

Mohd Saleem Khan & Ors vs The State & Anr on 28 July, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 3464/2022

MOHD SALEEM KHAN & ORS.

Through:

Mr. Farhat Qadeeri, Advocate

versus

THE STATE & ANR.

Through:

Mr. Shoaib Haider, APP for
with SI Suresh Kumar PS New
Usman Pur.

R-2 in-person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 28.07.2022 The petitioner Nos.1 and 2 are present in-person and the petitioner No.3 is stated to have delivered a child and is unable to put in appearance.

The petitioners, vide the present petition seek the quashing of the FIR No.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 submitting to the effect that a settlement has been arrived at between the parties to the petition and the settlement document dated 13.03.2015 has been executed between the petitioner No.1 and the respondent No.2 in the course of the proceedings in CC No.708/2014 in the Family Court, Karkardooma, Shahdara and that the petitioner No.1 and the respondent No.2 have also since divorced and no useful purpose would be served by the continuation of the proceedings in relation to the present FIR.

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The Investigating Officer of the case is present and has identified the petitioners no. 1 and 2, i.e. petitioner no.1 Mohd. Saleem Khan and petitioner no.2 Smt.Rafiqan as being the two accused persons arrayed in FIR No.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 and has also identified the respondent No.2 Ms.Farha Khatoon as being the complainant of the said FIR.

The respondent no.2 in her deposition on oath in replies to specific Court queries affirms having signed her affidavit dated 03.02.2022 as well as the settlement document dated 13.03.2015 voluntarily of her own accord without any duress, coercion or pressure from any quarter, and

submits that in terms of the settlement arrived at between her and the petitioner No.1, she has received a total settled sum of Rs.2,25,000/- from the petitioners and there are no claims of her left against the petitioners. Inter alia, she states that she has since been divorced from the petitioner No.1 in the year 2015 and has remarried in 2017. She also states that a minor child born of the wedlock between her and the petitioner No.1, a son aged 7 years, is in her custody.

In reply to further Court queries, she states that she has studied till Standard VIII. She further states that she has made her statement to the effect that she does not oppose the prayer made by the petitioners seeking the quashing of the FIR in question nor does she want them to be punished in relation thereto 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.07.2022 14:59:47 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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 the deposition of the respondent No.2 that she has remarried and has also been divorced from the petitioner No.1 and all her claims have been settled as testified by her and there appears no reason to disbelieve the statement made by the respondent no.2 which she has made voluntarily of her own accord without any duress, coercion or pressure from any quarter, 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)

(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.

....."

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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 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.]"

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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 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.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.07.2022 14:59:47 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Dowry Prohibition Act, 1961 and all consequential proceedings emanating therefrom against the petitioners are thus quashed.

It is made expressly clear that despite the quashing of the FIR No.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 and the settlement documents dated 13.03.2015 placed on record and the divorce between the petitioner No.1 and the respondent No.2 as testified by the respondent No.2, it shall not amount to any embargo on the minor child born of the wedlock between the petitioner No.1 and the respondent No.2 seeking his claims against the petitioner no.1 and the respondent No.2 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 JULY 28, 2022 ha Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.07.2022 14:59:47 This file is digitally signed by PS to HMJ ANU MALHOTRA.

IN THE HIGH COURT OF DELHI: NEW DELHI MOHD SALEEM KHAN & ORS. V. THE STATE & ANR. 28.07.2022 CW-1 SI Suresh Kumar PS New Usman Pur.

ON S.A. I am the Investigating Officer of the FIR No.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961.

I identify the petitioners no. 1 and 2, i.e. petitioner no.1 Mohd. Saleem Khan and petitioner no.2 Smt.Rafiqan, present today in Court as being the two accused arrayed in the FIR No.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961. I also identify the respondent No.2 Ms.Farha Khatoon, present in Court today, as being the complainant of the said FIR.

RO & AC
28.07.2022

ANU MALHOTRA,

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IN THE HIGH COURT OF DELHI: NEW DELHI MOHD SALEEM KHAN & ORS. V. THE STATE & ANR. 28.07.2022 CW-2 Ms.Farha Khatoon, W/o Mohd. Rahees Ahmed, D/o Mohd. Javed, Aged 31 Years, R/o H.No. 610, Gali No.3, Chauhan Banger, Delhi.

ON S.A. My affidavit dated 03.02.2022 as well as the settlement document dated 13.03.2015 bear my signatures thereon which I have signed voluntarily of my own accord without any duress, coercion or pressure from any quarter.

I have since been divorced from the petitioner No.1 in the year 2015 and have remarried in the year 2017 and there is a child born of the wedlock between me and the petitioner No.1, a son aged 7 years who is in my custody and in view of the settlement arrived at between me and the petitioner no.1, I have received a total settled sum of Rs.2,25,000/- from the petitioner No.1 and as there are now no claims of mine left against the petitioners, I do not oppose the prayer made by the petitioner Nos.1 to 3 seeking the quashing of the FIR No.278/2015, PS New Usmanpur, under Sections 498A/406/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 nor do I want them to be punished in relation thereto.

I have studied till Standard VIII. I have made my statement after understanding its implications voluntarily of my own accord without any duress, coercion or pressure from Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.07.2022 14:59:47 This file is digitally signed by

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any quarter and I do not need to think again.

RO & AC
28.07.2022

ANU MALHOTRA, J

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