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MOHD. SHAMIM AND ORS.

v.

SMT. NAHID BEGUM AND ANR.

JANUARY 7, 2005

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[N. SANTOSH HEGDE AND S.B. SINHA, JJ.]

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Code of Criminal Procedure, 1973—Section 482—Penal Code, 1860—Sections 406, 498A and 34—Quashing of criminal proceeding—For abusing process of court—Criminal complaint by Respondent-wife against Appellants (husband and in-laws)—Appellants filed application for grant of anticipatory bail—Settlement at the instance of Addl. Sessions Judge hearing the matter—Monetary relief to be given to Respondent-wife in full and final settlement of stridhan, dowry mehar, present and future maintenance etc.—Substantial amount paid—Rest was to be paid at the time of wife making statement and

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no-objection for quashing the FIR against Appellants—But when Appellants filed application before High Court for quashing of FIR, Respondent-wife filed objections—High Court declined to interfere on grounds that the wife did not wish to compromise and wanted to continue with her complaint—Held;

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On facts, denial of execution of the settlement was an afterthought on the part of Respondent-wife—In view of her conduct in entering into the settlement, continuance of criminal proceeding pending against Appellants would be an abuse of the process of Court—Hence the FIR quashed—Constitution of India, 1950—Article 142.

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Appellant No.1 and Respondent No.1 were married as per rites governing marriage under the Muslim Personal Law. Appellant No.2 is the mother of Appellant No.1 and Appellant Nos. 3 to 5 are his sisters. Appellant No. 1 allegedly divorced Respondent No.1 and intimation thereabout was communicated to her through a legal notice. Respondent No.1 lodged First Information Report in the Women Cell against the Appellants, pursuant to which the Appellants filed an application for grant

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of anticipatory bail. During course of hearing of the said application, a settlement was arrived at, at the instance of the Additional Sessions Judge hearing the said matter, between the parties. The Judge by reason of an order recorded that it was settled by the parties that a sum of Rs. 2,75,000 would be paid by the Appellants-applicants to the complainant-Respondent

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No.1 in full and final settlement of stridhan, dowry, mehar present past and future maintenance etc., that 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 the complainant and Rs. 50,000 would be paid at the time of complainant making statement and no objection for quashing the FIR; till then the applicants be not arrested. A written agreement to this effect was filed before the court of the Additional Sessions Judge. In view of the aforementioned settlement, the Additional Sessions Judge allowed the application for anticipatory bail, recording that a pay order of 2.25 lakhs had been given by the Appellants to the complainant-Respondent No. 1 and that the Appellants undertake to further pay a sum of Rs. 50,000 as per the agreement. In furtherance of the said settlement, the Appellants filed application before the High Court for quashing the said FIR purported to be under Section 482, CrPC. Respondent No.1, in her reply filed before the High Court, denied any compromise; and contended that she was paid only Rs.2,25,000; and she was forced to sign some papers. In view of the stand taken by the Respondent No.1, Single Judge of the High Court refused to interfere in the matter on grounds that Respondent No.1 did not wish to compromise the matter and wanted to continue with her complaint. Hence this present appeal.

Allowing the appeal, the Court

HELD: 1. 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, the contention of the Respondent No. 1 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, the denial of execution of the said deed of settlement is an afterthought on the part of Respondent No.1. [158-D-E]

2. Ex facie the settlement between the parties appears to be genuine. If the contention of the First Respondent 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 Additional Sessions Judge. What was least expected of her was that she would return the said sum of Rs. 2,25,000 to the Appellants. [158-F]

3. In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding

A pending against the Appellants, would be an abuse of the process of the court. Respondent No.1, however, would be entitled to withdraw the sum of Rs. 50,000 which has been deposited in the court. In exercise of the Court's jurisdiction under Article 142 of the Constitution, it is directed that the impugned judgment of High Court be set aside. The First Information Report lodged against the Appellants is quashed. However, this order should not be treated as a precedent. [159-C-D]

Ruchi Agarwal v. Amit Kumar Agrawal and Ors., [2004] 8 Supreme 525, relied on.

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 23 of 2005.

From the Judgment and Order dated 16.2.2004 of the Delhi High Court in CrI. M.C. No. 4161 of 2002.

D Zafar Sadique, Azeez Nazar Sabri and Balraj Dewan for the Appellants.

Amitava Poddar, Mrs. Anil Katiyar and Vijay K. Mehta for the Respondents.

The Judgment of the Court was delivered by

E S.B. SINHA, J., Leave granted.

F 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.

G 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 whereto or in furtherance whereof the parties entered into a written agreement on 14.11.2002.

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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,

A the details whereof had been specified therein.

It was further averred :

B “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.

C 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 Mulsim 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.

F 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.

G 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 :

H “Present : Counsel for the parties with parties in person App for

the State.

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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.”

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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 :

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“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.”

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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 :

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“Respondent No.1/Complainant is present in person. She does not wish to compromise the matter and wants to continue with her

A 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.”

B 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
C 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.

D 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
E 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.

F 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.

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

H This Court in *Ruchi Agarwal v. Amit Kumar Agrawal and 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 Respondent 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.

B.B.B.

Appeal allowed.