



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 19TH DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 101416 OF 2024 (MC)

BETWEEN:

SRI. LAXMAN S/O. IRAYYA NAIK
AGED ABOUT 36 YEARS, OCC NIL,
R/O. #136, MANNEND, TATTIHAKKAL
SHIRALI, BHATKAL TALUK,
UTTAR KANNADA DISTRICT .

...APPELLANT

(BY SRI RAMACHANDRA V. BHAT, ADVOCATE)

AND:

SMT. BHAVANI
D/O. JATTA NAIK W/O. LAXMAN NAIK
AGED ABOUT 33 YEARS, OCC: NIL
R/O. #136, MANNED, TATTIHAKKAL,
SHIRALI, BHATKAL TALUK,
UTTAR KANNADA DISTRICT.

...RESPONDENT

(BY SRI R.H. ANGADI, ADVOCATE)

THIS MFA IS FILED U/S.28(1) OF THE HINDU MARRIAGE ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 25.01.2024 IN M.C.NO.23/2023 PASSED BY THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BHATKAL BY ALLOWING THE MISCELLANEOUS FIRST APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.



THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE GEETHA K.B.)

Appellant-husband has filed this appeal under Section 28 of the Hindu Marriage Act, 1955 praying for setting aside the judgment and decree passed in M.C.No.23/2023 dated 25.01.2024 on the file of Senior Civil Judge, Bhatkal (for short, 'Trial Court'), wherein petition for divorce filed under Section 13(1)(i) & (ia) of Hindu Marriage Act, by the appellant-husband was dismissed.

2. The parties would be referred with their ranks as they were before the Trial Court for convenience and clarity.

3. The brief facts of the case are that petitioner-husband has filed the divorce petition before the Trial Court under Section 13(1) (i) & (ia) of Hindu Marriage Act praying for dissolution of his marriage that had solemnized with



respondent on 17.04.2016 at Namdari Sabha Bhavan, Sharadahole, Shirali. The petitioner contended that he is working in Dubai since 12 years. From the wedlock, respondent gave birth to a daughter. Earlier to marriage, she was working in Dharmastala Sangha, but after the marriage, respondent discontinued her job as petitioner provided all basic necessities to her. Since three years, respondent is forcing the petitioner to make separate residence and due to her cruelty, petitioner has separated along with respondent in the same house by making partition. Respondent requested the petitioner that she intends to start a beauty parlour shop as she was residing alone and hence as per her request, beauty parlour shop was also installed for her. Respondent started neglecting petitioner and she was always busy with her work and in mobile phone by chatting with others without taking care of petitioner and the child. Further, she developed the habit of assaulting the child and to pour hot water on her body and send those photos to the petitioner. When petitioner



questioned it, she gave threat that she would commit suicide by consuming poison. He has paid sufficient money to respondent, but she was not satisfied with it and often demanding money from him. Further, on one day petitioner verified the mobile phone of respondent and noticed that she was having illicit relationship with one Sri Jairam and one Sri Ishwar and said Jairam had sent number of messages to the respondent through his mobile phone number 9900999895. Those messages sent by said persons are bad. Hence, respondent caused mental harassment to the petitioner. She had illicit relationship with others. Even though petitioner advised her not to repeat the same and to lead happy marital life with him, she refused to do so. Hence, he prayed for allowing the petition.

4. After service of notice, respondent has not appeared and thus placed ex-parte before the trial court.

5. Afterwards, on behalf of petitioner, he was examined as P.W.1 apart from marking Exs.P.1 to P.4 and



closed his side before trial court. Even though, there was no rebuttal to his evidence, the trial court dismissed his petition for grant of divorce.

6. Aggrieved by the same, the appellant/petitioner-husband has filed the present appeal.

7. Learned counsel for appellant, Sri Ramachandra V Bhat would submit that the dismissal of petition by the Trial Court is illegal and erroneous. The learned Trial Judge has not considered the factum of photographs produced by the petitioner before the Trial Court and not considered that his evidence was not rebutted. The trial court took stand that in case of opposite party not contested the petition, the Court has to stand on the foot of the opposite party, which is not known to law. The trial court has not examined the materials before it independently. The learned Trial Judge disbelieved his evidence and dismissed the petition, which is erroneous.



8. Learned counsel for appellant would further contend that as per the will and wish of the respondent, separate residence was also made to her and beauty parlor was also installed to her. The photographs produced by the appellant would depict the cruelty inflicted by respondent to the minor child i.e., injuries on body of minor child and also pouring hot water to her. That itself shows the attitude of respondent which definitely inflicted cruelty upon the appellant. However, learned Trial Judge has not verified these facts. Hence, prayed for allowing the appeal and to grant the decree of divorce at least on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

9. Learned counsel for respondent, Sri R.H.Angadi would submit that even though the appellant was not cross-examined by the respondent before Trial Court, it was the duty of appellant to prove cruelty and adultery alleged against respondent by him independent of the cross-examination. However, he has not produced any material before the Trial Court to substantiate these facts.



Considering these facts, rightly, the learned Trial Judge dismissed the petition. Hence, prayed for dismissal of appeal by confirming the judgment of Trial Court.

10. Having heard the arguments of both sides and verifying the records, the only point that would arise for consideration is:

"Whether the Trial Court erred in coming to the conclusion that petitioner/appellant has not proved the adultery alleged against respondent and the cruelty inflicted by respondent is not established?"

11. Our finding on this point is in '**negative**' for the following reasons:

12. The admitted facts of the case are that the petitioner and respondent are husband and wife and they got a minor child from the wedlock.

13. The main allegation of the petitioner is that the respondent is living in adultery with one Jairam and Ishwar.



However, the petitioner has not made those persons as parties in the petition. Further, he has not examined any independent witnesses to substantiate that respondent is living in adultery with those persons.

14. It is only alleged in the petition that once, petitioner verified the mobile phone of respondent and found that there were some vulgar messages by Sri Jairam and Ishwar sent to the respondent. However, to substantiate it, petitioner has not produced those messages. Even otherwise, if there is any such message by those two persons, if respondent has not replied to it, then it would not prove the allegation of petitioner.

15. To get divorce under Section 13(1)(i) of the Hindu Marriage Act, the husband has to prove that wife had voluntary sexual intercourse with another person during subsistence of her marriage with the petitioner. However, there is no such clear allegation in the petition and it is not at all proved in accordance with law.



16. Considering these aspects, rightly, the learned Trial Judge came to the conclusion that petitioner failed to prove the ingredient of Section 13(1)(i) of the Hindu Marriage Act.

17. Another allegation against respondent is that respondent was and is treating the petitioner with cruelty. There are some bald allegations of cruelty against respondent by the petitioner. He has stated that respondent has poured hot water on his daughter and caused injuries to her and there are photographs to establish it. The learned Trial Judge in the impugned judgment at paragraph No.18 has made an observation that on perusal of the photographs at Ex.P.1, there is some wound mark on the body of baby, but there is no evidence to show that respondent herself has assaulted the child and caused those injuries to the child and there is no independent evidence to substantiate it.



18. Mere production of photographs will not establish the assault to child or causing injury to child or pouring hot water to the child by respondent. Considering it, rightly, learned Trial Judge has come to the conclusion as stated above. Except producing those photographs and its CD, nothing is produced by the petitioner to prove the cruelty inflicted by the respondent.

19. In the absence of any independent evidence to prove the cruelty, we are of the considered opinion that petitioner failed to establish even the ground of cruelty to get the decree of divorce.

20. Considering all the above aspects in proper manner, rightly, the learned Trial Judge dismissed the petition, which needs no interference.

21. Hence, we proceed to pass the following:

ORDER

Appeal filed under Section 28 of the Hindu Marriage Act, 1955 is dismissed by confirming the judgment and



**NC: 2025:KHC-D:15890-DB
MFA No. 101416 of 2024**

decree passed in M.C.No.23/2023 dated 25.01.2024 on the
file of Senior Civil Judge, Bhatkal.

**Sd/-
(S G PANDIT)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

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