

Ajay Kumar Gakhar vs State (Govt. Of Nct Of Delhi) & Anr. & Ors on 6 December, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 3151/2021

AJAY KUMAR GAKHAR

Through:

..... Pe
Mr.____, Advocate through vc
petitioner in person through

versus

STATE (GOVT. OF NCT OF DELHI) & ANR. & ORS.

..... Respon
Through: Mr.Izhar Ahmed, APP for State with
SI Prisilla, Police Station Paschim
Vihar
Respondent No.2 in person through
vc.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 06.12.2021 Exemption allowed, subject to just exceptions.

The petitioner vide the present petition seeks the quashing of the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 submitting to the effect that a settlement has since been arrived at between the parties vide a mediation settlement dated 23.5.2019 and pursuant thereto the marriage between the petitioner and the respondent No.2 has since been dissolved vide a decree of divorce through mutual consent dated 11.9.2019 in HMA No.2209/19, of the Court of the Judge, Family Courts West, Tis Hazari Courts, and in terms of the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

settlement no useful purpose would be served by the continuation of the proceedings qua the FIR in question.

The deputed Investigating Officer of the case is present and submits there were three accused arrayed in the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 and only the petitioner was put in column No.11 and stated that the

other co-accused were put in column No. 12 and were not summoned by the learned Trial Court. The deputed Investigating Officer has identified the petitioner, present in the Court today through video conferencing, as being the accused charge sheeted in relation to the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 and has also identified the respondent No.2 present in the Court today through video conferencing as being the complainant of the said FIR.

The respondent No.2 in her deposition on oath affirms having signed the mediation settlement dated 23.5.2019 arrived at the Delhi Mediation Centre voluntarily of her own accord without any duress, pressure or coercion from any quarter and that in terms of the settlement arrived at between her and the petitioner there was no consideration in the said settlement. She further states that as per the settlement the two minor children, namely, Prerak Gakhar and Ronak Gakhar born of the wedlock between her and the petitioner would remain in her custody. Inter alia, she states that the minor children are in her custody.

In terms of the settlement agreement vide clause 2 it has been mentioned to the effect:

"2. It is agreed between the parties that both parties will cooperate with each other for taking divorce by mutual consent Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Without any consideration/ maintenance (present, past and future)/ permanent alimony, dowry articles, stridhan, jewellery etc. as consented by the complainant/ wife that she will not claim any consideration/ maintenance (present, past and future)/ permanent alimony etc."

She has stated further that she affirms the factum of dissolution of the marriage between her and the petitioner vide a decree of divorce through mutual consent aforementioned and states that in view of the settlement arrived at between her and the petitioner she does not oppose the prayer made by the petitioner seeking the quashing of the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 nor does she want him to be punished in relation thereto. The respondent No.2 further stated that she has done M.A.(Economics) from Himachal University and works in her shop and that she has understood the implications of the statement made by her and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter.

On behalf of the State in view of the settlement arrived at between the petitioner and the respondent no.2 there is no opposition to the prayer made by the petitioner seeking the quashing of the FIR in question.

Taking into account the deposition of the respondent No.2 and the admitted fact that she is well educated having done her M.A. (Economics) and states that she works in a shop and states also in reply to a specific Court query that she has understood the implications of the statement made by

her and that she has made her statement voluntarily of her own accord without any duress pressure or coercion from any quarter, there is no reason to disbelieve the statement of the respondent No.2 that she has arrived at a Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

settlement with the petitioner of her own accord with the petitioner it is considered appropriate to put a quietus to the litigation between the parties for maintenance of peace and harmony between the parties and for the well being of the minor children born of the wedlock between the petitioner and the respondent no.2, 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 wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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 : -

"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, Signature Not Verified Digitally Signed By: SUMIT GHAI
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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...."

(emphasis supplied), In view thereof, FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioner are thus quashed.

However, it is made expressly clear that despite the term in paragraph 2 of the mediation settlement dated 23.5.2019 referred to herein above and despite the factum that there is not a single averment in the settlement Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

document in relation to any rights of the minor children born of the wedlock between the petitioner and the respondent No.2 apart from the aspect of the petitioner having agreed vide clause 5 thereof, to the effect:

"5 It is agreed between the parties that permanent custody of minor children Prerak Gakhar and Ronak Gakhar shall remain with their mother Ms.Geeta Respondent husband shall not claim custody or visitation rights of the children in future"

as per which the petitioner has agreed not to claim any custody or visitation rights in near future, the said settlement document and the quashing of the FIR herein above shall not amount to any embargo on the two minor children Prerak Gakhar and Ronak Gakhar born of the welock between the petitioner and the respondent seeking their claims against the petitioner 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 DECEMBER 6, 2021/SV Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

IN THE COURT OF HIGH COURT OF DELHI, NEW DELHI AJAY KUMAR GAKHAR V. STATE & ANR.

CW-1 SI PRISILLA PS PASCHIM VIHAR ON S.A. I am the deputed Investigating Officer of the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860. There were three accused arrayed in the FIR. Only the petitioner was put in column No.11 and the other two accused were put in column No. 12 and were not summoned by the learned Trial Court. I identify the petitioner, present in the Court today through video conferencing, as being the accused charge sheeted in relation to the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860. I also identify the respondent No.2

present in the Court today through video conferencing as being the complainant of the said FIR.

ANU MALHOTRA, J.

RO & AC 06.12.2021.

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IN THE COURT OF HIGH COURT OF DELHI, NEW DELHI AJAY KUMAR GAKHAR V. STATE & ANR.

CW-2 GEETA D/O SHRI RAJENDER KUMAR R/O H. No.52B, BG-5, PASCHIM VIHAR, NEW DELHI-63 AGED 41 YEARS.

ON S.A. The mediation settlement dated 23.5.2019 bears my signatures thereon which I have signed voluntarily of my own accord without any duress, pressure or coercion from any quarter and that in terms of the settlement arrived at between me and the petitioner apart from the settled term to the effect that the two minor children, namely, Prerak Gakhar and Ronak Gakhar born of the wedlock between me and the petitioner would remain in my custody and are in my custody, there were no other considerations. In terms of the said settlement arrived at between me and the petitioner the marriage between me and the petitioner has since been dissolved vide a decree of divorce through mutual consent dated 11.9.2019 in HMA No.2209/19, of the Court of the Judge, Family Courts West, Tis Hazari Courts. In view of the settlement arrived at between me and the petitioner I do not oppose the prayer made by the petitioner seeking the quashing of the FIR No.283/16, PS Paschim Vihar, registered under Sections 498A/406/506/34 of the Indian Penal Code, 1860 nor do I want him to be punished in relation thereto. I have done M.A.(Economics) from Himachal University and work in my shop. I have understood the implications of the statement made by me. I have made my statement Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:07.12.2021 16:09:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

voluntarily of my own accord without any duress, pressure or coercion from any quarter.

ANU MALHOTRA, J.

RO & AC 06.12.2021.

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