

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 185 of 2004****Reserved on 13-8-2018****Decided on 27-8-2018**

- Smt.Sumitra w/o. Shiv Kumar Kanwar, aged about 25 years, r/o/ village Tendukona, PO Pithora, District Mahasamund (CG).

---- Appellant**Versus**

- Shiv Kumar aged about 34 years, s/o. Bhagchand Kanwar, r/o. Kanakoat, PS Palari, presently residing at Gardeen Chowk, Baloda Bazar, District Raipur (CG).

---- Respondent

For appellant	:	Ms. Juhi Pandey, Advocate.
For respondent	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. The appellant has preferred this appeal under Section 28 of the Hindu Marriage Act, 1955 (for short, "the Act, 1955") against the judgment and decree dated 25-6-2004 passed by the First Additional District Judge, Baloda Bazaar, Civil District Raipur (CG) in Hindu Marriage Case No. 15-A/2003 wherein the said court granted decree of divorce in favour of the respondent/husband on the ground mentioned in Section 13 (1) (i) of the Act, 1955 that the appellant/wife has, after the

solemnization of the marriage had voluntary sexual intercourse with one Harish Choudhary other than her spouse.

2. As per case of the appellant, there is evidence that the respondent did not like the appellant for her complexion and had in a planned way created evidence regarding her infidelity. It is further case of the appellant that the person with whom appellant had illicit relation has not been examined, therefore, it is not a case warranting grant of decree of divorce.
3. It is a case of the statement of oath by the appellant against the statement of oath by the respondent. The respondent stated regarding illicit relation between one Harish Choudhary and the appellant while the appellant denied the same. It is not clear from the evidence regarding residence of Harish Choudhary and said Harish Choudhary is unknown to the record of the trial Court because he was not a party in the proceeding and did not appear or enter into witness box before the trial Court. When the appellant has denied the version of the respondent to the effect that she had never any sexual intercourse with the said Harish Choudhary and said Harish Choudhary has nowhere appeared, it was not proper for the trial Court to reject the denial made by the appellant. The trial Court had no reason to reject the denial as false, therefore, the ground under Section 13 (1) (i) of the Act, 1955 is not established before the trial Court.

4. The other aspect of the matter is that the trial Court completely overlooked the provision of Section 25 of the Act, 1955 which is enacted for permanent alimony and maintenance as per provisions in the Act enacted for the same and not granted any sum as alimony.
5. For the foregoing reasons, the judgment and decree passed by the trial Court is not sustainable and same is reversed.
6. Accordingly, the appeal is allowed and decree is passed in favour of appellant and against respondent as under:
 - (I) Setting aside the decree, the suit filed by the respondent is hereby dismissed.
 - (ii) Parties to bear their own costs.
 - (iii) Pleader's fee, if certified, be calculated as per Schedule or as per certificate whichever is less.
 - (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju