

Nawab vs The State Nct Of Delhi And Anr on 18 May, 2023

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P. (CRL) 1421/2023
NAWAB

Through: Mr. Manoj Kumar
versus

THE STATE NCT OF DELHI AND ANR.
Through: Mr. Sanj
Priyam Ag
Manish Kr

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN
ORDER

% 18.05.2023 CRL.M.A. 13419/2023(exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(CRL) 1421/2023

3. The present petition has been filed under Article 226 of Constitution of India read with Section 482 CrPC seeking quashing of the FIR No.18/2023 under Sections 498A/406/354A/377/506/34 IPC and under Section 3/4 of Dowry Prohibition Act & Section 4 of the Muslim Women (Protection of Rights on Marriage) Act 2019, registered at Police Station Jafrabad, Delhi and all other proceedings arising therefrom, on the ground that the parties have entered into a settlement.

4. Issue notice. The learned Standing Counsel for the State accepts notice. He submits that since the FIR is an outcome of a matrimonial dispute and the parties have amicably settled their disputes, the State has no objection in case the FIR in question is quashed.

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5. The petitioner no.1 (former husband) and other three petitioners who are the relatives of the petitioner no. 1 and respondent no.2 are present in court and they have been identified by the Investigating Officer (I.O), SI Manish Kr. Sagar, PS. Jafrabad.

6. The marriage of the petitioner no.1 and the respondent no.2 was solemnised on 16.02.2019, according to the Muslim Rites and Customs and out of the said wedlock, one female child born

namely Ayeza.

7. The dispute between the parties gave rise to litigation including, the registration of aforesaid FIR. However, with the intervention of the respectable members of the society and their family members, a settlement was arrived at between the petitioner no.1 and the respondent no.2, terms whereof were recorded in the form of compromise deed/Settlement Deed/MoU dated 27.04.2023.

8. It has been agreed between the parties that a total sum of Rs.12 lacs shall be paid by the petitioner no.1 to the respondent no.2 towards full and final settlement, out of which an amount of Rs. 6 lacs has already been paid before the Family Court, the receipt of which respondent no.2 acknowledges. The balance amount of Rs. 6 lacs has been paid by way of Manager's Cheque bearing no.019370 dated 18.04.2023 issued by HDFC Bank, Kirti Nagar, New Delhi in favour of the respondent no.2 today in the court.

9. The learned counsel for the petitioner has invited the attention of the court to the 'Mutual Talaqnama' dated 27.04.2023 (Annexure 'A') to contend that marriage between the parties has been dissolved by three pronouncements of Talaq on 15.02.2023; 19.03.2023 and 20.04.2023, which position is also confirmed by the respondent no.2.

10. On a query made by this court, the respondent no.2 states that she has This is a digitally signed order.

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11. In the present FIR, apart from the usual offences under Sections 498A/406 IPC, offences under Sections 354A/377/506/34 IPC and under Section 3/4 of Dowry Prohibition Act & Section 4 of the Muslim Women (Protection of Rights on Marriage) Act 2019, have also been invoked.

12. A coordinate bench of this court in 'Rifakat Ali & Ors Vs. State & Anr.' [CRL.M.C. No. 599/2021, decided on 26.02.2021] after referring to three decisions of the Supreme Court, has taken a view that an offence under Section 377 IPC, is though a heinous offence, but where such an offence is invoked in a matrimonial dispute and where the parties have decided to part ways and move ahead in their lives without acrimony against each other, power under Section 482 Cr.P.C. can be exercised for quashing the offence under Section 377 IPC on the ground that the dispute is private in nature. The material part of the said decision reads as under:-

"....10. A perusal of the three judgments which shows that the Supreme Court has consistently held that the power under Section 482 CrPC should not be used for quashing heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. since these offences are not private in nature and have a serious impact in society. An offence under Section 377 IPC is a heinous offence and points to

the mental depravity of the accused and hence ought not to be quashed by the High Court on the basis of compromise by exercising its jurisdiction under Section 482 CrPC.

11. The present case arises out of matrimonial dispute and the allegation has been made by the wife against the husband. The parties have decided to part ways and get ahead in their lives This is a digitally signed order.

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12. The learned counsel for the petitioners has placed reliance on orders of this Court in CRL.M.C.830/2019 titled as Dinesh Kumar & Ors. v. State & Anr., CRL.M.C.1613/2019 titled as Anmol Katyal & Ors. v. State (NCT of Delhi) & Anr., CRL.M.C. 5216/2018 titled as Gajender Singh & Ors. v. State (NCT of Delhi) & Ors. and CRL.M.C. 4117/2018 titled as Joginder Singh Bote & Ors. v. NCT of Delhi & Anr. In all these cases wife has levelled allegation of the husband committing an offence under Section 377 IPC. This Court has exercised its jurisdiction under Section 482 CrPC and has quashed the FIRs on the basis of the compromise entered into between the husband and wife.

13. It is made clear that this Court is exercising its powers under Section 482 CrPC to quash an offence of Section 377 IPC on the ground that the parties have compromised the matter with each other only because it arises out of a matrimonial dispute, the allegation has been levelled by wife against her husband of committing an offence under Section 377 IPC and the parties have decided to move ahead in life."...

13. The same analogy would apply to the other non-compoundable offences under which the FIR was registered. In view of the above, there is no legal impediment in quashing the FIR in question.

14. In view of the facts that the parties have amicably settled their disputes out of their own free will and without any coercion, no useful purpose will be served in continuing the proceedings, rather the same would create further acrimony between them.

15. It is, thus, in the interest of justice that the present FIR and all the other proceedings emanating therefrom be quashed.

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16. Consequently, the petition is allowed and the FIR No.18/2023 under Sections 498A/406/354A/377/506/34 IPC and under Section 3/4 of Dowry Prohibition Act & Section 4 of the Muslim Women (Protection of Rights on Marriage) Act 2019, registered at Police Station Jafrabad, Delhi is quashed along with all other consequential proceedings emanating there from.

17. The petition stands disposed of.

18. Order be uploaded on the website of this court.

VIKAS MAHAJAN, J MAY 18, 2023/dss This is a digitally signed order.

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