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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4286/2019**

VINOD KUMAR AND OTHERS Petitioners

Through: Mr. Jahar Singh, Adv. with
petitioners.

versus

GOVT OF NCT OF DELHI & ANR Respondents

Through: Mr. Raghuvinder Varma, APP for
State with SI Vikas, PS Rohini
SouthR-2 in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **27.01.2020**

Vide the present petition, the petitioners seek quashing of the FIR No.752/2014, PS Rohini South registered under Sections 354/354A/354B/323/34 of the Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the parties vide a settlement agreement dated 03.01.2018 at the Delhi Mediation Centre, Rohini Courts 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 Election Commission

Identity Card, copy of which is directed to be placed on the record. The respondent no.2 in her examination on oath by the Court has affirmed having signed the mediation settlement/ agreement dated 03.01.2018 arrived at the Delhi Mediation Centre, Rohini Courts, copy of which as issued by the Delhi Mediation Centre, Rohini District Courts is placed on record as Ex.CW2/A voluntarily of her own accord without any duress, coercion or pressure from any quarter.

She has stated that in view of the settlement between her and the petitioners, she does not oppose the prayer made by the petitioner no.2 Mrs. Sheela @ Durgi, petitioner no.3 Mrs. Meera, petitioner no.4 Mrs. Rani seeking quashing of the FIR No.752/2014, PS Rohini South registered under Sections 354/354A/354B/323/34 of the Indian Penal Code, 1860 nor does she want the petitioner nos.2, 3 & 4 to be punished in relation thereto. Apparently, the offence alleged against the petitioner nos.2, 3 & 4 is one under Sections 323/34 of the Indian Penal Code, 1860, which is *per se* compoundable in terms of Section 320 of the Cr.PC, 1973. In view of the deposition of the respondent no.2 and non-opposition on behalf of the State qua the offence alleged against the petitioner nos.2, 3 & 4, the FIR in question is partially quashed qua the petitioner nos.2, 3 & 4 qua alleged commission of the offences punishable under Sections 323/34 of the Indian Penal Code, 1860.

The petition as observed at the outset *inter alia* seeks quashing of the FIR in relation to the allegations alleged against the petitioner no.1 qua the alleged commission of the offences punishable under Sections 354/354A/354B of the Indian Penal Code, 1860 on the basis of a settlement

dated 03.01.2018. It is essential to observe that the said offences alleged against the petitioner no.1 as put forth through the averments made in the FIR and the statement under Section 164 of the Cr.PC, 1973 of the prosecutrix i.e. the respondent no.2 dated 17.09.2014 speak of gross mental depravity against the petitioner no.1.

In the circumstances, it is not considered appropriate to grant the prayer made by the petitioner no.1 seeking quashing of the FIR in question against him and the prayer is allowed only qua the petitioner nos.2, 3 & 4.

As observed vide order dated 17.01.2020 in Crl.M.C.214/2020, the learned trial Courts making reference to mediation proceedings ought to take into account the guidelines laid down in *Afcons Infrastructure Limited & Another v. Cherian Varkey Construction Company Private Limited*; (2010) 8 SCC 24 as well as the guidelines laid down by this Court in *Yashpal Chaudhrani & Ors. v. State (Govt. of NCT of Delhi) and Another* 2019 SCC OnLine Del 8179 whereby it has been observed to the effect that

“67. This Court is of the firm view that before making a reference to mediation in the context of criminal case, the court must consider as to whether a settlement reached by such effort would be acceptable for the criminal process to be brought to an end.

(emphasis supplied)

.....

71. To sum up, this Court is of the considered opinion that there has to be circumspection at all stages and:

(i) The court while considering reference of the parties to a criminal case to mediation must before even ascertaining as to whether elements of settlement exist first examine, by preliminary scrutiny, the permissibility in law for the criminal action to be brought to an end either because the offence

involved is compoundable or because the High Court would have no inhibition to quash it, bearing in mind the broad principles that govern the exercise of jurisdiction under Section 482 Cr.P.C.

(ii) The mediator (before commencing mediation) must undertake a preliminary scrutiny of the facts of the criminal case and satisfy himself as to the possibility of assisting the parties to such a settlement as would be acceptable to the court, bearing in mind the law governing the compounding of the offences or exercise of power of the High Court under Section 482 Cr.P.C. For this, an institutional mechanism has to be created in the mediation centres so that there is consistency and uniformity in approach. The scrutiny in above nature would also need to be undertaken, as the mediation process continues, should any such criminal case, as mentioned above, be brought on the table by the parties (for being included in the settlement), as takes it beyond the case initially referred.

(iii) The system of vetting, at the conclusion of the mediation process, needs to be institutionalised so that before a settlement vis-a-vis a criminal case is formally executed by the parties, satisfaction is reached that the criminal charge involved is one which is either compoundable or one respecting which there would be no inhibition felt by the High court in exercise of its inherent power under Section 482 Cr.P.C., bearing in mind the relevant jurisprudence.

72. It is hoped and expected that the criminal courts, and the mediation centres shall abide by the above guidelines in future. It may be added that the above would equally apply mutatis mutandis to the other ADR methods.”

(emphasis supplied)

The learned trial Courts are thus directed to adhere to the law at the time of making referral of cases to Mediation especially in relation to non-compoundable offences involving gross allegations of mental depravity

against the accused persons.

The petition is disposed of accordingly.

Copy of this order be sent to the learned trial Court and be circulated to all learned trial Courts and all Mediation Centres in Delhi by the learned Registrar General of this Court.

ANU MALHOTRA, J

JANUARY 27, 2020

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IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 4286/2019

**VINOD KUMAR AND OTHERS Vs. GOVT OF NCT OF DELHI & ANR
27.01.2020**

CW-1 SI Vikas, PS Rohini South.

ON S.A.

I identify the petitioner no.1 Mr. Vinod Kumar, petitioner no.2 Mrs. Sheela @ Durgi, petitioner no.3 Mrs. Meera, petitioner no.4 Mrs. Rani as being the accused arrayed in the FIR No.752/2014, PS Rohini South registered under Sections 354/354A/354B/323/34 of the Indian Penal Code, 1860. I identify the respondent no.2 Ms. Seema as being the complainant of the said FIR.

**RO & AC
27.01.2020**

ANU MALHOTRA, J

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 4286/2019

**VINOD KUMAR AND OTHERS Vs. GOVT OF NCT OF DELHI & ANR
27.01.2020**

**CW-2 Ms. Seema, d/o Mr. Ram Kishan, aged 25 years, r/o Jhuggi
No.161, T-Huts, Sector-3, Rohini, Avantika, Rohini, Delhi.
ON S.A.**

I have brought my original Election Commission Identity Card, copy of which be placed on the record. A mediation settlement/ agreement dated 03.01.2018 has been arrived at between me and the petitioners at the Delhi Mediation Centre, Rohini Courts, copy of which as issued by the Delhi Mediation Centre, Rohini District Courts bears my signatures thereon as visible at Point A on Ex.CW2/A, which I have signed voluntarily of my own accord without any duress, coercion or pressure from any quarter.

In view of the settlement between me and the petitioners, I have no opposition to the prayer made by the petitioner no.2 Mrs. Sheela @ Durgi, petitioner no.3 Mrs. Meera, petitioner no.4 Mrs. Rani seeking quashing of the FIR No.752/2014, PS Rohini South registered under Sections 354/354A/354B/323/34 of the Indian Penal Code, 1860 nor do I want the petitioner nos.2 , & 4 to be punished in relation thereto.

I have studied upto standard 8th and I am a cook.

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
27.01.2020**

ANU MALHOTRA, J