

Mohd. Shamim & Ors vs Smt. Nahid Begum & Anr on 7 January, 2005

Equivalent citations: AIR 2005 SUPREME COURT 757, 2005 (3) SCC 302, 2005 AIR SCW 332, (2005) 1 JCR 177 (SC), (2005) 1 SCALE 109, (2005) 26 ALLINDCAS 77 (SC), (2005) 2 BLJ 139, 2005 (1) CALCRILR 506, 2005 ALL MR(CRI) 828, 2005 (26) ALLINDCAS 77, 2005 (1) SLT 355, 2005 (3) SRJ 273, (2005) 1 FAC 183, (2005) 1 RECCRIR 28, (2005) 1 BLJ 173, (2004) 22 ALLINDCAS 779 (PAT), (2004) 3 EASTCRIC 130, (2004) 4 PAT LJR 350, 2004 BLJR 3 2258, (2005) 1 SUPREME 59, (2005) 53 ALLCRIC 237, (2005) 3 BLJ 405, (2005) 1 DMC 311, (2005) 1 HINDULR 551, (2005) 2 MADLW(CRI) 886, (2005) 1 MARRILJ 617, (2006) MATLR 374, (2005) 1 ORISSA LR 335, (2005) 30 OCR 309, (2005) 2 PAT LJR 26, (2005) 1 RAJ CRI C 180, (2005) 1 RECCRIR 697, (2005) 1 SCJ 367, (2005) 1 CURCRIR 179, (2005) 1 ALLCRILR 875, (2005) 99 CUT LT 631, (2005) 1 EFR 618, (2005) 1 CRIMES 108, (2005) 1 ALLCRIR 340, (2005) 1 CHANDCRIC 110, 2005 (1) ALD(CRL) 552, 2005 (1) ANDHLT(CRI) 224 SC

Author: S. B. Sinha

Bench: N.S. Hegde, S.B. Sinha

CASE NO.:
Appeal (crl.) 23 of 2005

PETITIONER:
Mohd. Shamim & Ors.

RESPONDENT:
Smt. Nahid Begum & Anr.

DATE OF JUDGMENT: 07/01/2005

BENCH:
N.S. Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (Crl.) No. 2051 of 2004] S. B. SINHA, J :

Leave granted.

The First Appellant and the First Respondent were married as per the rites governing the marriage under the Muslim Personal Law on 02.04.1989. The Appellant No.2 is the mother of the First Appellant and the Appellant Nos. 3 to 5 are the sisters. The First Appellant allegedly divorced the First Respondent and intimation thereabout was communicated to her through a legal notice dated 03.05.2002. On or about 30.10.2002, the Respondent No.1 lodged a First Information Report in Women Cell, Rajinder Nagar, New Delhi, against the Appellants herein which was registered as FIR No. 224 of 2002, Police Station Hauz Qasi, Delhi, under Sections 406/498-A/34 IPC. The Appellants having come to learn about the lodging of the First Information Report filed an application for grant of anticipatory bail.

During the course of hearing of the said application, a settlement was arrived at inter alia at the instance of the learned judge hearing the said matter between the parties on or about 11.11.2002 pursuant where to or in furtherance where of the parties entered into a written agreement on 14.11.2002.

By reason of an order dated 11.11.2002, the learned Additional Sessions Judge, directed :

"During the course of arguments it is settled by the parties that a sum of Rs.2,75,000/- would be paid by the petitioner to the complainant Nahid Begum in full and final settlement of istridhan, dowry mehar present past and future maintenance etc. out of that Rs.2,25,000/- would be paid on the next date of hearing by way of pay order in the name of complainant and Rs.50,000/- would be paid at the time of complainant on making statement and no objection for quashing the FIR and the said pay order would be retained in court. The parties make the draft agreement to this effect to facilitate to both the parties for quashing of FIR. Pay order would be brought on the next date. Adjourned for bringing pay order on 14.11.2002. Till then applicants be not arrested."

The said agreement was filed before the court of the Additional Sessions Judge, Delhi.

An affidavit in support of the said settlement was also affirmed by the First Respondent herein, wherein inter alia it was stated :

"8. I undertake that I will cooperate in all respect and will participate in the proceedings for quashing the F.I.R. against Mohd. Shamim Ishrat Bi, Shahnaz Begum, Farhat Begum and Shahzad Begum, vide F.I.R. No. 224/2002, P.S. Hauz Qazi, u/s 498-A/406/34 I.P.C., as I have received the said amount through Bank Drafts and I have no objection in any manner. I have entered into the compromise with the said persons voluntarily with my own free will and consent.

9. That I have executed an Agreement with Mohd. Shamim which is separately written with my consent and I have understood the contents of the same, through my counsel and have been read over to me in vernacular and I admit the contents of the

said Agreement in all respect and I accept the same as correct.

13. That the contents of the Agreement may be read as part and parcel of this affidavit and the same are not being repeated here for the sake of brevity."

In the said Agreement it was clearly stipulated that the First Respondent received a sum of Rs.2,25,000/- from the First Appellant out of Rs.2,75,000/-, the details whereof had been specified therein.

It was further averred :

"2. That the Draft/pay order of Rs.50,000 (Rupees fifty thousand only) Rs.25000/- each (Rupees twenty five thousand only), (1) bearing No.103621 dated 13.11.02, drawn on Canara Bank, Chandni Chowk, Delhi (ii) bearing No.031030 dated 13.11.02 drawn on Bank of India, Hamdard Dwakhana, Delhi-6 have been deposited in the court in terms of the order dated 11.11.2002.

3. That the above mentioned amount Rs.2,75,000/- (Rupees two lacs seventy five thousand only) covers the "MEHAR" amount entire articles of dowry, Istridhan, past, present and future maintenance, entire jewellery including the jewellery presented by the bridegroom/second party and his relatives. After receipt of the said amount the first party shall not claim anything from the secondary party. She will not claim any further amount or articles, Istridhan, Charhawa i.e. the gifts from the sides of both the parties, maintenance u/s 124 Cr.PC or Section 3 of the Mulsum Women Act, or under any other provisions of law. The first party states that she has already filed a petition u/s 125 Cr. PC against the second party and the same is pending in the court of Shri R.K. Sharma, M.M., Delhi and is fixed for 3.12.2002 of which no notice is served upon the second party. The first party now undertakes to withdraw the said petition under section 125 Cr. PC immediately.

5. That both the parties are at liberty to get married any person of their choice in future. They will not interfere in the affairs of each other in future. They will also not litigate in future in respect of the above said matters.

6. That the first party undertake to give no objection/statement in order to quash the FIR in the present case and shall withdraw any other complaint lodged with any other authority/court of law. She also undertakes that she will not file any other or further complaints case(s) etc. against the second party."

In view of the aforementioned settlement, the learned Additional Sessions Judge in his order dated 14.11.2002, recorded :

"Present : Counsel for the parties with parties in person App for the State.

A pay order of 2.25 lakhs has been given by the petitioners to the complainant. The petitioners undertake to further pay a sum of Rs.50,000/- to the complainant when she would be called for the statement for quashing of the FIR. In these facts and circumstances, the parties would bound by their undertaking, the applications are allowed. It is ordered that in the event of arrest, applicants are released on anticipatory bail on furnishing personal bond in the sum of Rs.10,000/- each with one surety each in the like amount to the satisfaction of IO/SHO concerned who are required to be arrested in case FIR No.224/02 PS Hauz Qazi. Parties are also placed on record copy of pay order, agreement and affidavit etc."

Pursuant to or in furtherance of the said settlement, the Appellants herein filed an application before the Delhi High Court for quashing the said First Information Report purported to be under Section 482 of the Code of Criminal Procedure, 1973. The First Respondent, however, in stead and place of complying with her undertaking contained in the agreement as also in her affidavit filed objections to the said application. In her reply filed before the High Court, it was, inter alia, contended :

"6. That the contents of para no.6 of the petition under reply are wrong and denied. It is wrong and denied that any compromise was accepted by the Respondent No.1. The court of Shri S.N. Gupta, ADJ, Delhi accepted the bail application of the petitioners on the condition that the petitioner no.1 will pay a sum of Rs.2,75,000/- to the respondent No.1 in lieu of dowry cost. The respondent No.1 has been paid only Rs.2,25,000/- and the petitioners have not paid Rs.50,000/- till date hence the petition is liable to be dismissed. It is also submitted that respondent No.1 was forced to sign some papers by the petitioner that Rs.50,000/- will be paid when the paper mentioned above will come on record of the court. But till date amount of Rs.50,000/- has not been paid hence the petition is liable to be dismissed."

In view of the stand taken by the Respondent No.1 herein, a learned Single Judge of the High Court by reason of the impugned judgment and order dated 16.02.2004 refused to interfere in the matter stating :

"Respondent No.1/Complainant is present in person. She does not wish to compromise the matter and wants to continue with her complaint which gave rise to FIR No.224/2002, under Sections 406/498A/34, registered at Police Station Hauz Qazi.

In this view of the matter. I find no grounds to interfere.

Dismissed."

Before us, there is no denial or dispute as regard the factum of entering into the aforementioned settlement dated 14.11.2002. In the said deed of compromise it has categorically been averred that the same had been entered into on the intervention of S.N. Gupta, Additional Sessions Judge, Delhi.

It has also been accepted that out of sum of Rs.2,75,000/-, a sum of Rs.2,25,000/- has been paid to the First Respondent herein and the balance amount of Rs.50,000/- would be paid at the time of complainant's making statement and no objection for quashing the FIR, which was retained in the court as per the direction of the court. It has further been averred that no dispute remained between the parties regarding the payment of dower amount (Mehar), dowry articles, including the alleged jewellery gift etc. In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the First Respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavit which were got signed by her by misrepresentation of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of the Respondent No.1 herein.

Ex facie the settlement between the parties appears to be genuine. If the contention of the First Respondent herein is to be accepted, she would not have accepted the sum of Rs.2,25,000/- and in any event, she could have filed an appropriate application in that behalf before the Court of S.N. Gupta, Additional Sessions Judge, Delhi. What was least expected of her was that she would return the said sum of Rs.2,25,000/- to the Appellants herein.

Section 406 is a compoundable offence with the permission of the court. It is true that Section 498-A IPC is not compoundable.

This Court in Ruchi Agarwal vs. Amit Kumar Agrawal & Ors. [2004 (8) Supreme 525], in almost a similar situation has quashed a criminal proceeding against the husband, stating :

" Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue "

In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the Appellants, in our opinion, in this case also, would be an abuse of the process of the court. The Appellant No.1, however, would be entitled to withdraw the sum of Rs.50,000/- which has been deposited in the court. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the impugned judgment be set aside. The First Information Report lodged against the Appellants is quashed. The Appeal is allowed. However, this order should not be treated as a precedent.