

**(2001) 11 DEL CK 0019**  
**In the Delhi High Court**  
**Case No : Criminal M. (M) 3994 of 2000**

Harvinder Singh

APPELLANT

Vs

Binder Kaur and Another

RESPONDENT

**Date of Decision :** 08-11-2001

**Acts Referred:**

Contract Act, 1872 — Section 23  
Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 482  
Hindu Marriage Act, 1955 — Section 13  
Penal Code, 1860 (IPC) — Section 406, 498

**Citation :** (2002) 95 DLT 670 : (2002) 1 DMC 343 : (2002) 61 DRJ 331

**Hon'ble Judges :** Kripa Shankar Gupta, J

**Bench :** Single Bench

**Advocate :** L.D. Adlakha, for the Appellant; Rajan K. Chourasia, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.S. Gupta, J.—This petition u/s 482 Cr.P.C. was filed alleging that petitioner No. 1 was married to respondent No. 1 on 21st November 1993 and as they could not adjust with each other due to temperamental differences they started living separately from 20th December 1994. Respondent No. 1 lodged FIR No.1 760/95 under Sections 498A/406 IPC on 15th December 1995 against the petitioners and criminal proceeding based thereon is pending before a Metropolitan Magistrate. It is further alleged that petitioner No. 1 and respondent No. 1 decided to dissolve their marriage by mutual consent. First motion u/s 13-B(i) of Hindu Marriage Act was disposed of by the order dated 23rd March 1996. In second motion u/s 13-B(ii) of the Act joint statement of parties was recorded on 27th May 1997 and marriage was dissolved by decree of divorce by mutual consent by the order dated 31st May 1997 by an Additional District Judge. Respondent No. 1 had received her istridhan. She had also been paid the settled amount of Rs. 60,000/- by petitioner No. 1. It is stated that despite the undertaking given in said divorce petition the respondent No. 1 has failed to

cooperate with the petitioners in getting above FIR No. 760/95 as also criminal proceeding emanating there from, quashed. It was prayed that FIR No. 760/95 and criminal proceeding emanating there from pending before a Metropolitan Magistrate may be quashed.

2. Respondent No. 1 contested the petition by filing reply. It is not disputed that she was married to petitioner No. 1 and marriage was also dissolved by mutual consent on 31st May 1997 as alleged. However, it is stated that in addition to Rs. 60,000/-, petitioners had agreed to pay amount of Rs. 3 lakhs after the decree of divorce was passed which amount has not been paid. Compromise which debars respondent No. 1 from claiming future maintenance is hit by Section 23 of the Indian Contract Act. It is further alleged that offences under Sections 406/498A are non-compoundable and in exercise of power u/s 482 Cr.P.C. criminal proceeding pending against petitioners cannot be legally quashed.

3. Submission advanced by Sh.L.D.Adlakha for petitioner was that pursuant to amicable settlement reached between petitioner No. 1 and respondent No. 1, marriage was dissolved by a decree of divorce by mutual consent on 31st May 1997. In second motion u/s 13-B(ii) as also in statement recorded on 27th December 1997 respondent No. 1 had undertaken to make statement for withdrawal of FIR No. 760/95 and to cooperate with petitioner No. 1 for quashing criminal proceeding emanating there from but she has failed to do so and, Therefore, said FIR and criminal proceeding pending against the petitioners deserve to be quashed u/s 482 Cr.P.C. On the other hand, relying on the decisions in Pyare Lal Gupta and Ors. v. State and Anr. 1999 (51) DRJ 524, the contention advanced by Sh. Rajan Kumar Chaurasia for respondent No. 1 was that as the offences under Sections 498A and 406 IPC are non-compoundable the inherent power u/s 482 Cr.P.C. cannot be invoked to quash the FIR and proceeding based thereon pending against the petitioners. Para No. 8 of the petition u/s 13-B(ii) of the Act (copy at pages 14 to 18) notices that amount of Rs. 60,000/- which petitioner No. 1 had agreed to pay to respondent No. 1 was toward the value of remaining dowry articles and permanent alimony. In all probabilities the value of dowry articles towards which said payment was made later on must be of more than Rs. 250/-. Admittedly offence u/s 498A IPC is non-compoundable. In the second Table given in Section 320 Cr.P.C. the offence u/s 406 IPC has been shown to be compoundable with the permission of court where the value of property in respect of which breach of trust had been committed, did not exceed Rs. 250/-. Sub-section (9) of said Section 320 provides that no offence shall be compounded except as provided by that section. In the decision in Ram Lal and Another Vs. State of Jammu and Kashmir, which was quoted with approval by a three Judge Bench in the decision in Surendra Nath Mohanty and Anr Vs. State of Orissa, it was held by the Apex court that the offence which law declares, to be non-compoundable, even with the permission of court, cannot be compounded. In the decision in Madhu Limaye Vs. The State of Maharashtra, , it was held that power u/s 482 Cr.P.C. should not be exercised as against the express bar of law engrafted in any other provisions of the Code. Similar is the

ratio of the decisions in Smt. Sooraj Devi Vs. Pyare Lal and Another, ; Dharampal and others Vs. Smt. Ramshri and others, and Satya Narayan Sharma Vs. State of Rajasthan, . That being the legal position, proceeding u/s 498A/406 IPC pending against the petitioners cannot be terminated on the ground of respondent No. 1 having undertaken to make statement for withdrawal of FIR in question and to cooperate with petitioner No. 1 for quashment of criminal proceeding as it would run in the teeth of statutory prohibition contained in said Sub-section (9). What is interdicted in direct terms cannot be achieved in indirect manner by invoking Section 482 Cr.P.C. Petition, thus, deserves to be dismissed.

4. Consequently, the petition is dismissed.