

Divyanshu Gautam vs State (Govt Of N.C.T. Of Delhi) & Anr on 20 December, 2021

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

\$~4

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2817/2021, CRL.M.A.20493/2021
DIVYANSHU GAUTAM

Through: Ms. Sonali Dhir and Mr. A
Nautiyal, Advocates with
Sandhya Kaim, SPA Holder
in person.
Petitioner in person(thro

versus

STATE (GOVT OF N.C.T. OF DELHI) & ANR. Respondent
Through: Mr. Panna Lal Sharma, APP with
Investigating Officer SI Rajind
Singh, PS Hazrat Nizamuddin.
Mr. Navin Sharma, Advocate for
with Smt. Kiran Devi, SPA for R
person.
Respondent No.2 in person (thro
VC).

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 20.12.2021

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed by the Petitioner praying for quashing of FIR bearing No. 557/2015 registered at Police Station Hazrat Nizamuddin, New Delhi for offences punishable under Sections 498A/406/313/34 of the Indian Penal Code, 1860 filed through Ms. Sandhya Kaim, the Special Power of Attorney holder of the Petitioner, duly authorized by Power of Attorney dated 4th December, 2019. The Respondent No.2 is also represented by Power of Attorney holder Mrs. Kiran Devi who is the Special Power of Attorney holder of the Respondent No.2 duly authorized by Power of Attorney dated 5th February, 2020 which is on the record.

2. Mr. Divyanshu Gautam, Petitioner appeared through video conferencing from Australia and has been identified by his counsel Ms. Sonali Dhir and Investigating Officer SI Rajinder Singh, Police Station Hazrat Nizamuddin, New Delhi. Ms. Anuradha Gautam, Respondent No.2 is also appearing through video conferencing from Australia and been identified by his counsel Mr. Navin Sharma and Investigating Officer SI Rajinder Singh, Police Station Hazrat Nizamuddin, New Delhi.

3. On the query made by this Court, Respondent No.2 has categorically stated that she has entered into the compromise on her own free will and without any pressure. It is also stated by Respondent No.2 that the entire dispute has been amicably settled between the parties.

4. The brief facts of the case are that the Petitioner and Respondent No.2 are Hindus and their marriage was solemnized according to the Hindu rites and ceremonies on 24th August, 2012 at Arya Samaj Mandir, Dadri, Gautam Budh Nagar, U. P. It is also submitted that they have no issue born out of the said wedlock. It is submitted that after initial few months of the wedding, both the Petitioner and the Respondent No.2 started living in Melbourne, Australia. It is further submitted that due to some temperamental differences between them, the relationship between them started getting strained. Both the parties subsequently decided to live separately since October, 2014.

5. It is submitted that on account of differences and due to certain misunderstanding, disputes ensued between the Petitioner and the Respondent No. 2 as a result of which Respondent No. 2 filed several cases against the Petitioner. The details of the cases are given in the paragraph 2

(d) of the petition, reads as follows:

"2.(d) That on account of differences and due to certain misunderstanding disputes ensued between the Petitioner and the Respondent No 2 and the Respondent No. 2 initially filed following cases in Melbourne and India against Petitioner and his family members;

I. Application for Intervention Order at Magistrate Court of Victoria at Melbourne (Withdrawn vide Notice of Withdrawal of Intervention Order dated 07.09.2015).

II. Application under Section 125 Cr.PC before the Family Courts, Saket District Courts, Delhi (which already stands withdrawn).

III. Application under Section 12 of Domestic Violence Act before Mahila Court, Saket Court bearing CT Case No.624894/2016 titled as Anuradha versus Divyanshu Gautam and Ors.

IV. FIR No.557 of 2015, under sections 498A, 406 and 313 IPC, P.S. Hazrat Nizamuddin wherein charge sheet has been filed and the matter was committed to the sessions and the same is pending adjudication before Mr. Gulshan Kumar, Ld. ASJ, Saket. True Copy of the charge sheet is annexed herewith as Annexure P/3.

V. Petition under Section 482 Cr. PC pending before Hon'ble High Court of Delhi bearing Crl. MC. No. 3591/2017 seeking cancellation of Bail granted to the Petitioner no. 1 vide Order dated 05.08.2017 by the Ld. Additional Sessions Judge, Saket.

VI. Initiating Application dated 08.07.2016 before Commonwealth Courts, Melbourne seeking Financial (Property/Maintenance) (which stands disposed off)."

6. It is submitted that the the Petitioner had filed an application for divorce on 6th November, 2015 before Federal Court of Australia at Melbourne, wherein the Respondent No. 2 had given a notice of Discontinuance dated 11th April, 2016 and thereafter vide Order dated 6th July, 2016, the Federal Court granted the divorce to the Petitioner and the Respondent No. 2 with effect from 7th July, 2016. The copy of the Divorce Order dated 6th July, 2016 is appended as Annexure P/4.

7. It is submitted that the Petitioner and the Respondent No. 2 entered into a settlement in form of Minutes of Consent Orders dated 29 th November, 2017 before the Federal Circuit Court of Australia, whereby the Petitioner agreed and paid an amount of \$40,000 (Australian Dollar) to Respondent No. 2 in Melbourne, Australia.

8. It is submitted that the the Petitioner and the Respondent No. 2 have amicably settled all their disputes relating to the permanent alimony, maintenance and stridhan and subsequently recorded their statements in the Petition under Section 13(b)(l) of Hindu Marriage Act, 1955 (First Motion) on 8th August, 2019 before the Principal Judge, Family Court, Saket District Courts, Delhi on the terms and conditions which have been given in paragraph 2 (g) of the petition, read as follows:

2 (g) That now the Petitioner and the Respondent No. 2 being self-

reliant and independent, have amicably settled all their disputes relating to the permanent alimony, maintenance and istridhan, etc. and subsequently recorded their statements in the Petition under Section 13 (b)(l) Hindu Marriage Act, (First Motion) on 08.08.2019 before the Ld. Principal Judge, Family Court, Saket District Courts, Delhi, in the following terms:

i. The Petitioner shall making first installment of Rs. 5,00,000/(Rupees Five Lakhs Only) to Respondent No. 2 by way of a Demand Draft in the Name of "Anuradha" at the time of recording of the statement in the First Motion Petition which was duly paid to the Respondent No. 2 by Petitioner No. 1 on 08.08.2019.

ii. The Petitioner shall make second installment of Rs. 3,00,000/(Rupees Three Lakhs Only) to Respondent No. 2 by way of a demand Draft in the Name of "Anuradha" at the time of withdrawal of Application under Section 12 DV Act pending before the Court of Ms. Sheetal Chaudhary Pradhan, Mahila Court(South-East), Saket District Courts, bearing CT Case No. 624894/2016 titled as 'Anuradha versus Divyanshu Gautam and Ors., which was duly paid on 08.08.2019 before Ms.Sheetal Chaudhary Pradhan, Ld. MM, Saket Court, New Delhi and accordingly the matter was settled as withdrawn.

iii. The Petitioner shall make third installment of Rs. 2,00,000/(Rupees Two Lakhs Only) to Respondent No. 2 by way of a Demand Draft in the Name of "Anuradha" at the time of recording of the statement in the Second Motion Petition.

iv. The Respondent no. 2 on receipt of the first installment of Rs.5,00,000/- on the First Motion petition shall also withdraw the Crl. MC. No. 359112017 titled as 'Anuradha versus Divyanshu Gautam' pending before Hon'ble High Court of Delhi on or before the next date of hearing which

was accordingly withdrawn on 20.08.2019.

v. The Respondent No.2 further undertook that she shall extend all cooperation and take all necessary steps and sign all such documents including affidavits etc. to be filed before the Hon'ble High Court, necessary for seeking quashing of the FIR No. 557/2015 P.S. Hazrat Nizamuddin and proceeding emanating therefrom which is pending before Mr. Gulshan Kumar, Ld. ASJ, Saket and is fixed for hearing on 10.05.2021.

vi. The Petitioner and Respondent No. 2 recorded their statements dated 08.08.2019 in the aforestated manner and undertook to abide by the same and are thus remained bound by the said terms and conditions. Copy of Statement and order dated 08.08.2019 recorded before the Ld. Principal Court, Family Court, Saket Courts, New Delhi in First motion by mutual consent is annexed herewith and marked as Annexure P/5(Colly)."

9. It is submitted that acting upon the settlement, Respondent No.2 withdrew the application under Section 12 of Protection of Women from Domestic Violence Act, 2005 pending before the Court of Mahila Court, (South-East), Saket District Courts, bearing CT Case No, 624894/2016 titled as 'Anuradha versus Divyanshu Gautam and Ors.' And Crl. MC. No. 3591/2017 titled as 'Anuradha versus Divyanshu Gautam' pending before Hon'ble High Court of Delhi on 20th August, 2019.

10. It is submitted that the Petitioner and the Respondent No.2 have already obtained divorce by mutual consent vide an order dated 15th January, 2020 granted by the Ld. Principal Judge, Family Court, South East, New Delhi. The copy of the order granting Divorce decree passed by Principal Judge, Family Court, South East, New Delhi is appended as Annexure P/6 (Colly) of paper-book.

11. It is submitted that the Petitioner has already paid the entire amount of Rs. 10,00,000/- as agreed between the Petitioner and the Respondent No.

2. The aforesaid amount of Rs. 10,00,000/- is a payment of lump sum amount to the Respondent No. 2 towards all her past, present and future maintenance and after payment of the same, the Respondent No. 2 shall have no claim whatsoever towards the Petitioner or his family members.

12. The Accused No. 2 i.e., mother-in-law of the Respondent No.2 had already expired in the month of November, 2019. The copy of the death certificate is already on record and appended as Annexure-A and the fact of the same is verified by the State.

13. It is submitted that now all the conditions as contained in the statement before the Learned Family Court, Saket Courts, New Delhi have been complied with. The joint statement made by the both the parties is appended as Annexure P/5.

14. Mr. Panna Lal Sharma, learned APP appearing on behalf of the State submitted that there is no opposition to the prayer made by the Petitioner seeking quashing of the FIR in question in view of the settlement arrived at between the parties.

15. Heard, learned counsel for the parties and perused the record.

16. The instant criminal proceedings are in respect of non-compoundable offences which are private in nature and do not have a serious impact on the society especially when there is a settlement/compromise between victim and accused.

17. In such cases, it is settled law that High Court is also required to consider the conduct and antecedents of the accused in order to ascertain that the settlement has been entered into by her own free will and has not been imposed upon her by the Petitioner or any person related to him. In the present case, the Respondent No.2 is present in Court through video conferencing and has categorically stated that she has entered into compromise and settled the entire disputes amicably with Petitioner by her own free will without any pressure or coercion. There is also no allegation from Respondent No.2 that the conduct and antecedents of Petitioner has been bad towards her the compromise. As per the settlement, the Respondent No.2 has received the entire settled amount.

18. In the case of B.S. Joshi & Ors. vs. State of Haryana & Ors 2003 (4) SCC 675, the Hon'ble Supreme Court has held that if for purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of the power of quashing under Section 482 Cr.P.C.

19. Moreover, the Hon'ble Supreme Court in Jitendra Raghuvanshi & Ors. vs. Babita Raghuvanshi & Anr. (2013) 4 SCC 58, has held that criminal proceedings on FIR or complaint can be quashed under Section 482 Cr.P.C. in appropriate cases in order to meet the ends of justice. Even in non-compoundable offences pertaining to the matrimonial disputes, if Court is satisfied that parties have settled the disputes amicably and without any pressure, then for the purpose of securing ends of justice, FIRs or complaints or subsequent criminal proceedings in respect of offences can be quashed.

20. In the instant case, as stated above, the parties have reached the compromise and amicably settled the entire disputes without any pressure.

21. In view of the settlement arrived at between the parties and the law laid down by the Hon'ble Supreme Court, the present petition is allowed. Accordingly, FIR bearing No. 557/2015 registered at Police Station Hazrat Nizamuddin, New Delhi for offences punishable under Sections 498A/406/313/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom are quashed.

22. Accordingly, the petition and the pending application stand disposed of.

CHANDRA DHARI SINGH, J DECEMBER 20, 2021/Pallavi