

Avdhesh Kumar Singh And Ors vs The State Nct Of Delhi & Anr on 26 February, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 645/2024

AVDHESH KUMAR SINGH AND ORS

Through: Mr. Manoj Kumar, Adv
with Petitioners in person.

versus

THE STATE NCT OF DELHI & ANR.

Through: Ms. Nandita Rao, ASC f
SI Suresh Kumar, PS: New Usmanp
Ms. Kiran, Advocate for R-2 alo
person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 26.02.2024

CRL.M.A. 5996/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 645/2024

3. This petition has been filed on behalf of the Petitioners under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR No. 347/2021 dated 03.07.2021 under Sections 498A/406/34 IPC and Section 4 of Dowry Prohibition Act, 1961 registered at PS: New Usmanpur including proceedings emanating therefrom.

4. Marriage between Petitioner No. 1 and Respondent No. 2 was solemnized on 08.02.2012 according to Hindu rites and ceremonies at Delhi. A male child was born from the said wedlock on 15.08.2014, who is in the custody of Petitioner No.1. On account of disputes and differences arising between Petitioner No. 1 and Respondent No. 2, they have been living This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2024 at 22:46:11 separately since 24.08.2020. Respondent No. 2 made a complaint against the Petitioners which culminated into registration of the present FIR. Respondent No.2 filed a petition under Section 125 Cr.P.C. for maintenance and also filed a complaint case under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('D.V. Act').

5. During the pendency of this petition, parties have resolved all their disputes with the intervention of family, friends and well-wishers by way of an oral settlement dated 06.02.2023. Marriage between Petitioner No. 1 and Respondent No. 2 has been dissolved by mutual consent by a Decree of Divorce dated 06.09.2023, copy of which is annexed to the petition. As per the terms of settlement, a sum of Rs.1,00,000/- was payable by Petitioner No.1 to Respondent No.2 in full and final settlement of all her claims including permanent alimony, istridhan, dowry, maintenance etc. in three instalments, out of which the first instalment of Rs.30,000/- was to be paid at the time of recording of statements during First Motion under Section 13B(1) of the Hindu Marriage Act, 1955 and the second instalment of Rs.30,000/- was to be paid at the time of recording of statements during Second Motion under Section 13B(2). The balance amount of Rs.40,000/- was payable at the time of quashing of the FIR.

6. Issue notice.

7. Learned ASC accepts notice on behalf of the State.

8. Ms. Kiran, learned counsel accepts notice on behalf of Respondent No.2.

9. Petitioners and Respondent No. 2 are present in Court and are identified by their respective counsels as well as Investigating Officer SI Suresh Kumar, PS: New Usmanpur. Respondent No. 2 acknowledges the This is a digitally signed order.

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10. The Supreme Court in *Gian Singh v. State of Punjab and Another*, (2012) 10 SCC 303, observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal proceedings despite the compromise and if the answer to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of mental depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the victim's family settles the disputes with the offender. Relevant paragraphs of the judgment are as follows:-

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on This is a digitally signed order.

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58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. 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, 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.

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61. The position that emerges from the above discussion can be This is a digitally signed order.

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question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

11. The Supreme Court has consistently reaffirmed this view and in the context of matrimonial disputes, it would be relevant to refer to the This is a digitally signed order.

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"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. The 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 be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders."

12. Parties have mutually settled all their disputes. Marriage between Petitioner No.1 and Respondent No.2 stands dissolved. Settlement amount has been paid to Respondent No. 2. In view of the settlement between the parties and the categorical stand of Respondent No.2 that she does not want to pursue the complaint, no useful purpose will be achieved in continuing the criminal proceedings emanating from the subject FIR as the chances of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2024 at 22:46:12 conviction are bleak and it would be in the interest of justice that the proceedings are terminated. It is settled that where criminal proceedings arise essentially out of matrimonial dispute and parties decide to bury the hatchet, Court must examine the likelihood of criminal prosecution resulting in a conviction. Unless there is an indication of lack of bona fide on either side, if the parties are keen to move on with their respective lives and seek closure of the disputes, rejecting the prayer to quash the criminal case would restore acrimony instead of bringing about peace and harmony. This Court is fortified in its view by the judgments of this Court in Mohit Sharma & Ors. v. State (NCT of Delhi) & Anr., 2019/DHC/1440; Chandan Kumar Majumdar v. State and Another; and Nazimuddin and Others v. State and Another, 2019 SCC OnLine Del 9325, where the Courts have quashed FIRs under similar provisions, predicated on settlement between the parties, in the interest of justice. Accordingly, FIR No. 347/2021 dated 03.07.2021 under Sections 498A/406/34 IPC and Section 4 of Dowry Prohibition Act, 1961 registered at PS: New Usmanpur is quashed including proceedings emanating therefrom.

13. It is made clear that in view of the binding dictum of the Supreme Court in Ganesh v. Sudhirkumar Shrivastava and Others, (2020) 20 SCC 787, the terms of settlement between Petitioner No. 1 and Respondent No. 2 shall not come in the way of the child born out of the wedlock, from enforcing his rights against Petitioner No. 1 and Respondent No. 2, if and when he chooses to so enforce.

14. Petition stands allowed and disposed of.

JYOTI SINGH, J FEBRUARY 26, 2024/kks This is a digitally signed order.

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