



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

DATED : 22nd September, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RP(FAM.CT.) No.02 of 2015

Petitioner : Smt. Mala Rai,
W/ o Shri Bal Krishna Dhamala,
R/ o Chalamthang,
Pakyong,
East Sikkim.

versus

Respondent : Shri Bal Krishna Dhamala,
S/ o Dadhiram Dhamala,
R/ o Amba Busty,
Pakyong,
East Sikkim.

Revision Petition under Section 19(4)
of the Family Courts Act, 1984

Appearance

Mr. B. K. Gupta, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Umesh Ranpal, Ms. Kesang Choden Tamang and Mrs. Sashi Rai, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J

1. Aggrieved by the Order of the Learned Family Court,

East Sikkim in Gangtok, in Family Court Case No.51/ 2014, Reg.

No.35/ 2014, dated 11-05-2015, this Petition has arisen.



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2. It may be elucidated here that the parties were involved in three consecutive matters as detailed below ;

- (i) Family Court Case No.2/ 2014, in the Court of the Judge Family Court, East and North Sikkim at Gangtok (*Smt. Mala Rai Dhamala vs. Shri Bal Krishna Dhamala*). This pertained to an Application filed under Section 125 of the Code of Criminal Procedure, 1973. The Petitioner wife, therein, was granted relief and the Respondent husband was directed to make over a monthly maintenance allowance of Rs.5,000/- (Rupees five thousand) only, to the Petitioner.
- (ii) A second litigation ensued between the parties being a Family Court Case registered as H.M. Act 1955/ 83/ 2014, Reg. No. 77/ 14 (*Shri Bal Krishna Dhamala vs. Smt. Mala Rai*). The Petitioner therein, being the husband had sought a divorce under Section 13(1)(i) of the Hindu Marriage Act, 1955, on the ground that the Respondent his wife, had voluntary sexual intercourse with other persons during the subsistence of their marriage. The relief was duly granted to the Petitioner vide Judgment dated 18-04-2015.
- (iii) Another Application was filed by the Respondent herein, as the Petitioner, under Section 125(4) and (5) of the Code of Criminal Procedure, 1973 before the Family Court, East Sikkim, being Family Court Case No.51/ 2014 (*Shri Bal Krishna Dhamala vs. Smt. Mala Rai*), alleging therein that the Respondent, his wife was living in adultery. The Learned Trial Court on duly analyzing the evidence on record, granted relief to the Petitioner



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vide Order dated 11-05-2015, duly cancelling the Order of Maintenance granted in Family Court Case No.2/ 2014.

3. It is against the Order dated 11-05-2015 (*supra*) of the learned Family Court that this Revision has arisen.

4. The Learned Counsel for both parties were heard at length and their submissions given careful and due consideration. The relevant records have been duly perused.

5. Pertinent to the matter at hand is the fact the Petitioner herein had assailed the Judgment and Decree of Divorce dated 18-04-2015 in H.M. Act 1955/ 83/ 2014, Reg. No. 77/ 14 (*supra*), in Mat.App. No.01 of 2015 before this Court. After hearing the rival contentions of Learned Counsel at length, giving due and anxious consideration to the same and carefully perusing the relevant documents on record, the Judgment of the Learned Trial Court was upheld by a Division Bench of this Court, in which one of us (*M. M. Rai, J.*) was a part. This court, vide Judgment dated 16-06-2016 observed as follows;

“17. In view of the evidence on record which has been discussed hereinabove, there is no reason to doubt that the Appellant was in an adulterous relationship with D.W.3. It is thus apparent that the findings of the Learned Family Court warrant no interference.

18. In the result, the Appeal is dismissed. Decree be drawn accordingly.”



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6. It would thus be an exercise in futility to embark on a verbose discussion lending unwarranted prolixity to this decision in view of the finding of this Court in the Judgment in Mat.App. No.01 of 2015, following which nothing further survives to be discussed in the instant matter.

7. The impugned Order of the Learned Trial Court out of which this Revision arises consequently warrants no interference.

8. In the result, the Revision Petition is dismissed.

9. No order as to costs.

10. Copy of this Judgment be sent to the Learned Trial Court along with Records of the Court for information and compliance.

Sd/ -
(**Meenakshi Madan Rai**)
Judge
22-09-2016

Approved for reporting : **Yes**

Internet : **Yes**