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[MANU/DE/1005/1998](#)

**IN THE HIGH COURT OF DELHI**

CrI. M. (M) No. 2005 of 1996

Decided On: 14.08.1998

Appellants: **Satish Gathwal and Ors.**  
**Vs.**  
Respondent: **State and Anr.**

**Hon'ble Judges:**

J.B. Goel, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: R.N. Mittal, Adv.

For Respondents/Defendant: Santosh Kohli, Adv. for Respondent No. 1 and Shailender Paul, Adv. for Respondent No. 2

**Subject: Family**

**Subject: Criminal**

**Catch Words:**

Contempt of Court, Decree of Divorce, Dissolution of Marriage, Divorce by Mutual Consent, Father, Future Maintenance, Hindu, Maintenance, Marriage, Oath, Wife

**Acts/Rules/Orders:**

Criminal Procedure Code (CrPC), 1973 - Section 482; Indian Penal Code, 1860 - Sections 34, 406 and **498A**; Hindu Marriage Act, 1955 - Section 13(B)(1)

**Cases Referred:**

State of Karnataka v. L. Muniswamy and Ors., AIR 1977 Supreme Court 1489

**Disposition:**

Petition allowed

**JUDGMENT**

**J.B. Goel, J.**

1. This is a petition Under Section 482 of the Code of Criminal Procedure (for short "the Code) for quashing of FIR No. 317/87 registered at P.S. R.K. Puram, New Delhi Under Section **498A**/406/34, IPC and the proceedings arising out of the said FIR.

2. Briefly the facts are, that the petitioner No. 1 (Satish Gathwal) was married to respondent No. 2 (Sujata) on 27.1.1986. The parties could not pull on together for long and have been living separately since August, 1987. A complaint dated 15.9.1987 was filed by respondent No. 2 wife alleging harassment and demand of dowry against the husband, his father and mother on the basis

of which aforesaid FIR No. 317/87 was registered. After investigations, Challan was submitted and charges have also since been framed on 7.8.1996. In the meantime, parties entered into a written agreement dated 4.6.1996 whereby they settled the disputes between them on the terms and conditions mentioned therein. Inter alia, it was agreed that a sum of Rs. 7.00 lakhs was to be paid by the husband to the wife and in consideration of that the parties would go for divorce and shall also seek quashing of the aforesaid FIR and the proceedings arising out of it. Apparently, in pursuance of this agreement, the present petition was filed here. Parties appeared here on September 25, 1996 and made statements before this Court on that day confirming the settlement arrived at between them but the amount payable was enhanced to Rs. 8.00 lakhs. A sum of Rs. 5.00 lakhs was paid to the wife in Court on that day and the balance amount was to be paid as per their statements made in Court.

3. A joint petition Under Section 13(B)(1) of the Hindu Marriage Act was also filed on 15.10.1996. Both the parties appeared before the Court of learned Addl. District Judge on 16.10.1996 and had made consenting statements and a sum of Rs. 1.00 lakh was paid by the husband to the wife as per statements made in this Court on September 25, 1996. It appears that for the second motion the wife has not agreed.

4. The grievance of the petitioner is that the petitioner-husband has been ready to fulfil his obligation and has filed the petition for the second motion but the respondent-wife has not joined and is avoiding joining in the second motion and thereby the divorce could not be secured.

5. The petitioners have filed this petition Under Section 482 of the Code for quashing the FIR and the proceedings.

6. I have heard learned Counsel for the parties. Learned Counsel for the petitioners has invited my attention to the agreement, the statements made by the parties on 25.9.1996 and other relevant circumstances and has contended that the respondent-wife had entered into settlement, has taken Rs. 6.00 lakhs in pursuance of agreement and by giving an undertaking that the marriage will be dissolved by a decree by joint petition and that criminal proceedings will be got quashed, the respondent is misusing the process of this Court and in the circumstances, it is eminently in the interest of justice not to allow her to so misuse and these proceedings be quashed.

7. Learned Counsel for the respondent-wife has contended that it was never agreed between the parties that the amount of Rs. 8.00 lakhs was to be paid as a consideration for quashing these proceedings. The amount was payable in settlement of her claim towards her maintenance, istridhan and dowry articles and that settlement has nothing to do with the criminal proceedings pending trial.

8. Learned Counsel for the State supports the petitioner on the ground that taking into consideration the statements made and conduct of the parties, it will be misuse of the process of the Court to continue these proceedings.

9. I have considered the contentions. Copy of the agreement dated 4.6.1996 has been placed on record. Correctness of the same has not been disputed. It reads as under :

#### "Agreement

XX	XX	XX	XX
XX	XX	XX	XX

And Whereas on account of intervention of common friends and relatives, parties have agreed to resolve their differences for their mutual benefits and for the benefits of both the families on the terms and conditions contained herein :

Now this Agreement is Witnessed as Under :

1. The marriage between the parties has irrevocably been broken. The parties have agreed to dissolve the marriage by a decree of divorce by mutual consent. The first motion shall be filed on the 29th June, 1996 before the Hon'ble Court of District Judge, Delhi. A sum of Rs. 2,00,000/- (Rupees two lacs only) shall be paid to the second party by Bank Draft on the divorce decree being granted by the Hon'ble Court. The amount shall be paid in the presence of the Court on completion of the formalities of the second motion. The parties agreed to sign the first motion on 27th June, 1996 in the Chamber of Shri S.K. Duggal, Patiala House Courts, New Delhi.

2. Both the parties have agreed to file a petition Under Section 482, Cr.P.C. before the Hon'ble High Court of Delhi on 29th day of June, 1996 for quashing the F.I.R. No. 317/87 Under Section 498-A/406/34, IPC, P.S. R.K. Puram, New Delhi and the proceeding pending before the Hon'ble Court of Smt. Sunita Gupta, M.M., New Delhi. The parties have also agreed to sign this petition for quashing on 27th day of June, 1996 simultaneously of signing the petition for divorce. The both parties shall appear before the Hon'ble Court, Delhi to make a statement in support of the quashing petition. Party No. 1 shall pay a draft of Bank of Rs. 5,00,000/- (Rupees five lacs only) in the presence of the Court after statement of parties have been recorded in the Hon'ble Court to party No. 2 (Smt. Sujata Gathwal). An attempt to be made by requesting the Hon'ble Court to quash the F.I.R. and proceedings on that very day. In any event a request shall be made to stay the proceedings before the Lower Court.

3. The parties shall on expiry of a period of six months or earlier, if possible shall sign and present application for second motion for obtaining Degree of Divorce by mutual consent. The parties undertake to co-operate for quashing the F.I.R. as well as obtaining the degree of divorce. No complaint against each other shall remain pending thereafter anywhere.

In Witness Whereof the parties have hereto signed this Agreement in the presence of the following witnesses.

Sd/-  
FIRST PARTY  
WITNESSES:  
1.  
Sd/-  
2. SECOND PARTY"

After the present petition was filed here, both the parties had made the following statements:

25th September, 1996

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Statement of Smt. Sujata d/o Shri V.P. Singh, resident of 5835, Block No. 4 Gali No. 8, Dev Nagar, Karol Bagh, New Delhi on S.A.

I was married to petitioner No. 1 in accordance with Hindu rites and customs on 27th January, 1986. There arose certain disputes and differences between me and the petitioners and I, therefore, left the matrimonial home and since August, 1987 I am living separately from the petitioners. After leaving the matrimonial home, I lodged a complaint with the Crime Against Women Cell which ultimately resulted in the registration of FIR No. 317/87 under Sections 498A/406/34, IPC with PS R.K.Puram, New Delhi and proceedings pursuant thereto are now pending in the Court of Ms.

Sunita Gupta, MM, Delhi.

With the intervention of friends, relatives and well-wishers, it was decided that we will have our marriage dissolved by a decree of divorce by mutual consent and petitioner No. 1 shall pay me a total sum of Rs. 8,00,000/- (Rupees eight lakhs only) by way of return of my dowry articles, Istridhan and past and future maintenance and on receipt of the said amount I will have no claim of whatsoever nature against any of the petitioners. A sum of Rs. 5,00,000/- (Rupees five lakhs only) in cash has been handed over to me today in Court by petitioner No. 1. Out of the remaining amount of Rs. 3,00,000/-, a sum of Rs. 1,00,000/- will be paid to me at the time of recording of statement in the petition for divorce which will be filed by the parties for dissolution of marriage by a decree of divorce by mutual consent. Balance amount of Rs. 2,00,000/- has been agreed to be paid to me at the time of grant of decree of divorce. After the divorce is granted and the balance amount of Rs. 3,00,000/- is paid, I will not pursue my complaint and I want to live happily thereafter and do not want to be dragged in Courts and I, therefore, pray that after the grant of divorce and on payment to me the balance amount of Rs. 3,00,000/-, the subject FIR be quashed.

In case, I do not co-operate in getting our marriage dissolved by decree of divorce by mutual consent, I undertake not to pursue my complaint and the FIR which has been registered on the basis of the said complaint.

Sd/- (respondent No. 2).

R. O. & A. C.

sd/-

September 25, 1996 (S.K.MAHAJAN)

"Ravindra" JUDGE "

"25th September, 1996 Crl.M.(M). 2005/96

Statement of Mr. Satish Gathwal s/o Sh. M.R. Gathwal, resident of 1021, Sector-24, Chandigarh, presently residing in Delhi at 180-K/1, Sainik Farm, New Delhi on S.A.

10. I have heard the statement of respondent No. 2 and undertake to pay balance amount of Rs. 3,00,000/- (Rupees three lakhs only) as mentioned in her statement. In case, I fail to co-operate with respondent No. 2 in getting our marriage dissolved by a decree of divorce by mutual consent, I will forfeit my right to claim back a sum of Rs. 5,00,000/- which has already been paid by me today in Court to respondent No. 2 and I will not insist upon quashing of the FIR and proceedings against me.

11. It is not disputed that the parties had approached the Court of learned District Judge for the first motion for divorce by mutual consent Under Section 13(B)(1) of the Hindu Marriage Act, Rs. 5.00 lakhs were paid to her on 25.9.1996 and another sum of Rs. 1.00 lakh was paid at the time of first motion. The husband is ready and willing for the second motion and has also moved the Court concerned for the second motion, but the wife is not willing.

12. The question is whether in these circumstances, the proceedings arising out of the said FIR should be allowed to be continued or not.

13. Section 482 of the Code reads as under :

"482. Saving of inherent powers of High Court--Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

14. It has also been held by the Hon'ble Supreme Court inter alia in State of Karnataka v. L. Muniswamy and Ors., reported in AIR 1977 Supreme Court 1489 that -

"In the exercise of the wholesome power under Section 482, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice requires that the proceedings ought to be quashed."

15. The respondent-wife in her statement made on September 25, 1996 had very categorically stated that due to intervention of friends and relations and well-wishers, it had been decided that the parties will have their marriage dissolved by a decree of divorce by mutual consent; the petitioner (No. 1 shall pay her a total sum of Rs. 8.00 lakhs by way of return of her dowry articles, istridhan, past and future maintenance and on receipt of the said amount, she will have no claim of whatsoever nature against any of the petitioners. Out of that, a sum of Rs. 5.00 lakhs was paid before the Court when this statement was made on 25.9.1996. Out of the balance amount of Rs. 3.00 lakhs, Rs. 1.00 lakh was agreed to be paid at the time of recording of the statement in the petition for divorce. This amount has already been paid. And the amount of Rs. 2.00 lakhs was agreed to be paid to her at the time of grant of decree of divorce. Rs. 6.00 lakhs have thus already been paid to the wife on being directed by this Court; Rs. 2.00 lakhs have been deposited in this Court. Learned Counsel for the petitioners has stated that the petitioners will have no claim on this amount and this may be paid to the respondent-wife provided that she consents and joins for mutual divorce.

16. In the last para of her statement, the respondent-wife has further stated on oath that:

"In case, I do not cooperate in getting our marriage dissolved by decree of divorce by mutual consent, I undertake not to pursue my complaint and the FIR which has been registered on the basis of the said complaint."

17. Her statement was a representation made and undertaking given before this Court that she will not pursue her complaint and on the basis of this, the petitioner has given and she has accepted Rs. 6.00 lakhs in part satisfaction of the agreement. This is very unfortunate that she is now backing out from this undertaking. She is estopped in law from withdrawing her undertaking and representation. This would amount to committing Contempt of Court by her. From the agreement entered into between the parties and which is confirmed by them in Court, no doubt is left that this was a package deal for divorce as well as for quashing the criminal proceedings. By denying this agreement, she is certainly misusing the process of the Court. The Court would not allow a party to **misuse** its process.

18. In my view, it is just, proper and otherwise to secure the ends of justice to exercise jurisdiction Under Section 482 of the Code and quash the criminal proceedings.

19. This petition is accordingly allowed. FIR No.317/87 Under Section **498A**/406/34, IPC, P.S. R.K.Puram and the proceedings arising out of the same are hereby quashed.

20. The bail bonds of the petitioners are hereby cancelled and discharged. One month's time is given to the respondent-wife to join in the joint petition for divorce failing which the petitioners will be entitled to seek appropriate order from this Court for the disposal of the amount of Rs. 2.00 lakhs deposited by them in this Court.

Trial Court may be informed.