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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.16623 of 2017
&
CRL.M.P.Nos.10215 & 10216 of 2017

1.Kathirava Moorthy

2.S.Theivakani

3.C.Seetha Lakshmi

4.Alex Chandrasekar

5.C.Muthulakshmi

6.M.Chelladurai ... Petitioners

Versus

1.Sub - Inspector of Police,
W-2, All Women Police Station,
Madipakkam, Chennai.

2.K.Lavanya ... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to call for the records and quash C.C.No.981 of 2012 pending on the file of the Judicial Magistrate, Alandur.

For Petitioners : Mr.C.H.Vinobha Gandhi

For Respondent No.1 : Mr.A.Damodaran
Additional Public Prosecutor

For Respondent No.2 : Ms.Reshmi Christy for
Mr.K.V.Sanjeev Kumar

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O R D E R

This criminal original petition has been filed to call for the records and quash C.C.No.981 of 2012 pending on the file of the Judicial Magistrate, Alandur.

2.The case of the prosecution is that the 1st petitioner and the 2nd respondent were legally married on 28.11.2003 at New Bombay Abbot Hotel, Vashi, Navi Mumbai as per Hindu rites and customs, it was an arranged marriage, after the marriage in Mumbai a reception was arranged at Chennai. Immediately after the marriage, both of them left to USA and stayed there for four years. Out of the wedlock, there is one male child born on 03.01.2008 named Krishiv. The 2nd respondent came to her parental home at Chennai for delivery in the end of 2007 and thereafter, they have developed serious difference of opinion and since 2008 they started living separately. Their minor son is in the custody of the 2nd respondent. The de-facto complainant filed a complaint against the petitioner, his mother, sister and sister's husband and FIR was registered in Crime No.02 of 2010 for the offences under Section 498(A), 506 (1) of IPC and Section 4 of Tamil Nadu Dowry Prohibition Act. The first respondent police filed charge sheet before the Judicial Magistrate, Alandur, Chennai, which was taken on file in C.C.No.981 of 2012.

3.The learned counsel for the petitioners submitted that it is a matrimonial dispute and the compromise was arrived between the first petitioner and the de-facto complainant. Now, both of them have come to a compromise. Hence, prayed for quash C.C.No.981 of 2012.

4.The 1st petitioner, who is the estranged husband of the defacto complainant, now, residing at USA appeared through video conferencing and the 2nd respondent/defacto complainant was physically present before this Court. In view of the compromise entered into between the 1st petitioner and the defacto complainant, permanent alimony of Rs.26,00,000/- have been fixed and Rs.13,00,000/- by way of Demand Draft drawn on HDFC Bank in D.D.No.783398 dated 23.02.2022 received by the defacto complainant. The other petitioners are mother, sister, sister's husband and 5 & 6 petitioners are uncle and aunt of first accused. In respect of the same, a Joint Memo of Compromise dated 28.02.2022 filed by the first petitioner and the 2nd respondent/defacto complainant before this Court, which is extracted hereunder :-

"1. The 1st Petitioner is

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Mr.KathiravaMoorthy son of Sivaramakrishnan, Hindu aged about 48 years permanent resident of Apna Co-Operative Housing Society C-7, First Floor, Sector -15, Vashi, New Mumbai : 400705, employed in USA.

2. The 2nd respondent is Mrs.Lavanya wife of Kathiravanoorthy Hindu aged 39 years residing at No:20/43, 3rd Street, Annamalai Nagar, West Mambalam, Chennai : 600 033.

3. It is submitted that the 1st petitioner and the 2nd respondent were legally married on 28.11.2003 at New Bombay Abbot Hotel, Vashi, Navi Mumbai as per Hindu rites and customs, it was an arranged Marriage, after the marriage in Mumbai a reception was arranged at Chennai. Immediately after the marriage both of them left to USA and stayed there for four years. Out of the wedlock there is one male issue born on 03.01.2008 named Krishiv.

4. It is submitted that after marriage they lived in USA for about four years and second respondent came to her parental home at Chennai for delivery in the end of 2007 and thereafter they have developed serious difference of opinion and since 2008 they started living separately. Their minor son is in the custody of 2nd respondent.

5. It is submitted that the second respondent lodged complaint on 24.05.2010 before W-2, Madipakkam All Women Police Station against the petitioner, his mother, sister and sister's husband and the same was registered on 28.08.2010 in Cr.No. 2/2010 for the alleged offences u/s. 498A, 506(1) and Sec.4 of Tamil Nadu Dowry Prohibition Act., subsequently the said case was taken on the file in C.C.No.981 of 2012 on the file of Judicial Magistrate, Alandur and lookout notice was issued against the petitioner, and on 21.05.2017 when the petitioner landed at Mumbai Airport Immigration Authorities detained him on the basis of lookout notice and he was produced before Learned Judicial Magistrate Alandur on 23.05.2017 and remanded in jail. Later the 1st petitioner was enlarged in bail on 30.05.2017.

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6. It is submitted that they have not lived together since their separation. The 1st petitioner filed a Petition No.26 of 2012 before Civil Judge, Thane, Maharashtra seeking Dissolution of Marriage and while the matter was pending the 2nd respondent filed Transfer Petition No.462/2012 before the Hon'ble Supreme Court for transfer of Marriage Petition No:26 of 2012 from Civil Judge, Thane, to Family Court Chennai, and upon the transfer orders the Marriage Petition No.26 of 2012 was transferred to Family Court, Chennai and renumbered in O.P.No:4504/2012 in the Court of II Addl' Family Judge, Chennai and the same was dismissed for default on 26.08.2016. The 2nd respondent also filed M.C.No.111 of 2012 before the Hon'ble I Addl' Family Court, Chennai, claiming Maintenance. Ex-parte order passed in the above M.C and the 2nd respondent filed M.P.No.704/2014 claiming arrears of maintenance, wherein the 1st petitioner has paid Rs.2,00,000/- in the said proceedings towards arrears of maintenance and M.C proceedings are still pending.

7. It is submitted that the 1st petitioner after his release on bail filed a petition before the Hon'ble High Court, Chennai in Crl.O.P.No:16924/2017 to recall the look-out notice and Crl.O.P.No:16623/2017 praying to quash the Criminal proceedings pending in C.C.No.981 of 2012 on the file of J.M. Alandur along with interim petitions for stay of the proceedings. Whereas through order dated 17.08.2017 passed in Crl.M.P.No's:10215/2017 & 10216/2017 filed in Crl.O.P.No:16623/2017 Criminal proceedings pending on the file of J.M., Alandur stayed pending disposal of main petition and through orders dated 13.11.2017 passed in Crl.O.P.No:16924/2017 look-out notice was recalled and the returned to his employment.

8. It is submitted that the earlier mediations by the relatives of both families were held which borne no fruit as there was no possibility for reunion. The subsequent events also created more gap between the parties, they felt that their marriage was broken down due to their temperamental incompatibility. Therefore

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they have decided to part amicably by filing petition for divorce by mutual consent.

9. It is submitted that they have exchanged all articles belonging to each other and there is no claims with regard to certificates, jewels or valuables whatsoever from each other respectively.

10. It is submitted that as mutually agreed between the 1st petitioner and the respondent, the 1st petitioner has accepted to pay Rs.26,00,000/- (Twenty Six Lakhs Only) to the 2nd respondent towards full and final settlement as per the 13-B petition and the same was agreed by the second petitioner. The first petitioner paid an amount of Rs.13,00,000/- (Thirteen Lakhs Only) through a Demand Draft in the name of Lavanya Jayaprakash (2nd respondent) Demand Draft No.783398 dated 23.02.2022 drawn on HDFC Bank, IFSC :HDFC0000060 Branch in the name of second petitioner during Joint Compromise Memo filed before the Hon'ble High Court in Crl.O.P.No:16623 of 2021 quash petition filed by the first petitioner. The second petitioner acknowledges the receipt of this payment. The first petitioner agreed to make the balance payment Rs.13,00,000/- (Thirteen Lakhs Only) before Family Court on the day of disposal of 13-B petition. The second respondent consented for this and also agree to withdraw all cases including M.C.No.111 of 2012 filed by her pending on the file of II Addl' Family Judge, Chennai without any prior condition. They mutually agreed that the custody of their only minor child Master. Krishiv shall be with (his mother) the 2nd respondent here in and the 1st petitioner has no objection for this. The 1st petitioner assures that he will not claim or separate the child from the 2nd respondent.

11. The 2nd respondent has extended her satisfaction on the above arrangement and that she has no claim whatsoever in respect of the present, past or future maintenance from the petitioner.

12. It is submitted that as the parties have decided to put an end to the dispute the

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second respondent undertakes to extend her no objection to quash the criminal petition O.P.No:16623/2017 filed against the Criminal Proceedings pending in C.C.No.981 of 2012 on the file of J.M. Alandur. The second respondent has also agreed to withdraw M.C.No:111 of 2012 inclusive of all I.A's filed therein pending on the file of Hon'ble I Addl' Family Court , Chennai. The Marriage petition No.26 of 2012 filed before Civil Judge, Thane, Maharashtra by the 1st petitioner seeking Dissolution of Marriage which was transferred to Family Court Chennai, and renumbered as O.P No:4504/20212 on the file of II Addl' Family Court, Chennai, the same has been dismissed for default already.

It is submitted that there is no collusion or connivance in filing this memo of compromise and the consent has not been obtained by threat, force, coercion, undue, influence or fraud.

Hence, the 1st petitioner and the 2nd respondent has agreed to file this memo before this Hon'ble Court, the same may be recorded and on recording the memo of compromise this Hon'ble Court may be pleased to pass an appropriate order."

It is therefore prayed that this Hon'ble Court may be pleased to record the present Joint Memo of Compromise and pass an appropriate order."

5.The case is still at the stage of trial. By passage of time, the parties have decided to bury their hatchet and compromise the dispute amicably among themselves. The case is an offshoot of matrimonial discord.

6.Under such circumstances, no useful purpose will be served in keeping the case pending, even though, the offences involved are not compoundable in nature. In the light of the guidelines given by the Hon'ble Supreme Court reported in 2017 9 SCC 641-(Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath), and after exercising due caution as advised by the Hon'ble Supreme Court in The State of Madhya Pradesh v. Dhruv Gurjar and Another reported in (2019) 2 MLJ Crl 10, this Court in exercise of its jurisdiction under Section 482 Cr.P.C., quashes the case in C.C.No.981 of 2012, pending on the file of the learned Judicial Magistrate, Alandur.

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7.This Criminal Original Petition stands allowed and as a sequel, the proceedings in C.C.No.981 of 2012, pending on the file of the learned Judicial Magistrate, Alandur, is quashed and the terms of compromise memo shall form part and parcel of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mpl/sms

To

1. The Judicial Magistrate Court,
Alandur, Chennai.

2.The Sub - Inspector of Police,
W-2, All Women Police Station,
Madipakkam, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.V.Sajeev Kumar, Advocate SR.No.13440
+1cc to Mr.C.H.Vinobha Gandhi, Advocate SR.No.13011

CRL.O.P.No.16623 of 2017
&
CRL.M.P.Nos.10215 & 10216 of 2017

MT(CO)
GN(25/03/2022)

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