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

+ **W.P.(CRL) 1565/2024**

GAURAV GUPTA & ORS.

.....Petitioners

Through: Ms. Latika Malhotra, Mr. Mridul
Bakshi, Ms. Anant Gautam,
Advocates

versus

STATE & ANR.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel for
the State
SI Annu, P.S.: Neb Sarai
Mr. Ashutosh Lohia, Ms. Shradha
Bhargava, Ms. Prinay Sharma,
Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

23.01.2025

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1. This is a petition filed seeking quashing of FIR No. 461/2023, registered at P.S. Neb Sarai, New Delhi, under section 498A/406/34 of the Indian Penal Code, 1860 (IPC).

2. The Subject FIR has been lodged at the instance of Respondent No. 2, wife of Petitioner No. 1. It is the case of the Petitioners that the parties herein have settled all their disputes in terms of the Memorandum of Understanding (MoU) dated 20.02.2024, which has been filed as Annexure-4 to this petition.

3. It is stated that as per the terms of the said MoU, a sum of Rs. 2,52,00,000/- was payable to Respondent No. 2, which amount stands paid. And the Flat No. 603, 6th Floor, Amarpali Royal, Maneka 2, Indirapuram, Ghaziabad, Uttar Pradesh also stands transferred to Respondent

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No. 2, by virtue of a gift deed.

4. It is a matter of record that two (2) daughters have born from the wedlock of Petitioner No. 1 and Respondent No. 2, one of whom is a minor. The MoU dated 20.02.2024 records that Custody of the minor daughter will remain with Petitioner No. 1, while the major daughter has elected to reside with Petitioner No. 1 until she becomes self-reliant. Furthermore, the MoU specifies that neither daughter will have any claim over the assets (movable or immovable) of Respondent No. 2.

5. Learned standing counsel objects to the part of condition no. 8 of the MoU to the extent it bars the rights of the two (2) children in the assets of Respondent no. 2. He states that this is in teeth of the Judgment of the Supreme Court in **Ganesh v. Sudhirkumar Shrivastava**¹. The relevant part of the Clause 8 of the settlement deed, which is objected to reads as under: -

“8. Also both the children of the parties shall have no claim now or in future in any assets moveable or immoveable acquired by the First party whether by herself or through the said alimony/settlement amount in the past, present or in future.”

6. The Petitioner Nos. 1, 2 and 3 are present in the court and are identified by their Counsel as well as their Investigation Officer ('IO'). Petitioner duly acknowledges the execution of the said MoU and have filed their affidavits in support of this Petition.

7. None appears on behalf of Respondent No. 2.

8. In the interest of justice matter was passed over to enable the IO to contact Respondent No. 2 and direct her to remain present before this Court.

9. At the second call IO informs this Court that initially, Respondent No.

¹ (2020) 20 SCC 787.



2 assured the IO that she will join the proceedings through VC link; however, Respondent No. 2 has not joined the hearing and has stop taking the calls of the IO.

10. At this stage, Ms. Shradha Bhargava, learned counsel has appeared on behalf of Respondent No. 2. She states that she is appearing only because her *Vakalatnama* is on record, however, Respondent No. 2 has not given any instructions for the hearing today.

11. Learned counsel for the Petitioners has drawn this Court's attention to Order dated 31.05.2024 passed in these proceedings which records Respondent No. 2's confirmation with respect to the final settlement of the disputes and execution of the MoU dated 20.02.2024. She also points out that Respondent No. 2 has already filed no objection affidavit which has been annexed as Annexure-6 to the petition.

12. She states that the Petitioners has complied with all the obligations assumed under the said MoU.

13. She states that to allay the objections raised by the State i.e. Respondent No. 1 with respect to the rights of the children, Petitioner No. 1 has filed an affidavit dated 29.05.2024 and has consented that the relevant part of the Clause 8 of the settlement deed which is objected to by the State stands withdrawn and Petitioner no. 1 will not rely on the said portion of Clause 8.

14. This Court has considered the submissions of the Petitioners and learned Standing counsel.

15. This Court finds no justification in the non-appearance of the Respondent no. 2 at today's hearing.

16. Nevertheless, in view of the unequivocal statement of Respondent No. 2 recorded in the order dated 31.05.2024 and the affidavit dated



09.05.2024 filed by the Respondent No. 2 in support of this petition, and considering that the chances of conviction of the Petitioners being remote and bleak, there is no use continuing with proceedings of the present FIR, as it would be a misuse of the process of the Court and an unnecessary burden on the State exchequer. Hence, it would be in the interest of justice to quash the aforementioned FIR and the proceedings pursuant thereto.

17. Consequently, the FIR No. 461/2023, registered at P.S. Neb Sarai, New Delhi, under section 498A/406/34 IPC and the proceedings pursuant thereto are quashed.

18. With respect to the portion of Clause 8 extracted in paragraph 5 above, it is hereby directed that the said clause shall not be binding on the children of Petitioner no. 1 and Respondent no. 2 as the said condition is contrary to law. And, to this extent the said portion of Clause 8 is deemed to be deleted from the said agreement.

19. The petition stands disposed of along with all pending applications if any.

MANMEET PRITAM SINGH ARORA, J

JANUARY 23, 2025/mt/AKT

[Click here to check corrigendum, if any](#)