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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1220/2020 & CRL.M.A. 4726/2020**
OM KUMAR SHARMA & ORS. Petitioners
Through: Mr. Sachin Kumar Sharma, adv.

versus

STATE & ANR. Respondents
Through: Mr. Ashok Kr. Garg, APP for State
with SI Sandeep Maan, PS Ambedkar
Nagar.
R-2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **03.03.2020**

CRL.M.A. 4726/2020 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 1220/2020

Vide the present petition, the petitioners seek quashing of the FIR No.59/2014, PS Ambedkar Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act submitting to the effect that a settlement has been arrived at between the parties at the Counselling Cell, Family Courts, Saket Courts and the marriage between the petitioner no.1 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 petitioners

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 no.1, a total sum of Rs.5 lakhs has been agreed to be paid to her by the petitioner no.1, of which, a sum of Rs.3,50,000/- has already been received by her previously, of which, a sum of Rs.2 lakhs has been deposited in the form of an FDR in the name of minor child Devashish born of the wedlock between the petitioner no.1 and her, who is in her custody and the balance sum of Rs.1,50,000/- has now been handed over to her by the petitioner no.1 vide a demand draft bearing no.181041 dated 19.02.2020 in her favour drawn on the Indian Overseas Bank, the copy of the same is on the record as Ex.CW2/D and that there are no claims of hers left against the petitioners now.

She has further stated that pursuant to the settlement arrived at between her and the petitioner no.1, the marriage between her and the petitioner no.1 has since been dissolved vide a decree of divorce dated 16.01.2020 under Section 13B (2) of the HMA in HMA Petition No.63/2020 of the Court of the Principal Judge, Family Court, South, Saket Courts, New

Delhi, copy of which is on the record as Ex.CW2/E. She has further stated that in view thereof, she does not oppose the prayer made by the petitioners seeking the quashing of the FIR No.59/2014, PS Ambedkar Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act nor does she want the petitioners to be punished in relation thereto. She has further stated that she has studied upto Standard V and she has made her statement voluntarily after understanding the implications thereof.

On behalf of the State, there is no opposition to the prayer made by the petitioners seeking quashing of the FIR in question in view of the settlement arrived at between the petitioners and the respondent no.2.

In as much as there appears no reason to disbelieve the statement made by the respondent no.2 that she has arrived at a settlement with the petitioners voluntarily in as much as the FIR in question being an aftermath of 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 all claims of the respondent no.2 having been settled as testified by the respondent no.2, 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.59/2014, PS Ambedkar Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act and all consequential proceedings emanating therefrom against the petitioners are quashed.

However, it is made expressly clear that despite the clause 4 & 12 of the mediation settlement dated 10.04.2019, copy of which is Ex.CW2/C, which read to the effect:

“4. It is further agreed between the parties that husband will pay Rs. 2,00,000/-(Rupees Two Lac Only) to the wife at the time of recording of statement of second motion by way of FDR in the name of Devashish, aged 7 years.

12. That above mentioned settlement is with respect to all claims of the wife past, present and future Istridhan, maintenance, pending amount of maintenance, articles, property etc. and neither she nor her relatives shall claim anything from husband or his family members in future for herself or on behalf of child/children.”

as per which, a sum of Rs.2 lakhs has been deposited in the form of an FDR in the name of minor child Devashish born of the wedlock between the petitioner no.1 and the respondent no.2 and it has also been agreed between

the petitioner no.1 and the respondent no.2 that the respondent no.2 would not claim anything from the husband or his family members inclusive of herself and on behalf of the child/children, it is made expressly clear that terms vide clause 4 and clause 12 of the settlement document to the extent that the respondent no.2 has given up the rights of the minor child Devashish is not in consonance with law 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 as adhered to by this Court in ***Rakesh Jain & Ors. vs. State & Anr.*** in CRL.M.C. 2935/2019 dated 06.09.2019.

In view thereof, despite quashing of the FIR in question, clauses 4 & 12 of the settlement agreement Ex.CW2/C between the petitioner no.1 and the respondent no.2 shall not amount to any embargo on the minor child Devashish seeking his claims against the petitioners qua maintenance or otherwise in accordance with law.

The petition is disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

MARCH 03, 2020

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IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 1220/2020

OM KUMAR SHARMA & ORS. Vs. STATE & ANR

03.03.2020

CW-1 SI Sandeep, PS Ambedkar Nagar.

ON S.A.

I identify the petitioner no.1 Mr. Om Kumar Sharma, petitioner no.2 Smt. Kiran Sharma and petitioner no.3 Ms. Poonam as being the accused arrayed in the FIR No.59/2014, PS Ambedkar Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act. I identify the respondent no.2 Ms. Renu as being the complainant of the said FIR.

RO & AC

03.03.2020

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 1220/2020

OM KUMAR SHARMA & ORS. Vs. STATE & ANR

03.03.2020

CW-2 Ms. Renu, d/o Mr. Shyam Nath, aged 35 years, r/o 1/46, Dakshin Puri Extn., New Delhi.

I have brought my original proof of identity, copy of which is on the record as Ex.CW2/A. My affidavit in support of the averments made in the petition bears my signatures thereon at points A & B thereon on Ex.CW2/B. The compromise deed dated 10.04.2019 arrived at between me and the petitioner no.1 at the Counselling Cell, Family Courts, Saket Courts, New Delhi bears my signatures as visible at point A thereon 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 no.1, a total sum of Rs.5 lakhs has been agreed to be paid to me by the petitioner no.1, of which, a sum of Rs.3,50,000/- has already been received by me previously, of which, a sum of Rs.2 lakhs has been deposited in the form of an FDR in the name of minor child Devashish born of the wedlock between the petitioner no.1 and me, who is in my custody and the balance sum of Rs.1,50,000/- has now been handed over to me by the petitioner no.1 vide demand draft bearing no.181041 dated 19.02.2020 in my favour drawn on the Indian Overseas Bank, the copy of the same is on the record as Ex.CW2/D. There are no claims of mine left against the petitioners now.

Pursuant to the settlement arrived at between me and the petitioner

no.1 Ex.CW2/C, the marriage between me and the petitioner no.1 has since been dissolved vide a decree of divorce dated 16.01.2020 under Section 13B (2) of the HMA in HMA Petition No.63/2020 of the Court of the Principal Judge, Family Court, South, Saket Courts, New Delhi, copy of which is on the record as Ex.CW2/E.

In view of the settlement arrived at between me and the petitioners, I do not oppose the prayer made by the petitioners seeking the quashing of the FIR No.59/2014, PS Ambedkar Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act nor do I want the petitioners to be punished in relation thereto.

I have studied upto standard 5th.

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

RO & AC
03.03.2020

ANU MALHOTRA, J