

(1991) 02 DEL CK 0066

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 3093 of 1990

Nazir Ahmed Wani and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 01-02-1991

Acts Referred:

Citation : (1991) 43 DLT 571 : (1991) 1 DMC 499 : (1991) 21 DRJ 4 : (1991) 3 RCR(Criminal) 618

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : B.R. Handa, S.K. Bhatia and S.D. Ansari, for the Appellant;

Judgement

Arun B. Saharya, J.

(1) By this petition u/s 482 of the Code of Criminal Procedure, 1973, the petitioners have prayed that the proceedings against them pending in the Court of Shri R.C.Yaduvanshi, Metropolitan Magistrate. Delhi in pursuance of Fir No. 83/89, P.S.Chandni Mahal u/s 498A/406, Indian Penal Code be quashed.

(2) Nazir, petitioner No.1, is the son of Gulam Rasool, petitioner No 2. They are residents of Srinagar, Kashmir Nazir contracted a marriage with Husnbano. respondent No. 2 on 20th of June 1987 according to Hanafi Mohammadan Law which unfortunately floundered. She left the matrimonial home in October 1987 and came to Delhi where a daughter was born to her on 5th of April 1988. Husnbano lodged an FIR. on 6th of April 1989 The Dowry Cell took up the investigation. Prosecution was instituted against the petitioners. The case is at an initial stage. The charge has yet to be framed.

(3) During investigation, the petitioners moved the Sessions Judge for anticipatory bail. At that stage, with the intervention to the Court the parties started negotiations for settlement. This is borne out from the copy of an order dated 18th of August 1989 passed by Shri S.L.Bhayana. Addl Sessions Judge, Delhi (Annexure "H"). The effort was worth while It resulted in a settlement

between the parties. The terms and conditions of the settlement were reduced to writing. A series of documents were executed by Nazir and Husnbano on 19th of September 1990. They are : (1) a compromise deed, (2) a deed of divorce executed by Nazir, (3) a joint agreement between Nazir and Husnbano described as dissolution of marriage by mutual consent, (4) a banker's cheque in favor of Husnbano for Rs 60,000.00 , (5) a receipt signed by Husnbano, and (6) an affidavit of Husnbano (Annexures "A, "B, "C, "D, "E and G respectively to the petition) A combined reading of these documents shows that a comprehensive compromise between the parties was achieved. They mutually agreed to divorce, to live separately, and to withdraw all complaints and proceedings against each other including Fir No. 83/89. Husnbano agreed to accept a sum of Rs 60,000.00 in satisfaction of all her claims with regard to dower, iddat period amount, maintenance for self and for the child etc. It was even agreed that Husnbano would retain custody of the child and Nazir would never claim the same in future. The banker's cheque was drawn in favor of Husnbano for the agreed amount of Rs. 60,000.00 . She executed a stamped receipt for the same. In addition to this, the petitioners have also produced a copy of a certificate from Punjab and Sind Bank dated 26th of September 1989 certifying the payment of Rs 60,000.00 to Husnbano "through State Bank of India, Jamma Masjid, Delhi in clearing". Thus, it is claimed by the petitioners that the matrimonial dispute between Nazir and Husnbano was fully settled.

(4) In response to a notice of the petition issued to Husnbano, she has made certain allegations against Nazir in respect of his behavior with her after marriage. She admits the settlement between the parties. However, she has pleaded :-

".....AS per settlement, it was agreed to pay Rs. 65,000.00 and will return the dowry articles and jewellery and in the terms of the settlement, the petitioner No. 1 issued a bank draft in the sum of Rs. 60,000.00 and further said that the balance amount of Rs. 5,000.00 and the articles shall be returned, when the respondent No. 2 withdraws the litigation against him, whenever the challan will be filed, before the court, as the offence u/s 406/498A. are not compoundable."

She has added that she is also ready to compromise the matter as per this settlement. Further she has alleged that the dowry articles which are in the custody of petitioner No. 1 are of the value of more than 1.50 lacs.

(5) The stand taken by Husnbano that the balance payment Rs. 5,000.00 and the return of the dowry articles is still outstanding, is not supported by any document. On the contrary, the written terms and conditions of the various documents signed by her and Nazir do not support her claim. The plea taken by her is contrary to the written terms of settlement duly acted upon and evidenced by various documents on the record. The plea now by Husnbano is far from bona fide. It appears that she wants to coerce the petitioner into paying her something more than what was agreed to earlier. She wants to use the process of Court to satisfy her greed.

(6) In the circumstances of the present case, the documents executed by Nazir and Husnbano conclusively show that the matrimonial dispute between the two of them has been settled and that the terms of the settlement have been duly acted upon. Husnbano cannot be permitted to abuse the process of Court to harass Nazir and his father and to drag them from Srinagar to Delhi to face criminal prosecution in pursuance of the said Fir despite the subsequent settlement.

(7) Therefore, the proceedings pending against the petitioners in the Court of Shri R.C.Yaduvanshi, Metropolitan Magistrate, Delhi on the basis of Fir No. 83/89 of P.S.Chandni Mahal, Delhi u/s 498A/406, Ipc are hereby quashed.

(8) The petition is allowed. No costs.