

# Sanjay Ahuja & Ors vs State Nct Of Delhi & Anr on 4 August, 2022

**Author: Yogesh Khanna**

**Bench: Yogesh Khanna**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.M.C. 2605/2021, CRL.M.A.Nos.16854/2021, 2948/2021, 5495/2022, 5496/2022  
SANJAY AHUJA & ORS.

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Through: Mr.Dhan Mohan, Ms.Tanu B.  
Mr.Ravi Mishra, Mr.Ratnes  
Ms.Tanisha Bhatia, Ms.Shi  
Yadav, Mr.Manish Kumar, M  
Gupta, Advocates.

versus

STATE NCT OF DELHI & ANR.

Through: Mr.Amit Sahni, A  
with SI Shweta,  
Mr.Virendra S.Ch  
for R2.

CORAM:  
HON'BLE MR. JUSTICE YOGESH KHANNA  
ORDER

% 04.08.2022

1. This petition is filed for quashing of FIR No.39/2014 under Sections 341/354A/509/506/34 IPC registered at PS Vikaspuri, Delhi and the proceedings emanating therefrom.

2. The petitioners and respondent no.2 were neighbors during the year 2012-13 and were residing at Antriksh Apartment, H3, Vikarpuri, New Delhi-110018. The petitioner no.2 was the president and husband of respondent no.2 was vice-president of RWA. It is alleged the husband of respondent no.2 had done lots of illegal acts and harassment during his tenure specifically against the president for which lots of complaint were also filed to police as well as to the Registrar of Societies. It is also alleged the respondent no.2 had done criminal act of misbehaving, harassing and using abusive language against the petitioners for which FIR No.533/2013 under Section 509/34 IPC registered at PS Vikaspuri, New Delhi was registered and the present FIR is a counter blast to the FIR filed against petitioner no.2.

3. Prior to these, various litigations were pending between them viz. FIR No.533/2013; CS No.580/2014; CC No.17966/2019; CS No.216/2014; C.R.P.70/2019.

4. On 17.01.2020 a settlement took place between the petitioners and respondent no.2 and a MoU was also signed between them and all the cases pending between the parties were settled and that respondent no.2 also agreed for quashing of the present FIR. In lieu of said settlement the respondent no.2 also agreed to accept an amount of Rs.1.00 lac from the petitioners and such amount has been duly paid.

5. Since the number of FIR was not mentioned in the mediation settlement as it was not referred to by the Court, hence a MoU of the same date i.e., 17.01.2020 was also executed between the parties which was duly signed by respondent no.2 wherein she agreed to withdraw/quash this FIR also. But after the quashing of FIR No.533/2013 against her husband and other civil matters, she started demanding more money from the petitioners for quashing of the present FIR and refused to cooperate in the settlement.

6. On 17.02.2020 an affidavit was prepared by respondent no.2 before the learned MM in respect of settlement and discharge of the accused but the Court asked to file the present petition since the offence was not compoundable. It is submitted all the cases filed by the petitioners were withdrawn and thereafter the intention of respondent no.2 and family members became dishonest and are now extorting more money from the petitioners and have declined to give any no objection in quashing of the present FIR.

7. I have perused the settlement dated 17.01.2020 and also the MoU dated 17.02.2020 in respect of the present FIR. Some relevant clauses of the MoU dated 17.01.2020 are as under:

"Whereas the first party has lodged a case FIR No .39/ 2014 in P. S. Vikaspuri U/S 354/34 IPC against the second party i.e. Sanjay Ahuja , Dimpy Ahuja and Bhupender Kalra at present , the case titled as state vs. Sanjay Ahuja & Ors is pending in Dwaraka District Court before Ms. Manisha Tripathi MM.

AND Whereas other following connected cases are also pending, details are given bellow:-

i) State VS Jagesh Saxena, FIR No. 533/2013 P.S. -Vikaspuri pending at Dwarka Court.

ii) Complaint case no.-17966/2019, titled Jagesh Saxena VS Dimpy Ahuja & Ors. Pending at Dwarka court.

iii) Civil suit no. 580/2014 titled Jagesh Saxena VS Dimpy ahuj a & Ors. Pending at Tis-Hazari courts.

iv) Civil suit no. 216/2016 titled Jagesh Saxena Vs Dimpy Ahuja & Ors. Pending at Tis-Hazari courts.

v) CRP No. 70/2019 titled Dimpy Ahuja & Ors. vs Jagesh Saxena pending before Hon'ble Delhi High Court.

Whereas all the above five matters have been amicably settled between the respective parties before the Delhi mediation centre at Dwarka Court Delhi Vide the settlement dated 17/01/2020.

Whereas the case of FIR No. 39/2014 is Non compoundable, hence the parties to this MOU have agreed to the following conditions:

Now this deed witnesseth as under:

1. That the both parties have agreed for the quashing of the case FIR No. 39/2014 P.S. Vikaspuri in view of the settlement in other connected five matters mentioned above.
2. That the first party has agreed for the quashing of case FIR No. 39/2014 P.S. Vikaspuri.
3. That the first has agreed that the second party may file a quashing petition before the Hon'ble Delhi high Court for quashing of case FIR No. 39/2014 P.S. Vikaspuri.
4. That the first party has agreed to give her No objection affidavit for the purpose of quashing of Vikaspuri. case FIR No. 39/2014 P.S.
5. That the first has agreed to appear before Hon'ble Delhi High Court and to give her statement for quashing of 39/2014 P.S. Vikaspuri.
6. That the first Party has amicably all her disputes with the second party without any outside pressure or threat."
8. There is no denial of the fact an amount of Rs.1.00 lac as per mediation settlement has been received by the respondent no.2. Further there is no serious denial qua the MoU dated 17.01.2020 except the learned counsel for the respondent no.2 says it was put inside the papers and got signed.
9. The learned counsel for the petitioner also shown me a whatsapp communication between the petitioner and husband of respondent no.2 annexed at Page No.294 which is as under:

"Message received from the husband of respondent no.2 to petitioner:

Please deposit Rs.25k in my icici bank ac no 629601085225. Ifsc code icic0006296 vikas puri branch in my name. Jagesh Saxena: Please deposit in ICICI bank only Please transfer money before court time 10 am Message sent by the petitioner to the

husband of Respondent no.2: Transfer Successful:

Reference Id 2146390541 Mode Within ICICI Paid to Account Jagesh 629601085225 Amount Rs.25000 From Account xxxxxxxxxx-67 on 16/12/2020 18:26:04 Remarks Court case charges"

10. Thereafter, the husband of respondent no.2 has sent an affidavit of no objection of his wife on whatsapp to the petitioner which is as under:

"Affidavit of Smt.Vinod Saxena W/o Sh.Jages Saxena aged about 63 years R/o Flat No. 89, Antriksh Apartment, H3 Block, Vikaspuri, New Delhi- 110018 do hereby solemnly affirm and declare as under:

1.That I am the complainant in the above mentioned case and as such, I am fully conversant with the facts and circumstances of this case.

2.That I have settled the dispute with the accused persons before the mediation centre, Dwarka Courts, New Delhi vide the Mediation Centre Settlement dated 17.01.2020.

3. That it is my true and correct statement."

11. After receiving the money, the respondent no.2 has stopped coming to the Court and through her counsel and rather denied no objection to the petitioner.

12. In Sanjeev Nagpal and Ors. vs. State and Anr. 147(2008) DLT 498, it was held:

"14. In the decision reported as Mohd. Shamim v. Nahid Begum 2005 (1) JCC 83, first respondent-wife filed a complaint under Sections 498A/406/34 IPC against the appellants. During the pendency of the complaint, a settlement was arrived at by the parties. An affidavit in support of the said settlement was filed by the first respondent-wife. The said settlement was duly recorded in a judicial order. Pursuant to the said settlement, appellants filed a petition under Section 482 of the Cr. P.C., 1973 before the High Court for quashing the FIR. First respondent-wife filed an objection to the said petition. In view of stand taken by the first respondent, the High Court declined to quash the FIR. Noting that the first respondent had entered into a settlement and had also received money in pursuance of said settlement, the Supreme Court in appeal reversed the decision of the High Court and quashed the FIR. In the said decision, the Supreme Court had observed as under:

In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the Appellants, in our opinion, in this case also, would be an abuse of process of the court. The Respondent No. 1, however, would be entitled to withdraw the sum of Rs.

50,000/- deposited in the court. We therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the impugned judgment be set aside. The First Information Report lodged against the appellants is quashed. The Appeal is allowed. However, this order should not be treated as a precedent.

17. Her statement was a representation made and undertaking given before this Court that she will not pursue her complaint and on the basis of this, the petitioner has given and she has accepted Rs. 6.00 lakhs in part satisfaction of the agreement. This is very unfortunate that she is now backing out from this undertaking. She is estopped in law from withdrawing her undertaking and representation. This would amount to committing Contempt of Court by her. From the agreement entered into between the parties and which is confirmed by them in Court, no doubt is left that this was a package deal for divorce as well as for quashing the criminal proceedings. By denying this agreement, she is certainly misusing the process of the Court. The Court would not allow a party to misuse its process.

17. Lastly, I note the following observations of the Supreme Court in the decision reported as State of Karnataka v. L. Muniswamy and Ors. :

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature....

18. In the light of the afore-noted judicial pronouncements and noting the fact that the respondent No. 2 had entered into a written agreement dated 20.1.2003 and that she took Rs. 4 lakhs in pursuance of said agreement, I consider it appropriate to quash the aforesaid FIR and proceedings arising out of the said FIR.

19. Petitioners are hereby directed to deposit a sum of Rs. 4 lacs in the Registry of this Court within a week from today.

20. On compliance of the aforesaid direction by the petitioners, the FIR No. 16/2003 registered at P.S. Kirti Nagar under Sections 498A/406/34 IPC would be deemed to be quashed."

13. In view of the above, since the amount has been paid by the petitioners to respondent no.2, and admittedly the MoU dated 17.01.2020 pertaining to the present FIR was signed on the same day belies the arguments raised by the learned counsel for respondent no.2 and as such there is no impediment in quashing the present FIR. Rather the continuation of the proceedings in the wake of withdrawal of litigation by the petitioner against the husband of respondent No.2 and in view of a separate MOU dated 17.01.2020 being executed and money received, would be an abuse of process of this Court

14. Accordingly, the petition is allowed. Consequently, the FIR No.39/2014 under Sections 341/354A/509/506/34 IPC registered at PS Vikaspuri, Delhi and the proceedings emanating therefrom stands quashed.

Pending application(s), also stands disposed of. Order dasti.

YOGESH KHANNA, J.

AUGUST 04, 2022 DU