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

Date of decision:- 11th September, 2024.

+ **CONT.CAS. (CRL) 8/2024**

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr. Madhav Khurana, Adv. Amicus
Curiae & Mr. Teeksh Singhal,
Advocate.

versus

ABHINAV KATHURIA

.....Respondent

Through: Mr Anubhav Mehrotra, Advocate
along with Respondent in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition arises out of the order dated 6th July, 2024 in the case titled '*Abhinav Kathuria vs. Shreya Kathuria*', G.P. No. 82/2023 by the learned Judge, Family Court-02, Shahdara District, Karkardooma Courts, Delhi, whereby a reference has been made to this Court under Section 15 (2) of the Contempt of Courts Act, 1971.
3. The allegations against the Respondent/Contemnor are that he used abusive language in the Court and upon the Court asking the Respondent/Contemnor and his Counsel to appear before the Court, they chose not to appear and walked away. The order dated 6th July, 2024 is a detailed one which sets out the background of the reference. The same is extracted below:



“1. The present is the guardianship petition filed by father of the child Sh. Abhinav Kathuria against the mother of the child Ms. Shreya Kathuriya.

2. There have been prior litigation between the parties and it was settled between the parties that child shall remain with the mother and petitioner was granted visitation rights. However, on 01.04.2024, petitioner had taken custody of the child from the respondent and did not return the child. Rather he moved an application before the Court that child may be placed in his permanent custody. This application was taken up on 12.04.2024.

3. During course of the proceedings, the petitioner got aggressive and used abusive and unparliamentary language in the Court. His conduct was noted by this Court in order-sheet dated 12.04.2024. While dismissing the application of petitioner for placement of the child in his permanent custody, his conduct and behaviour was noted which is as follows:

“19 In order to avoid creating any difficulty for the child while leaving with his mother as he appears to be under the influence of his father, it is deemed appropriate that child be sent with the mother from the backdoor after counseling. This was specifically done in view of aggressive behaviour of petitioner in the Court since morning when he appeared in the Court.

20 When it was told to the petitioner that in order to avoid any untoward incident in the Court and for the betterment of the child, the mother was advised to leave the Court &om the back door, the petitioner again got very aggressive.

*21 While leaving and when petitioner was near the exit gate of the Court, he used the abusive word " bh*****d". On being asked by the Court to stop, he and his counsel went away. It only shows that he is habitual in using such words. Using such words in the Court is undermining the*



authority of the Court, is scandalous, disrespectful, offensive and willful disobedience of the Court. Put up for further orders on this aspect on the next date."

4. On 22.04.2024, petitioner did not appear before the Court and Court issued the contempt notice. Order-sheet dated 22.04.2024 narrates the same. On this date, no apology was tendered by the petitioner. Thereafter, matter was listed before Division Bench of Hon'ble Delhi High Court on 26.04.2024 wherein proceedings were filed against the order for dismissal of his application. The Division Bench of Hon'ble Delhi High Court noted the conduct of the petitioner and expressed inclination to issue contempt notice. It was then that counsel for petitioner apprised Hon'ble Delhi High Court that the trial court had already issue contempt notice. Relevant extract of the order of Hon'ble Delhi High Court dated 26.04.2024 is as follows:

"6. This appeal is directed against order dated 12.04.2024 whereby the learned Family Court Judge withdrew the visitation rights given to the appellant/father, having regard to his conduct which, inter alia, included removal of the child from the custody of the respondent i.e. Ms. Shreya Kathuria.

7. What is disconcerting insofar as this Court is concerned, are the observations made by the learned Family Court Judge in paragraph 21 of the impugned order qua the appellant, which reads as under:

*"21 While leaving and when petitioner was near the exit date of the Court, he used the abusive work "bh*****d". On being asked by the Court to stop, he and his counsel went away, it only shows that he is habitual in using such words. Using such words in the Court is undermining the authority of*



the Court, is scandalous, disrespectful, offensive and willful disobedience of the Court. Put up for further orders on this aspect on the next date."

8 Given the deplorable conduct of the appellant, we have put the counsel for the appellant to notice that this is a fit case in which we would consider initiating contempt proceedings.

8.1 Counsel for the appellant says that the learned Family Court Judge has also taken cognizance of the conduct and the matter is listed before her on 13.05.2024.

8.2 Furthermore, counsel for the appellant says that the appellant will file an affidavit before the learned Family Court Judge, which would state in no uncertain terms that the appellant is apologetic for his conduct. 8.3 This aspect of the matter will be examined on the next date of hearing. 8.4 In any event, if any affidavit is filed, a copy of the same will be placed before us.

9. List the matter on 17.05.2024."

5. It was only after the deplorable conduct of petitioner was noted by Hon'ble High Court of Delhi that petitioner appeared and tendered his apology.

6. The application filed by petitioner before Hon'ble Delhi High Court was dismissed on the next date of hearing as visitation rights were already granted to him by this Court.

7. The above-mentioned conduct of petitioner in using defamatory and abusive language has scandalized the Court and lowered the authority of the Court. The use of such words in the midst of the Court proceedings, directed towards the Court, when the advocates were present in the Court, the staff was present and litigants were also present, has undermined the authority, dignity and respect of a Court of Law.

8. Such actions are discussed amongst lawyers, litigants and staff, leading to ridicule and further diminishing the



respect for the Judicial process beside being extremely embarrassing for the Judicial officer who has unnecessarily become part of such type of episode. Such slanderous and disparaging words directly affect the reputation and character of the Judge/Judicial officer involved beside undermining the authority and dignity of the Court and is in direct violation of the standards of decorum required in a Court.

9. Use of such slanderous, defamatory and disrespectful language and the effects which it had ensued in lowering the image of judiciary, undermining the authority and dignity of Court cannot be undone by writing an apology on a piece of paper.

10. Further petitioner does not appear apologetic and remorseful at all.

11. In the circumstances, it is humbly submitted that petitioner is found to be guilty of Criminal Contempt. This reference is hereby made to Hon ble Delhi High Court u/s 15(2) of Contempt of Courts Act for further proceedings as per law.

12. Matter is referred to Hon'ble Delhi High Court for further orders.”

4. On 31st July, 2024, the present reference was listed before this Court and on that day, show cause notice as to why contempt action ought not to be initiated, was issued to the Contemnor. The Court had also appointed Mr. Madhav Khurana, Advocate as *Amicus Curiae* to assist the Court.

5. The Contemnor is present in Court today along with his Counsel.

6. The *Id. Amicus Curiae* has placed today a brief note of submissions. The first submission of the *Id. Amicus* is that the contemnor was involved in a matrimonial dispute with his wife and he had tendered an unconditional apology for his conduct before the *Id. Family Court*. He, however, also adds that the *Family Court* could have at best constituted a reference and referred the matter to this Court but the *Id. Family Court* could not have issued show



cause notice and come to any conclusion that the Contemnor had in fact committed contempt. Various judgments are relied upon by the Id. *Amicus Curiae*.

7. It is also urged that the power of Courts in case of contempt ought to be exercised sparingly and the circumstances in which the Contemnor has committed contemptuous acts has to be considered. Ld. *Amicus Curiae* also submits that the circumstances of heightened emotions, anger or frustration of the Contemnor in a matrimonial dispute would also deserve to be considered.

8. On behalf of the Contemnor, Id. Counsel has handed over a final settlement agreement dated 20th July, 2024, wherein, the disputes between the Contemnor and his wife have been finally resolved. It is submitted in terms of the settlement, the custody of the minor son is now with the father, *i.e.*, Contemnor, subject to various conditions.

9. Ld. *Amicus Curiae* has pointed out that an unconditional apology has been tendered by the Contemnor before the Family Court itself. In the said affidavit, the Contemnor has sought to explain the circumstances that led to his misbehaviour. He however states that he has great remorse and real contrition from his conduct. The relevant paragraphs of the said affidavit are set out below:-

“2. I state that the present Affidavit Cum Reply is being filed in terms of order dated 22.04.24 passed by this Ld Court as well as order dated 26.04.2024 passed by Hon'ble High Court of Delhi in MAT APP (FC) 139/2024.

3. That I state that that on 12.10.05 the marriage between the parties was solemnized at Sahibabad on 12.10.05 as per Hindu rites and Customs.

4. That I state that due certain differences between the parties herein litigation had ensued which was however



settled before the Ld Judge, Family Court, Shahdara, Karkardooma Court, Delhi vide Mediation Agreement dated 04.10.21.

5. I state that in the terms of the settlement I had done the needful and continued to do the needful as agreed. It is further stated that in terms of Agreement, I was also to be provided visiting rights for a period of 2 hrs daily at a place convenient to the wife and child. It was also agreed that on every weekend, the child shall remain with the husband from 3.00 pm on Saturday till 12.00 noon on Sunday subject to convenience of the Respondent and the minor child.

6. I state that post mediation agreement due to certain differences and misunderstandings between the parties flesh litigation came to be filed and thus the present petition seeking guardianship of my minor son Master Yuv Kathuria who is presently around 8 years of age came to be filed by me before this Ld. Court.

7. I state that my son and I have deep bonding and attachment and I am very emotionally attached to him and can't loose his sight and when on 12.04.2024 an order came to be passed against me and my meeting hours were denied and my child was directed to be given to my Respondent wife after counseling. It is further stated that when I saw my child leaving with the Respondent wife from the back door and upon the query being raised to this Ld Court, this Ld Court specifically told me that they shall be allowed to go through the back door on the premise to avoid any confrontation. It state that such was the heat of that moment that it triggered my emotions and I got provoked at the spur of the moment since I had completely lost my sense of thoughtfulness which I should not have and I was not in any state of mind to distinguish between what should be said and what should not be said before whom.

8. I state with most humbleness that I have great remorse and real contrition for my conduct which was totally non deliberate and unintentional and I undertake with full



responsibility that the same shall not be repeated again.

9. I state that I am law abiding citizen and I have full faith and due regard to the majesty and dignity of the Indian Judiciary and its judges and I seek unconditional pardon for my conduct which happened during the Court proceedings on 12.04.2024.

10. I state that I have great regret for the unparliamentary language which was used before this Ld Court which was an inadvertent error and shall not be repeated henceforth in future and I shall always remain careful about my conduct before any court of law or any other person.”

10. The Court has considered the matter and has heard the Contemnor as also his Counsel and the Id. *Amicus Curie*.

11. Having regard to the fact that the conduct of the Contemnor though completely unbecoming, appears to have taken place in a circumstance of frustration and in the midst of a matrimonial spat with his wife where his son's custody was also involved, this Court is of the opinion that the Contemnor may not have had any intention to show disrespect to the Court. The Contemnor, has admitted that in a moment of anger and frustration, had misbehaved with the Id. Family Court.

12. There can be no doubt that a litigant cannot be allowed to indulge in contemptuous conduct against a Court. However a perusal of the affidavit filed shows that the said conduct occurred at a time when the son of the Contemnor was being separated from him. Such moments could be traumatic and emotional moments for a father that it is believable that he may have lost control and misbehaved. The contemnor clearly did not intend to cause disrespect or impede the administration of justice. The power of contempt, specifically criminal contempt, ought to be exercised sparingly as the Court



is not personally involved in such matters and can be compassionate and empathetic to such circumstances, especially when the Contemnor is expressing remorse.

13. Keeping in mind the overall facts and circumstances, this Court accepts the apology of the Contemnor subject to the condition that the Contemnor shall deposit a sum of Rs.25,000/- to the Delhi High Court Legal Services Committee, within 1 week.

14. Subject to the above condition, the apology is accepted and the Contemnor is discharged.

15. The contempt case is disposed of along with all pending applications.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

SEPTEMBER 11, 2024/bsr/bh/pr