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

+ **CRL.M.C. 1823/2020 & CRL.M.A. 12843/2020**

JAI KRISHAN KOTHIYAL & ORS. Applicant

Through: Petitioner no.1 in person with
Mr.Simarpal Singh Sawhney, Advocate.

Versus

STATE & ANR.Respondent

Through: Mr.Sanjeev Sabharwal, APP for State
with SI Anuj Bajout.
R-2 in person with Ms.Shweta Sharma,
Advocate for R-2.

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **17.09.2020**

(hearing through Video Conferencing)

CRL.M.A. 12843/2020 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 1823/2020

The petitioner no.1 is present through Video Conferencing and the petitioner nos. 2 & 3 are not present and are stated by the learned counsel to be senior citizens who are presently at Rishikesh and are stated to have executed a power of attorney in favour of their son arrayed as the petitioner no.1, the copy of which power of attorney is on the record dated 09.03.2020, whereby the petitioner no.1 has been authorized to seek quashing of the FIR No.545/2018, PS Gazipur under Sections 498A/406/34 of the Indian Penal Code, 1860.

The petitioners, vide the present petition seek the quashing of the FIR No.545/2018, PS Gazipur 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, that the marriage between the petitioner no.1 and the respondent no.2 has been dissolved vide a decree of divorce through mutual consent and that all claims between the parties having been settled, 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 who is present through Video Conferencing submitted that he identifies the petitioner no.1 Mr.Jai Krishan Kothiyal present today through Video Conferencing and the proofs of identity of the petitioner no.2 Mr.Ramesh Dutt Kothiyal and petitioner no.3 Smt.Kamla Devi Kothiyal as being the three accused persons arrayed in the FIR No.545/2018, PS Gazipur registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and also identifies the respondent no.2 Ms.Reena Kothiyal as being the complainant thereof.

The respondent no.2 in her deposition on oath by the Court in replies to specific Court queries has affirmed the factum of the settlement arrived at between her and the petitioner no.1 at the Delhi Mediation Centre, KKD Courts, Delhi and has testified to the effect that pursuant thereto, a total sum of Rs.12,00,000/- had been agreed to be paid to her, out of which a sum of Rs.8,00,000/- had been received by her previously out of which a sum of Rs.2,00,000/- in terms of Clause 3 of the said agreement had been received in the name of her minor child Aarav and the balance sum of Rs.4,00,000/- has to be received by her today at the time of quashing of the FIR which has now been handed over to her by the petitioner no.1 vide a demand draft bearing no.610362 dated 15.09.2020 drawn on the Punjab National Bank in her favour and has stated that there are now no claims of hers left against the petitioners. She

has further testified to the effect that in view of the settlement arrived at between her and the petitioner no.1 at the Delhi Mediation Centre, KKD Courts, Delhi on 19.11.2019, the marriage between her and the petitioner no.1 has since been dissolved vide a decree of divorce through mutual consent under Section 13B(2) of the HMA, 1955 in HMA Petition No.33/2020 vide a decree dated 15.01.2020 of the Court of the Principal Judge (East), Family Court, KKD Courts, Delhi and that pursuant to the said settlement arrived at between her and the petitioner no.1, the child namely Aarav born of the wedlock between her and the petitioner no.1 is in her custody.

The respondent no.2 in reply to a specific Court query has stated that she has done her B.Com and works with Tech Mahindra and that she has made her statement voluntarily of her own accord after understanding its implications, there appears no reason to disbelieve her statement that she has arrived at a settlement with the petitioners voluntarily of her own accord without any duress, coercion or pressure from any quarter.

On behalf of the State, it is submitted that apart from the factum that Clause 3 of the mediation settlement reads to the effect:-

“3. It is agreed between the parties that the wife has also agreed to settle the matter on behalf of the minor child Aarav for an amount of Rs.2,00,000/- (Rs. Two Lak11 only) in relation to his maintenance; education and upbringing. In case of any dissatisfaction in the settlement done on behalf of the minor child by the mother/the wife, he would be free to have recourse to the provisions of law for seeking appropriate relief.”

to submit that, the rights of the minor child ought not to have been given up by the mother for a settlement amount of Rs.2,00,000/- and could not have been so settled between the parties and it is submitted further on behalf of the State that apart from the aforestated factum, there is no other ground for opposing the prayer made by the petitioners seeking the

quashing of the FIR in question in view of the settlement arrived at between the parties.

Learned counsel for the petitioners submits that vide Clause 3 of the said agreement itself, it has been stipulated to the effect that in case of any dissatisfaction in the settlement done on behalf of the minor child by the mother/the wife, he would be free to have recourse to the provisions of law for seeking appropriate relief.

It is made clear that in view 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 and order dated 22.01.2020 in CRL.M.C.323/2020 ***Pawan Sharma & Anr. Vs. State & Anr.*** of this Court, it would be open to the minor child Aarav to seek redressal qua his rights qua maintenance or otherwise in accordance with law against the petitioner nos. 1 to 3 as well as against the respondent no.2.

In as much as, the present FIR has apparently emanated from a matrimonial discord between the petitioner no.1 and the respondent no.2 which has since been resolved by the dissolution of the marriage between the petitioner no.1 and the respondent no.2 and in view of the statement made by the respondent No.2 duly identified by the Investigating Officer, there appears no reason to disbelieve the statement of the respondent no.2 that she has arrived at a settlement with the petitioners voluntarily, she being a graduate and has stated that she understands the implications of her statement with their being no opposition on behalf of the State to the prayer made by the petitioners seeking quashing of the FIR in question, 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 and the minor child, 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, FIR No.545/2018, PS Gazipur 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 Mr.Jai Krishan Kothiyal, petitioner no.2 Mr.Ramesh Dutt Kothiyal and petitioner no.3 Smt.Kamla Devi Kothiyal are thus quashed.

The petition is disposed of accordingly.

ANU MALHOTRA, J

SEPTEMBER 17, 2020

‘neha chopra’

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 1823/2020

JAI KRISHAN KOTHIYAL & ORS. Versus STATE & ANR.

17.09.2020

CW-1 SI Anuj Bajout, PS Gazipur.

ON S.A.

I identify the petitioner no.1 Mr.Jai Krishan Kothiyal present today through Video Conferencing and the proofs of identity of the petitioner no.2 Mr.Ramesh Dutt Kothiyal and petitioner no.3 Smt.Kamla Devi Kothiyal as being the three accused persons arrayed in the FIR No.545/2018, PS Gazipur registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and I also identify the respondent no.2 Ms.Reena Kothiyal as being the complainant thereof.

RO & AC
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JAI KRISHAN KOTHIYAL & ORS. Versus STATE & ANR.

17.09.2020

CW-2 Ms.Reena Kothiyal, d/o Sh.Surender Dutt, age 33 years, r/o 118H, Mayur Vihar, Phase-III, Delhi previously r/o A36, Mayur Vihar, Phase-III, Delhi.

ON S.A.

In view of the settlement arrived at between me and the petitioner no.1 at the Delhi Mediation Centre, KKD Courts, Delhi on 19.11.2019, the marriage between me and the petitioner no.1 has since been dissolved vide a decree of divorce through mutual consent under Section 13B(2) of the HMA, 1955 in HMA Petition No.33/2020 vide a decree dated 15.01.2020 of the Court of the Principal Judge (East), Family Court, KKD Courts, Delhi. Pursuant to the said settlement arrived at between me and the petitioner no.1, the child namely Aarav born of the wedlock between me and the petitioner no.1 is in my custody.

In terms of the settlement arrived at between me and the petitioners, a total sum of Rs.12,00,000/- had been agreed to be paid to me, out of which a sum of Rs.8,00,000/- has been received by me previously out of which a sum of Rs.2,00,000/- in terms of Clause 3 of the said agreement has been received in the name of my minor child Aarav and the balance sum of Rs.4,00,000/- has to be received by me today at the time of quashing of the FIR which has now been handed over to me by the petitioner no.1 vide a demand draft bearing no.610362 dated 15.09.2020 drawn on the Punjab National Bank in my favour. There are now no claims of mine left against the petitioners.

In view thereof, I do not oppose the prayer made by the petitioners seeking the quashing of the FIR No.545/2018, PS Gazipur registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and all the consequential proceedings emanating therefrom nor do I want the petitioners to be punished in relation thereto.

I have done my B.Com and presently I work with Tech Mahindra.

I have made my statement after understanding the implications thereof voluntarily of my own accord without any duress, coercion or pressure from any quarter and I do not need to think again.

RO & AC
17.09.2020

ANU MALHOTRA, J