

Gaurav Malhotra & Ors vs State (Nct Of Delhi) & Anr on 9 November, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

\$~29

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 5784/2022 & CRL.M.A. 22764/2022
GAURAV MALHOTRA & ORS.

Through: Mr. Pankaj Kumar & Ms. Sugan Taneja, Advocates with P-1

versus

STATE (NCT OF DELHI) & ANR.

Through: Ms. Meenakshi Dahiya, APP f
with SI Prem, PS North Rohi
Ms. Shruti Sharma, Advocate
with R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 09.11.2022 Exemption allowed subject to all just exceptions. The application is disposed of accordingly.

The petitioner Nos. 1 to 3 vide the present petition seek the quashing of the FIR No.110/2019, PS North Rohini, under Sections 498A/406/34 of the Indian Penal Code, 1860 submitting to the effect that a settlement has since been arrived at between the parties to the petition in view of the mediation settlement dated 02.07.2022 arrived at the Delhi Mediation Centre, Rohini District Courts in Case No.147/2019, HMA No. 1429/2018, HMA No. 362/2020 and State Vs. Gaurav Malhotra and others qua FIR No. Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

110/2019, and that the marriage between the petitioner no.1 and the respondent no.2 has since been dissolved vide a decree of divorce through mutual consent under Section 13B(2) of the HMA, 1955 in HMA Petition No.1824/2022 vide a decree dated 16.09.2022 of the Court of the learned Principal Judge, Family Court, North, Rohini, and that all claims of the respondent No.2 stand settled by the payment of the total settled sum of Rs.30 Lakhs to the respondent No.2 by the petitioners, of which a sum of Rs.15 Lakhs has been paid to her previously and the balance sum of Rs.15 Lakhs having been handed over to the respondent No.2 by the petitioners during the course of the present proceedings vide a demand draft bearing No. 926293 dated 04.10.2022 drawn on the Kotak Mahindra Bank in favour of the respondent No.2, and that no useful purpose would be served by the continuation of the proceedings qua the FIR in question.

The Investigating Officer of the case is present and has identified the petitioner nos.1 to 3 i.e. petitioner No.1 Sh. Gaurav Malhotra, petitioner No.2 Sh. Subhash Chander Malhotra and petitioner No.3 Smt. Sushil Malhotra, present in Court today, as being the three accused persons arrayed in the column No.11 in the chargesheet and states that two other persons named Sh. Puneet Chawla and Smt. Poonam Chawla were put in the column No.12 in the chargesheet and they were not summoned by the learned Trial Court. The Investigating Officer of the case has also identified the respondent no.2 Ms. Ankita Malhotra, present in Court today, as being the complainant of the said FIR.

The respondent no.2 in her deposition on oath in replies to specific Court queries affirms having signed her affidavit dated 12.10.2022 and the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

mediation settlement dated 02.07.2022 voluntarily of her own accord without any duress, coercion or pressure from any quarter, and inter alia states that in view of the said settlement arrived between her and the petitioners, she has received the total settled sum of Rs.30 Lakhs from the petitioners.

She has also affirmed the factum of the dissolution of her marriage with the petitioner no.1 vide a decree of divorce through mutual consent aforementioned and states that there is no child born of the wedlock between her and the petitioner no.1. She further states that in view of the settlement arrived at between her and the petitioners, she does not oppose the prayer made by the petitioner nos. 1 to 3 seeking the quashing of the FIR No.110/2019, PS North Rohini, under Sections 498A/406/34 of the Indian Penal Code, 1860 nor does she want them to be punished in relation thereto. She also states that she does not seek to proceed against the other two persons not chargesheeted but arrayed in column No.12 of the chargesheet.

She further states in reply to a specific Court query that she is a post- graduate in CMA and works as a Senior Manager Finance with HCL and has understood the implications of the statement made by her and that she has arrived at a settlement with the petitioners voluntarily of her own accord without any duress, coercion or pressure from any quarter and does not need to think again.

On behalf of the State, the learned APP for the State submits that there is no opposition to the prayer made by the petitioners seeking the quashing of the FIR in question in view of the settlement arrived at between the parties to the petition.

Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

In view of the settlement arrived at between the parties, the identification of the parties by the Investigating Officer of the case, the non- opposition on behalf of the State and as there appears no reason to disbelieve the statement made by the respondent no.2 that she has arrived at a settlement with the petitioners voluntarily of her own accord without any duress, coercion or pressure from any

quarter, in as much as, the FIR has apparently emanated from a matrimonial discord between the petitioner no.1 and the respondent no.2 which has since been resolved by the dissolution of their marriage vide a decree of divorce through mutual consent, for maintenance of peace and harmony between the parties, it is considered appropriate to put a quietus to the litigation between the parties in terms of the verdict of the Hon'ble Supreme Court in Narender Singh & Ors. V. State of Punjab; (2014) 6 SCC 466 wherein it has been observed vide paragraph 31(IV) to the effect:-

"31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I)

(II)

(III)

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

or family disputes should be quashed when the parties have resolved their entire disputes among themselves."

and in view of the observations of the Hon'ble Supreme Court in Gian Singh vs. State of Punjab & Another, (2012) 10 SCC 303, to the effect : -

"58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the

family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed." [Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]"

and in view of the verdict of the Hon'ble Supreme Court in Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. (2013) 4 SCC 58, to the effect : -

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. They institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed....",-

(emphasis supplied), in view thereof, FIR No.110/2019, PS North Rohini, under Sections 498A/406/34 of the Indian Penal Code, 1860 against the petitioner nos.1 to

3 i.e. petitioner No.1 Sh. Gaurav Malhotra, petitioner No.2 Sh. Subhash Chander Malhotra and petitioner No.3 Smt. Sushil Malhotra, as well as, all other accused persons arrayed therein, and all consequential proceedings emanating therefrom are thus quashed.

The petition is disposed of accordingly ANU MALHOTRA, J NOVEMBER 9, 2022 ha
Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022
17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

IN THE HIGH COURT OF DELHI: NEW DELHI GAURAV MALHOTRA & ORS.
versus STATE (NCT OF DELHI) & ANR.

09.11.2022 CW-1 SI Prem, PS North Rohini.

ON S.A. I am the Investigating Officer qua the FIR No.110/2019, PS North Rohini,
under Sections 498A/406/34 of the Indian Penal Code, 1860.

I identify the petitioner nos.1 to 3 i.e. petitioner No.1 Sh. Gaurav Malhotra, petitioner
No.2 Sh. Subhash Chander Malhotra and petitioner No.3 Smt. Sushil Malhotra,
present in Court today, as being the three accused persons arrayed in the column
No.11 in the chargesheet.

Sh. Puneet Chawla and Smt. Poonam Chawla are the persons arrayed in the column
No.12 in the chargesheet and they were not summoned by the learned Trial Court.

I also identify the respondent no.2 Ms. Ankita Malhotra present today in Court as
being the complainant of the said FIR.

RO & AC
09.11.2022

ANU MALHOTRA,

Signature
Not Verified
Digitally Signed
By:SUMIT GHAI
Signing
Date:10.11.2022
17:29:54
This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.

IN THE HIGH COURT OF DELHI: NEW DELHI GAURAV MALHOTRA & ORS.
versus STATE (NCT OF DELHI) & ANR.

09.11.2022 CW-2 Ms. Ankita Malhotra, D/o Sh. Rajan Prabhakar, aged 39 years, R/o H. No.255-256, Sector-7, Pocket G-20, Rohini, Delhi. ON S.A. My affidavit dated 12.10.2022 and the mediation settlement dated

02.07.2022 bear my signatures thereon which I have signed voluntarily of my own accord without any duress, coercion or pressure from any quarter.

In terms of the said settlement dated 02.07.2022 arrived at the Delhi Mediation Centre, Rohini District Courts, a total sum of Rs.30 Lakhs had to be paid to me by the petitioners, of which a sum of Rs.15 Lakhs has been paid to me previously and the balance sum of Rs.15 Lakhs has now been handed over to me by the petitioners during the course of the present proceedings vide a demand draft bearing No. 926293 dated 04.10.2022 drawn on the Kotak Mahindra Bank in my favour in my name as Ankita Malhotra. There are now no claims of mine left against the petitioners.

The marriage between me and the petitioner no.1 has since been dissolved vide a decree of divorce through mutual consent under Section 13B(2) of the HMA, 1955 in HMA Petition No.1824/2022 vide a decree dated 16.09.2022 of the Court of the learned Principal Judge, Family Court, North, Rohini. There is no child born of the wedlock between me and the petitioner no.1.

In view of the settlement arrived at between me and the petitioners, as Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:10.11.2022 17:29:54 This file is digitally signed by PS to HMJ ANU MALHOTRA.

well as the dissolution of the marriage between me and the petitioner No.1, and all my claims having been settled, I do not oppose the prayer made by the petitioners seeking the quashing of the FIR No.110/2019, PS North Rohini, under Sections 498A/406/34 of the Indian Penal Code, 1860 nor do I want them to be punished in relation thereto. I also do not seek to proceed against the other two persons not chargesheeted but arrayed in column No.12 of the chargesheet.

I am a post-graduate in CMA and I work as a Senior Manager Finance with HCL.

I have made my statement after understanding the implications thereof voluntarily of my own accord without any duress, coercion or pressure from any quarter and I do not need to think again.

RO & AC
09.11.2022

ANU MALHOTRA, J

Signature
Not Verified
Digitally Signed

By: SUMIT GHAI

Signing

Date: 10.11.2022

17:29:54

This file is
digitally signed by
PS to HMJ ANU
MALHOTRA.