

\$~31

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

+ **CRL.M.C. 6621/2022**

SWAPNIL KAMBLE & ORS.

..... Petitioners

Through: Mr. Geo Joseph, Mr. Ajit Pravin
Wagh, Advs.

versus

STATE AND ANR & ANR.

..... Respondents

Through: Mr. Hemant Mehla, APP for the State
with SI Prabhakaran, PS Dabri.

Mr. Amrit Singh Khalsa, Mr. Hitesh
Kakkar, Advs. for R-2

%

Date of Decision: 2nd May, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 Cr. PC seeking quashing of FIR No. 530/2022 registered at PS Dabri, Delhi under Sections 498A/406/34IPC.
2. Brief facts of the case are that the marriage between Petitioner no. 1 and respondent no. 2 was solemnised on 04.07.2015 according to Buddhist rites and customs. After their marriage, the parties started

living separately from 09.11.2020 due to serious differences and temperamental incompatibility. The present FIR was lodged on the statement of respondent no. 2/complainant.

3. Learned Counsel for the petitioners submits that during the pendency of the proceedings, the parties have amicably settled and compromised all the disputes between them in respect of FIR under reference. He also states that the terms of the settlement between the parties have been duly recorded in the Memorandum of Understanding/settlement deed dated 19.09.2022 with the following terms and conditions:

“1.That the SECOND PARTY shall, pay an amount of Rs. 3,00,000/- [Rupees three lakh only] to the FIRST PARTY in the name of JAGRUTI SWAPNIL KAMBLE , Demand vide Draft No. 501995 drawn on State Bank of India, Branch, Sector 12 , Noida , dated : 16/09/2022 out of the total consideration of Rs.15,50,000/- [Rupees Fifteen Lakh fifty thousand only] towards the first part of the full and final settlement inclusive of all payments towards ad interim maintenance, interim maintenance, or any other maintenance, fines, penalty, alimony, expenses etc., past, present or future ordered or may be ordered by any Court, authority etc. and inclusive of any other expense payable to the FIRST PARTY by the SECOND PARTY or his family members that are not enlisted herein, upon the FIRST PARTY having finally withdrawn the Complaint filed by the FIRST PARTY before the Dwarka court under section 12 of DV Act titled “Jagruti Swapnil Kamble Vs. Swapnil Kamble” (MC 169/2021).

The said amount of Rs. 3,00,000/- [Rupees Three Lakhs only] shall be handed over by the SECOND PARTY through his legal representative / advocate to the Advocate of the FIRST PARTY before the Ld. Magistrate in Case No. MC 169/2021 only after the

proceedings of withdrawal of Case No. MC 169/2021 are completed.

2. That the Second party shall, pay an amount of Rs. 2,50,000/- [Rupees two lakh fifty thousand only] to the FIRST PARTY vide Demand Draft out of the total consideration of Rs.15,50,000/- [Rupees Fifteen Lakh fifty thousand only] towards the second part of the full and final settlement inclusive of all payments towards ad interim maintenance, interim maintenance, or any other maintenance, fines, penalty, alimony, expenses etc., past, present or future ordered or may be ordered by any Court, authority etc. and inclusive of any other expense payable to the FIRST PARTY by the SECOND PARTY or his family members that are not enlisted herein, upon the FIRST PARTY having finally withdrawal legal proceedings filed by the FIRST PARTY against the SECOND PARTY, at the expense of the FIRST PARTY, including those listed below as well as any other complaint, claim, demand etc. filed by the FIRST PARTY against the SECOND PARTY and / or the parents or relatives of the SECOND PARTY, that the SECOND PARTY may not be aware of . -

- i. Complaint filed before CAW Cell – Dwarka, New Delhi.
- ii. Police complaint before Pardi police station Nagpur, Maharashtra Dated 21.12.2020.
- iii. Complaint filed before CAW Cell – Kirti Nagar, New Delhi
- iv. If any FIR has been registered against the SECOND PARTY or the family members of the SECOND PARTY for offences under section 498A IPC etc., upon the complaint of the FIRST PARTY or her family members, the FIRST PARTY shall take all steps required to and shall cooperate with the SECOND PARTY to quash any such FIR.

The Demand draft for the amount of Rs.2,50,000/- [Rupees two lakh fifty thousand only] shall be handed over by the SECOND PARTY to the FIRST PARTY only upon the SECOND PARTY having received the proof of withdrawal of the above referred

complaints or any other complaint etc. filed by the FIRST PARTY against the SECOND PARTY or any of the relatives of the SECOND PARTY or after quashing of the FIR has been completed as the case may be.

3. That the SECOND PARTY shall upon receipt of the proof of withdrawal FIRST PARTY in terms of Paragraph 1 above, before the concerned Court, authority etc., withdraw all the cases and complaints filed by second party and / or the father of the second party against the First party (wife) including those listed below as well as any other complaint, claim, demand etc. filed by the SECOND PARTY against the FIRST PARTY, that the FIRST PARTY may not be aware of, at the expense of the SECOND PARTY.

a) The complaint filed in Shakardara Police Station against the first party.

b) The complaint filed in Ajni Police Station against the first party.

c) The complaint filed in Maharashtra State Council for Occupational Therapy and Physiotherapy (OTPT) (if any).

4. That the SECOND PARTY shall upon receipt of proof of withdrawal / quashing of complaint / FIR etc. filed by the FIRST PARTY in terms of Paragraph 1 and 2 above, before the concerned Court, authority etc.-

Transport the items mentioned in Schedule 'A' annexed herewith as list of items, from Nagpur to residence of the FIRST PARTY at Delhi to the ADDRESS- Qtr. No. D- 862, Second Floor, Type- 3, D-sector, Mandir Marg, Gol Market, Peshwa Road, New Delhi- 110001, the Second Party shall transport the belongings of the First party which is kept at the Delhi Residence of the Second Party as per the list already annexed at First party Delhi Residence.

5. That the FIRST PARTY has taken all her wearing apparel, jewellery and other personal effects, etc. belonging to her from the residence of the SECOND PARTY, (except for those items which are part of Schedule 'A', which the SECOND PARTY shall transported to Delhi at the expense of the SECOND PARTY). The FIRST PARTY shall not make fresh claims in this regard.

6. That the Physical conditions and details of items have been duly verified to the satisfaction of the FIRST PARTY and her parents and the FIRST PARTY undertakes not to dispute the completeness of the contents and the condition of the items mentioned in SCHEDULE 'A' i.e. the list of items.

7. That the Payment of transport carriage shall be borne by the SECOND PARTY however any damage / delay etc. to the goods after the same is handed over to the carriage shall be at the risk and responsibility of the FIRST PARTY.

8. PAYMENT SCHEDULE

That the FIRST PARTY and the SECOND PARTY have agreed herewith to settle all disputes / claims/ demands etc. between the parties for a total consideration of Rs. 15,50,000/- [Rupees Fifteen Lakh Fifty Thousand only] to be paid by the SECOND PARTY to the FIRST PARTY in the following manner.-

i. Rs.3,00,000/- (Rupees Three Lakh only) shall be paid by the SECOND PARTY to the FIRST PARTY by Demand Draft to be handed over before Ld. Magistrate in Case No. MC 169/2021 only after the proceedings of withdrawal of Case No. MC 169/2021 are completed.

ii. Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) shall be paid by the SECOND PARTY to the FIRST PARTY by Demand draft only upon the SECOND PARTY having received the proof of withdrawal of the above referred complaints or any other complaint etc. filed by the FIRST PARTY against the SECOND PARTY or any of the relatives of the SECOND PARTY or after quashing of the FIR has been completed as the case may be.

iii.Rs. 5,00,000.- (Rupees Five Lakh only) shall be handed over by Demand draft by the SECOND PARTY to the FIRST PARTY before the Hon'ble Court upon completion of first motion of divorce petition i.e. under section 13B(1) of HMA Act, 1955b) as Payment of the Third Part.

iv.Rs. 5,00,000.- (Rupees Five Lakh only) shall be handed over by Demand draft by the SECOND PARTY to the FIRST PARTY before the Hon'ble Court upon completion of Second motion of divorce petition i.e. under section 13B(1) of HMA Act, 1955b) upon the completion of the divorce proceedings and grant of divorce, as Payment of the Fourth Part.

9. That both the Parties shall not raise any claim/s, against each other or each other's parents, brothers, sisters and other relatives, in respect of any expenses, claims etc. Whatsoever, for the past, present or future.

10. That it has also been assured by both the parties that none shall raise any, claims, in respect of any movable and/or immovable properties, business, goods and assets of each other.

11. That both the parties hereto do not have any grievance left against each other, therefore, in view of the same, they have further undertaken that they shall not level any allegations against each other or each other's parents/relatives or cause to act in a manner so as to harm the reputation and image of the other, in the family or the society at large.

12. That the First Party does not have any claim/s left, pending against the Second Party on account of maintenance, (past, present and future), alimony, or demand of any nature whatsoever. Also, both the parties do not have any grievance against each other and they have duly and peacefully settled the same to their entire satisfaction.

13. That the Second Party shall have no other claim against the First Party in future for all times to come and all their claims touching to the matrimonial life of the parties stand settled in all respect.

14. That both the parties shall live separately and apart from each other and no party shall have any right, authority over the other or shall institute any legal proceeding including that for restitution of conjugal rights or otherwise.

15. That both the parties shall be full liberty to live and enjoy their life as per their own wishes and are free to re-marry without taking any consent from each other, if any of the party wants to marry with the third party.

16. That both the parties have amicably decided without any force, fraud or coercion that they will not initiate or enter into any legal dispute by way of police complaint, court cases or likewise against each other or their relatives.

17. That both the parties shall be bound by the terms and conditions of this deed and failing which each of the party shall have the right to take appropriate relief against the other party according to law.

18. That both the parties have agreed to dissolve their marriage by way of mutual consent. That both parties shall appear before Family Court/competent court within Thirty (30) days of complaints/cases filed against each other or the family members of either party, having been withdrawn or FIR having been quashed.

19. That the FIRST PARTY shall return the entire amount paid by the SECOND PARTY in terms of this agreement, as well as pay an additional amount of Rs.5,00,000/- (Rupees five lakh only) if the FIRST PARTY fails to withdraw any complaint or get any FIR quashed that the FIRST PARTY or any of the family members of the FIRST PARTY may have filed against the SECOND PARTY or against any of the family members of the second party in terms of paragraph No. 1 and paragraph No.2 of this agreement, including the cases / complaints that the SECOND PARTY may not be aware of.

20. That the SECOND PARTY shall forgo any amount that the SECOND PARTY has paid to the FIRST PARTY in terms of paragraph 8 of this agreement, and pay an additional amount of

Rs. 5,00,000/- (Rupees five lakh only), if the SECOND PARTY fails to make payment to the FIRST PARTY in terms of paragraph No. 8 of this agreement or fails to fulfil the terms mentioned in the paragraph No.3.

21. That both the parties are at liberty to take appropriate remedy in accordance with law if either of the party fails to fulfill the terms and conditions mentioned in the present MOU and both the parties are at liberty to persue their respective cases or complaints.

WHEREAS both parties have consented to this memorandum of understanding out of their own sweet will, and without any undue influence or duress and they are bound with the terms and conditions of this agreement. That both the parties shall not withdraw their consent for obtaining the divorce by mutual consent till they obtained the divorce by mutual consent and both the parties have surrendered their rights to withdraw their consent for obtaining the divorce by mutual consent.”

4. Learned Counsel for the petitioner submits that since no dispute is left between the parties and no purpose would be served by continuing with the trial of the FIR and therefore, the present FIR may be quashed.
5. Ordinarily, FIRs such as in the present case should not be quashed, however, it was observed by the Supreme Court in ***Gian Singh v. State of Punjab***, (2012) 10 SCC 303, that it is encouraged to quash the FIR in circumstances wherein a compromise has been achieved especially in those criminal cases which have overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of a matrimonial relationship or family disputes.

6. Recently, the Supreme court in *Jasmair Singh and Another vs. State of Haryana and Another* (2022) 9 SCC 73 quashed the proceedings arising out of a matrimonial dispute on the ground that the parties have buried the hatchet and decided to give quietus to the proceedings which were lodged inter se.
7. Both the parties are present in Court and have duly been identified by the IO. Respondent No.2 states that she entered into the settlement agreement as well as MoU voluntarily without any fear, force or coercion. She further states that as per the settlement, Petitioner No.1 had to pay Rs.15,50,000/- towards the full and final settlement of the entire dispute and she has already been paid Rs.13,00,000/. The remaining sum of Rs.2,50,000/- has been received by way of a Demand Draft bearing No.807402 dated 29.04.2023 drawn on State Bank of India. She states that since she has already received all the amount and the terms and conditions agreed between the parties have been complied with, she has no objection if the FIR under objection is quashed. A no objection affidavit of respondent no. 2 has been filed confirming the same.
8. In view of the above, FIR No. 530/2022 registered at PS Dabri, Delhi under Sections 498A/406/34IPC and all the proceedings emanating therefrom is quashed.
9. The petition along with the pending application stands disposed of.

DINESH KUMAR SHARMA, J

MAY 2, 2023/Pallavi

CRL.M.C. 6621/2022

Page 9 of 9