

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUBJECT : CODE OF CRIMINAL PROCEDURE

Date of Reserve: November 05, 2008

Date of Order: December 10, 2008

CM(M) 1020/2008

Satinder Pal Singh .. .Petitioner

Through: Mr. F.K. Jha, Advocate

Versus

Daman Preet Kaur Respondent

Through: Mr. S.C. Baweja, Advocate

Justice Shiv Narain Dhingra

1. The petitioner has filed this petition under Article 227 stating therein that the petitioner had filed a Divorce petition against the respondent being HMA No. 863/2006 before the learned ADJ and the petitioner filed his evidence in May, 2007. The respondent delayed the proceedings and did not cross-examine the petitioner and his witnesses. However, on 4th June, 2008, the petitioner and the respondent made a joint statement agreeing for a divorce by mutual consent on following conditions:-
 - a) The petitioner shall pay the amount of Rs. 8 lacs in full and final settlement of maintenance claim of the respondent and the daughter as well as claim of education, marriage expenses, etc. of minor daughter.
 - b) The respondent shall withdraw the Petition under Section 125 Cr.P.C. pending in the Court of MM.
 - c) The respondent along with the petitioner shall move Divorce petition under Section 13-B for divorce by mutual consent and she shall also co-operate in getting FIR No. 133/01 quashed lodged by her under Sections 498-A/406 read with Section 34 of IPC against the petitioner and other family members.
2. Out of amount of Rs.8 lacs, a sum of Rs.5 lacs was to be paid at the time of grant of divorce by mutual consent and a sum of Rs. 3 lacs was to be paid at the time of quashing of FIR. Both the parties made a joint statement in the Court of ADJ where Divorce Petition filed by husband was pending and undertook to abide by this compromise. After signing this compromise, when respondent was asked to sign the joint Divorce Petition she refused to sign the joint Divorce petition and make a statement in pursuance thereof before the Court. She also refused to co-operate in the quashing of FIR.
3. It is stated that the petitioner has ever been ready to fulfill his part of the compromise. The petitioner got prepared drafts for a sum of Rs. 5 lacs for payment to the respondent. Copies of drafts for amount of Rs.5 lacs dated 27th to 30th June, 2008 have been placed on record. The case was fixed for joint statement of parties before the Court on 1st July, 2008 when respondent refused to make joint statement and sign the joint petition. Thereafter, on subsequent hearings also respondent refused to join the proceedings.
4. A notice of this petition was served upon the respondent.. The respondent appeared along with another counsel who told the Court that in the compromise entered into between the parties nothing was stated about the istridhan articles of the respondent lying in custody of IO, which were worth Rs.40lacs.
5. The petitioner herein told the Court that he had no objection if all the articles in custody of IO are taken by the respondent. On this the respondent's counsel immediately changed the stand saying that there was further istridhan to be recovered from the petitioner and the same should be ordered to be returned. He did not specify what was further istridhan. The respondent who was present in the Court stated that she was not ready to abide by the statement even if istridhan lying in the custody of IO was returned to her.

6. It is obvious that the respondent after giving an undertaking to the Court and after entering into a compromise resiled from the compromise. Though this Court cannot force the respondent to make a statement for divorce by mutual consent in the Court, but looking at the tendency of using Courts as a tool to extract money, it is necessary, the Court should give appropriate directions. It would be in the fitness of things to give necessary directions to the Courts where Divorce Petition and other proceedings are pending. The following directions are given:

- i) That the Court of MM where applications under Section 125 Cr.P.C. is pending shall not proceed further with the proceedings unless the respondent abides by the compromise.
- ii) The Court of Sessions where trial of FIR No.133/01, P.S. Saraswati Vihar under Sections 498-A/406 and 34 of IPC was pending shall not proceed further with the trial of the case and in terms of compromise the complainant has to join for quashing of FIR. So long as FIR is not quashed, the proceedings before the Sessions Court shall remain stayed.
- iii) The Court of ADJ where divorce suit HMA 863/06 was pending shall continue with the suit and bring it to logical end. No interim maintenance shall be payable to the petitioner because of non-abiding with the compromise. The divorce proceedings shall be continued on day-to-day basis and the conduct of the respondent in resiling from the compromise and trying to extract more and more money after changing Advocates, shall be kept in mind.

7. With these directions, this petition is disposed of.

Sd./-

December 10, 2008 SHIV NARAYAN DHINGRA J.