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

+ **CRL.M.C. 1355/2022**

SH. PRADEEP AND ORS.

.....Petitioners

Through: Mr. Vijay Datt Gahtori, Mr. Tara Singh Bisht, Mr. Saurabh Kumar, Mr. S.N. Ranga, Mr. Pradeep Kumar and Mr. Asutosh Sharma, Advocates.

versus

STATE(N.C.T OF DELHI) AND ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State. Mr. Faraz Maqbool, Ms. Sana Juneja & Mr. Chandan Kumar, Advocates for R-2. SI Sangeeta (D-6527), PS Mukherjee Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

01.08.2024

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1. The Petitioners have approached this Court for quashing FIR No.382/2015 dated 14.03.2015 registered at Police Station Mukherjee Nagar for offences under Section 498A, 406 & 34 IPC on the ground that the parties have entered into a settlement. The present proceedings arise out of matrimonial disputes between the parties.

2. It is stated that the parties were sent for mediation and a mediation settlement was arrived at between the parties before the Counselling Cell, Family Court, Delhi. The Settlement Deed dated 14.10.2019, reads as under:-



“The present case is assigned by Mr. M R Sethi, Principal Judge, Family Court, Delhi. Process of counseling has been explained in detail to the parties with greater emphasis of confidentiality. Heard the parties jointly and separately. They have agreed to settle their matter voluntarily without any force/coercion on the following terms and conditions:-

1. The parties have agreed to dissolve their marriage by mutual consent in accordance with the law, as provided under Section 13(B) of the Hindu Marriage Act.

2. It is agreed between the parties that husband shall pay to the wife a sum of Rs. N.A., Dowry article copy enclosed as full and final settlement (against stridhan and dowry, maintenance towards past, present and future qua this marriage) in N.A. installments by way of DD/Pay Order.

3. It is further agreed between the parties that out of the settled amount, the husband will pay Rs. N.A. to the wife at the time of recording of the statement of first motion by way of DD/Pay Order. Return Dowry article on First motion. Copy enclosed.

4. It is further agreed between the parties that the husband will pay Rs. N.A. to the wife at the time of recording of the statement of second motion by way of DD/Pay Order.

5. It is further agreed between the parties that the husband shall pay balance amount of Rs. N.A. to the wife at the time of quashing of FIR No.382/15 UNDER Section 498A/406/34 IPC before the Hon'ble High Court of Delhi within 2 months after the second motion and the wife shall also cooperate and sign all the necessary affidavit and do the needful in quashing of



the said FIR.

6. It is further agreed between the parties that the first motion petition shall be filed on or before 24.10.2019 and second motion petition shall be filed soon after the completion of the statutory period of the order under Section 13(B)(1) of HMA.

7. There is baby girl child namely Sunaina (8 years) born from this wedlock, who is living with the mother. It is agreed amongst the parties that the custody, will be with mother. The father will not have visitation rights during winter vacation for N.A. days and during summer vacation for N.A. days.

8. It is further agreed between the parties that petitioner/respondent will withdraw the case which is pending in Ld. Pr. Judge M.R., Court No.-104. It is further agreed between the parties that they will withdraw any other complaint/case filed by/ against either of the parties in any other court in Delhi/India.

9. The above settlement is with respect to all claims of wife past, present and future alimony stridhan, maintenance, pending amount of maintenance, articles, property etc. and neither she nor her relatives shall claim anything from husband or his family members in future for herself or on behalf of child/children.

10. All the matters emanating from this marriage whether civil or criminal are settled and neither the parties nor their relatives shall make any claim against each other in future and will not file any case/complaint against each other at any time in future in any Court of Law/Police Station etc.

11. It is agreed between the parties that if either of the parties commit breach or default of this mutually



agreed settlement after the recording of first motion, if wife backs out, the amount taken at the time of first motion shall be returned to the husband with 2% interest per month and if husband backs out, the amount given to the wife at the time of first motion shall stand forfeited and will be adjusted towards the amount of maintenance/alimony. It is further understood by the parties that for breach of the undertaking given to the concerned court or willful/deliberate violation of a consent order/decreed, the defaulting party will be liable to be punished for contempt of court.

12. The parties have agreed on each and every terms as recorded in the settlement agreement, after carefully reading over and fully understanding and appreciating the contents, scope and effect thereof as also the consequences of the breach thereof, including payment of the fine/penalty as mentioned above.

13. The terms and conditions mentioned in the settlement have been understood in vernacular by either of the parties. The abovesaid settlement is arrived at between the parties voluntarily, out of their own free will, volition and consent and without there being any undue pressure, force, coercion, influence, misrepresentation or mistake (both of fact and law), in any form whatsoever and the parties have agreed that the Settlement/Agreement has been correctly recorded as per the agreed terms and conditions.

14. It is further agreed between the parties that they shall remain bound with the aforesaid terms and conditions as mentioned in the settlement and will execute the same.”

3. The Settlement Deed was made a part of the Order dated 19.11.2019 by which the decree for divorce was granted. Pursuant to the settlement



deed, the Petitioners have approached this Court for quashing the FIR, which is one of the terms mentioned in the settlement deed. However, Respondent No.2 is not prepared to go ahead with the settlement on the ground that there is no provision for maintenance of the child.

4. When the matter came up for before this Court quashing of the FIR, this Court referred the parties to the Delhi High Court Mediation & Conciliation Centre for further mediation. However, the attempt to arrive at an amicable settlement failed.

5. The settlement deed does not provide for any maintenance of the child. The Apex Court in Ruchi Aggarwal v. Amit Kumar Aggarwal, (2005) 3 SCC 299, has held that once the parties have entered into a settlement and one of the terms of the settlement is quashing of a criminal case, then the FIR from which the criminal proceedings arise should be quashed even if one of the parties resile from the agreement. The relevant portion of the said judgment reads as under:-

“5. In the compromise petition, referred to hereinabove, both the parties had agreed to withdraw all the civil and criminal cases filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No. 63 of 2002 on the file of the Family Court, Nainital which was a complaint filed under Section 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant and on the basis of the terms of the compromise, the said case came to be dismissed. However, so far as the complaint under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject-matter of this appeal,



the appellant did not take any steps to withdraw the same. It is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

6. From the above-narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received stridhan and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings, civil and criminal, filed and initiated by her against the respondents within one month of the compromise deed, which included the complaint under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

7. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13-B of the Hindu Marriage Act and in partial compliance with the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.”



6. Needless to state that the rights of the child cannot be compromised or given up by the mother when she enters into a settlement regarding her maintenance and divorce. The right of child to claim maintenance from the father is independent of the settlement arrived at between the parents in their proceedings.
7. In view of the above, it is always open for the mother to claim maintenance for the child under law and this settlement would not bind or take away the rights of the child.
8. With these observations, FIR No.382/2015 dated 14.03.2015 registered at Police Station Mukherjee Nagar for offences under Section 498A, 406 & 34 IPC and the proceeding emanating therefrom are hereby quashed.
9. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 1, 2024
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