

Varun Kharbanda & Ors vs The State & Anr on 5 October, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. No. 1907/2020 AND CRL.M.A. No.13644/2020

VARUN KHARBANDA & ORS.

..... Petitioners

Through: Ms.Suman Kapoor, Advocate with
petitioners in person.

versus

THE STATE & ANR.

.... Respondents

Through: Mr. Izhar Ahmad, APP for State
With SI Pooran Mal PS Hari Nagar
Mr.Amit Gaba, Advocate for R-2
with R-2 in person

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 05.10.2020 (Hearing through Video Conferencing) Exemption allowed, subject to just exceptions.

Vide the present petition, the petitioners 1 to 3, i.e. Varun Kharbanda, Ramesh Chander and Meena Kharbanda seek the quashing of the FIR No.408/2018, PS Hari Nagar, submitting to the effect that a settlement has since been arrived at between the parties vide a settlement deed dated 2.7.2019 and the marriage between the petitioner No.1 and the respondent No.2 has since been dissolved vide a decree of divorce through mutual consent and that no useful purpose would be served by the continuation of the proceedings in relation to the FIR in question.

The Investigating Officer of the case has identified the petitioners present today in Court through Video Conferencing as being Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:06.10.2020 19:07:19 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the three accused arrayed in the FIR in question and has also identified respondent no.2 present in Court today through Video Conferencing as being the complainant of the said FIR.

The respondent No.2 in reply to a specific Court query affirms the factum of the mediation settlement dated 2.7.2019 arrived at the Delhi Mediation Centre, Tis Hazari Courts between her and the petitioners and has also affirmed that in terms of the said settlement a total sum of Rs.10,25,000/- has been received by her and submits that there are now no claims of hers left against the petitioners. She further submits that there is no child born of the wedlock between her and the petitioner No.1. The respondent no.2 further submits that the marriage between her and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent dated

16.12.2019 of the Court of the Principal Judge, Family Courts (West), Tis Hazari Courts in HMA No. 2303/2019 and she does not oppose the prayer made by the petitioners No. 1 to 3 seeking quashing of the FIR in question nor does she want the petitioners to be punished in relation thereto. The respondent No.2 further submits that she has studied till standard XII and has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter and after understanding the implications of the making of the statement made by her and that she does not want to think again.

The learned APP for the State submits that there is no opposition to the prayer made by the petitioners seeking quashing of the FIR in view of the statement made by the respondent No.2 in as much as the FIR has emanated out of a matrimonial discord between Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:06.10.2020 19:07:19 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the respondent No.2 and the petitioner No.1 which has since been resolved vide a decree of divorce through mutual consent between them, in view thereof, it is considered appropriate to put a quietus to the litigation and disputes between the parties for maintenance of peace and harmony between them as also for the well being of the respondent no.2 in relation to the FIR in question, 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 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:06.10.2020 19:07:19 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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." [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 : -

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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. 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 be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed...."

(emphasis supplied), thus the FIR No. 408/2018 PS Hari Nagar, under Sections 498A/406/34 of the Indian Penal Code, 1860 against the petitioners No.1 to 3, Varun Kharbanda, Ramesh Chander and Meena Kharbanda and all consequential proceedings emanating therefrom are thus quashed.

The petition is disposed of.

ANU MALHOTRA, J OCTOBER 05, 2020/SV Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:06.10.2020 19:07:19 This file is digitally signed by PS to HMJ ANU MALHOTRA.

VARUN KHARBANDA & ORS. VS. THE STATE & ANR.

05.10.2020 CW-1 SI POORAN MAL PS HARI NAGAR ON S.A. I identify the petitioner nos. 1 to 3 i.e. Varun Kharbanda, Ramesh Chander and Meena Kharbanda present in Court today through Video Conferencing as being the three accused persons arrayed in the FIR No.408/2018, PS Hari Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and I also identify the respondent no.2 Ms.Kavita Rani present in Court today through Video Conferencing as being the complainant thereof.

RO & AC
05.10.2020

ANU MALHOTRA, J

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VARUN KHARBANDA & ORS. VS. THE STATE & ANR.

05.10.2020 CW-2 MS.KAVITA RANI, D/O SH. KEWAL KRISHAN KATARIA AGED 32 YEARS R/O WZ-692/1 SHIV NAGAR EXTENSION GALI NO.1, DELHI.

On S.A. A settlement has since been arrived at between me and the petitioners vide a mediation settlement dated 2.7.2019 at the Delhi Mediation Centre, Tis Hazari Courts, pursuant to which a total sum of Rs.10,25,000/-was to be paid to me by the petitioners and the entire sum has been received by me and there are now no claims of mine left against the petitioners. There is no child born of the wedlock between me and the petitioner no.1. The marriage between me and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent dated 16.12.2019 of the Court of the Principal Judge, Family Courts (West) in HMA No. 2303/19 in view of the settlement arrived at between me and the petitioners and thus I do not oppose the prayer made by the petitioners seeking quashing of the FIR No. 408/2018, PS Hari Nagar under Sections 498A/406/34 of the Indian Penal Code, 1860, nor do I want them to be punished in relation thereto. I have so stated voluntarily of my own accord without any duress, pressure or coercion from any quarter.

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I have studied till standard XII and I have made my statement after understanding its implications voluntarily of my own accord without any duress, coercion or pressure from any quarter and I do not want to think again.

RO & AC
05.10.2020

ANU MALHOTRA,

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