

Ankit Ahuja And Ors vs State Nct Of Delhi And Anr on 3 February, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

\$~37

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 484/2022 & CRL.M.A. 2147/2022
ANKIT AHUJA AND ORS

Through: Petitioners in person with
Madan, Advocate. P

versus

STATE NCT OF DELHI AND ANR

Through: Ms.Manjeet Arya, APP for St
SI Sumit Dhankar, PS Tilak
R-2 in person. R

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 03.02.2022 (through Video Conferencing) CRL.M.A. 2147/2022 (Ex.) Exemption allowed subject to all just exceptions. The application stands disposed of.

The petitioners, vide the present petition seek the quashing of the FIR No.297/2017, PS Tilak Nagar under Sections 498A/406/34 of the Indian Penal Code, 1860 submitting to the effect that a settlement has been arrived at between the parties vide a Memorandum of Understanding dated 12.07.2021 pursuant to which 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Petition No. 1986/2021 vide a decree dated 07.10.2021 of the Court of the learned Judge, Family Court, Dwarka Courts, New Delhi and that pursuant thereto the total settled sum of Rs.5,50,000/- has since been paid by the petitioners to the respondent no.2 of which a sum of Rs.5,00,000/- had been received by the respondent no.2 previously and the balance sum of Rs.50,000/- has now been handed over to the respondent no.2 during the course of the present proceedings vide a demand draft bearing No.518057 dated 13.12.2021 drawn on the SBI, no useful purpose would be served by the continuation of the proceedings in relation to the present FIR.

The deputed Investigating Officer of the case is present and has identified the petitioner nos. 1 to 3 i.e. the petitioner no.1 Ankit Ahuja, petitioner no.2 Ajay Ahuja and petitioner no.3 Geeta Ahuja as being the three accused persons arrayed in FIR No.297/2017, PS Tilak Nagar under Sections

498A/406/34 of the Indian Penal Code, 1860 and has also identified the respondent no.2 as being the complainant of the said FIR.

The respondent no.2 in her deposition on oath in replies to specific Court queries by the Court affirms the factum of the settlement arrived at between her and the petitioners as well as the dissolution of her marriage with the petitioner no.1 aforementioned as well as the aspect of all claims of hers against the petitioners having been settled for a total settled sum of Rs.5,50,000/-. In reply to a further specific Court query, she states that there is one child born of the wedlock between her and the petitioner no.1 i.e. a daughter aged 7 years now who is in her custody. She further states that she has made her statement to the effect that she does not oppose the prayer made by the petitioner nos. 1 to 3 seeking the quashing of the FIR in question nor does she want them to be punished in relation thereto Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

voluntarily of her own accord without any duress, coercion or pressure from any quarter.

On behalf of the State, 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 and the deposition of the respondent no.2.

In view of the settlement arrived at between the parties 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 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)

Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

(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 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

convicted and by not quashing the criminal proceedings, 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 record, that allowing the proceedings to continue would
Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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.297/2017, PS Tilak Nagar under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner nos. 1 to 3 i.e. the petitioner no.1 Ankit Ahuja, petitioner no.2 Ajay Ahuja and petitioner no.3 Geeta Ahuja is thus quashed.

However, despite the quashing of the FIR No.297/2017, PS Tilak Nagar under Sections 498A/406/34 of the Indian Penal Code, 1860 and the decree of divorce through mutual consent between the petitioner no.1 and the respondent no.2 and despite the Clause (1), (2) (i)(ii)(iii), (3)(b) & (5) of the Memorandum of Understanding dated 12.07.2021 which read to the effect:-

"(1). That it has been agreed voluntarily and mutually between the parties that a total sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand) shall be paid by the First Party to the second party as full and final settlement towards all her matrimonial claims/rights including dowry articles, stridhan, jewellery, past, present and future maintenance as well as the child and permanent alimony of the second party. (2) That it has been further agreed between the parties that the above mentioned settled amount shall be paid as follows:

(i) A sum of Rs 2,50,000/- (Rupees Two Lacs Fifty Thousand Only) shall be paid in the form of a FDR(for the period of 10 years) in favour of the child, at the time of statement under section 13-B(1) HMA (First Motion) petition for divorce by mutual consent before the Hon'ble Family Court. The said FDR shall be used for the higher education/marriage of the
Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

child and the interest thereupon shall be used for the routine/upbringing expenses of the child.

(ii) A sum of Rs 2,50,000/- (Rupees Two Lacs Fifty Thousand Only) shall be paid in the form of a FDR(for the period of 10 years) in favour of the child, at the time statement under section 13-B(2) HMA (Second Motion) petition for divorce by mutual consent before the Hon'ble Family Court. The said FDR shall be used for the higher education/marriage of the child and the interest thereupon shall be used for the routine/upbringing expenses of the child.

(iii). Final remaining amount of Rs 50,000/- (Rupees Fifty Thousand) shall be paid by the first party to the second party by way of Bank Draft/ DD drawn in the name of second party, at the time of making her statement before the Hon'ble High Court of Delhi in petition of quashing of FIR No 297/2017, registered at P. S Tilak Nagar, Delhi under section 498A/406/34 IPC against the first party and his parents. (3)

....

(b) The second party shall also withdraw her petition filed under section 125 Cr.P.C, for maintenance which is pending before the court of Ms. Renu Bhatnagar, Ld. P.J, Family .Court, Tis Hazari Courts, Delhi which is fixed for 06.09.2021. It is further agreed between both the parties that the second party i.e. the wife shall not file any execution petition for herself and her child qua any past, present and future interim maintenance order passed in her/their favour by the court of Dr.Sudhir Kumar Jain, Ld.P.J., Family Court (West) Tis Hazari Courts, Delhi, in above mentioned petition under section 125 Cr.P.C. all claims qua the maintenance of her and her child have been settled.

.....

.....

(5) That both the parties hereto have agreed that after payment of above amount of Rs.5,50,000/- (Five Lacs and Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.

fifty Thousand Only) as aforesaid and agreed, nothing remains due towards any claim of the second party, including the child against the first party. It is also further agreed that after the receipt of the said amount, the second party hereby undertakes not to claim any right whatsoever towards maintenance of herself and her child namely Ashiya towards present, past and future, permanent alimony, Istridhan, jewellery or any other articles from the first party and with this amount the second party is fully satisfied.", It is made expressly clear that the same shall not amount to any embargo on the minor child seeking her claims against the petitioner no.1 qua maintenance or otherwise in accordance with law in view of the verdict of the Hon'ble Supreme Court in Civil Appeal 4031-4032/2019 arising out of SLP (C) Nos.32868-32869/2018 titled as Ganesh Vs. Sudhirkumar Shrivastava & Ors. vide the verdict dated 22.04.2019 as adhered to and followed by this Court in Rakesh Jain & Ors. vs. State & Anr. in CRL.M.C. 2935/2019 dated 06.09.2019.

The petition is disposed of accordingly.

ANU MALHOTRA, J FEBRUARY 3, 2022 nc Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.02.2022 14:17:42 This file is digitally signed by PS to HMJ ANU MALHOTRA.