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

+ CRL.REV.P. 16/2020

SH. SARANJEET SINGH Petitioner

Through: Mr.Prabhjit Jauhar, Adv. with
Ms.Aishwarya, Adv.

versus

SMT. RANJIT KAUR & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **10.01.2020**

Crl. M.A. 409/2020

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

Crl.Rev.P.16/2020 & Crl.M.A. 408/2020 & 410/2020

3. It is stated in the present petition that the petitioner was granted a decree of divorce against respondent no.1 on the grounds of cruelty vide judgment and order dated 22.01.2018 passed by Principal Judge, East Karkardooma Courts, Delhi in divorce case bearing no. H.M.A No. 116 of 2018. Thereafter, aggrieved by the said judgment, respondent no.1 assailed the same and vide order dated 22.01.2018 a decree of divorce was affirmed by the Division Bench of this Court on 20.11.2019 in Mat. App.(F.C) No. 214 of 2018.
4. Learned counsel appearing on behalf of the petitioner submits that the

petitioner was bearing all the educational expenses of his daughter respondent no.2 who was staying with the petitioner and the petitioner had also borne marriage expenses of the said respondent when respondent no.1 was trying to extort money from petitioner in the name of respondent no.2. Apart from the education and marriage expenses of respondent no.2, petitioner is staying on rent and is paying a monthly rental of Rs. 23, 595/- whereas respondent no.1 is staying in petitioner's house.

5. Learned counsel for the petitioner submits that the learned Family Court failed to appreciate the factum of respondent no.1 wife maintaining objectionable relations with one Mohd. Ansari and her conduct of concealing facts about respondent no.3 being independent and earning and also the factum of respondent no.2 has already been living with petitioner for whom respondent no.1 had been claiming maintenance and the same was only being done to create pressure in the mind of petitioner and to extort more money from petitioner.

6. Further submits that the petitioner and respondent no.2 have been living separately since 1995. It has been more than 24 years and the entire substratum of the marriage has eroded away. Even when the parties resided together from 12.09.2008 after the mediation settlement, they could not sustain the mediation settlement even for four days. There was no resumption of cohabitation in the said period.

7. Learned counsel has drawn the attention of this Court to the judgment and order dated 22.01.2018 passed by learned Principal Judge whereby recorded as under:

“16. The petitioner has persistently alleged the respondent of having undue intimacy with one rickshaw

puller Mohd. Ahmad Ansari which led to constant altercation between them and ultimately, led to rupture of their marital bond. He is particularly aggrieved by the facts that he was shunted out by the respondent in the year 1995 and the respondent continued to have contact with said Mohd. Ahmad Ansari despite his objection. In his testimony he deposed that he had filed a police complaint on 23/1/1993 which he proved on record as Ex. PW-1/2. As per his testimony, he made several complaint in December, 1994, 29/12/1995, 22/6/1998, 29/6/1998, 22/7/1998, 28/7/1998, 29/7/1998 and 25/7/2002. He proved the copy of the complaint dated 29.12.1995 as marked B and the copy of the proceeding Under Section 107/151 Cr.P.C. against Mr. Ansari as marked-C. It grievances of the petitioner that due to her said conduct, he started living separately at 211, Patparganj, Delhi with a hope that good sense would prevail upon the respondent.

He tolerated the intimacy of the respondent with said Mohd. Ansari for the sake of his children and Reputation but could not bear the fact that the respondent had purchased a house i.e. B-61, Gali No.18, Jitar Nagar, Delhi from his refund and was keeping the said person in that house. It is depose that even then he tried to pursue her but in vain. He further depose that he had also filed the several complaints to the police station in this regard, which are already exhibit PW-1/PI to Ex. PW-1/P3 and Ex. PW-1/2 and mark A and B whereas the respondent RW-1 in her cross examination took inconsistent stands firstly by deposing that she did not remember the name of the Rickshaw puller who used to take her children to the school. She straightway refused to that she knew any person by the name of Mohd. Ahmad Ansari, whereas in her written statement and affidavit of evidence, she mentioned the name of the said Mohd. Ahmad Ansari as rickshaw puller who used to ferry their children to school. Not only this, during cross examination of the petitioner, it was suggested to him that said Mohd.

Ahmad Ansari was a rickshaw puller who used to take their children to school. Thus, the contrary stands taken by her in her cross examination shows that she had tried to evade questions about her relation with said Mohd. Ahmad Ansari which gives rise to adverse interference against her cross examination, she stated that she was not aware as to whether any Kalandra was filed by the police under Section 107/151 Cr.P.C. regarding quarrel between her husband/petitioner, her son and said Mohd. Ahmad Ansari but when it was put to her in her cross examination that the said Mohd. Ahmad Ansari was residing in her house situated at Jitar Nagar, Delhi and that the petitioner and their son had a quarrelled with him because they were having objections against her relationship with the said person, she simply said that she did not know, which only shows that she avoided the question because the said Mohd. Ahmad Ansari was not living with her at Jitar Nagar, House, she must have denied the suggestion rather than that she does not know, the attested copy of Kalandra U/s 107/151 Cr.P.C. dated 3/8/2002 marked as Mark C not only corroborates the testimony of the petitioner in this respect but also proves that the said Mohd. Ahmad Ansari was living in house B-67, Gali No.18, Jitar Nagar, Delhi.

The said discrepancies in the statement of the respondent which blew hot and cold at the same time, case nothing but only as persons on her testimony and fortifying the case of the petitioner that she continued to have contact with the said Mohd. Ahmad Ansari despite objection being raised not only by him but also their children.

17. Relying upon a judgment of Hon'ble Andhra Pradesh High Court in Gali Kondaiah vs. Gali Ankamma AIR 1988 AP 68

"Ld. Counsel for petitioner has submitted that the High Court Rules were framed when "Living in adultery" was the ground of divorce and hence, that adultere was

considered a necessary party to the petition seeking divorce U/sec. 13 (1) (4) of HM Act but after amendment in 1976, the single act of the spouse of having voluntary intercourse with any other person is made the ground of seeking divorce. This authority has no application to the petition is the present case as only U/sec. 13 (1) (i) of HM Act and no U/sec. 13 (1) (i) of HM Act then the Ld. Counsel for the petitioner has submitted that the petitioner has not claimed for a decree of divorce U/sec. 13(1)(i) of HM Act but his case is that the act of the respondent Ns continuing the intimate relationship with Mohd. Ahmad Ansari despite objections of petitioner and their family amounts to act of mental cruelty. The son of the parties Amarpreet Singh (since died) in his statement recorded in Kalandara (DD No.59B) which is mark C (Colly), on record stated that the said Mohd. Ansari used to stay in inter house for the whole day long and interference in their family matters. That Mohd. Ansari used to intimidate them and when they used to complaint about him to their mother i.e. respondent, she instead used to reprimand them. However, said Amarpreet Singh also did not stick to one stand as in his cross examination, stated that the respondent used to treat Ahmad Ansari as her brother. In such a scenario, the testimony of the Amarpreet Singh now deceased cannot be taken given much weightage.

Leaving apart the complaints filed by the petitioner and the statement of deceased son of the parties, certified copy of Kalandara U/s 107/151 Or.P.O. and the statement recorded in DD No.59B had been placed on record with regard to alleged abusing, threatening and quarrelling against Mohd. Ahmad Ansari by the petitioner and the deceased son of the parties substantiating the stand of the petitioner that alleged the relationship of the respondent with Mohd. Ahmad Ansari married their matrimonial life. Thus taking overall view of the controversy with regard alleged relations of the respondent with one Mohd. Ansari. It can be concluded

that the petitioner succeeded in proving his contention that the respondent, despite his objections, continued to have contact with said Mohd. Ansari ignoring the disapproval of her family members causing him immense mental trauma.”

8. He further submits that despite the fact that she is living in adultery, learned Trial Court has granted maintenance in favour of respondent no.1 which is contrary to the provisions of section 125 Cr.P.C.
9. Issue notice.
10. On taking steps, let notice be served upon respondents, returnable on 26.03.2020.
11. Till further order, the impugned order dated 26.08.2019 shall remain stayed.
12. Order dasti under signatures of the Court Master.

SURESH KUMAR KAIT, J

JANUARY 10, 2020
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