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

+ W.P.(CRL) 1967/2023

WASIM AHMAD & ORS.

..... Petitioners

Through: Mr. D. K. Srivastava, Adv. with
petitioners.

Versus

GOVERNMENT OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Rupali Bandhopadhyay, ASC for
the State with SI Shantanu PS Amar
Colony
Mr. Amit Sahni, APP for the state
Mr. Anil Basoya, Adv. for R-2

+ W.P.(CRL) 1969/2023

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for the state with SI Shantanu PS
Amar Colony with SI Sunita PS New
Usmanpur
Mr. Anil Basoya, Adv. for R-2(VC)

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Date of Decision: 29.08.2023



CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. These are petitions seeking quashing of FIR No. 843/2020 dated 31.12.2020 registered at PS New Usmanpur, Delhi under Sections 498A/406/34 IPC and Section 4 of Dowry Prohibition Act, 1961, in W.P.(CRL) 1967/2023 and FIR No. 477/2020 dated 17.11.2020 registered at PS Amar Colony under Section 354 IPC and 10 POCSO Act in W.P.(CRL) 1969/2023. Both the FIRs were lodged on the complaint of the wife of the petitioner.
2. FIR No. 843/2020 was lodged on 31.12.2020 by the complainant/wife alleging that the petitioner has committed mental and physical harassment, cruelty, dowry demand, beatings, and caused threat to her life. Basis these allegations the said FIR was lodged under sections 498A/406/34 IPC and Section 4 of Dowry Prohibition Act, 1961, against the petitioner and his relatives. Later, both the parents of the petitioner expired. Their death certificates have been placed on record. Chargesheet is yet not filed.
3. FIR No. 477/2020 was registered on 17.11.2020, again at the complaint of the wife alleging therein, that the petitioner misappropriately touched the private part of their daughter. It was alleged that a matrimonial dispute arose between the complainant and



the petitioner. Allegedly at the time, the complainant used to go out of the house for her work and her husband the petitioner used to stay back at home to look after the children. It was alleged that somewhere in July 2020 the complainant noticed some redness near the private part of their daughter, who was not letting her check it. The complainant took the child to a doctor whereupon she was advised that the rash/redness may have developed as a result of the diapers she was wearing. After 10-15 days of the treatment, the redness eventually subsided however the child remained uncomfortable and did not let the mother/complainant inspect the area. The complainant again took the child to the doctor whereupon she was told that it was possible that something bad may have happened with the child. The complainant went back home and enquired about this with her son. Upon enquiry, the son revealed that their father/petitioner used to badly touch his sister/victim and used to take her to the bedroom and touch her private parts. The complainant along with her children came to the police station and handed over a written complaint containing all these allegations, basis which, the present FIR No. 477/2020 came to be lodged under sections 354 IPC and 10 POCSO Act. Chargesheet is stated to have been filed.

4. Learned counsel for the parties submit that both the above said FIRs stemmed from a matrimonial dispute between the parties. Learned counsel submits that however, while the proceedings were underway,



the parties reached on an amicable settlement on 11.05.2023 before the Mediation Centre, Saket Courts, on the following terms and conditions:

“1. It is agreed between the parties that since there is no chance of their re-union and they have decided to separate themselves by way of mutual consent (talaaq).

2. It is mutually agreed between the parties that they have resolved the present matter amicably and the First Party has forgo all her claims including maintenance (past, present and future), permanent alimony. stridhan, expenses etc with regard to their marriage. It is further agreed by the First Party shall not claim the same in future also.

3. That it is agreed between the parties that care and custody of both minor children namely Master Abdul Kabir Ahmad (6 years) and Baby X (name masked) (4 years) shall at all times remain with the First Party/Wife and the Second Party/Husband shall not claim their custody.

4. That the parties to this Settlement Agreement have decided to dissolve their marriage by taking Khula/Divorce from the Islamic Scholar/Mufti, New Delhi as per Shariat Law on the same day of execution of the present Settlement Agreement. The Second Party has given his consent to First Party that after the dissolution of marriage the First Party shall perform her iddat period without any obstacle of custom of Islam. That the First Party shall go her office during her iddat period with covering her face and other routine work. Thereafter, the parties may approach the concerned Family



Court seeking declaration of their marital status as per Family Courts Act within one month thereafter.

5. That it is agreed between the parties that they shall withdraw present as well as above-mentioned connected mentioned at Serial No. (1) within one month of the dissolution of marriage as per Shariat as laid down in para hereunder.

6. That it is also agreed between the parties that within one month of obtaining Khula/Divorce, the Second party shall file the petition before Hon'ble High Court of Delhi for quashing the FIR as mentioned at Serial No. (ii) of above-mentioned connected matter and the First party shall co-operate with the Second Party in getting the same quashed.

7. That the present Settlement shall not prejudice the proceedings emanated from FIR bearing No. 477/2020 under Section 10 POCSO Act and Section 354 IPC registered at P.S. Amar Colony, New Delhi. However, both the parties have agreed to approach the Hon'ble High Court to file the quashment petition against the said FIR in view of the present Settlement Agreement.

8. That both the parties have agreed that after quashing of the F.I.R bearing No. 477/2020 under Section 10 POCSO Act and Section 354 IPC registered at P.S. Amar Colony, New Delhi, the Second Party shall meet both the children physically or virtually alternatively once in a two month (one time physically and one time virtually). It is also agreed between the parties that the physical/virtual meeting with the children will be done on 3rd Sunday of every month at 04:00



pm. It is also agreed between the parties that in case the meeting was not hold as per the agreed term, the parties will inform each other and the postponed meeting will be held on the succeeding Sunday of the said month. It is also agreed between the parties that in case Hon'ble High Court of Delhi not allowed the quashing petition the Second Party shall start meeting with the both the children as per the above agreed timings after disposal of the above-mentioned case from the Court of Ld. ASJ, South-East District, Delhi. That the meeting time will be one hour for physical meeting and half an hour for virtual meeting and Second Party bear all expenses of physical meeting.

9. That it is further agreed between the parties that the Second Party/Husband undertakes that he shall not make any phone calls either on mobile or landline numbers in the house or in the office of the First Party/Wife and her parents and relatives and shall not in manner try to communicate with the First Party/Wife at any time in future.

10. It is further agreed between the parties that in case of default or breach of the above-mentioned terms and conditions in the present settlement on behalf of either of the parties, the respective party shall also have liberty to initiate proper and appropriate legal proceedings against the other party.

11. It is also agreed by the parties that upon compliance of the above- mentioned terms and conditions of this settlement, parties will not file any civil/criminal case pertaining to their marriage and/or with regard to their respective movable or immovable property/properties, whatsoever.



12. It is also agreed between the parties that pursuant to the settlement reached between the parties, all the matters, which are pending between the parties before any court/forum/PS/any authority of law shall be deemed to have been settled post signing of this settlement.”

5. Learned counsel submits that in terms of the above settlement, the parties have already been granted Talaq-E-Mubarat. The certificate of divorce/ Talaqnama dated 11.05.2023 is also on record. Learned counsel submits that in terms of the settlement all the pending litigations between the parties have also been withdrawn. Learned counsel submits that since the parties have amicably resolved all their disputes and no longer wish to pursue the present FIRs, it would be futile to keep the present complaints pending as the same would amount to abuse of the process of the court.
6. **The parties are present in person and have been duly identified by the IO.** Both the petitioner and complainant are stated to be lawyers. Respondent No. 2 states that both FIR No. 843/2020 & FIR No. 477/2020 arose as a result of matrimonial dispute between the parties. She states that FIR No. 477/2020 under sections 354 IPC and 10 POCSO Act was lodged on account of a misunderstanding. She states that she has amicably resolved all her differences with the petitioner and has already been granted Talaq on 11.05.2023. She states that she no longer wishes to pursue the present complaints and has no objection if the same are quashed. She states that she wants to



move on with her life and has settled the matter voluntarily without any fear, force or coercion with the petitioner, keeping in mind the betterment and future of the children. She states that the custody of the children will remain with her and the petitioner will have visitation rights as per the terms of the settlement. Both the parties have also submitted that the settlement arrived between them is only with respect to their rights and titles and not with respect to the rights, titles and interest of the children, who may avail their remedies as per law. In compliance of the order dated 14.07.2023, both the parties have also filed an affidavit to this effect stating that the settlement shall not affect the rights, titles or interest of the children born out of the wedlock.

7. Submissions considered.
8. Upon a careful perusal of the FIR and the pleadings before this Court, it is amply clear that the issue in the present case stems from a matrimonial dispute between the parties. The parties have already settled the matter and have been granted Talaq. Respondent No. 2 has stated that the FIR No. 477/2020 came to be lodged under sections 354 IPC and 10 POCSO Act on account of misunderstandings. While this Court acknowledges the growing tendency in parties alleging grave allegations on one another merely to win matrimonial battles and strongly deprecates the practice of children being used as an instrument to set the criminal justice in motion solely to harass or



intimidate the other party. Be that as it may, this Court under 482 CrPC has the inherent jurisdiction to quash any criminal proceedings in order to secure the ends of justice or to prevent the abuse of the process of the Court.

9. In the present case, admittedly the dispute arose due to matrimonial discord between the parties. The petitioner is stated to have clear past antecedents. The FIR lodged under provisions of POCSO have admittedly been lodged owing to misunderstandings between the parties.
10. Thus, the Courts have to adopt a pragmatic approach and can quash criminal proceedings for justifiable reasons, given the peculiar facts and circumstances of the case, and in order to secure ends of justice or to prevent the abuse of the process of the court. Moreover, the parties have already settled the dispute and have been granted mutual divorce. Complainant has stated that she no longer wishes to pursue the present complaints. The chances of conviction would be bleak, given that the complainant does not wish to pursue the present complaints on account of the amicable settlement. In such circumstances continuance of the present FIRs would serve no useful purpose and may cause prejudice to the petitioner and be an exercise in futility. I do not see any reason to reject the compromise. The Supreme Court and this Court have time and again held that cases arising out of matrimonial differences should be put to quietus if the



parties have arrived upon a genuine settlement. Reliance can be placed on ***B.S. Joshi v. State of Haryana***, (2003) 4 SCC 675; ***K. Srinivas Rao v. D.A. Deepa***, (2013) 5 SCC 226; ***Yashpal Chaudhrani and Others vs. State (Govt. of NCT Delhi) and Another***, 2019 SCC OnLine Del 8179.

11. Considering the peculiar facts and circumstances of the case and in view of the submissions of respondent no.2/ complainant, FIR No. 843/2020 dated 31.12.2020 registered at PS New Usmanpur, Delhi under Sections 498A/406/34 IPC and Section 4 of Dowry Prohibition Act, 1961, in W.P.(CRL) 1967/2023 and FIR No. 477/2020 dated 17.11.2020 registered at PS Amar Colony under Section 354 IPC and 10 POCSO Act in W.P.(CRL) 1969/2023 and all subsequent proceedings emanating therefrom are quashed.
12. It is pertinent to mention that the children born out of the wedlock will be free to pursue their legal rights in accordance with the law. The parties have entered into a settlement only with regard to their rights and titles. The rights, titles, and interests of the children to pursue their legal remedies as per law is left open.
13. Moreover, since such cases place a burden on the criminal justice system, the petitioner Wasim Ahmad who is a lawyer by profession is directed to do ten Pro bono cases.
14. Learned member Secretary, Delhi State Legal Service Committee is requested to assign ten cases which the petitioner shall do Pro bono.



The compliance report be filed within a month.
15.List on 11.10.2023 for compliance.

DINESH KUMAR SHARMA, J

AUGUST 29, 2023
Pallavi