



2024:DHC:7578



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 17th September, 2024**
+ **CRL.M.C. 6700/2024, CRL.M.A. 25588/2024 (ex-
parte interim reliefs) CRL.M.A.25589/2024
(Exemption) & CRL.M.A.25590/2024 (permission
to file lengthy list of dates and synopsis)**

KUNWER SACHDEV

.....Petitioner

Through: Mr. Anirban Bhattacharya, Mr.
Apoorv Agarawl, Ms. Prachi Darji,
Mr. Bhanu Karan Singh Jodha, Mr.
Tushar Gadia, Ms. Muskaan Goel and
Mr. Rajeev Chaoudhary, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI & ANR.....Respondents

Through: SI Navneet Yadav, PS Connaught
Place.
Ms. Arundhati Katju, Mr. Sanyam
Khetarpal, Ms. Arya Suresh, Mr.
Nitai Agarwal, Ms. Lisa Sankrit and
Ms. Ritika Meena, Advocates for R2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)**CRL.M.C. 6700/2024**

1. The Petition under Section 528 of BNSS, 2023 has been filed on behalf of the petitioner for quashing of FIR No. 0126/2024 dated 31.05.2024 under Sections 420, 120B read with Section 34 of Indian Penal Code, 1860



2024:DHC:7578



(“IPC” *hereinafter*) , registered at Police Station Connaught Place, New Delhi.

2. Learned counsel for the respondent No. 2 has appeared on advance Notice.

3. ***Briefly stated*** the petitioner, Mr. Kunwer Sachdev was married to respondent No. 2 Ms. Geeta Sachdev on 25.09.1987 according to Hindu rites and ceremonies at Arya Samaj Mandir, Mandir Marg, New Delhi. Two sons, Kanav and Shourya were born from their wedlock. However, due to ongoing disputes and quarrels, the parties have been living separately since September 2009 and have not been able to reconcile their differences.

4. The petitioner and respondent No. 2 jointly filed a Petition under Section 13(B) of the Hindu Marriage Act, 1955 (“HMA,1955” *hereinafter*) before the Family Court, New Delhi. They entered into a Settlement and it was agreed that the Petitioner would pay a settlement amount of Rs. 5,00,00,000/- and transfer complete rights, titles, and ownership of two immovable properties: one commercial property bearing No. WZ- 1402/1, Nangal Raya, Delhi-110046, and another residential property bearing No. F-37, Greenwood City, Gurgaon, Haryana in favour of Respondent No. 2.

5. The parties accepted the *Settlement Deed* dated 13.08.2015 in their respective statements and first motion of divorce under Section 13B(1) of the HMA, 1955 was allowed by the Order dated 14.08.2015.

6. In furtherance of the Settlement Deed, parties signed *two addendum Agreements* both dated 11.03.2016. The *first Addendum Agreement* was e-stamped at 6:46 PM and the second was e- stamped on 11.03.2016 at 6:48 PM. There were thus, two *Addendum Agreements* signed on the same day e-stamped at a gap of two minutes.



2024:DHC:7578



7. The *second Addendum Agreement* was presented before the Family Court in the second Petition for Divorce under Section 13(B)(2) of HMA wherein parties made their detailed statements endorsing the *second Addendum Agreement* and also deposed about the details of the Settlement. The statements were accepted and it was mentioned in the Order dated 11.03.2016 that full and final settlement amount of Rs. 3 crores has been received by the respondent No. 2. The Divorce by Mutual Consent under Section 13(B)(2) of HMA, 1955 was accordingly given to the parties.

8. The petitioner has claimed that during the Divorce proceedings, he was unable to retrieve the cheques issued to respondent No. 2 in pursuance of the *first Addendum*. However, these cheques were wrongly deposited by her despite there being no underlying liability. In light of the final *Second Addendum Agreement*, she ought to have returned the cheques. But she has manipulated the facts to her advantage in order to coerce the petitioner and to extract more money.

9. The respondent No. 2 filed a Complaint under Section 138 of the *Negotiable Instruments Act, 1881* against the Petitioner for dishonour of above-mentioned cheques *vide* Complaint case bearing no. NACT/10395/2016 and NACT/10396/2016 which are pending adjudication before Hon'ble Chief Judicial Magistrate, Gurugram.

10. The respondent No.2 has also filed a Civil Suit (Original Side) bearing No. 398/2019 under *Order XXXVII* of the *Code of Civil Procedure, 1908* seeking recovery of Rs. 4,05,00,000/- along with pendent lite and future interest @12% p.a..

11. Additionally, at the behest of Respondent No. 2, the distinguished Publication houses, Times of India and The Hindu, published defamatory



2024:DHC:7578



Articles concerning the Petitioner. The Petitioner submitted his representation to these publication houses requesting them for the removal of the Articles.

12. The petitioner has claimed that the present Complaint Case bearing No. 2086/2024 under Sections 420, 120B read with Section 34 was yet another attempt by respondent No.2 to harass the petitioner. The respondent No. 2 by relying on the *first Addendum* read with the final Settlement, has sought to portray the petitioner has committed *criminal breach of trust and cheating*. She has concealed the *second Addendum* entered into between the parties. Moreover, he has impleaded Smt. Khushboo Sachdev, the second wife of the petitioner in the impugned F.I.R., even though she has no concern with any of this controversy.

13. The petitioner exhausted by the continuous harassment and hoping to achieve peace, the Petitioner paid the Respondent No. 2 Rs. 5,00,000/- on 28.12.2022 and an additional Rs. 2,00,000/- on 21.02.2023, over and above the already paid settlement amount.

14. The petitioner has claimed that he has been dragged into false and frivolous litigation by respondent No. 2, who is a habitual litigant. The petitioner further submits that the IDBI Bank has filed a Petition for initiating personal insolvency of the Petitioner under Section 95 of the *Insolvency and Bankruptcy Code, 2016*. Consequently, an Interim Moratorium has commenced under Section 96 of the Code. Once an Application under Section 95 IBC is filed, no legal actions or proceedings can be initiated or continued against the personal Guarantor for any debt.

15. Owing to the interim moratorium in effect, the Respondent No. 2 was unable to pursue or continue any civil proceedings against the Petitioner,



2024:DHC:7578



including the said Civil Suit. The respondent No. 2 then resorted to the present vexatious Complaint, resulting in registration of the FIR. The petitioner has claimed that the entire Settlement amount in terms of the Settlement Deed stands paid to the Respondent No. 2. Any dispute specifically in regard to this Deed, is purely Civil in nature.

16. The petitioner has asserted that the allegations in the FIR include breach of trust, cheating, forgery, criminal conspiracy, and criminal intimidation. It is alleged in the Complaint by respondent No.2 that the petitioner and his wife have committed multiple fraudulent activities and purportedly induced Respondent No. 2 to sign a settlement Agreement and addendum, promising a payment of Rs. 7 Crores. Allegedly, the Petitioner issued cheques that were dishonored due to insufficient funds, with no intention to honor the payment.

17. Further allegations are made in the Complaint that the petitioner and his wife intimidated and threatened respondent No.2 to prevent her from pursuing her legal action and coerced her into negotiating a reduction in the Settlement amount.

18. It is stated in the Petition that the impugned FIR No.0126/2024 under Sections 420, 120B read with Section 34 against him and his present wife had been registered in compliance of the Order dated 28.05.2024 of the learned MM in Complaint Case bearing no. 2086/2024 titled as 'Geeta Sachdev vs State of Delhi' filed by the Respondent No. 2, ex-wife of the petitioner. It is asserted that this Order has been obtained by suppressing *second* and *final Addendum* dated 11.03.2016 bearing Certification No. INDL254474609476750 e-stamped on 10.03.2016 at 6:48 which was executed between the Petitioner and the Respondent No. 2.



2024:DHC:7578



19. It is claimed that her actions are driven by a desire to disrupt the Petitioner's current marital happiness and to harass them. It is a retaliatory move, aimed at causing distress and disarray in the Petitioner's well-established and content life, rather than to address any legitimate legal grievance.

20. It is claimed that the allegations in the Complaint pertain solely to the terms of the Settlement between the petitioner and the respondent No. 2 and non performance of the second Addendum. On these allegations, no criminal offences are made out. Hence, the petitioner has sought the quashing of the FIR. The petitioner has placed reliance on Indian Oil Corporation v. NEPC India Limited and Others 2006 INSC 452, State of Haryana & Ors. Vs Bhajan Lal & Ors 1992 AIR 604, Vishnu Kumar Shukla & Anr. vs the State of Uttar Pradesh & Anr. Crl. Appeal No. 3618/2023, Sajjan Kumar v Central Bureau of Investigation (2010) 9 SCC 368, Vijay Kumar Ghai v. State of West Bengal 2022 SCC OnLine SC 344.

21. ***Learned counsel for the respondent No. 2*** has argued that *two second Addendums* were signed on 11.03.2016. The petitioner fraudulently without the respondent No. 2 being aware presented a *second Addendum* signed on 11.03.2016 while she was under the impression of the *first Addendum* of the same date being the full and final Settlement.

22. She has further contended that the petitioner was regularly sending her WhatsApp messages and giving the assurance that the balance amount under the first Addendum Settlement shall be paid by him and he did make certain payments to the Respondent No. 2, who remained under a bona fide belief that the petitioner shall be honoring the said Addendum. The copies of the various WhatsApp conversations have also been tendered which are



2024:DHC:7578



taken on record.

23. It is vehemently argued on behalf of the respondent No.2 that there is no ground for quashing of the FIR.

24. Submissions heard.

25. The petitioner and the respondent No. 2 are the divorced spouses who had multiple matrimonial litigations which finally culminated into Divorce by Mutual Consent vide Final Decree dated 11.03.2016. During their long acrimonious litigation, the parties entered into three Settlement Deeds; first being 13.08.2015, in which the petitioner had agreed to give her Rs. 5 crores and two immovable properties. This Settlement was presented at the time of First Divorce Petition and was accepted by the parties in their respective Statements before the Family Court and is not under dispute.

26. The other two Agreements dated 11.03.2016, are:

(i) The *first Addendum* Agreement e-stamped at 6:46 PM according to which the petitioner was to give Rs. 10 crores along with two properties to the respondent No. 2, and

(ii) The *second Addendum* dated 11.03.2016 e-stamped on 6:48 PM, the respondent No. 2 was to get Rs. 3 crores along with two properties.

27. It is not in dispute that the *second Addendum dated 11.03.2016* which provided for payment of Rs. 3 crores and two properties, was presented in the Court at the time of recording of Statements of the parties under the Petition for Divorce under Section 13(B) 2 of Hindu Marriage Act (HMA).

28. The certified copy of the Judgement under Section (B) 2 HMA specifically records that the parties have amicably resolved all their disputes. The contents of the Second Addendum Settlement providing for total



2024:DHC:7578



Settlement amount of Rs. 3 crores with two properties was specifically recorded. It is further mentioned that in terms of the second Addendum, the wife had already received Rs. 1.5 crore from the husband as was mentioned in the Petition and the statements made by the parties in the Court. Out of the remaining 1.5 crore, a sum of Rs. 1.25 crores has been deposited by way of Bank Draft bearing No. 501589 dated 10.03.2016, drawn on ICICI Bank in favor of Respondent No. 2. The balance 25 lakhs were to be paid to respondent No.2 herein at the time of quashing of FIR No. 147/2011 under Sections 323/341/504 IPC before the High Court of Rajasthan, Jaipur Bench. The respondent No. 2 undertook to cooperate and ensure her presence for the quashing of the FIR.

29. The said Judgment further records that the parties had agreed that the petitioner/husband shall be the sole and absolute exclusive owner of residential Apartment bearing No. 1625 B Magnolias, Gold Course Road, Gurugram from the said date and that the Respondent No. 2/wife had already executed the necessary documents and Application for deletion of her name with regard to the said property. The parties undertook to cooperate with each other for implementation of the said Agreement.

30. Moreover, it was recorded that the exclusive and absolute title of commercial property bearing No. WZ-1401/2 Nangal Raya, Delhi – 110046 shall also be with the petitioner. Both the parties undertook to abide by the terms and conditions of the Settlement as was mentioned in their Petition and the *MOU/Addendum* dated 11.03.2016 exhibited as Ex. P5. After recording the Settlement, the divorce by Mutual Consent under Section 13(B) 2 HMA, was granted.

31. It is evident that the terms of this Settlement were specifically



2024:DHC:7578



reproduced and the documents exhibited. In fact, there was a specific reference that the total cash amount agreed was Rs. 3 crores out of which Rs. 1.5 crores already stood paid while Rs. 1.25 crores were deposited to be released to the respondent No. 2, only after execution of the requisite title documents. Having made specific statements and exhibiting the Agreement as Ex. P-5, the respondent No. 2 cannot now either deny or challenge the Judgement which has never been challenged by respondent No. 2 till date. The contents of this Settlement, which were endorsed and accepted by the Parties before the Court, was duly acted upon and the Divorce was granted. The contention of the respondent No. 2 that she has been cheated or defrauded or was not aware that the second Addendum stamped at 6:48 PM was not presented before the family court is behest of any logic especially when the Order granting the Divorce repeated and affirmed the contents of the Settlement in detail.

32. There being specific reproduction and re affirmation by the parties of the terms of the Agreement, it cannot be said that she was misled or the terms of the Settlement were misrepresented to her. Therefore, it has to be held that this *second Addendum* dated 11.03.2006 signed by the Parties at the same time, signatures on which are not denied by her, was a binding Settlement.

33. The *next question* which arises is the validity of the *first Addendum* e-stamped at 6:46 PM on 11.03.2016. 27. Apparently, it seems that the parties arrived at *two Addendum Settlements* each of which were independent; one for the purpose of taking divorce by Mutual Consent while the other was for Settlement of other disputes, claims in respect of money and properties. In any case, it is a question of interpretation of the intention



2024:DHC:7578



of the parties, which they are at liberty to establish in the appropriate Civil Litigation. There is nothing to show that the *second Addendum* had superseded the *first Addendum*. This is further corroborated by the fact that the respondent No. 2 never sought repudiation of this Agreement, which was the basis of divorce by mutual consent.

34. Apparently, the *two Addendums* signed on 11.03.2016 were intended to be independent of each other; while the second Addendum became the basis for *Divorce by Mutual Consent*, the grievance against first addendum has been raised only in 2024 by filing a Complaint for registration of FIR.

35. Pertinently, this *second Addendum* which became the basis of divorce by Mutual Consent does not find any mention in the FIR, which is purely confined to the *first Addendum*.

36. It is evident that the entire grievance of the respondent No. 2 is in regard to the non compliance of the First Addendum *Settlement* dated 11.03.2016. The parties have voluntarily entered into it and whatever be the implications, they are essentially civil in nature. Breach of a Settlement would entail only civil liabilities; the essential ingredient of dishonest or fraudulent intention which are the foundation for an offence of Cheating or Breach of Trust, are essentially missing in the present FIR. Significantly, while the Addendum Agreement is of 2016, the Criminal Complaint alleging fraud and breach of Trust vis. a viz. this Agreement, has been filed only in 2024 i.e. after eight years of its execution, leading to registration of impugned FIR.

37. ***Consequently, the FIR No. 0126/2024 dated 31.05.2024 is hereby quashed along with all the proceedings emanating therefrom,*** leaving the parties to pursue their civil litigation and other litigation under Section 138 NI Act, which have already been initiated.



2024:DHC:7578



38. It is hereby stated that observations made herein is for the purpose of the present petition and are not an expression on the merits of the Settlement Deeds.

39. The Petition along with other Application, if any is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 17, 2024/PT