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

+ **CRL.M.C. 7130/2022**

JAVED KHAN AND ORS

..... Petitioners

Through: Mr. Anis Mohd., Adv. for P- 1 to 6.

versus

THE STATE (GNCT OF DELHI) AND ANR. Respondents

Through: Mr. Hemant Mehla, APP for the State
with SI Sandeep Kumar, PS Uttam
Nagar, ND.

Mr. Rajeev Kumar, Adv. with
Respondent No.2 in person.

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Date of Decision: 23rd 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. 27619/2022 (exemption)

Exemption is allowed subject to all just exceptions.

CRL.M.C. 7130/2022

1. The present petition has been filed under section 482 Cr.P.C. seeking quashing of FIR No. 0702/2021 registered at PS Uttam Nagar under Sections 498A/406/34 IPC.

2. Briefly stated the facts are that the marriage between the petitioner No. 1 (husband) and respondent No. 2 (wife) was solemnized on 07.02.2020 as per Muslim rites and customs in Delhi. Out of the wedlock, one child namely, Master Zohan was born. However, owing to temperamental differences both the parties started residing separately and since then there was no cohabitation between both the parties. Subsequently, respondent No. 2 (wife) got registered FIR No. 0702/2021 dated 12.09.2021 under Sections 498A/406/34 IPC at P.S Uttam Nagar, against the petitioners herein. Besides the aforesaid FIR, litigations emerged between the parties for Maintenance and Domestic violence. In the proceedings under section 125 Cr.P.C. before the learned Principal Judge, Family Court, Dwarka Courts, New Delhi, the parties were referred to amicably settle all disputes between them before the Principal Counsellor, Dwarka Courts. Learned counsel for the parties submit that both the parties have mutually entered into a settlement agreement dated 17.09.2022 before the learned Principal Counsellor, Dwarka Courts. The settlement has been placed on record. As the settlement, the parties were required to take the divorce as per Muslim Personal Law.
3. Moreover, as per the settlement agreement dated 17.09.2022 the parties have agreed to settle all their disputes amicably. It has been agreed that the petitioner No. 1/ husband shall pay a total sum of Rs. 18,00,000/- in three equal instalments of Rs. 6,00,000/- each to the respondent No. 2/wife towards full and final settlement of all claims including past, present and future alimony, stridhan, jewellery articles,

maintenance, Dower, expenses of Iddat period, Mehar, property etc.. It has been submitted that as per the Muslim Personal Law, Talakul Hasan has taken place. In terms of the settlement dated 17.09.2022, the petitioner No. 1/husband pronounced first Talakul Hasan as per Shariat Law on 27.09.2022, the second Talakul Hasan on 27.10.2022 and the third Talakul Hasan on 28.11.2022 and the same were all duly accepted by the respondent No. 2/wife in the presence of witnesses. Further, as per the settlement dated 17.09.2022, it was agreed that the petitioner No. 1/husband shall pay Rs. 6,00,000/- each, at the time of the second and third Talakul Hasan i.e. on 27.10.2022 and 28.11.2022 to the respondent No.2 and the same stand paid. It was agreed that the remaining Rs. 6,00,000/- shall be paid at the time of the quashing of the aforesaid FIR before this Court. As per the settlement dated 17.09.2022 it was also agreed between the parties that the custody of the male child namely Zohan shall remain with the respondent No.2/wife and there shall be no visitation rights with the petitioner No.1 or the members of his family. It was agreed between the parties that they shall not file any case (civil or criminal) in any court against each other or their family members, regarding restitution of conjugal rights, maintenance and claim in property of each other etc. in the future. Pursuant to the settlement, the Talaqnama dated 28.11.2022 between the parties came to be executed. The same has also been placed on record.

4. Thus, the marriage between both the parties stands dissolved by Talaqnama dated 28.11.2022 and as per settlement deed dated 17.09.2022 all claims and disputes between the parties also stand settled. Learned counsel for the petitioners 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.
5. The petitioner No. 1 (husband) and respondent No. 2 (wife) are present in person before this court and have been duly identified by the IO. The parties state that they were married to each other on 07.02.2020, and a male child namely Zohan was born out of said wedlock. Both the parties state that as per Muslim Personal Law, Talakul Hasan has taken place and Talaknama dated 28.11.2022 has been placed on record. Respondent No. 2 states that as per the settlement dated 17.09.2022 the petitioner No. 1/ husband pronounced Talakul Hasan as per Shariat Law on 27.09.2022, 27.10.2022 and 28.11.2022 and the same were all duly accepted by her. She has stated that as per the settlement the custody of the only child namely Zohan shall remain with her. Both the parties have submitted that there are no visitation rights with the petitioner No. 1/husband or the members of his family. It has also been submitted by both the parties that the parties have not entered into any settlement regarding the rights, title and interest of the child. Respondent No. 2 has stated that as per the settlement, Rs. 12,00,000/- has already been paid to her and today a Demand Draft vide DD No. 327753 for the remaining sum of Rs.

6,00,000/- drawn on Punjab National Bank has been paid to her. She has stated that she has no objection if FIR No. 0702/2021 registered at P.S. Uttam Nagar U/s 498A/406/34 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.

6. 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 High Court would exercise its extraordinary jurisdiction 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.

7. 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.”

8. 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.

9. In *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 and *State of M.P. v. Laxmi Narayan & Ors.*, (2019) 5 SCC 688, the Apex Court has *inter alia* held that the inherent power conferred under section 482 Cr.P.C. is of wide plenitude with no statutory limitation but it has to be exercised (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. The Apex Court held that the power to quash the criminal proceeding or complaint or FIR in cases where the offender and the victim have settled their disputes would depend on the facts and circumstances of each case and no category can be prescribed. However before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute as such offences are not private in nature and have a serious impact on society. But the criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purposes of quashing. These include offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute.

It has been held that in these 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, 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. The Apex Court thus held that the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question (s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

10. Further, a Coordinate Bench of this Court vide order dated 26.02.2021 in CRL.M.C. No. 599/2021 titled '**Rifakat Ali & Ors Vs. State & Anr.**', and order dated 03.08.2022 in CRL.M.C. No. 2819/2022 titled '**Sh. Shailesh Deshwal vs. State of NCT of Delhi & Anr.**', 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.

11. A perusal of the aforesaid well settled law makes it clear that the High Courts should exercise the power under Section 482 CrPC for quashing of criminal cases having overwhelmingly and predominantly civil flavour. In matrimonial matters where the wrong is basically private or personal in nature and the parties have amicably resolved their entire dispute, the High Court may quash the criminal proceedings. However, only if the Court on the basis of record forms an opinion that because of the compromise between the offender and the victim/complainant, the possibility of conviction is remote and bleak. Because in such cases 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. Thus, 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.

12. 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 all their disputes as per the settlement dated 17.09.2022 and the Talaqnama dated 28.11.2022 has already been executed between the parties dissolving their marriage.

In such cases, 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.

13.The continuance of proceedings arising out of FIR No. 0702/2021, given that Talaqnama has already been executed and the parties have settled all their disputes amicably, would be an abuse to the process of the courts and an exercise in futility which would not secure ends of justice. In light of the settled law, the settlement arrived at between the parties and the submissions of respondent no.2-wife, the case FIR No. 0702/2021 registered at PS Uttam Nagar under Sections 498A/406/34 IPC and all the proceedings emanating therefrom are quashed.

14.It is pertinent to mention here that both the parties have stated that the male child born out of the wedlock namely Zohan will be free to pursue his legal rights in accordance with the law. The parties have entered into a settlement only with regard to their rights, titles or interests and the rights of the child to pursue his legal remedies as per law is left open.

15.Accordingly, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 23, 2022

Pallavi