

(2023) 07 DEL CK 0273

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 5205 Of 2023

Vivek Kumar & Ors.

APPELLANT

Vs

State & Anr.

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Constitution of India, 1950 — Article 142
Code Of Criminal Procedure, 1973 — Section 125, 482
Indian Penal Code, 1860 — Section 34, 406, 498A
Dowry Prohibition Act, 1961 — Section 4
Hindu Marriage Act, 1955 — Section 9, 13B, 13B(1)

Citation : (2023) 07 DEL CK 0273

Hon'ble Judges : Dinesh Kumar Sharma, J

Bench : Single Bench

Advocate : Sanjeev Kumar, Wahid Ali, Ram Kamal Prasad, Digam Singh Dagar,
Aman Srivastava, Tanvir Ahmad

Final Decision : Disposed Of

Judgement

Dinesh Kumar Sharma, J

CRL.M.A. 19785/2023

Exemption allowed subject to just exceptions.

Application stands disposed of.

CRL.M.C. 5205/2023

1. The present petition has been filed under section 482 Cr.P.C seeking quashing of case FIR No. 603/2016 registered under Sections 498A/406/34 IPC and Section 4 Dowry Prohibition act, at PS New Usmanpur, Delhi.

2. Briefly stated facts of the case are that Petitioner no.1/Husband and Respondent No.2/Wife got married on 31.01.2015 according to Hindu rites and ceremonies. However, Certain temperamental differences and disputes cropped

up between the parties due to which the parties have been living separately since 04.12.2015. Thereafter, the present FIR was lodged at the statement of Respondent No.2. No child was born out of the wedlock.

3. Learned Counsel for the petitioner submits that during the pendency of the proceedings the parties have entered into an amicable settlement vide settlement deed dated 16.01.2020 on the following terms and conditions:

"1. The parties have dissolved their marriage by mutual consent in accordance with the law, as provided under section 13(B) of Hindu Marriage Act.

2. It is agreed between the parties that petitioner no.1 shall pay to the petitioner no.2 a sum of Rs. 7,50,000/- as full and final settlement (against istridhan and dowry, maintenance towards past, present, and future qua this marriage) in three instalments by way of DD/pay order.

3. It is further agreed between the parties that the petitioner no.1 will pay Rs. 2,50,000/- to the petitioner no.2 at the time of recording of the statement of first motion by way of DD/pay order.

4. It is further agreed between the parties that the petitioner no.1 will pay Rs. 2,50,000/- to the petitioner no.2 at the time of recording of the statement of second motion by way of DD/pay order.

5. It is further agreed between the parties that the petitioner no. 1 shall pay Rs. 2, 50,000/- to the petitioner no.2 at the time of quashing of FIR No. 603/2016 U/S 498-A/406 IPC at P.S. New Usmanpur in the Hon'ble High Court of Delhi within 60 days after second motion and the petitioner no.2 shall cooperate and sign the entire necessary affidavit and do the needful in quashing of said FIR.

6. It is further agreed between the parties that the first motion petition shall be filed on or before 07.03.2020 and the second motion petition shall be filed soon after the completion of the statutory period of the under section 13 B (1) of HMA.

7. It is further agreed between the parties that the petitioner no.1 will withdraw the cases under section 9 of HMA and petition under section 125 Cr.P.C for maintenance which is pending in the court of Ms. Sukhvinder Kaur, LD. Judge, Family Court KKD, Delhi at the time of first motion petition.

8. It is further agreed between the parties that they have understood the terms and condition of the settlement in vernacular.

9. It is further agreed between the parties that they shall remain bound with the aforesaid, terms and conditions as mentioned in the settlement.

10. All the matters relating to this marriage either civil or criminal are settled and neither the parties nor their relatives shall make any claim against each other in future and will not file any case/complaint against each other at any time of future in any court of law/police station etc.

11. The above settlement is with respect to all claims of wife past, present and

future alimony, istridhan, maintenance, pending amount of maintenance, articles, property etc. and neither she nor her relatives shall claim anything from husband or his family members in future for herself or on behalf of children.

12. It is further agreed between the parties that if either of the parties commits breach or default of this mutually agreed settlement after the first motion if petitioner no.2 back out the amount taken at the time of first motion shall be return to petitioner no. 1 with 2% interest per month and if petitioner no. 1 backs out the amount given at time of first motion shall stands forfeited by the petitioner no. 1.

13. The parties have agreed on each and every terms as recorded in the settlement agreement, after carefully reading over and fully understanding and appreciating the contents, scope and effect thereof, as also the consequences of the breach thereof, including payment of the fine/penalty as mentioned above.

14. The terms and conditions mentioned in the settlement have been understood in vernacular. The above said settlements is arrived at between the parties out their own free will, volition and consent and without there being any undue pressure, coercion, influence, misrepresentation or mistaken both the law and facts in any form whatsoever and the parties agreed that the settlement/ agreement have been correctly recorded as per the agreed terms and conditions."

4. It is submitted that the divorce has already been granted vide decree of divorce dated 17.11.2022.

5. In pursuance to the terms of the settlement agreement Petitioner no.1 has made a payment of Rs. 2,50,000/- by way of demand draft bearing DD No. 012068 dated 19.07.2023 in the name of Krishna drawn from Canara bank.

6. IO has duly identified the parties.

7. Respondent No.2 is present in person and has submitted that she has entered into the settlement agreement voluntarily out of her own free will without any fear, force or coercion. She states that she has no objection if the present proceedings are quashed.

8. It has repeatedly been held by the Apex Court that in the matrimonial disputes, if the parties have settled the matter between themselves amicably, it is the duty of Courts to encourage the same. Reliance can be placed on B.S. Joshi v. State of Haryana, (2003) 4 SCC 675; Yashpal Chaudhrani and Others vs. State (Govt. of NCT Delhi) and Another; 2019 SCC OnLine Del 8179.

9. I consider that there would be no purpose of continuing with the trial as the parties have entered into the settlement voluntarily without any fear, force and coercion, and have decided to give quietus to the proceedings. It was a matrimonial dispute which has been amicably settled and thus the parties must be given a chance to move on with their lives.

10. In view of the submissions made above, the case FIR No. 603/2016

registered under Sections 498A/406/34 IPC and Section 4 Dowry Prohibition act, at PS New Usmanpur, Delhi and consequent proceedings arising therefrom are quashed.

11. However, It is pertinent to mention here that this court while dealing with petitions of matrimonial quashing often comes across the settlement agreements being drafted by the Mediation Centres which are on a printed proforma. This court takes serious objection to it. The settlement on the printed proforma sometimes gives an impression that there is no application of mind and the settlement deed has been drafted mechanically. Therefore, The Mediation Centres and the Family Courts are directed to ensure that the settlement deeds are drafted properly and it should not be on a printed proforma.

12. This court has also come across various settlement deeds which are not in consonance with the judgment of the Hon'ble Supreme Court in Ganesh vs. Sudhirkumar Shrivastava (2020) 20 SCC 787 wherein it has inter alia held as under:

" 7. Before we part with, we must also express our reservation insofar as Para 6 is concerned, which was incorporated in the order on 8-11-2017 by the Principal Judge, Family Court, Aurangabad. It was certainly open to the wife to give up any claim so far as maintenance or permanent alimony or stridhan is concerned but she could not have given up the rights which vest in the daughter insofar as maintenance and other issues are concerned.

8. We, therefore, exercising our powers under Article 142 of the Constitution of India, set aside Para 6 of the consent terms. Rest of the order stands unaltered and ought to be given effect to."

13. Alongwith this, it is further directed that the copy of settlement deeds which are annexed should be legible.

14. Let the copy of this judgment be circulated to all the Mediation Centres and the Family Courts with a direction to draft the settlement deed showing due application of mind and to ensure that the said deeds are drafted in consonance with judgment in Ganesh vs. Sudhirkumar Shrivastava (supra)

15. The Present petition stands disposed of.