and disputes between the parties qua the FIR in question 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. They 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.374/2005, PS Krishna Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner are quashed.

It is made expressly clear that though vide clause (2) of the mediation settlement dated 25.09.2018, copy of which is on the record as Ex.CW2/C, it has been agreed between the Petitioner and the Respondent No.2 to the effect:-

“2.It has been agreed between the parties that the husband shall pay Rs.2,20,000/- (Rupees Two Lacs Twenty Thousand Only) to the wife and daughter as full and final settlement of all her claims such as maintenance (past, present and future), istridhan, dowry articles, jewellery, permanent alimony, etc.”

whereby the total sum of Rs.2,20,000/- agreed to be paid by the Petitioner to the Respondent No.2 which has since already been paid as

stated by the Respondent No.2 has been agreed to be paid as full and final settlement of all the claims of the Respondent No.2 qua maintenance past, present and future, stridhan, dowry articles, jewellery and permanent alimony, etc. This clause also states that it is towards the payment made to the daughter as well qua maintenance past, present and future which term is not in consonance with the law laid down in terms of the verdict of 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 as adhered to and followed 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 quashing of the FIR in question shall not amount to any embargo on the minor child Bhawna born out of the wedlock between the Petitioner and the Respondent No.2 seeking her claims against the Petitioner qua maintenance or otherwise in accordance with law.

The petition is disposed of.

ANU MALHOTRA, J

FEBRUARY 28, 2020/sg

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 1128/2020

SHRI RADHEY SHYAM Vs. STATE & ANR

28.02.2020

CW-I SI Sahansar Vir, PS Krishna Nagar.

ON S.A.

I identify the petitioner present in Court today as being the sole accused chargesheeted in relation to the allegations under Sections 498A/406/34 of the Indian Penal Code, 1860 qua FIR No.360/2016 PS Krishna Nagar with all other 6 accused persons having been arrayed in column No.12 of the chargesheet. I also identify respondent no.2 Mrs. Trishla present in Court today as being the complainant of the said FIR.

RO & AC
28.02.2020

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 1128/2020

SHRI RADHEY SHYAM Vs. STATE & ANR

28.02.2020

CW-2 Ms. Trishla D/o Shri Ram Prakash W/o Shri Radhey Shyam R/o X/3720/11, Gali No.8, Shanti Mohalla, Gandhi Nagar, Delhi-110031.

ON S.A.

I have brought my original proof of identity, copy of which is on the record as Ex.CW2/A (original seen and returned). My affidavit annexed to the petition bears my signatures thereon at points A & B thereon on Ex.CW2/B. A settlement dated 25.09.2018 has since been arrived at between me and the petitioner at the Delhi Mediation Centre, Karkardooma Courts, Delhi and copy of the same bears my signatures at point A on Ex.CW2/C.

I have signed these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter.

The marriage between me and the Petitioner has since been dissolved vide a decree of divorce under Section 13B(2) of HMA No.1490/19 dated 21.10.2019 of the Court of Principal Judge, Family Courts, East District, the certified copy of which decree is on the record as Ex.CW2/D.

In terms of the settlement arrived at between me and the Petitioner, a total sum of Rs.2,20,000/- had been agreed to be paid to me by the petitioner towards my all claims of which a sum of Rs.1,60,000/- has been received by me previously during the proceedings under Section 13B(1) and 13B(2) of the Hindu Marriage Act, 1955 and the balance sum of Rs.60,000/- has been handed over to me by the petitioner today during the course of the present

proceedings vide a Demand Draft No.195724 dated 27.02.2020 drawn on Punjab & Sind Bank in my favour, copy of which is Ex.CW2/E. There are now no claims of mine left against the petitioners. In view of the settlement arrived at between me and the petitioner, I do not oppose the prayer made by the petitioner seeking quashing of the FIR No.360/2016 PS Krishna Nagar, registered under Sections 498A/406/34 of the Indian Penal Code, 1860, nor do I want the petitioner to be punished in relation thereto.

I have studied upto 10th Standard. 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
28.02.2020

ANU MALHOTRA, J