

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : INDIAN PENAL CODE**

CrI.M.C.(M).No.1104 of 2007

Judgment reserved on: 3rd October, 2007

Judgment delivered on: 20th November, 2007

Sh. Jagdish Prashad Saboo  
S/o. Sh. Nand Kumar Saboo  
R/o G-3/2, Model Town-III,  
Delhi

..... Petitioner.

Through: Mr.S.C.Buttan with  
Mr.Himanshu Buttan, Adv.

Vs.

1. The State

2. Smt. Navneet Saboo  
W/o. Lt. Sh. Ghanshayam Saboo  
R/o. C-33/1, Adarsh Nagar,  
Delhi.

..... Respondents

Through: Mr.Navin Sharma, Adv.  
Mr.Maheshwari Sharma, Adv.

V.B. GUPTA, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of the proceedings arising out of FIR No.733/02 under Section 354 IPC, P.S. Model Town, Delhi. 2. The FIR in question was registered on the complaint of respondent no.2. It is stated that large number of litigation is pending between the parties and due to multiplicity of the litigations, the matters were transferred to the Mediation Cell and Sh. G.P. Mittal, Judge/incharge Mediation Cell passed a detailed order, after the parties settled their disputes.

3. As per the order passed by the Mediation Judge, the respondent had to withdraw the present FIR and also to withdraw another FIR registered under Section 498A

IPC. It was decided by the Mediation Cell that a sum of Rs.10 lakh shall be paid to the respondent by the petitioner by way of Demand Draft, out of which Rs.2 lakh in the shape of Bank Draft in the name of respondent no.2 and Rs.3 lakh shall be given to respondent no.2 as gift as a compensation regarding all jewelery etc. The remaining amount of Rs.5 lakh was directed to be deposited in any bank in the name of minor son of the respondent no.2 and the respondent no.2 would be at liberty to withdraw the interest from that amount for the maintenance of child.

4. In compliance of the order, the petitioner paid an amount of Rs.5 lakh against the compensation to respondent no.2 and also undertook, that the rest of the amount will be paid to respondent no.2 by way of Demand Draft, when the respondent no.2 moves an application for compounding the offence under Section 354 IPC in the present FIR and also assist the petitioner for getting the proceedings of case under Section 498-A IPC quashed and the petitioner further gives Rs.7 lakh to the respondent also for compounding another case under Section 376 IPC.

5. In spite of all efforts, respondent no.2 refused to move any application before the concerned court for getting the present case withdrawn under Section 354 Cr.P.C. and also refused to assist the petitioner in getting the proceedings under Section 498-A IPC quashed and insisted upon making the statement under Section 376 IPC.

6. The non compliance of the orders of the Mediation court where the respondent no.2 has given an undertaking, is not only violation of the orders of the Mediation Court but, is also an abuse of process of the Court and so, it is prayed that the FIR in question may be quashed or in the alternative, respondent no.2 be directed to comply with the order dated 4th May, 2006 passed by the Judge in-charge, Mediation Cell.

7. Notice of this petition was issued to the respondents. Respondent no.2 has put in appearance through counsel.

8. It has been contended by learned counsel for the petitioner that since the matter has been settled in the Mediation Cell, so under the terms of the settlement, respondent no.2 had to move an application for compounding offence under Section 354 IPC, which she has not done and under these circumstances, the continuation of the FIR in question and the proceedings are abuse of Criminal Justice System and respondent no.2 cannot be allowed to make mockery of the system and in support of his contentions learned counsel for the petitioner cited a decision of this Court; Dr. Aakash Deep Makkar and Ors. v. Dr. Vanisha and Anr. 139 (2007) Delhi Law Times 20.

9. On the other hand, it has been contended by learned counsel for respondent no.2 that, respondent no.2 has not received the full payment and as such question of moving an application for compounding of offence under Section 354 IPC does not arise.

10. The copy of the terms of settlement placed on record by the petitioner is at page 35 to 38 of the paper book. From these terms of settlement, it is not possible to make out as to what is the total amount of settlement, made between the parties i.e. what amount in total had to be paid to respondent no.2, received. The relevant portion of this settlement with regard to the payment clauses is reproduced as under :- “As per terms of the settlement, defendant no.8 Mr. Jagdish Prasad Saboo has agreed to pay a sum of Rs.5 lacs by way of demand draft and jewelery worth Rs.3 lacs to the plaintiffs and defendant no.1 Mr. Om Prakash Saboo has agreed to pay a sum of Rs.2 lacs by way of demand draft to the plaintiff no.2 Smt. Navneeta Saboo.” “Out of the amount of Rs.7 lacs, the amount of Rs.2 lacs shall be paid by way of a pay order in the name of plaintiff no.2 Smt. Navneeta Saboo and the amount of Rs.5 lacs shall be paid by defendant no.8 Mr. Jagdish Pd. Saboo by way of pay order in the name of Master Lalit Saboo (minor), plaintiff no.1.” “It is agreed by all the parties that the amount of Rs.7 lacs plus jewelery worth Rs.3 lacs shall be received by the plaintiffs in full and final settlement of all the claims in respect of the share if any, in respect of house No. G-3/2, Model Town-III, Delhi, right to claim of maintenance from defendant no.8 and there shall not remain any claim what-so-ever against any of the properties against any of the defendants on getting the jewelery and payment of above stated amount of Rs.7 lacs.” “It has been agreed by plaintiff no.2 that the amount of Rs.5 lacs which has been agreed to be given to plaintiff no.1 shall be kept either in a fixed deposit in a Nationalised Bank or in any saving scheme (not involving any risk) in UTI, Post Office or any scheme of the Central Government or State Government where from the plaintiffs may get monthly, quarterly or annual interest which shall be utilised for upbringing and benefit of Master Lalit Saboo.” “The plaintiffs on receipt of the amount of Rs.7 lacs and jewelery worth Rs.3 lacs by way of gift do not claim right, title or interest in property No.G- 3/2, Model Town-III which has already been sold by defendant no.8 to defendant no.1.” “Case FIR No.733/02 P.S.Model Town U/s. 354 IPC is a compoundable offence with the permission of the court. The plaintiffs undertake to move an application for compounding the offence in the case FIR on the next date of hearing before the Ld. M.M.Rohini.”

11. So, from the above terms, it is not clear as to what is the total amount which has to be paid to respondent no.2.

12. In para 13 of the petition, it is stated that:- “it was also decided by the Hon'ble Court that a total sum of Rs.10 lacs shall be paid to the complainant by the petitioner by way of Demand Draft out of which Rs.2 lacs in the shape of a Bank

Draft in the name of the complainant and Rs.3 lacs be given to the complainant as gift as a compensation regarding all the jewelery etc. The remaining amount of Rs.5 lacs was directed to be deposited in any bank etc in the name of minor son”

13. In para 14 of the petition, it is stated that:- “in compliance of the order, the petitioner paid the amount of Rs.5 lakhs, against the compensation to the complainant and also undertaken that the rest of the amount he will also pay to the complainant by way of Demand Draft when the complainant moves application for compounding the offence U/s. 354 IPC in FIR No.733/2002 and also assist the petitioner for getting the proceedings of case under Section 498A IPC quashed in FIR No.196/05 and the petitioner further gives Rs.7 lakh to the complainant also compounding the another case under Section 376 IPC pertaining to PS, Model Town, Delhi”

14. So, according to the averments made in para 14, petitioner has to give further sum of Rs.7 lakh to respondent no.2 for compounding the case under Section 376 IPC.

15. There is no mention of payment of Rs.7 lakh for compounding the offence under Section 376, in the terms of settlement, which is purported to have taken place in the Mediation Cell. Moreover, Rs.5 lakh out of Rs.10 lakh (which is stated to have been the total amount) as per terms of settlement made before the Mediation Cell, have still not been paid to respondent no.2.

16. Interestingly, the petitioner has also placed on record photocopy of the statement dated 28th October, 2006 made by respondent no.2 before the Magistrate in case, FIR No.733/2002 for which the quashing petition has been filed. In this statement, respondent no.2, has stated that she never wished for finishing this case and other case under Section 376 IPC, which is continuing. Sh. K.C.Maini told her to bring her file from Sh. Mahavir ji and advised for finishing of this case. She refused for the same and said that she will not finish this case and will continue with the present case.

17. Respondent no.2 in her statement has also stated that she had received Rs.17 lakh from the accused persons till now. The accused have retained Rs.1 lakh in this case and Rs.4 lakh of the case under Section 376 IPC, but she does not want to finish this case.

18. So, in view of this statement given by respondent no.2, in the court of Magistrate, it is clear that respondent no.2 has not received the entire money and that is why, she is not willing to finish the present case.

19. Since, entire money has not been paid to respondent no.2, hence, she is justified in not moving an application for compounding of offence under Section 354 IPC and under these circumstances, the case law cited by learned counsel for the petitioner, is not applicable at all, to the facts of the present case.

21. Under these circumstances, the question of quashing of FIR in question does not arise and as such the present petition, for quashing of FIR is not maintainable and the same is hereby dismissed.

Sd/-  
(V. B. GUPTA)  
JUDGE