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

RESERVED ON -21.08.2023.

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DATE OF DECISION ON -21.09.2023.

+ CRL.M.C. 275/2022

DEEPAK MALHOTRA & ORS.

..... Petitioners

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva, Ms. Sagrika Arya, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Digam Singh Dagar, APP for the State with Inspector Asha, PS Kapashera
Ms. Mishika Singyh, DHCLSC for R-2

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present petition has been filed for quashing FIR No. 51/2014 registered at Police Station CWC Nanakpura under section 498A/406/506/34 of IPC along with all the consequential proceedings.
2. Briefly stated, Respondent no. 2 filed a complaint in SPUWAC on 31.12.2013 against the petitioners for harassment, cruelty, torture for

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the demand of dowry, and criminal breach of trust. In her complaint, the complainant inter-alia stated that she got married to Petitioner No. 1 on 12.12.2008 according to Hindu Rites & rituals at Air-Force Auditorium, Dhaula Kuan, New Delhi. Her parents spent money in marriage beyond their capacity. After the marriage, she was harassed, taunted, and tortured mentally and physically for dowry by her husband and in-laws i.e., the present petitioners. Thereafter, both parties were called at SPUW&C, Nanakpura, New Delhi for counseling/mediation proceedings, but they failed in the mediation proceedings and resultantly the present case FIR No. 51/2014 was registered at PS CWC under sections 498A/406/34 of IPC.

3. Learned Counsel for the petitioner submits that both the parties instituted multiple litigations against each other and their respective families including the present FIR. It is submitted that the chargesheet, in this case, has already been filed and the matter is pending before the Learned MM, Dwarka Courts, New Delhi.
4. Learned Counsel submits that during the pendency of the proceedings, the parties have resolved their disputes amicably before the Division Bench of this Hon'ble Court in MAT. APP. (FC) 156/2020 vide order dated 16.12.2021. The matrimonial disputes between the parties were resolved and thereafter divorce was granted by this Court. It is further submitted by the learned counsel that Respondent No. 2 accepted to settle all her claims towards permanent alimony, stridhan, etc. by accepting payment of Rs. 60,00,000/- (Rupees Sixty Lakhs). Further, she agreed to apply for quashing of the present FIR. The Hon'ble



Division Bench of this court took the settlement on record and directed the Parties to remain bound by the settlement, and further directed that payment were to be made in court within the next one week.

5. Learned counsel for the petitioner also submits that in terms of the settlement arrived at between the parties, the petitioner deposited the entire settlement amount of Rs. 60 Lacs in Court on 21.12.2021 vide Demand Draft no 2564648, dated 20.12.2021 drawn on ICICI Bank, 07 Connaught Place New Delhi. Further on 21.12.2021, after the deposit of the amount of Rs. 60 Lacs, a quashing petition was drafted and was sent to Respondent No. 2 for her signatures. After receipt of the Email Respondent No.2 failed to cooperate in quashing of present FIR.
6. Learned counsel for the petitioner further submits that respondent no 2 is appearing before this court and yet not coming forward to comply with the directions of the Division Bench as recorded in the order dated 16.12.2021. It is furthermore submitted that the approach of Respondent No. 2 is incomprehensible in as much as she is in blatant contempt of the order passed by the Hon'ble Division Bench. Learned counsel submits that during the submissions made by respondent no. 2 on 21.08.2023 in court, she openly stated that she needs more money from Petitioner No. 1 i.e., over and above Rs. 60 Lacs which clearly indicates Respondent no. 2's inequity.
7. Learned counsel for the petitioners also submits that by denying the settlement recorded in court, Respondent No. 2 is misusing the process of the Court and the further continuance of the criminal proceedings, at



the instance of Respondent No.2 in the present case will cause a miscarriage of justice.

8. Respondent No. 2 has filed the counter affidavit to the present petitioner and it is submitted by the counsel that Respondent No.2 in MAT APP. (FC) No.156/2020 appeared through Video Conferencing for the proceedings on 16.12.2021 and, therefore, was unable to understand the proceedings of the Hon'ble Court clearly due to disturbances in the network.
9. It is submitted that Respondent No.2 appeared in the hearing on 16.12.2021 in person, i.e. without the assistance of a Counsel, and therefore was unable to understand the legalities of the procedure being conducted in Court. Further, Respondent No.2 was suffering from immense mental pressure on account of continuous acts of harassment and threat by Petitioners in the present case. Thus, it is submitted that the allegations made against the Petitioners in the FIR and substantiated in the charge sheet still hold true as the acts of intimidation and threat to Respondent No.2 have continued, and hence the present FIR should not be quashed as quashing the same will lead to severe miscarriage of justice.
10. Learned counsel for Respondent No.2 submits that Respondent No.2 was unwell yet she attended the hearing to avoid giving an impression to the Court that she was trying to prolong the matter and further, Respondent No.2 informed the Court that she was not mentally prepared and requested time to think which course to adopt in between



mutual settlement and contest but the Hon'ble Court was not inclined to grant further time to the respondent no. 2.

11. Learned counsel has furthermore submitted that Respondent No.2, after getting to know about the contents of the Order dated 16.12.2021, approached this Hon'ble Court, but court vacations were there from 24 December 2021 to 03 January 2022. It was under these circumstances that Respondent No.2 approached the Delhi High Court Legal Services Committee to assign her a Legal Aid Counsel in January 2022.
12. It is further submitted by the learned counsel that once Respondent No.2 got to know about the Order dated 16 December 2021, she intended to file an appeal against the said order. However, Petitioner No.1 filed the present quashing petition, and therefore counsel for Respondent No.2 submits that Respondent no 2 is contesting the legality of the order dated 16.12.2021 passed by the division bench of this court.
13. Further, Learned counsel also submits that Respondent No.2, under no circumstance, after having won the divorce case at the lower court, was willing to give her free consent for settling the matter and divorce being granted for a meager amount of Rs.60lakhs, which is considerably less than the amount spent by the Respondent No.2 and her family members during the marriage and in the last several years of court cases due to the acts and omissions of the Petitioners herein.
14. It is submitted by the learned counsel that Respondent No.2 was clearly not in a position to give her free consent due to her being unwell. During the hearing, RespondentNo.2 could not comprehend that



divorce was being granted on the very same date as she was under the impression that for divorce to happen, she needed to sign relevant documents. In fact, Respondent No.2 heard the Hon'ble Division Bench mentioning seven days and understood it to be the time for her to contemplate. However, it was later clarified by the Hon'ble Division Bench of this Court that the time of seven days was being given to Petitioner No.1 to deposit the amount of Rs.60 lakhs before the Registry.

15. It is also submitted by the counsel for Respondent No.2 that grave prejudice is being caused to Respondent No.2 due to the order dated 16.12.2021, which passed without the free consent of Respondent No.2 and on a date when she was appearing in person through VC without a Counsel who could advise her on the implications of the proceedings.
16. In order to support the argument that once the terms and conditions of the settlement agreed upon by both the parties have been complied with, the wife is stopped from resiling from the settlement recorded before the division bench of this court, the learned counsel for the petitioner has relied upon **Sanjeev Nagpal and Ors. Vs. State and Ors., 2007 (98) DRJ 510**, wherein it was *inter-alia* held as under:

“18. In the light of the afore-noted judicial pronouncements and noting the fact that the respondent No. 2 had entered into a written agreement dated 20.1.2003 and that she took Rs. 4 lakhs in pursuance of said agreement, I consider it appropriate to quash the aforesaid FIR and proceedings arising out of the said FIR.”

17. Learned counsel for the petitioner has further placed reliance upon the judgment of this Hon'ble Court in the case of **Seemant Sinha vs. State,**



2015 SCC OnLine De/8222; **State of Karnataka v. L. Muniswamy&Ors.** (1997) 2 SCC 699.

18. In the present matter the primary questions which require consideration are:

- i. Whether the parties who have entered into the settlement in the appeal before this court can be permitted to backtrack from the settlement arrived at, which, otherwise, has been acted upon wholly or partially?
- ii. Whether this court have the jurisdiction to consider the judgment and findings passed by the Division bench of this court?

19. It is pertinent to mention that the Report-2 has not challenged the order in MAT.APP(FC) 156/2020 dated 16.12.2021. The co-ordinate bench of this court in **Anshu Soni & Ors. v. State&Anr.**, 2013 (1) AD (Delhi) 111, has held that parties cannot be permitted to backtrack from the settlement arrived at through the process of mediation, which, otherwise, has been acted upon wholly or partially. It has been held *inter-alia* as under:

“6. After having settled the matter through the process of mediation, which has even been acted upon partially, parties cannot be permitted to backtrack from the same as it will negate the aims and objectives of whole process of mediation. Withdrawal of consent by respondent no.2 on some innocuous ground is impermissible. In Ruchi Aggarwal versus Amit Kumar Agrawal and Ors. 2005 (1) ALT 42 (SC), civil and criminal litigations were pending between the husband and wife. Matter was compromised before the Family Court pursuant whereof, a decree of divorce by mutual consent was granted. Wife withdrew



application filed by her under Section 125 Cr.P.C. in terms of the settlement, however, she avoided to withdraw the complaint under Sections 498- A/328/506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Accordingly, husband filed a petition before the High Court of Uttaranchal for quashing of the said complaint. In the said petition, High Court quashed the charge-sheet and the summoning order for want of territorial jurisdiction and transferred the investigations to the concerned Police Station. Wife preferred an appeal before the Supreme Court wherein criminal proceedings were quashed keeping in mind the settlement arrived at between the parties despite opposition of the wife.”

20. In the decision of **Kamlesh Varma and Ors. v. NCT of Delhi and Ors.** 2002 (2) CCC (Delhi) 744, the co-ordinate bench of this court inter-alia held as under:

“It is not in dispute that respondent No. 2/complainant was working in the railway at the relevant time. In view of the same. I am unable to accept the argument that the complainant accepted Rs. 2,25,000/-only towards her maintenance. Articles of Istridhan were recovered by the police during investigation on 20th January, 1993 and 13th February, 1993. The respondent is resting her claim (or the un-recovered jewellery on the list given on 11th February, 1993 during the investigations to the police. This claim was very much within her knowledge on the date she accepted Rs. 2,25,000/-before Division Bench in High Court on 25th March, 1996 when she specifically undertook to withdraw/settle criminal case pending in the Matrimonial Court, Shahdra. If that was so, respondent No. 2 ought to have not agreed or ought to have sought clarification from the High Court. That having not been done, now it does not lie in her mouth and argued that she never agreed to get the criminal proceeding quashed. This contention is without merit and the same is rejected.



5. In the facts and circumstances noticed above, the continuation of the criminal proceedings would be an abuse of the process of the court and the same are liable to be quashed in terms of same law laid down by the Supreme Court in State of Haryana v. Bhajan Lal MANU/SC/0115/1992: 1992CriLJ527 and several subsequent judgments.”

21. Further, in the decision reported as **Satish Gathwal and Ors. v. State and Anr. 1982 (2) JCC 114** it was *inter-alia* held as under:

“17. Her statement was a representation made and undertaking given before this Court that she will not pursue her complaint and on the basis of this, the petitioner has given and she has accepted Rs. 6. 00 lakhs in part satisfaction of the agreement. This is very unfortunate that she is now backing out from this undertaking. She is estopped in law from withdrawing her undertaking and representation. This would amount to committing Contempt of Court by her. From the agreement entered into between the parties and which is confirmed by them in Court, no doubt is left that this was a package deal of divorce as well as quashing the criminal proceedings. By denying this agreement, she is certainly misusing the process of the Court. The Court would not allow a party to misuse its process.”

22. Hence, in view of the above-cited decisions, this court is of the view that inherent powers vested upon by the High courts are intended to achieve the aim that a court proceeding shouldn't be allowed to turn into a tool of intimidation or persecution. In the present case, the respondent No. 2 has entered into the settlement agreement before the Division bench of this court out of her own free will and the same stands unchallenged before any forum. Hence Respondent no. 2 is stopped from resiling from the settlement agreement which has already



been complied with to the fullest by the Petitioners. Further, the contention of the Respondent No 2 that the order passed by the Division bench vide order dated 16.12.2021 in MAT. APP. (FC) 156/2020 is causing grave injustice to the Respondent No. 2 cannot be appreciated in this petition as neither the Respondent No. 2 has filed any review petition before the Revisional court nor the same has been challenged before the appellate court. Further this court cannot consider and deal with a subject matter and set aside directly or indirectly the findings of the Division bench.

23. Taking into account the totality of facts and circumstances of the present case, this court considers that the parties have entered into an amicable settlement vide order dated 16.12.2021 passed by the Division bench of this in MAT APP. (FC) No.156/2020 out of their own free will, without any fear, force, or coercion, and in order to secure the ends of justice, and to prevent the abuse of the process of any court the present petition is allowed.
24. In view of the above, FIR No. 51/2014 registered at Police Station CWC Nanakpura under section 498A/406/506/34 of IPC and all the other proceedings emanating therefrom are quashed.
25. The present petition along with all the pending applications stands disposed of.

DINESH KUMAR SHARMA, J

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