

Deepak Kumar vs The State Of Rajasthan on 22 April, 2022

Bench: A.M. Khanwilkar, Abhay S. Oka

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

I.A. No.42660/2022

IN/AND

CRIMINAL APPEAL NO.667 OF 2022
(Arising from SLP(Crl.) No(s). 2233/2020)

DEEPAK KUMAR & ORS.

APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

The private parties have resolved all their differences and have decided to give quietus to all the proceedings pending between them before different Courts on the terms and conditions as agreed upon in the Deed of Settlement/Memorandum of Understanding dated 16th March, 2022. The same reads thus:

“DEED OF SETTLEMENT (MEMORANDUM OF UNDERSTANDING) THIS MEMORANDUM OF UNDERSTANDING is made and executed on this 16TH Day of March 2022 at New Delhi BY and BETWEEN:

Shri Deepak Kumar, age _____ years, S/o Sh. Damodar Sharma resident of 4□□8, R.C. Vyas Colony, Bhilwara, Rajasthan hereinafter called the HUSBAND OR FIRST PARTY, (which expression shall, unless repugnant to the context, mean and include his heirs, executors, administrators and assigns) of the First Part.

IN FAVOR OF:

Smt. Gunjan Sharma D/o Sh. Girdhari Lal Nirmal aged 30 years R/o Near Kedia Hospital, Bawari Gate, Fatehpur□Shekhawati, District Sikar (Raj.), hereinafter called

the WIFE OR SECOND PARTY, (which expression shall, unless repugnant to the context, mean and include her heirs, executors, administrators and assigns) of the Other Part AND WHEREAS the parties hereto are wife and husband, their marriage having been solemnized at Fatehpur Shekhawati, Sikar, Rajasthan on 21.04.2015 as per the Hindu rites and customs; AND WHEREAS from this wedlock, the parties hereto have two sons, Krishna aged about 6 years and Keshav @ Girik aged about 3 years, who are in custody of the second party.

AND WHEREAS owing to differences between both the parties and their respective families, they have been living separately from each other since 03.08.2019 and despite several sincere efforts made by both the parties and the members of their respective families, the differences between both the parties could not be resolved for which it has not been possible for them to resume their marital life and cohabit as husband and wife.

AND WHEREAS on account of differences created by few relatives between the parties, there has been court litigation during the recent years, which are pending till date;

AND WHEREAS the parties have further agreed and undertaken to withdraw all the litigations between them, including any and all cases/complaints if any, lodged by them or their relatives against each other. The parties further undertake that neither of them shall file any complaint, case or plaint, either civil or criminal, against each other nor will their relatives file any such case in future. Furthermore, they will not keep any grievance against each other and their family members.

AND WHEREAS the parties have decided to settle all their disputes amicably with each other by this Memorandum of Understanding and have now agreed to file for a decree of divorce with mutual consent of each other on the following terms and conditions: ☐NOW, THIS DEED WITNESSES, and it is hereby mutually agreed by and between the parties as follows:

1. That, the parties hereto do hereby declare and confirm that the memorandum of understanding does not amount to any collusion on their part, and they do hereby further and once again declare and confirm that they sincerely enter into and execute this memorandum of understanding only with their full consent and final agreement.
2. That, both the parties hereby agree and undertake that they are filing a joint application for dissolution of their marriage under section 13(b) of the Hindu Marriage Act before the Hon'ble Supreme Court of India in SLP (Crl) No. 2233/2020 which is already pending before the Hon'ble Court. The parties have voluntarily signed the present Memorandum of Understanding and they also agree and undertake to abide by all the terms and conditions as agreed upon here which are being annexed with the aforementioned joint application. The parties hereby agree

that they shall cooperate with each other on its presentation and make necessary statements before the competent court of law accordingly.

3. That in case either of the parties withdraws their consent and fails to file and cooperate with the other party in abiding by the terms of the present MoU, the defaulting party would be liable to pay a penalty of Rs 1 lac to the other party. In case the Second Party defaults on the terms of this agreement, they shall also be liable to pay any and all monies already paid to them as per the terms of this settlement by the first Party along with the aforementioned penalty of Rs 1 Lac.

4. That, this MOU between both the parties is being executed and it is agreed by the first party that he shall pay an amount of Rs. 20 Lakhs (Twenty lakhs rupees) to the second party towards the future maintenance of the second party and the two minor children, their expenditure and in consideration of stridhan/ past, present and future maintenance and alimony in the form of Demand Draft (DD) in the name of the second party who is also sole guardian and nominee of the two children. The Second Party shall continue to retain sole custody of the two children Krishna and Keshav @ Girik and the first party may visit the children in a manner mutually agreeable to both parties.

5. That, the first party shall pay the second party a sum of Rs. 20 lakhs (Twenty lakhs rupees) In the form of DD In the name of the second party at the time of withdrawal of all pending litigation between the parties, quashing of all FIRs filed by both parties against each other and grant of decree of divorce by the Hon'ble Supreme Court.

6. That, after filing of the captioned joint application for dissolution of marriage, both the parties shall request the Hon'ble Supreme Court to fix a date within 30 working days for final disposal of all disputes and handing over of the requisite settlement amount by first party to second party.

7. That, it is agreed by both parties that they shall cooperate in quashing all FIRs filed by them against each other by making joint statement before the Hon'ble Supreme Court. A request would be made before the Hon'ble Supreme Court of India to quash/ close/ dispose of the following pending cases at the time of grant of decree of divorce: □A. FIR No. 0305/ 2019 PS □Subhash Nagar, Bhilwada, Rajasthan dated 03/08/2019 u/s 341, 323, 379 IPC lodged by Petitioner husband B. FIR No. 0207/2019 PS □Fatehpur Kotwali, Sikar, Rajasthan dated 24/08/2019 u/s 498A, 406, 423, 344, 354, 377 IPC lodged by Respondent wife C. Criminal Case No. 28/2020 filed by wife titled as Gunjan Sharma & Ors. V. Deepak Sharma before the court of Addl.

Chief Judicial Magistrate, Fatehpur Shekhawati, Sikar, Rajasthan u/s 125 CRPC.

8. That, the second party shall withdraw all the pending cases/ complaints against the first party and his family members, and similarly the first party shall withdraw all the pending cases against the second party, if pending in any Indian Court which are known or unknown to each other, before final disposal of the captioned joint application.

9. That, the parties hereby agree and consent that minor children Keshav @ Girik and Krishna shall remain in the sole care and custody of the Second Party; however, the First Party may seek to meet with the children at mutual understanding of both parties.

10. That, Furthermore, the second party shall not claim any property (both movable and immovable) /gold articles /stridhan in future neither from the first party, his parents and/ or their relatives (family and friends). Similarly the two minor children shall not claim any right in the moveable and immovable properties, and/or ancestral properties of the 1st Party.

11. That, both the parties agree and undertake that neither of the parties and/or their relatives (family and friends) and/or their agents shall file any litigation against each other arising out this marriage and both the parties undertake to place the copy of present Memorandum of Understanding before the competent courts of law and/or any authority if required.

12. That, both the parties agree and undertake to cooperate with each other in all possible manners and sign and execute the necessary documents, if any, required by any authority.

13. That, both the parties undertake that the present Memorandum of Understanding has been made to their satisfaction and the same is in lieu/consideration of all the claims of the second Party towards her stridhan, including maintenance (past, present, future), alimony etc and thereafter neither the 2nd party and the two children nor the members of her family would have any other claims whatsoever against the first Party.

14. That, both the parties further agree and undertake not to claim any right, title/interest in any movable and/or immovable property of either of the parties and their respective family members at any point of time.

15. That, both the Parties further undertake that after passing of Decree of Divorce with Mutual Consent both parties will not interfere in each other's life and they would further never communicate with each other in any manner whatsoever including phone, SMS, social media or emails etc. Both the parties agree and undertake that neither of the parties, the two children or their family members will say or do anything against each other or their family which can impact the other party's or their family's physical, mental, financial or social wellbeing.

16. That, the present Memorandum of Understanding would become effective and enforceable in the eyes of law from the date of its execution and shall remain effective and binding and form part of the Decree of Divorce with Mutual Consent till all the terms and conditions stipulated in the present Memorandum of Understanding have been fulfilled in its letter and spirit. That time is the essence of the present Memorandum of Understanding and both parties undertake to be strictly bound by

the timeline as stated herein.

17. That, the parties agree and undertake that they have entered into the present understanding of their own free will and they would abide by the terms of the present Memorandum of Understanding.

18. That, both the parties agree and undertake that there was no force, fraud, coercion or undue influence on each other at the time of arranging this Memorandum of Understanding, at the time of reducing its terms to writing, or at the time of its signing.

19. That, it has been mutually agreed between both the parties to this Memorandum of understanding that in case of any default by not adhering to the terms, conditions or timelines of the present Memorandum of Understanding both the parties shall be at liberty to take the following actions:

a. In case the First Party defaults, then the second party would be at liberty to forfeit the amount paid by the first party to the second party in consideration of the terms of this MOU. b. In case the Second Party defaults, then the Second party shall be bound to return double the amount paid by the first party. The first party will be at liberty to raise the claim of the above said amount from the second party.

20. That, if any Party fails to abide by the terms and conditions mentioned in the MOU the entire settlement shall be null and void and the party failing to execute his/her part shall be liable to be prosecuted as per relevant provisions of law.

Sd/-

Deepak Kumar

Petitioner No.1

Sd/-

Gunjan Sharma

Respondent No.2

Sd/-

Vikram Singh Kushwaha

Advocate for the Petitioners

Sd/-

Rishi Matoliya

Advocate for the

Respondent no.2"

A formal joint application (I.A. No.42660/2022) has been moved by the parties for taking on record the Deed of settlement/Memorandum of Understanding and for dissolution of their marriage under Section 13(1)(b) of the Hindu Marriage Act, 1955.

As per settlement arrived at between the parties, a demand draft amounting to Rs.20,000,000/- (Rupees Twenty Lakhs Only) has been handed over by the learned counsel for the petitioners to the private respondent, who is personally present in Court. This amount has been accepted as full and final settlement as noted in the MoU.

We are satisfied that the settlement entered into between the parties on 16.03.2022 deserves to be accepted. Further, we accede to the prayer for a decree of divorce by mutual consent in exercise of plenary powers of this Court under Article 142 of the Constitution of India to do substantial justice to the parties.

We, accordingly, grant the decree of divorce by mutual consent as prayed. Undertakings given by the parties in the MoU dated 16.03.2022 are accepted. Accordingly, the marriage between petitioner No.1 (Deepak Kumar) and Respondent No.2 (Gunjan Sharma) solemnized on 21.04.2015 stands dissolved.

In view of above, all cases pending between the parties, i.e. (i) FIR No. 0305/ 2019 PS- Subhash Nagar, Bhilwada, Rajasthan dated 03/08/2019 u/s 341, 323, 379 IPC lodged by Petitioner husband, (ii) FIR No. 0207/2019 PS- Fatehpur Kotwali, Sikar, Rajasthan dated 24/08/2019 u/s 498A, 406, 423, 344, 354, 377 IPC lodged by Respondent wife, (iii) Criminal Case No. 28/2020 filed by wife titled as Gunjan Sharma & Ors. V. Deepak Sharma before the Court of Addl. Chief Judicial Magistrate, Fatehpur Shekhawati, Sikar, Rajasthan u/s 125 CRPC. (details of which mentioned in paragraph 7 of the Deed of Settlement/Memorandum of Understanding) and also case filed under Domestic Violence Act being registration number 10/21 pending before ACJM Fatehpur Shekhawati Sikar, shall stand withdrawn to this Court and are quashed/disposed of in terms of this order.

We once again record and accept the undertaking given by the parties that they will abide by the terms and conditions incorporated in the Memorandum of Understanding without any exception and that they shall not initiate any further civil or criminal case against each other and/or their family members with regard to the matrimonial alliance.

Resultantly, I.A. No.42660 of 2022 is allowed and the appeal is disposed of in the aforementioned terms. Pending applications, if any, stand disposed of.

.....,J.

(A.M. KHANWILKAR)J.

(ABHAY S. OKA) NEW DELHI;

APRIL 22, 2022.

ITEM NO.25

COURT NO.3

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2233/2020

(Arising out of impugned final judgment and order dated 24-02-2020 in SBCRMBA No. 1737/2020 passed by the High Court Of Judicature For Rajasthan At Jaipur) DEEPAK KUMAR & ORS. Petitioner(s) VERSUS THE STATE OF RAJASTHAN & ANR. Respondent(s) (IA No.44825/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.44826/2020-EXEMPTION FROM FILING O.T.) Date : 22-04-2022 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE ABHAY S.
OKA For Petitioner(s) Mr. Vikram Singh Kushwaha, Adv.

Mr. Nikunj Dayal, AOR For Respondent(s) Mr. Rishi Matoliya, AOR Mr. Vishal Meghwal, Adv.

Mr. Milind Kumar, AOR UPON hearing the counsel the Court made the following O
R D E R Leave granted.

The appeal is disposed of in terms of the signed order.

Pending applications are also disposed of.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed order is placed on the file.)