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

+ CRL.M.C. 6756/2022

RAHUL

..... Petitioner

Through: Mr. Rajesh Kumar Mishra, Adv.

Versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Hemant Mehla, APP for the
State.

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Date of Decision: 14th December, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 26219/2022 (delay)

For the reasons stated in the application, the application for condonation of delay of 48 days in re-filing the petition is condoned.

Application stands disposed of.

CRL.M.C. 6756/2022

1. The present petition has been filed under section 482 CrPC seeking quashing of FIR No. 0428/2018 registered at P.S. Vijay Vihar under sections 498A/406/34 IPC.
2. Briefly stated the facts are that the marriage between the petitioner (husband) and respondent No. 2 (wife) was solemnized on 20.05.2015

as per Hindu rites and customs in Bihar. No child was born out of the wedlock. However, due to incompatible temperamental differences, both the parties started residing separately since 17.08.2016. The respondent No. 2 (wife) lodged FIR No. 0428/2018 under Sections 498A/406/34 IPC at P.S Vijay Vihar, against the Petitioner herein.

3. Thereafter, the respondent No. 2 filed a complaint before the Learned MM under the DV Act and on joint request, the matter was referred to the Delhi Mediation Centre, Rohini District Courts, Delhi. With the efforts of the learned Mediator both the parties amicably resolved all their matrimonial disputes vide Settlement Agreement dated 03.07.2019 and agreed to dissolve their marriage by way of mutual consent.
4. As per the settlement agreement dated 03.07.2019 it was agreed that the petitioner (husband) shall pay Rs. 1,50,000/- to the respondent No. 2 (wife) towards full and final settlement of all claims past, present and future *qua* this marriage including permanent alimony, stridhan, dowry articles, maintenance and all other claims. It is also settled between the parties that out of the total settlement amount, the petitioner shall pay Rs. 50,000/- to the respondent No. 2 (wife) at the time of recording of the statement in the First motion in divorce petition under section 13B (1) HMA; Rs. 50,000/- shall be paid at the time of recording of the statement in the Second motion in divorce petition under section 13B (2) HMA; and Rs. 50,000/- shall be paid before this court at the time of quashing of the FIR No. 428/2018. It is agreed between the parties that the petitioner shall return the articles

such as utensils i.e. five Phool and five Steel utensils and a trunk lying at the house of the petitioner (husband) shall be handed over to the respondent No. 2 (wife) at her maternal grandmother's house before the second motion and the same has been returned to the respondent No. 2. It is agreed between the parties that none of the parties shall interfere in the life of each other in the future in any manner. It is agreed between the parties that if the respondent No. 2 /complainant backs out of the settlement agreement then she will have to return the amount received from the petitioner along with Rs. 25,000/- to the petitioner and similarly if the petitioner backs out of the settlement agreement then he will pay Rs. 25,000/- to the respondent No.1 (wife). It is agreed between the parties that all complaints/ cases in any court as well as the present case *qua* this marriage shall be withdrawn within one month of completion of second motion. It is agreed between the parties that no case/ dispute shall remain between the parties *qua* this marriage. It is agreed between the parties that none of the parties shall file any civil/criminal proceedings against each other in the future *qua* this marriage. It is agreed between the parties that if any litigation regarding any dispute *qua* this marriage is found pending in any court, the same shall stand withdrawn. It has been agreed between the parties that they will abide by and be bound by the agreed terms/stipulations of the settlement agreement dated 03.07.2019.

5. Pursuant to the settlement agreement dated 03.07.2019, the parties filed their first motion petition under section 13B (1), HMA, which

was allowed by the learned Judge, Family Court, Rohini Courts, Delhi vide order dated 11.09.2019. Thereafter, the parties filed their second motion mutual divorce petition u/s 13B (2), HMA bearing HMA No. 1355/2020, which too was allowed by the learned Judge, North West, Family Courts, Rohini Courts, Delhi, vide order dated 19.11.2020.

6. Thus, the marriage between both the parties stood dissolved by mutual consent vide divorce decree dated 19.11.2020 and as per settlement deed dated 03.07.2019 all claims and disputes between the parties also stand settled. Learned counsel for the petitioner submits that since the parties have resolved all their differences amicably, therefore, no useful purpose would be served by continuing the abovesaid FIR and proceedings emanating therefrom and seeks that the same be quashed.
7. The petitioner (husband) and respondent No. 2 (wife) are present in person before this court and have been duly identified by the IO. The statement of Respondent No.2/ Ms. Ruby has been recorded separately wherein she has stated that she was married to the petitioner namely Rahul on 20.05.2015 and remained together with the petitioner till 17.08.2016. She has stated that no child was born out of the wedlock. She has stated that due to temperamental differences the marriage could not succeed and mutual divorce petition was filed and decree of divorce was granted vide order dated 19.11.2020 by the Judge, Family Court, North-West, Rohini Courts, Delhi She has stated that during the divorce proceedings, she along with the petitioners have entered into a settlement vide settlement

agreement dated 03.07.2019 at Delhi Mediation Centre, Rohini District Courts. She has stated that as per the settlement, her husband has to pay Rs.1,50,000/- towards full and final settlement of the entire dispute out of which she has already been paid Rs.1,00,000/-. She has stated that the remaining Rs. 50,000/- has been received by her by way of a Demand Draft bearing No.559657 dated 07.11.2022 (re-validated) drawn on State Bank of India. She has stated that she has already received the entire dowry articles. She has stated that she has no objection if the FIR No. 428/2018 registered at P.S. Vijay Vihar U/s 406/398A/34 IPC and all other proceedings emanating therefrom are quashed. She has stated that she is making the statement voluntarily against all claims (past, present and future) without any fear, undue influence or coercion.

8. Thus, having considered the submissions/ voluntary statement of the respondent No. 2 (complainant) and upon perusal of the records, this Court deems it apposite to reiterate the settled principles of law with respect to exercising power conferred under 482 CrPC in matrimonial cases.
9. The High Court being the highest court of a State is conferred with the power of control and superintendence over all courts subordinate to it. Articles 226 and 227 of the Constitution of India and Section 482 CrPC also acknowledge the inherent powers of the High Courts. High Courts can exercise its inherent power u/s 482 CrPC either to prevent abuse of the process of the court or otherwise to secure the

ends of justice. However, exercise of such power would depend upon the facts and circumstances of each case. The powers possessed by the High Courts under section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The powers under section 482 CrPC are to be exercised with due care, caution and circumspection and in the rarest of the rare cases. Thus, the power under section 482 CrPC must be exercised very sparingly to render real and substantial justice to the parties. The court while exercising the power under Section 482 Cr.P.C. does not function as a court of appeal or revision. High Courts would exercise its power under section 482 CrPC, where it finds that non-interference shall result in abuse of the process of the court or failure of justice, or where grave injustice is shown to have been caused and requires to be undone, or where the complaint does not make out any triable case against the petitioner.

10. In **B.S. Joshi v. State of Haryana**, (2003) 4 SCC 675, the Supreme Court inter alia held as under:

“ 8. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

10. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] considering the scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was observed that in a criminal case, the

*veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. **What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.***

11. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692: 1988 SCC (Cri) 234] it was held that while exercising inherent power of quashing

under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

12. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] are very apt for determining the approach required to be kept in view in a matrimonial dispute by the courts. It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code, 1860 was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to

punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Penal Code, 1860.”

11. Referring to *B.S. Joshi (supra)*, the Supreme Court in *Bitan Sengupta v. State of W.B.*, (2018) 18 SCC 366, observed that in matrimonial disputes with respect to quashing of non-compoundable offences in cases of settlement of such disputes, having ramifications limited to the parties themselves, who have arrived at a settlement, it is the duty of court to encourage and act upon genuine settlements in such cases. It was *inter alia* held as under:

“ 6. As per the appellants, the parties have settled the matter, as they have decided to keep harmony between them to enable them to live with peace and love. The compromise records that Respondent 2 have no grievances whatsoever against the appellants and want both the appellants to get acquitted from the cases. Further, both the parties have undertaken not to indulge in any litigation against each other and withdraw all the complaints pending between them before the court.

7. In the aforesaid circumstances and going by the spirit of the law laid down by this Court in B.S. Joshi v. State of Haryana [B.S. Joshi v. State of Haryana, (2003) 4 SCC 675: 2003 SCC (Cri) 848], we are of the opinion that the High Court should have accepted the settlement and compounded the offences. It is, more so, when the settlement between the parties, who were husband and wife, was even acted upon as the parties took mutual divorce on that basis.

8. *We, accordingly, allow this appeal and set aside the order of conviction passed against the appellants.*”

12. Further in ***State of M.P. v. Laxmi Narayan & Ors.***, (2019) 5 SCC 688, the Supreme Court has observed as under:

“ 15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;”

13. Moreover, a Coordinate Bench of this Court in CRL.M.C. No. 599/2021 titled ***‘Rifakat Ali & Ors Vs. State & Anr.’***, decided on 26.02.2021 and in CRL.M.C. No. 2819/2022 titled ***‘Sh. Shailesh Deshwal vs. State of NCT of Delhi & Anr.’*** decided on 03.08.2022, following the settled principles enumerated above, have exercised their power under section 482 CrPC to quash criminal proceedings in matrimonial cases, whereby parties have amicably arrived upon a genuine settlement.

14.A perusal of the above-mentioned judgments makes it amply clear, that the High Courts should exercise the power under Section 482 CrPC for quashing of criminal cases having overwhelmingly and predominantly civil flavor, and in matrimonial matters where the wrong is basically private or personal in nature and the parties have amicably resolved their entire dispute. In such category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim/complainant, the possibility of conviction is remote and bleak, and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim/complainant. It is thus well-settled that in such situations where the High Court is convinced that continuance of the criminal proceedings would lead to abuse of the process of the court or where quashing of such proceedings on account of a compromise would bring about peace and secure the ends of justice, the Courts should not hesitate to quash them.

15.In the present case, the FIR has been lodged by the respondent wife against the petitioner husband under sections 498A/406/34 IPC. The FIR stems from a matrimonial dispute between the parties. The parties have willingly and amicably settled their disputes vide a settlement agreement dated 03.07.2019. The decree of divorce by mutual consent has already been granted by the Learned Family Court vide order

dated 19.11.2020. In a case under Section 498A IPC, if the parties have entered a compromise, the chances of an ultimate conviction are bleak, and hence no useful purpose would be served by allowing the criminal proceedings to continue.

16. Thus, in my considerate view, the continuance of proceedings arising out of FIR No. 0428/2018, given that the parties have settled their disputes amicably and have been granted divorce by mutual consent, would be an abuse to the process of the courts and an exercise in futility which would not secure ends of justice. Moreover, the Apex Court has repeatedly held that it is the duty of the courts to encourage genuine settlement of marital dispute. In light of the settled law and the statement of respondent No.2/ Ms. Ruby recorded separately, this Court deems it fit to exercise its inherent jurisdiction under section 482 CrPC to quash the FIR No. 0428/2018 registered at P.S. Vijay Vihar U/s 498A/406/34 IPC and all the proceedings emanating therefrom.

17. The present petition stands disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 14, 2022/Pallavi