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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CrI.M.C. No. 2254/2020

VASHNO JAISHWAL @ VASHNO & ORS Petitioners
Through: Ms. Vijaya Lakshmi, Advocate with
petitioners 2 to 4 in person.

versus

THE STATE GOVT. OF NCT OF DELHI & ANR. ... Respondents
Through: Ms.Meenakshi Dahiya, APP for State
with SI Sangita Tiwari
Mr.Yogendra, Adv for R-2 with R-2
in person.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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20.11.2020

(Through Video Conferencing)

CrI. M.A. No. 16043/2020

Exemption allowed, subject to just exceptions.

CrI.M.C. No.2254/2020

Vide the present petition, the petitioners No.1 to 4, namely, Vashnav Jaiswal (who is in judicial custody in relation to FIR No. 760/2020, Police Station Sagarpur, under Section 376 of the Indian Penal Code, 1860 and under POCSO Act, 2012), Deenanath Jaishwal @ Dinanath Prasad, Prem Jaishwal @ Gayatri Devi and Gagan Kumari, seek quashing of the FIR No. 373/2018, Police Station Pandav Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 submitting *inter alia* to the effect that a settlement

has been arrived at between the petitioners and the respondent No.2 and that the marriage between the petitioner No.1 and the respondent no.2 has since been dissolved vide a decree of divorce through mutual consent dated 14.1.2020 in HMA No. 1092/2019 of the Court of the Principal Judge, Family Courts, Patiala House Courts, New Delhi and that all claims of the respondent No.2 have now been settled and the no useful purpose would be served by the continuation of the said FIR.

The Investigating Officer SI Sangita Tiwari of the case is present and has identified the petitioners No.2 to 4 namely, Deenanath Jaishwal @ Dinanath Prasad, Prem Jaishwal @ Gayatri Devi and Gagan Kumari present in the Court today through Video Conferencing and the petitioner No.1 Vashno Jaishwal from his identity proof (petitioner No.1 is stated to be custody in relation to FIR No. 760/2020, Police Station Sagarpur) as being the four accused arrayed in the FIR No. 373/2018, Police Station Pandav Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and the respondent No.2 present in the Court today through video conferencing as being the complainant of the said FIR.

In reply to a specific Court query and on examination on oath by the Court the respondent No.2 has affirmed the factum of settlement arrived at between her and the petitioner No.1 dated 27.7.2019 at the Counselling Cell, Family Courts Patiala House Courts, New Delhi and that pursuant to the said settlement, the marriage between her and the petitioner No.1 has since been dissolved vide a decree of divorce through mutual consent under

Section 13 B (2) of the Hindu Marriage Act, 1955 vide decree dated 14.1.2020 in HMA 1092/2019 of the Court of the Principal Judge Family Courts, Patiala House Courts, New Delhi and that she does not oppose the prayer made by the petitioners seeking quashing of the FIR No. 373/2018, Police Station Pandav Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 nor does she want the petitioners to be punished in relation thereto. She further stated that she has so stated voluntarily of her own accord without any duress, pressure or coercion from any quarter. She further deposed that pursuant to the said settlement between her and the petitioner No.1 the total settled sum of Rs.10,50,000/- has been received by her from the petitioners and now no claims of hers are left against the petitioners. Inter alia, the respondent No.2 states that the minor child Vaishnavi born of the wedlock between her and the petitioner No.1 is in her custody. The respondent No.2 further stated that she has studied till standard XII and stays with her father and has understood the implications of the statement made by her and that she has made her statement voluntarily of her own accord without any duress, pressure or coercion from any quarter.

On behalf of the State, there is no opposition to the prayer made by the petitioners seeking quashing of the FIR in question in view of the settlement arrived at between the parties.

In view of the deposition of the respondent no.2, the non-opposition on behalf of the State, identification of the petitioners and the respondent no.2 by the Investigating Officer in relation to the FIR in question and taking into account that all claims between the parties

have since been settled as testified by the respondent No.2 there appears no reason to disbelieve the statement made by the respondent No.2 that she has arrived at a settlement with the petitioners voluntarily of her own accord without any duress, pressure or coercion from any quarter. In as much as the respondent No.2 is apparently adequately educated having studied till standard XII and states that she has understood the implications of the statement made by her and that in as much as the FIR has apparently emanated from a matrimonial discord which has since been resolved vide a decree of divorce through mutual consent dated 14.1.2020 indicating that the marriage between the petitioner No.1 and the respondent No.2 has since been dissolved in HMA No. 1092/2019 of the Principal Judge, Family Courts, Patiala House Courts, New Delhi, it is considered appropriate to put a quietus to the litigation between the parties for the maintenance of peace and harmony between them and for the wellbeing of the respondent No.2 and the minor child in view of the observations in the verdict of the Hon'ble Supreme Court in ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303, to the effect :-

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity

under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.” [Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]”

and in view of the verdict of the Hon’ble Supreme Court in *Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr.* (2013) 4 SCC 58, to the effect : -

“15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold

that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. They institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed....”

(emphasis supplied),

In view thereof the FIR No. 373/2018, Police Station Pandav Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom against the petitioners are quashed against the petitioner.

However, it is essential to observe that vide the settlement deed dated 27.7.2019 in HMA No. 693/2018 arrived at the Family Courts, Patiala House Courts, New Delhi, vide Clause 7 thereof, it was agreed between the parties to the effect:

“It is agreed between the parties that that the above settlement

*is with respect to all claims of wife past, present, future, alimony, stridhan, maintenance, executions, articles property etc. and **neither she nor her relatives shall claim anything from husband or from his family members in future for herself or on behalf of Child/children.***”

It is essential to observe that thereby the respondent No.2 has given up all rights of the minor child Vaishnavi qua the petitioners. The same apparently could not have been so done and cannot be accepted in terms of the verdict of the Hon’ble Supreme Court in ***Ganesh V. Sudhir Kumar Shrivastava & Ors.***; Civil Appeal Nos. 4031-4032/2019 arising out of SLP© Nos. 32868-32869/2018, a verdict dated 22.4.2019 adhered to by this Court in ***Rakesh Jain & Ors. V. State and Anr.*** in CrI.M.C. No. 2935/2019. In view thereof the minor child born of the wedlock between the petitioner No.1 and the respondent No.2 would be entitled to seek her claims against the petitioners and the respondent No.2 qua maintenance or otherwise in accordance with law.

The petition is disposed of.

ANU MALHOTRA, J

NOVEMBER 20, 2020/SV

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CrI.M.C. No. 2254/2020

**VASHNO JAISHWAL @ VASHNO & ORS V. THE STATE
GOVT. OF NCT OF DELHI & ANR.**

20.11.2020

CW-1 SI SANGITA TIWARI, PS PANDAV NAGAR

I identify the petitioners No.2 to 4, namely, Deena Nath Jaishwal @ Dinanath Prasad, Prem Jaishwal @ Gayatri Devi and Gagan Kumari present in the Court today through Video Conferencing and the petitioner No.1 Vashno Jaishwal from his identity proof as being the four accused arrayed in the FIR No. 373/2018, Police Station Pandav Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860. I also identify the respondent No.2 Priyanka Jaiswal present in the Court today through Video Conferencing as being the complainant of the FIR in question.

ANU MALHOTRA, J

**RO & AC
20.11.2020**

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CrI.M.C. No. 2254/2020

**VASHNO JAISHWAL @ VASHNO & ORS V. THE STATE
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20.11.2020

**CW-2 MS.PRIYANKA JAISWAL D/O SH. DEEPAK JAISWAL,
R/O H. NO. E-25A, GALI No.3, PANDAV NAGAR,
PATPARGANJ, DELHI 110046 AGED 26 YEARS.**

On S.A.

I do not oppose the prayer made by the petitioners 1 to 4 seeking the quashing of the FIR No. 373/2018, Police Station Pandav Nagar registered under Sections 498A/406/34 of the Indian Penal Code, 1860, in view of the settlement arrived at between me and the petitioner No.1 dated 27.7.2019 at the Counselling Cell, Family Court Patiala House Courts, New Delhi nor do I want the petitioners to be punished in relation thereto. I have so stated voluntarily of my own accord without any duress, pressure or coercion from any quarter. Pursuant to the said settlement, the marriage between me and the petitioner no.1 has since been dissolved vide a decree of divorce through mutual consent under Section 13 B (2) of the Hindu Marriage Act, 1955 vide decree dated 14.1.2020 in HMA 1092/2019 of the Court of the Principal Judge Family Courts, Patiala House Courts, New Delhi. Pursuant to the said settlement between me and the petitioner No.1 the total settled sum of Rs.10,50,000/- has been received by me from the petitioners and now no claims of mine are

left against the petitioners. The minor child Vaishnavi born of the wedlock between me and the petitioner No.1 is in my custody.

I have studied till standard XII and I stay with my father and have understood the implications of the statement made by me. I have made my statement voluntarily of my own accord without any duress, pressure or coercion from any quarter.

RO & AC
20.11.2020

ANU MALHOTRA, J