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

+ **MAT.APP.(F.C.) 106/2021**

NEELAM Appellant

Through: Mr. Inderpal Khokhar, Advocate.

versus

JAI SINGH Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

09.11.2021

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C.M. No. 39488/2021

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

C.M. No. 39489/2021

3. For the reasons stated in the application, the same is allowed and the delay in filing the appeal is condoned.
4. The application stands disposed of.

MAT.APP.(F.C.) 106/2021

5. The present appeal under Section 19 of the Family Courts Act is directed against the judgment & decree dated 27.05.2019 passed in H.M.A. No.246/2017. The said petition had been preferred by the respondent/ husband against the appellant/ wife to seek a decree of divorce under

Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground that he has been subjected to cruelty.

6. The brief facts are that the parties were married according to the Hindu rites & ceremonies on 02.12.2007. Out of the said wedlock, one male child was born on 15.11.2009. The said child is in the custody of the appellant. Disputes arose between the parties which led to the appellant filing the complaint to the CAW Cell, which resulted in registration of the FIR No.15/2013 under Section 498A/ 406/ 323/ 34 IPC at Women Police Station, Sonapat. The named accused in the said FIR were the respondent and his parents. The respondent and his parents were all taken into custody in the said case. Whereas the respondent remained in custody for three days, his parents were in custody for one day. Eventually, the accused, including the respondent, were acquitted on 10.08.2015. The appeal against the acquittal was filed by the appellant, which too was dismissed on 29.01.2016. Thus, the serious allegations of criminal conduct made against the respondent and his parents were not proved by the appellant. Premised on the said conduct of the appellant, the Family Court has returned a finding that the respondent was subjected to mental cruelty. Consequently, the decree of divorce has been passed in favour of the respondent and against the appellant.

7. The submission of learned counsel for the appellant is that when the respondent and his parents applied for bail, the same was not opposed by the appellant. The appellant had also filed a petition to seek restitution of conjugal rights under Section 9 of the HMA.

8. In our view, merely because the appellant may not have opposed the bail application moved by the respondent and his parents, is not sufficient to

efface the irresponsible conduct of the appellant. The mere fact that she made serious allegations of criminal conduct against the respondent and his parents – which she could not establish before the Court, was sufficient to constitute acts of cruelty against the respondent. How can the respondent be expected to allow the appellant into his life in these circumstances? The faith and trust – which is the foundation of a matrimonial bond stood completely demolished by the aforesaid conduct of the appellant. For a man to see his parents to be taken into custody and being incarcerated even for a single day would have caused immense and untold pain and agony to him. Admittedly, the appellant perused her allegations against the respondent and his parents in appeal as well. Did she not know that their conviction would have led to their being sentenced to imprisonment? Therefore, her conduct of not opposing the bail application is neither here, nor there.

9. The Family Court in the impugned judgment has observed as follows:

“17. I found force in the aforesaid submission of Ld. Counsel for the petitioner to the effect that due to the filing of the false case bearing FIR No. 15/2013 U/s 498A/403/323/34 IPC, PS Women Police Station, Sonapat against the petitioner and his both parents by the respondent, the petitioner remained in jail for 03 days and his both parents remained in jail for 01 days before grant of bail and they have been duly acquitted by Ld. JMFC, Sonapat vide judgment dated 10.08.2015, certified copy of which is Ex. PW-1/2 and even Appeal as filed by the respondent herein against the said Judgment of Acquittal dated 10.08.2015 was also dismissed by Ld. ASJ, Sonapat vide Judgment dated 29.01.2016, certified copy of which is Ex. PW-1/4, has caused cruelty upon the petitioner for entitling him for decree of divorce U/s 13 (1) (ia) of HMA as against the respondent herein and my said view is found supported from the judgment reported as (2014) 16 Supreme Court Cases 34 titled as "K Srinivas Vs. K. Sunita" as while dealing with the

similar aspect it was observed by Hon'ble Supreme Court of India as under:-

"This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well-reasoned judgment in K. Srinivas Rao v. D. A. Deepa in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce."

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25. In view of the aforesaid deposition of Petitioner/PW-1 and Respondent/RW-1 and considering the submissions of Ld. Counsel from both sides and keeping in mind that both the parties have been residing separately for last more than 07 years and by taking the cue from the aforesaid judgments as rendered by Hon'ble Supreme Court of India. I am of the considered view that the petitioner has successfully established the ground of Cruelty as contemplated U/s 13 (1) (ia) of HMA as against respondent and therefore, the petitioner is entitled to divorce on ground of cruelty as mentioned in the petition against the respondent. "

10. Accordingly, we find no merit in this appeal and dismiss the same.

11. Learned counsel for the appellant, at this stage, states that the appellant would be entitled to permanent alimony and the respondent is obliged to maintain the minor child who is in her custody. He submits that the respondent has not been paying the maintenance to the appellant. He submits that on the said aspect the matter could be resolved through

mediation.

12. To consider the aforesaid aspect of grant of permanent alimony to the appellant and for grant of maintenance for the child, issue notice to the respondent returnable on 10.12.2021.

VIPIN SANGHI, J

JASMEET SINGH, J

NOVEMBER 09, 2021

B.S. Rohella