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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 15.03.2023

Pronounced on: 16.05.2023

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CRL.M.C. 6197/2019

SH. CHHATTER PAL & ORS.

..... Petitioners

Through: Mr. P.K. Anand, Advocate.

versus

STATE & ANR.

..... Respondents

Through: Mr. Satish Kumar, APP for the State with SI Tej Ram, P.S. Uttam Nagar.

Ms. Shanta Pandey, Mr. Hiren Dasan, Ms. Preeti Chauhan, Advocates for R-2 with R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

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SWARANA KANTA SHARMA, J.

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure Code, 1973 ('Cr.P.C'), quashing of FIR bearing no. 519/2012, registered at Police Station Uttam Nagar, for the offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860 ('IPC') has been sought qua the present petitioners.

I. HISTORY AND FACTS OF THE CASE

2. Brief facts of the present case are that the marriage between the complainant i.e. respondent no. 2 and co-accused Lalit was solemnized on 23.01.2011. It is stated that there was irretrievable breakdown of the marriage due to incompatible behaviour, conduct and temperament of the parties. Thereafter, on the complaint of respondent no. 2 alleging physical and mental cruelty for demand of dowry and beating by her husband and in-laws, the present FIR was registered against the husband as well as the petitioners i.e. brother of husband's father, his son, and elder brother of husband.

3. The matter was referred to mediation centre at the time of hearing of anticipatory bail application of the accused husband. Fortunately, the matter was amicably settled before the mediation centre and all the disputes were resolved between the parties which were reduced to writing by way of a mediated settlement agreement dated 30.07.2014.

4. The story of the dispute culminating into an agreement to settle all disputes past, present and future, thus, had a happy ending for both the parties as the agreement was to the contentment of both the parties.

However, there was a twist in the story as now the police filed a chargesheet against all the accused persons and the police duly informed the learned Magistrate about the settlement arrived at between the parties and the quashment clause in the agreement. In the meantime, the petition to quash FIR was filed by the husband as only he had been summoned by the learned Magistrate and the FIR was quashed against the husband before summons could reach him. Thus, even husband or his relatives did not know that chargesheet had been filed by police, as the summons were to reach the husband before 25.08.2015. The twists in the story did not end here as now the other relatives of the husband i.e. petitioners were summoned by the learned Magistrate. By the time the present petitioners realised that they too needed to get the FIR quashed against them, another twist awaited them after eight years which was unforeseen that by this time, the other key player of the story i.e the complainant conveniently changed her mind and appeared before this Court only to inform that she had not entered into agreement with them but only with her husband and therefore, FIR cannot be quashed, even after receiving the entire amount of settlement including the amount for quashing of FIR.

5. This Court, therefore, had a situation at hand where the petitioners herein had a bumpy ride so far as the present litigation is concerned. They were lucky that the matter was amicably settled even before the chargesheet could be filed before the learned Magistrate, however, they were unlucky that the settlement agreement did not mention their names. They were blissfully unaware of the fact that they were also accused in this case. They were lucky that the chargesheet was filed without arresting them but they were unlucky that the Magistrate was

constrained to summon them after taking cognizance against them, since the FIR in question was not quashed qua them. In other words, they thought that they were fortunate that the FIR had been quashed, but unfortunately, the entire amount was paid to the complainant for quashing of the FIR without their names being included in the quashing petition. And even now, their misfortune, as far as the present litigation is concerned, has not come to an end as the complainant now refuses to give her statement for quashing of the FIR.

II. CONTENTIONS OF THE COUNSELS

6. Learned counsel for the petitioners states that complainant/respondent no. 2 has no grievance against the accused persons and she is not willing to support the imputations made in FIR because the dispute in question has already been settled/compromised between the parties in terms of Mediated Settlement Agreement dated 30.07.2014 arrived at before Mediation Centre, Tis Hazari Court, Delhi. It is further stated that the present petitioners could not file a petition for quashing of FIR since the investigating officer did not give any notice under Section 160 Cr.P.C to the petitioners on the day of registration of FIR. It is further stated that inadvertently, the earlier petition for quashing of FIR i.e. CRL.M.C. 3069/2015 was filed only by the husband and could not be filed by present petitioners, however the settlement agreement explicitly mentions that FIR shall be quashed qua all accused persons. Hence, it is stated that FIR be quashed.

7. *Per contra*, learned counsel for complainant/respondent no. 2 argues that the Mediated Settlement Agreement dated 30.07.2014 was only *qua* husband of the complainant and FIR in respect of the husband

already stands quashed. It is further stated that only the husband had signed the settlement agreement and not the present petitioners. It is, however, admitted by learned counsel for respondent no. 2 that FIR qua husband stands quashed *vide* order dated 31.07.2015 and that respondent no. 2 has already received payment of Rs.2,75,000/- towards full and final settlement of her claims including dowry articles, *stridhan*, alimony, maintenance of past, present and future, as well as all other claims and rights as per the terms of Settlement Agreement. The complainant after issuance of Court notice appeared before the Court and submitted that she has settled the case only with her husband, though she admits that she has received the entire settlement amount, including Rs.65,000/- received for quashing of FIR on 31.07.2015 as per settlement agreement. She states that matter may again be sent for mediation qua the present accused(s) and she will settle the matter again with them, as the money in this case was given by her husband and she had, thus, settled it with him only.

8. This Court has heard the rival contentions raised on behalf of both the parties and has perused the material on record.

III. MEDIATED SETTLEMENT AGREEMENT IN QUESTION

9. For proper adjudication of the present case, it shall be imperative to reproduce the Mediated Settlement Agreement dated 30.07.2014 for reference, which reads as under:

“30.07.2014

Present: Ms. Neeru, complainant alongwith Sh. Anoop Kumar Sharma, & Ms. Gulshan Jahan, Advocates.

Sh. Lalit, applicant/ respondent in person alongwith Sh. P.K. Anand, Advocate.

This matter has been referred by the court of Sh. Mukesh Kumar Gupta, Ld. MM, ASJ-02, Tis Hazari Courts, Delhi and has been assigned to me for mediation.

Process of mediation explained to **both the parties**. Single and joint sessions were held. After discussions, both parties have agreed to compromise their disputes in full and final on the following terms and conditions:-

“1. It has been agreed between the parties that both the parties i.e. complainant and respondent no. 1 shall dissolve the marriage by way of filing a petition under Section 13(B)(1) and 13(B)(2) of HMA.

2. It has also been agreed between the parties that the joint petition for dissolution of marriage shall be filed on or before 13.09.2014 and the second motion under Section 13 (B)(2) of HMA shall be filed within one week after the expiry of the statutory period of six months.

3. It has been agreed between the parties that the **respondent no. 1** shall make a payment of Rs,2,75,000/- (Rupees Two Lakh Seventy Five Thousand only) to the complainant **towards her full and final settlement including dowry articles, istridhan, alimony/ maintenance of past, present and future and all other claims and/rights.**

4. It has also been agreed between the parties that the above said amount of Rs.2,75,000/- shall be paid in four installments. The first installment of Rs. 70,000/- (Rupees Seventy Thousand only) shall be paid on 13.08.2014, on the hearing of the case under Section 125 Cr.RC., pending before the Court of Sh. Brijesh Sethi, Ld. Principal Judge, Family Courts, Tis Hazari Courts, Delhi. The second installment of Rs. 70,000/- (Rupees Seventy Thousand only) shall be paid by the respondent no. 1 to the complainant at the time of recording of their statements under Section 13 (B) (1) of HMA and the third installment of Rs.70,000/- (Rupees Seventy Thousand only) shall be paid by the respondent to the complainant at the time of recording of their statement in the proceedings under Section 13 (B) (2) of HMA.

5. It has also been agreed between the parties that a petition shall be filed under Section 482 Cr.P.C. by the **respondents** for **quashing of FIR** bearing No 519/12 under Section 498-A/406/34 IPC with PS Uttam Nagar and the complainant shall **cooperate with the respondents** and also shall file her affidavit for the quashing of the FIR. She will also make a statement in terms of the compromise arrived between the parties before the Hon'ble High Court.

6. That the fourth and last installment of Rs.65,000/- (Rupees Sixty Five Thousand only) shall be paid by the respondent no. 1 to the complainant at the time of disposal of the petition under Section 482 Cr.P.C for the quashing of the above said FIR.

7. It has also been agreed between the parties that the **petition for quashing of the FIR shall also be filed by both the parties** within one month from the date of disposal of petition under Section 13 (B) (2) of HMA.

8. It has been agreed between the parties that the complainant shall withdraw the case under Section 125 Cr.P.C. from the Court of Sh. Brijesh Sethi, Ld. Principal Judge, Family Courts, Tis Hazari Courts, Delhi after the disposal of the petition under Section 13(B) (2) of HMA.

9. It has also been agreed between the parties that this settlement is full and final and both parties undertake not to file any case/complaint/suit/petition against each other and shall be entitled to lead their life independently and both the parties shall not interfere in the life of each other and **family members of each other.**

This settlement has been voluntarily arrived at between the parties with their own freewill and without any force, pressure or coercion and both the parties are bound on the terms and conditions herein above. The contents of the settlement have been explained to the parties in vernacular and they have understood the same and have admitted the same to be correct.”

(Emphasis supplied)

IV. ANALYSIS AND FINDINGS

10. A bare perusal of the aforesaid Mediated Settlement Agreement reveals that it has been clearly mentioned in clause 5 of the Agreement that the complainant shall “*cooperate with the respondents*” and shall file her affidavit for quashing of the FIR. It is further mentioned that she will also make a statement in terms of compromise arrived at between the parties before this Court. It is, thus, clear that the settlement agreement between the parties towards full and final settlement was not with the husband alone, and in case it was so, the word ‘*respondents*’ would not have been mentioned in Clause 5 of the Agreement.

11. Furthermore, clause 9 of the Agreement also mentions that the settlement entered into between the parties was “**full and final**” and that both the parties undertook to not file any “*case/complaint/suit/petition against each other*”. It was also agreed that they “*shall be entitled to lead their life independently and both the parties shall not interfere in the life of each other and family members of each other*”. The concluding clause also records that the settlement between the parties had been voluntarily arrived at with their own free will and without any force, pressure or coercion, and that the parties would remain bound by the terms of the agreement.

12. If the Settlement Agreement is scrutinized from a close angle, it will be revealed that though it has been signed by the husband only, it is clear from the contents of the agreement that the settlement was being arrived at on behalf of all the respondents i.e. co-accused persons in present FIR since they were his close family members.

13. Moreover, in the judgment dated 27.03.2015 *vide* which divorce was granted to both the parties, it is mentioned in para no. 5 that complainant had stated on oath that she had settled all her claims of past, present and future maintenance, and that the final instalment of Rs.65,000/- would be paid to her at the time of final disposal of the petition under Section 482 Cr.P.C. for quashing the present FIR. Therefore, even before the learned Family Court, the complainant/respondent no. 2 did not state that she would make her statement for quashing of FIR *only qua* the husband and not in respect of other accused persons i.e. petitioners herein.

14. The complainant in the present case had signed the Settlement Agreement voluntarily, and thereafter, had also appeared before this

Court for the purpose of quashing of FIR against the husband i.e. petitioner in CRL.M.C. 3069/2015, wherein the FIR qua the husband was quashed *vide* order dated 31.07.2015. The operative part of the said order passed by this Court reads as under:

“...Respondent No.2, present in the Court, submits that the dispute between the parties has been amicably resolved *vide* aforesaid Mediated Settlement and terms thereof have been fully acted upon as today, she has received the balance settled amount of Rs. 65,000/- by way of two demand drafts and that divorce by mutual consent has been already granted by the family court on 27" March, 2015. Respondent No.2 affirms the contents of aforesaid Mediated Settlement and of her affidavit of supporting this petition and submits that now no dispute with petitioner survives, and so, the proceedings arising out of the FIR in question be brought to an end.

Accordingly, this petition is allowed and FIR No.519/2012, under Sections 498-A/406/34 of IPC registered at police station Uttaih Nagar, Delhi and the proceedings emanating therefrom are quashed qua petitioner...”

15. In the case at hand, upon a close perusal and scrutiny of the records, it transpires that the instant matter had been referred for mediation at the time of hearing of anticipatory bail application of the husband of the complainant when rest of the accused persons were not even present before the Court concerned and the accused/husband had appeared on behalf of other respondents also before mediator as they were his close family members and were primarily facing criminal action due to his matrimonial discord with the complainant. In view of the settlement dated 30.07.2014 arrived at between the parties, the husband was admitted to anticipatory bail. Having compromised the matter with his wife, the husband had filed the petition i.e. Crl.M.C. No. 3069/2015 for quashing of FIR and by that point of time, charge sheet

had not been filed by the prosecution. Thereafter, because the matter had been compromised between the parties, the relatives of the husband were kept in column no. 11 in the chargesheet i.e. they were chargesheeted without arrest.

16. Since the matter had already been settled, the learned Magistrate, pursuant to filing of the chargesheet, had taken cognizance of the offence only against the husband, and had neither taken cognizance nor had issued summons to rest of the family members. It was also mentioned that cognizance qua other accused persons would be taken only if the accused husband fails to take any steps with regard to filing of quashing petition. In this regard, a reference can be made to the order dated 14.07.2015 passed by learned Magistrate which reads as under:

“...It is submitted by the IO that matter has been settled between the parties before the mediation centre on 30.07.2015. Copy of mediation order attached with the charge sheet.

Heard. Record perused.

Considering the fact that matter has been settled, I take cognizance for the offence u/s 498A/406/34 IPC against the accused/husband Lalit Raj only at this very stage.

Cognizance qua rest of the respondents will be considered if no step is taken by the accused for filing quashing petition.

Let summons to the accused Lalit Raj be issued through IO concerned returnable on 25.08.2015...”

17. Considering the aforesaid observations of the learned Magistrate and the fact that the husband alone had been summoned to appear before the Court, only the husband would have deemed it appropriate to file the quashing petition since the impression was that the FIR was filed solely against him. Subsequently, when the FIR was quashed specifically in relation to him by this Court *vide* order dated 31.07.2015, the learned

Magistrate was pleased to issue court notice to other accused persons by way of following order dated 25.08.2015:

“...None for accused despite repeated calls. Court is already in receipt of order dated 31.07.2015 passed by Hon'ble High Court whereby present FIR No. 519/12 u/s 498A/406/34 IPC PS Uttam Nagar has been quashed for accused Lalit Raj.

It is submitted by Ld. APP for the State that as the FIR has already been quashed, hence nothing is left to be adjudicated upon.

In view of the same, after the quashing of FIR, nothing survives against the accused Lalit Raj. The accused Lalit Raj is discharged. His surety also stand discharged. The documents of the surety if any attached with the bonds, be returned to him against acknowledgment after cancellation of endorsement.

At this stage, it is submitted by the Ld. APP for the State that the present quashing petition has been quashed against accused Lalit Raj only, hence he request for summoning rest of the accused persons.

Heard.

Let court notice be issued to rest of the accused persons to be executed through IO concerned, for 28.09.2015...”

18. Further, four accused persons including the present petitioners were summoned by the learned Magistrate vide order dated 28.09.2015, which reads as under:

“...It is submitted by the Ld. Defence counsel that FIR has already been quashed. To this, Ld. Substitute APP for the State submits that FIR has been quashed against accused Lalit Raj and there are specific allegation against rest of the accused persons, hence he request to take cognizance against rest of the accused persons.

Heard.

In the quashing order it has been specifically mentioned that the FIR has been quashed only against the applicant who is the accused Lalit Raj and in mediation cell also matter got settled between accused Lalit Raj and complainant.

In view of the above, relying upon the submission of Ld. APP for the State and finding specific allegation, let summons be issued to accused Rukmani, Chhatarpal, Vijay and Rajiv to be executed through IO concerned, for 26.10.2015...”

19. It was only after the rest of the accused persons i.e. petitioners were summoned by the learned Magistrate that they realized the need to file a petition for quashing of the FIR. Considering the non-legal backgrounds of the parties involved and the specific circumstances of this case, it is plausible that the present petitioners might have assumed that they did not have to file a quashing petition since they had not been earlier summoned by the learned Magistrate.

20. To sum up the timeline of the present case, it may be noted that at the time of hearing of anticipatory bail application filed by the husband pursuant to registration of present FIR, the case had been referred for mediation by the Court concerned and thereafter, the matter had been settled. Thus, after the FIR was quashed in relation to the husband as cognizance had only been taken against him by the learned Magistrate, the other family members i.e. the petitioners herein may have been oblivious to the fact that they could have been summoned by the Court and the matter, which had been resolved amicably in the year 2014, may be prolonged for another 10 years.

21. Though the complainant has already received the amount that she was to get for quashing of FIR, the FIR was unfortunately quashed only qua the husband and not against rest of the family members even though the term '*respondents*' had been mentioned in clause 5 of the Settlement Agreement which clearly depicts the intention to quash the entire FIR against all the accused persons. Moreover, the fact that the Agreement also mentions that it is full and final settlement of all past, present and future claims with each other and that they will not interfere in each other's life or in the life of family members of each other, makes it clear that the complainant was well aware that the agreement was being

arrived at between herself and all the respondents. She was also duly assisted by her counsels who would have made it clear to her at the time of signing the mediation agreement.

22. However, seeking to take advantage of the situation in which the present petitioners are, the complainant appeared before this Court and stated that the Mediated Settlement Agreement dated 30.07.2014 was only between her and her husband. She also stated that the monetary settlement arrived at between the parties was also qua the husband only and matter may again be sent for mediation if the present petitioners also wanted the FIR to be quashed against them.

23. This approach of the complainant, in the considered opinion of this Court, is neither correct nor acceptable as she has already received the entire amount as per the settlement agreement towards settlement of all her claims and matrimonial disputes as well as for quashing of present FIR. In case this Court returns a finding that the settlement was arrived solely between the wife/complainant and the husband, it would undermine the fundamental objective of the process of mediation in this case. Suffice it to say, the very purpose of mediation in this case has already been defeated as legal proceedings have been prolonged and dragged on for 10 long years despite a successful mediation between the parties.

24. In the given set of facts and circumstances, this Court deems it fit to advert to the observations of the Hon'ble Apex Court in case of ***Ruchi Agarwal v. Amit Kumar Agrawal*** (2005) 3 SCC 299, wherein the Apex Court while quashing the criminal proceedings against the accused husband on the basis of compromise even though the complainant had refused to give her consent, had observed as under:

“6. From the above narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received Stridhan and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings civil and criminal filed and initiated by her against the respondents within one month of the compromise deed which included the complaint under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent- husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

7. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13(B) of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

8.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.

9. 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. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No.Cr.No.224/2003 registered in Police Station, Bilaspur, (Distt.Rampur) filed under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein...”

25. This Court in *Purshotam Gupta v. State Crl.M.C. 3230-32/2006*, while dealing with a situation wherein the complainant wife had refused

to appear before the Court for quashing of FIR after having received all the settlement amount and after divorce proceedings had been concluded, had also quashed the FIR against the accused husband with the following observations:

“13. This court cannot but accept the statements made on oath by Respondent No. 2 accepting the terms of the compromise and recorded by and forming part of the record of the Punjab and Haryana High Court. She has also accepted the sum of Rs. 4 lakhs in terms of the compromise. The divorce has been granted and the criminal case for maintenance stands withdrawn. Only the last bit regarding the quashing of the criminal proceedings under Sections 498A, 406/34 IPC remains. With the Respondent No. 2 not appearing in these proceedings to contest the petition, the assertions of the petitioners as noted hereinabove remain uncontroverted.

14. This Court is therefore inclined to follow the aforementioned two decisions of the Supreme Court in Ruchi Agarwal and Mohd. Shamim and quash the pending criminal proceedings against the petitioners. It may be mentioned that the learned APP for the State also does not dispute the facts stated in the petition or the law as settled by the Supreme Court. He expresses no objection the quashing of the FIR in view of the aforesaid developments.

15. Consequently the FIR No. 575 of 2002 registered in Police Station Rajouri Garden, New Delhi on 26th July 2002 under Sections 498A, 406/34 IPC and all proceedings consequent thereto hereby stand quashed. The petition is allowed but with no order as to costs.”

26. A similar view was also taken by this Court in *Dalbir Singh v. State* 2011 SCC OnLine Del 3528.

27. The present petitioners had been victims of circumstances not only in the past when they had failed to file quashing petitions for having not been summoned by the learned Magistrate, but now again, since the complainant, despite having received the full and final

settlement amount, has refused to give her statement for quashing of the FIR.

28. Upon a careful analysis and calibration of how the mediation process was conducted in this case from start to finish and keeping in mind the peculiar circumstances of the present case, it is difficult to accept that the settlement in this case was only qua husband for the purpose of quashing of FIR. As the surrounding circumstances indicate, the negotiations and execution of the settlement agreement took place pursuant to a Court referred mediation, and both the parties had engaged legal counsels and after negotiations, the substance of the agreement had been reduced into writing, which is a matter of dispute today. The complainant had understood and acted upon the agreement in question as she had filed petition for obtaining mutual consent divorce, had withdrawn certain cases and FIR against husband had been quashed and she had received all the money that she had agreed to as full and final settlement of the dispute with the husband and had undertaken that both of them will not interfere in peaceful life of each other and their family members life. The settlement agreement therefore, has to be accessed in the context of the circumstances in which it has reached this Court.

29. Thus, considering the overall facts and circumstances of the case and for the reasons stated in the preceding discussion, this Court is of the view that it would be gross injustice to the present petitioners if the criminal proceedings arising out of instant FIR qua them are allowed to be continued, when the complainant had already settled all her matrimonial disputes, had undertaken not to interfere in lives of family members of her husband, and had also received monetary sum including

Rs.65,000/- specifically for the purpose of quashing FIR against 'respondents' (i.e. accused persons) in the present case.

V. CONCERN AND DUTY OF THE COURT

(a) Dispute Over Clause Which Resolved The Dispute: Reasons

30. However, before parting with this case, this Court notes that the *dispute in question has arisen primarily due to an inadequately worded and ambiguous Mediated Settlement Agreement.*

31. In the process of mediation, the task of drafting an agreement at the culmination of long, arduous and challenging mediation proceedings carries significant responsibility. Each word included in the agreement holds importance for the parties involved. This is particularly crucial in cases involving criminal matters, as omission of even a single word can lead to severe legal ramifications and the interested parties can exploit such loopholes to their advantage, causing disadvantages to the opposing party.

32. The primary objective of mediation in matrimonial cases is to facilitate early resolution of disputes outside the Courts. In India, matrimonial disputes often include criminal proceedings. In case of comprehensive settlement agreements between the parties, especially when law mandates mediation in cases of family and matrimonial disputes, a number of issues should be considered and the settlement agreements arrived at from successful mediation must be drafted with due care and caution, so that the very purpose of mediation is not defeated.

33. In cases relating to matrimonial offences, at times, there are distant relatives, old parents, married sisters, etc. who are also involved and arraigned as accused, but they may not attend the mediation proceedings as the same generally will take place between the two key players i.e. the husband and wife. In such cases, the disputes are often settled on behalf of the entire family by the husband. The mediator while drafting an agreement must remember that the parties have come to an understanding and have reached a mediated settlement with willingness to resolve the disputes due to the skills of the mediator and help of family, friends, counsels etc., however, their own needs and protection of their interests remains paramount.

34. In the present case, as already discussed at length, the complainant had settled all her matrimonial disputes and had received Rs.2,75,000/- towards full and final settlement of all her claims and had also agreed to cooperate in quashing of FIR qua the 'respondents'. However, ambiguity and lack of clarity in the Mediated Settlement Agreement was sought to be misused before this Court by the complainant.

35. Rather than merely writing in the Settlement Agreement that a petition for quashing would be filed "by the respondents for quashing of FIR", had the mediator specifically mentioned that the FIR as well as all proceedings emanating therefrom were to be quashed qua all the accused persons, along with their names, in that case, even if the learned Magistrate was to decide on issuance of summons to the accused persons, the said Agreement drafted by the Mediator would have come to the rescue of the present petitioners. In such a situation, the complainant would have been bound to co-operate even in those proceedings which emanated from the same FIR. In other words, the

Mediated Settlement Agreement in the present case should have been more explicit, particularly in terms of clearly identifying and specifying the names of all the respondents referred to in the agreement.

36. The Mediator should have ensured that all the persons against whom allegations had been levelled and were named in the FIR, quashing of which was agreed between the parties, their names and identities were clearly spelt out in the Settlement Agreement, rather than using the general term 'respondents'.

37. Therefore, as gathered by this Court after going through entire records, lack of incorporation of specific names of the respondents, or persons named in the FIR, in the Settlement Agreement has put the parties concerned at disadvantage and has resulted in unwanted prolonging of criminal proceedings, which were already settled between them long back. The very purpose of resolving the dispute at the earliest has been successfully defeated in the present case despite a successful mediation due to a carelessly worded Mediated Settlement Agreement.

38. There is no denying the fact that each case that reaches mediation and successfully culminates into a settlement is based on its own circumstances and dynamics.

39. To put it differently, an inadequately drafted agreement will be the one which fails to include essential elements such as the name of all the relevant parties, the terms outlining the conditions of settlement, and the consequences in the event of non-compliance or breach.

40. While deliberating upon such issues, this Court also takes note of the decision rendered by Hon'ble Division Bench of this Court in ***Rajat Gupta v. Rupali Gupta*** 2018 SCC OnLine Del 9005, wherein four questions of law had been sent for consideration by way of reference,

and the Court had laid down detailed guidelines regarding drawing up petitions and agreements in cases filed for divorce by mutual consent.

41. The **mediation process involving family disputes**, albeit, is no more in its infancy in India. However, considering the problems that arise in such disputes, it is still evolving and trying to grapple with new problems which may arise on several grounds. While there can be no fixed pattern for preparing an agreement or a performa to fill in for the purpose of affecting a settlement before a mediator, the mediators dealing especially with matrimonial disputes should keep in mind that such agreements are reached with an intent to attain finality to all the disputes. In matrimonial disputes, the parties in majority of cases want the disputes to be settled at the earliest while the emotions and tempers run high. While the Mediator performs the duty of not only dealing with those tempers but also their disagreements and emotions, the mediator also has another responsibility to ensure that the agreement reached by the parties, as well as the hard work of the parties, their families, counsels and the Mediator, is crystalised. It is unfortunate to note that these attempts fail in a large number of cases, and the parties find themselves in conflict once again due to flaws or ambiguities in the settlement agreements.

(b) Guidelines Apropos Drafting A Settlement Agreement in Matrimonial Disputes with Special Reference to Clauses dealing with Criminal Cases

42. Having discussed the significance of process of mediation in resolution of a dispute, especially those arising out of family and

matrimonial cases, and having taken note of complexities that can arise due to inadequate drafting, inconsistencies, omissions or oversights within a settlement agreement achieved between parties subsequent to a successful mediation, this Court deems it appropriate to lay down following guidelines in relation to drafting of a Mediated Settlement Agreement, in addition to the guidelines laid down:

- (i) **Specify Names of Parties:** The agreement must specifically contain names of all the parties to the agreement.
- (ii) **Avoid Ambiguous Terms:** The terms such as 'respondent', 'respondents', 'petitioner' or 'petitioners', in absence of their names in the agreement must be avoided in an agreement as it leads to ambiguities and further litigation.
- (iii) **Include All Details:** The terms and conditions of the agreement reached between the parties, howsoever small and minute they may be, must be incorporated in the agreement.
- (iv) **Timeline For Compliance:** The timeline of the fulfilment of terms and conditions as well as their execution must be clearly mentioned. There should be no tentative dates as far as possible.
- (v) **Default Clause:** A default clause should be incorporated in the agreement and the consequences thereof should be explained and enlisted in the agreement itself.
- (vi) **Mode of Payment:** In case any payment is to be made as per settlement, the agreement should specify the method of payment agreed upon between the parties which should also

be as per their convenience i.e. electronic mode, by way of a Demand Draft or FDR and the necessary details for fulfilment of this condition.

(vii) Follow-Up Documents: The agreement should also stipulate as to which Follow-up documents are to be prepared and signed by which party. It may also be mentioned as to when, where, how and at whose cost such documents are to be prepared in furtherance of the terms of the agreement, as far as possible.

(viii) Cases involving 498A IPC: Further, especially in cases of matrimonial disputes, where one of the conditions in the Agreement is to cooperate in quashing of FIR, such as those under Section 498A IPC, and filing of affidavit and appearing in the Court for the purpose of the same, it is advisable that the agreement must stipulate the names of all the parties concerned who have been named in the FIR specifically and the fact that the claims have been settled in totality for quashing of entire FIR and proceedings emanating therefrom qua all persons named in the FIR. It be also clarified specifically that the FIR will be quashed in totality against all the persons arrested, not arrested, chargesheeted, not chargesheeted, with their names and whether the entire FIR will be quashed against all of them upon payment by husband or any other person on behalf of the husband.

- (ix) Criminal Complaints/Cross-cases:** Criminal Complaints filed by parties against each other, pending trial or investigation should also find specific mention with names of all the parties, the Court concerned, and as to how the parties intend to deal with them. The number/details of the complaint, FIR, Sections under which they have been filed, should also be mentioned specifically.
- (x) Read and Understood:** The agreement should necessarily mention that all the parties have read and understood the contents of the settlement agreement in their vernacular language.
- (xi) Signing of Agreement:** In case only one or some parties are present during mediation proceedings and only their signatures are obtained on the agreement, it be clearly mentioned and clarified that the agreement is being signed on behalf of those relatives or parties also even in case they are not present, in case the agreement is qua them too and they are not present in person due to age, ailment, distance or any other reason. It is important to do so since in matrimonial offences, the near and distant relatives may, due to above reasons, not be present in person but agreements are reached in totality, especially regarding quashing of FIRs and criminal proceedings and withdrawal of complaints.
- (xii) Clarity of Language:** At last, the language used in a settlement agreement must be definite enough to understand

the real intention of the parties and the goals they wish to achieve by entering into the agreement.

(c) Judicial Realism: Urgent Need to have Settlement Agreements in Hindi

43. There is an urgent need to ensure that the agreement drafted to settle the issues to bring an end to a future or pending *lis* does not itself become a matter of dispute giving rise to another *lis* between the parties. The common understanding of the parties on essential conditions for enforceability of an agreement is crucial in a mediated settlement agreement and expressing intentions and commitments to the agreement through clear and concise language is critical for its effective enforcement. But a mediator should bear in mind that the level of understanding of the parties concerned may vary according to their social backgrounds, and thus, the mediator should remain attentive and alert to the circumstances, capacity, and linguistic abilities of the parties involved, considering their backgrounds and language proficiency. Since mediated settlement agreements are usually drafted in English, it is important to carefully draft and ensure that the parties concerned comprehend the agreement in vernacular language as this can significantly impact its effectiveness and execution.

44. This Court also remains conscious of the fact that the majority of litigants who approach this Court and the Courts below speak Hindi as their first language. Given that Hindi is their mother tongue, they are far more adept at speaking and understanding it than they are at other languages such as English. However, the mediated settlement

agreements in Delhi are drafted only in English. In such a scenario, the Settlement Agreement and the conditions thereof may not always be adequately clear to the parties and at times, the translation from English to Hindi may not convey exactly what the parties intend to do.

45. It can be noted that as per directions of the Central Government, a Hindi Department has been constituted in every Court and Hindi Committee is also constituted in every Court complex. The project of translation of the judgments from English to Hindi is already successfully working **under guidance of Hon'ble Apex Court.**

i. **Preparation of Mediated Settlement Agreements in Hindi**

46. It is, therefore, **directed** that concerned In-charge of Mediation Centres **will ensure that the mediated settlement agreements are prepared in Hindi language also**, in addition to English language, as far as possible. It is being directed since in majority of cases, the parties do not comprehend English and their spoken language and mother tongue is Hindi. **However**, in cases the parties are well-versed in English language and want the agreement to be in English language only, there will be no such insistence or requirement.

47. This Court hopes that once the agreements are written in Hindi, wherever required, which the parties understand and the Mediator performs his/her duty carefully, it will ensure not only finality of agreements in the mediation centers but also its successful culmination in the Courts of law which is the aim and objective of mediation centers.

48. Also because the aim of mediation is to reduce or resolve litigation and not to escalate it, it would be apt to ask both the parties to bring their agreements in their own language even in skeletal form,

which can help the mediator to ensure that none of the conditions is left out while preparing the final draft or agreement.

VI. CONCLUSION

49. While it is difficult to lay down a definitive list of factors to be considered while drafting mediated settlement agreements, this Court has made an effort to bring the issue to the fore and try to provide a solution as this Court is alive to the plight of the parties where even after ten years of having reached an agreement, they are still before the Court where the clause vide which agreement was reached is itself under challenge due to its ambiguity.

50. The above guidelines and directions, as enlisted in para no. 42 and 46 are in addition to the guidelines and directions contained in the judgment of *Rajat Gupta v. Rupali Gupta* (*supra*) passed by Hon'ble Division Bench of this Court in respect of the issues raised before the Court therein.

51. Coming back to the present case, the parties to the settlement agreement had demonstrated their intention to release one another from all past, present and future claims and had settled all the matrimonial disputes against each other and their families, but the petitioners herein could not have foreseen that the complainant will use the ambiguity in the Mediated Settlement Agreement after ten years to their detriment. While the contextual analysis in this case indicates mutually acceptable agreement between the parties, the Settlement Agreement reflects the understanding of the parties towards the economic consequences and towards attaining a finality to the *lis*. However, the absence of a default clause and the conditions being written in inadequate terms have come

in the way of putting an end to the litigation and the misery of the petitioners. While the petitioners herein thought that they were insulated from any claim from the complainant or from criminal charges as the case had been settled and the FIR was agreed to be quashed wherein they were named, they remained unaware of the change of mind of the complainant which happened before this Court.

52. In cases of matrimonial disputes and proceedings of divorce, both the parties go through one of the most stressful phases of their lives. In cases such as the present one, where the matter was settled at an early stage and the parties were able to reach the final agreement, the mediator should also be careful of the future consequences of the agreement that the parties were arriving at, and the fact that fulfilment of one condition leads to another and in matrimonial cases, fulfilment of each condition and successful culmination and execution of such an agreement can make or break many lives.

53. When a Court is faced with a situation as the present one, it is left with no other option but to look at the circumstances in which the agreement was negotiated and executed and also peruse the records to find the original objective which the parties were seeking to achieve as well as the original intention exhibited by subsequent substantial compliance with the terms of the mediated settlement agreement. The complainant, who is now seeking to persuade this Court to believe that she had not agreed to settle the case with rest of the accused persons i.e. petitioners herein though she has already obtained a mutual consent divorce and has received the entire amount for quashing of the FIR, had to bring before this Court the reasons and circumstances which reflect that she can make significant departure from the settlement agreement

qua the present petitioners, and the clock cannot be put back by setting aside the entire settlement agreement.

54. This Court, therefore, having taken a broader approach of characterising the main issue in this case as discussed above, holds that the agreement in the present case for quashing of the FIR was qua **all the respondents** as mentioned in clause 5 of the Settlement Agreement in question.

55. Thus, *as far as the prayer in the present petition is concerned*, the same is allowed and the FIR bearing no. 519/2012, registered at Police Station Uttam Nagar, for the offences punishable under Sections 498A/406/34 IPC and all proceedings emanating therefrom stands quashed.

56. Accordingly, the present petition stands disposed of in above terms and directions.

VII. WAY FORWARD

57. To conclude, this Court notes that the confusion that arose due to an ambiguity in the settlement agreement and the prolonging of the present case for ten years after having been settled underscored the importance of laying down the above mentioned guidelines for preparation of mediated settlement agreements. The lives of people embroiled in matrimonial litigation are often in state of turmoil, and thus, the mediation as a method of alternate dispute resolution has to come to their rescue instead of further extending the state of turmoil. **Guidance needed by the mediators to draft agreements with degree of coherence, consistency, and unambiguity will come a long way in healing the lives of those in need of such healing by immediately**

putting an end to a dispute and further insulating them from future litigation. This Court by way of this judgment only aims to ensure that challenges to such mediation agreements due to lack of clarity or missing out on the crucial aspects of the agreement are minimized.

58. A copy of this judgment be forwarded to In-Charge, Delhi High Court Mediation and Conciliation Centre (SAMADHAN) as well as concerned In-charge of all the Mediation Centres in all District Courts of Delhi, for taking note and ensuring compliance and for further circulation among all learned mediators. A copy be also forwarded to Director (Academics), Delhi Judicial Academy.

59. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 16, 2023/ns

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