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

+ **CRL.M.C. 6053/2019**

WG. CDR. DEEPAK SHARMA & ORS.

..... Petitioners

Through Mr. Atul Nagarajan, Adv. with
petitioners in person

versus

STATE & ANR.

..... Respondents

Through Mr. Kewal Singh Ahuja, APP for State
SI S.P. Samaria, PS Vasant Kunj (South)
Ms. Poonam Mendiratta, Adv. for R-2
with R-2 in person

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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23.01.2020

Vide the present petition, the petitioners seek quashing of the FIR No.514/2013 under Sections 498A/406/34 Indian Penal Code, 1860 PS Vasant Kunj, South submitting to the effect that a settlement has been arrived at between the parties 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 Aadhar Card, copy of which is on the record 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 settlement deed/agreement dated 31.1.2019 Ex.CW2/C voluntarily of her own accord without any duress, coercion or pressure from any quarter.

She further stated that in terms of the settlement 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 dated 06.09.2019 in HMA Petition No.704/19 vide a decree of the Court of the Principal Judge, Family Courts, Patiala House Courts, New Delhi, copy of which is on the record as Ex.CW2/E. In terms of the settlement arrived at between the respondent No.2 and the petitioner No.1 a total sum of Rs.70.00 lakhs was agreed to be paid to the respondent No.2 by the petitioner No.1 of which a sum of Rs.60.00 lakhs has been received by her previously and the balance sum of Rs.10.00 lakhs has been handed over to respondent No.2 by the petitioner No.1 by way of a Bankers Cheque bearing No.899836 dated 15.1.2020 drawn on State Bank of India in favour of respondent No.2, copy of which is Ex.CW2/D. She has also testified to the effect that in terms of the proceedings dated 27.11.2019 the modified terms of the settlement that have been filed by the petitioner No.1 vide his affidavit dated 20.1.2020 Ex.CW3/C have been agreed to by her as well. She has further stated that in view of the settlement between respondent No.2 and the petitioner No.1, she has no opposition to the prayer made by the petitioners seeking quashing of the FIR No.514/2013 under Sections 498A/406/34 Indian Penal Code,

1860 PS Vasant Kunj, South nor does she want the petitioners to be punished in relation thereto. She has done Masters in Mass Communication and has been teaching off and on and that she has made her statement after understanding its implications.

The petitioners are present in person and the affidavit of the petitioner No.1 in terms of the direction dated 27.11.2019 is on record with effect to the modified terms of settlement. The petitioner No.1 has also been examined by the Court today and has testified to having signed his affidavit Ex.CW3/A as well as the settlement agreement dated 31.1.2019 Ex. CW2/C and the modified terms of settlement vide his affidavit CW3/C dated 20.1.2020. The petitioner No.1 has testified to the effect that Clause 6(vi) under the heading Alimony in the agreement which read to the effect.

6(vi) That the Second Party agrees that the minor daughter Sanya shall continue to have her name on her Dependent's Card, Canteen Card, Medical Insurance/facilities as per the Rules of Indian Air Force and even after pre-mature retirement/superannuation of the Second Party from Indian Air Force with no claim over retirement or pensionary benefits of the Second Party.

as submitted the petitioner No.1 through his affidavit CW3/C dated 20.1.2020, the agreed term now reads to the effect:

(vi) That the Second Party agrees that the minor daughter Sanya shall continue to have her name on her Dependent's Card, Canteen Card, Medical Insurance/facilities as per the Rules of Indian Air Force and even after pre mature retirement/superannuation of the Second Party from Indian Air Force.

Further qua the clause of custody in the settlement agreement dated 31.1.2019 which read to the effect:

“CUSTODY:

That the parties have one daughter from the wedlock namely, Ms. Sanya Sharma. That the First Party shall have the exclusive custody of the daughter Ms. Sanya Sharma and it is agreed between the parties that subject to the Second Party abiding by the terms of the present Agreement and making payments of the settlement amount within the stipulated time frame mentioned above, the first Party shall be solely responsible for education/tuition fees, medical expenses, insurances, marriage, travel and other routine expenditure and that the First Party shall have no claim whatsoever qua the maintenance of the daughter against the Second Party. The Second Party agrees that he shall never claim any custody or visitation rights over the minor daughter and all decision pertaining to the minor daughter shall be taken solely and exclusively by the First Party.”

The agreed term now reads to the effect:

“CUSTODY: That the parties have one daughter from wedlock namely; Ms Sanya Sharma. That the First Party shall have the exclusive custody of the daughter Ms. Sanya Sharma and it is agreed between the parties that subject to the Second Party abiding by the terms of the present Agreement and making payments of the settlement amount within the stipulated time frame mentioned above, the first Party shall be solely responsible for education/ tuition on fees, medical expenses, insurances, marriage, travel and other routine expenditure. The Second Party agrees that he shall never claim any custody or visitation rights over the minor daughter and all decision pertaining to the minor daughter shall be taken solely and exclusively by the First Party.”

He has further stated to the effect that he understands that the minor child Sanya Sharma born of the wedlock between the respondent No.2 and

the petitioner No.1 would be entitled to seek her claims against the petitioner No.1 qua maintenance or otherwise in accordance with law.

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 parties.

In view of the settlement arrived at between the parties and the deposition of the respondent no.2 and the non-opposition on behalf of the State and the claims of the minor child born of the wedlock between the petitioner No.1 and the respondent No.2 having been protected, 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 and of 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),

the FIR No.514/2013 under Sections 498A/406 Indian Penal Code, 1860 PS Vasant Kunj, South and all consequential proceedings emanating therefrom against the petitioner no.1 Wg. Cdr. Deepak Sharma, petitioner No.2 Shri R.S. Sharma and petitioner No.3 Smt. Urmil Sharma are quashed.

The petition is disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 23, 2020

IN THE HIGH COURT OF DELHI: NEW DELHI

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CRL.M.C. 6053/2019

Wg. Cdr. Deepak Sharma & Ors. vs. State of NCT of Delhi & Anr.

23.01.2020

CW-1 SI S.P. Samaria, PS Vasant Kunj (South)

ON S.A.

I identify the petitioner no.1 Wg. Cdr. Deepak Sharma, petitioner No.2 Shri R.S. Sharma and petitioner No.3 Smt. Urmil Sharma who are present in Court today as being the accused arrayed in FIR No.514/2013 under Sections 498A/406/34 Indian Penal Code, 1860 PS Vasant Kunj, South.

I identify the respondent no.2 Ms. Nidhi Sharma as being the complainant of the said FIR.

RO & AC
23.01.2020

ANU MALHOTRA, J

Wg. Cdr. Deepak Sharma & Ors. vs. State of NCT of Delhi & Anr.**23.01.2020****CW-2 Ms. Nidhi Sharma, d/o Air Cmde. Sh. H.V. Bansal (Retd) aged 42 years. r/o 12B, Tower-6, Ozone Park Apartments, Sector 86, Tigaon Road, Faridabad-121002****ON S.A.**

I have brought my original Aadhar Card, copy of which is on the record as Ex.Cw2/A. My affidavit annexed to the petition bears my signatures thereon at points A & B thereon on Ex.CW2/B. The settlement deed dated 31.1.2019 Ex.CW2/C bears my signature thereon at point A. I have signed all these documents voluntarily of my own accord without any duress, coercion or pressure from any quarter. I have read the contents of the affidavit dated 20.1.2020 filed by the petitioner No.1 pursuant to the directions dated 27.11.2019 and in terms thereof I do not oppose the prayer made by the petitioners seeking quashing of the FIR No.514/2013 under Sections 498A/406/34 Indian Penal Code, 1860 PS Vasant Kunj, South nor do I want the petitioners No.1 to 3 be punished in relation thereto.

In terms of the settlement between me and the petitioner no.1, 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 dated 06.09.2019 in HMA Petition No.704/19 vide a decree of the Court of the Principal Judge, Family Courts, Patiala House Courts, New Delhi, copy of which is on the record as Ex.CW2/E.

In terms of the settlement arrived at between me and the petitioner No.1 a total sum of Rs.70.00 lakhs was agreed to be paid to me by the petitioner No.1 of which a sum of Rs.60.00 lakhs has been received by me previously and the balance sum of Rs.10.00 lakhs has been handed over to me by the petitioner No.1 by way of a Bankers Cheque bearing No.899836 dated 15.1.2020 drawn on State Bank of India in my favour, copy of which is Ex.CW2/D.

I have done my Masters in Mass Communication and have been teaching off and on.

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
23.01.2020

ANU MALHOTRA, J

Wg. Cdr. Deepak Sharma & Ors. vs. State of NCT of Delhi & Anr.

23.01.2020

CW-3 Wg. Cdr. Deepak Sharma, s/o Shri R.S. Sharma aged 44 years, r/o House No.111-C, Block-B, Pocket U&V, Shalimar Bagh, New Delhi-110088

ON S.A.

I have brought my original Aadhar Card, copy of which is on the record as Ex.Cw 3/A. My affidavit annexed to the petition bears my signatures thereon at points A & B thereon on Ex.CW2/B. The settlement deed dated 31.1.2019 Ex.CW2/C bears my signature thereon at point B. My affidavit dated 20.1.2020 pursuant to the direction dated 27.11.2019 in the present petition bears my signatures thereon at points A and B on Ex.CW3/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 directions dated 27.11.2019 in relation to Clause 6(vi) of settlement deed dated 31.1.2019 under the heading Alimony which read to the effect:

6(vi) That the Second Party agrees that the minor daughter Sanya shall continue to have her name on her Dependent's Card, Canteen Card, Medical Insurance/facilities as per the Rules of Indian Air Force and even after pre-mature retirement/superannuation of the Second Party from Indian Air Force with no claim over retirement or pensionary benefits of the Second Party.

As submitted by me through my affidavit CW3/C dated 20.1.2020, the agreed term now reads to the effect:

(vi) That the Second Party agrees that the minor daughter Sanya shall continue to have her name on her Dependent's Card, Canteen Card, Medical Insurance/facilities as per the Rules of Indian Air Force and even after pre mature retirement/superannuation of the Second Party from Indian Air Force.

Further qua the clause of custody in the settlement agreement dated 31.1.2019 be read to the effect:

“CUSTODY:

That the parties have one daughter from the wedlock namely, Ms. Sanya Sharma. That the First Party shall have the exclusive custody of the daughter Ms. Sanya Sharma and it is agreed between the parties that subject to the Second Party abiding by the terms of the present Agreement and making payments of the settlement amount within the stipulated time frame mentioned above, the first Party shall be solely responsible for education/tuition fees, medical expenses, insurances, marriage, travel and other routine expenditure and that the First Party shall have no claim whatsoever qua the maintenance of the daughter against the Second Party. The Second Party agrees that he shall never claim any custody or visitation rights over the minor daughter and all decision pertaining to the minor daughter shall be taken solely and exclusively by the First Party.

F. That it is agreed between the parties that over and above the agreed amount of Rs.70,00,000(Rupees seventy lakhs only) to be paid by the Second Party to the First Party in the manner and mode prescribed above, the Second Party shall pay/reimburse to the First Party the school fee of the minor child Ms. Sanya for the quarter of January, 2019 in addition to Rs.15,000/- towards the maintenance of the minor child for the months of February, March and April, 2019. The First Party agrees to hand over to the Second Party the photocopy of the school fee receipts for the said quarter of January to March, 2019 for the Second Party to claim reimbursement of the said amount from Indian Air Force. However, the Second Party agrees to immediately reimburse the entire fee so paid by the First Party for the quarter of January, 2019 at the time of recording of statement in the First Motion Petition. The amount so paid by the Second Party

towards the fees for quarter of January, 2019 in addition to Rs.15,000/- for the months of February, March and April, 2019 shall be adjusted against the payment of Rs.9,000/- (Rupees Nine Thousand Only) per month received by the First Party from Air Force by order granting maintenance by the Air Force for the months of February to April, 2019.”

The agreed term now reads to the effect:

“CUSTODY: That the parties have one daughter from wedlock namely; Ms Sanya Sharma. That the First Party shall have the exclusive custody of the daughter Ms. Sanya Sharma and it is agreed between the parties that subject to the Second Party abiding by the terms of the present Agreement and making payments of the settlement amount within the stipulated time frame mentioned above, the first Party shall be solely responsible for education/ tuition on fees, medical expenses, insurances, marriage, travel and other routine expenditure. The Second Party agrees that he shall never claim any custody or visitation rights over the minor daughter and all decision pertaining to the minor daughter shall be taken solely and exclusively by the First Party.”

I have so agreed to the said terms of the settlement between me and the respondent No.2 voluntarily, of my own accord, without any coercion from any quarter and after understanding the implications thereof. I understand that the minor child born of the wedlock between me and the respondent No.2 Ms. Sanya Sharma would be entitled to seek her claims against me qua maintenance or otherwise in accordance with law. I am a graduate and a Wing Commander in the Indian Air Force. I understand the implications of the statement made by me.

RO & AC
23.01.2020

ANU MALHOTRA, J