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F.A.No.355/2004

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 13th OF OCTOBER, 2022

BETWEEN:-

**VEERAM S/O SHIVJI, AGE 30 YEARS, OCCUPATION LABOUR,
R/O GRAM PIPLIYAPAL, TAHSIL SARANGPUR, DISTRICT
RAJGARH (MADHYA PRADESH)**

.....APPELLANT

(NONE FOR THE APPELLANT)

AND

**SHAITAN BAI W/O VEERAM, AGE 25 YEARS, OCCUPATION
AGRICULTURE, R/O GRAM BASKHEDA, TAHSIL AND
DISTRICT RAJGARH (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR THE RESPONDENT)

*This appeal coming on for final hearing this day, **JUSTICE
VIVEK RUSIA** passed the following:*

JUDGMENT

1) Since no one was appearing in this appeal, therefore, S.P.C was issued to the appellant on 19.02.2009. Thereafter Shri Sanjay Sharma, Advocate appeared on behalf of the appellant on

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02.04.2009 but he stopped appearing in the matter, therefore, the appeal was dismissed in default on 09.09.2010. Thereafter the appellant filed an M.C.C seeking restoration of the appeal and vide order dated 05.05.2011 the appeal was restored to its original number. The appeal came up for hearing on 17.04.2013 but no one appeared on that date. Thereafter the matter was listed before the National Lok Adalat, there also no one appeared on behalf of the appellant as well as respondent.

Since this First Appeal is pending since 2003, therefore, we are deciding it on merit.

2) Appellant/husband has filed this appeal against the judgment dated 14.05.2004 passed by the 1st Additional District Judge, Shajapur in H.M.A Case No.2A/03 whereby the application filed under section 13(1)(1)(1a) of the Hindu Marriage Act has been dismissed.

3) Appellant filed the aforesaid application seeking the dissolution of the marriage on the ground of adultery and cruelty. According to the appellant, the marriage with the respondent was solemnized 8 years ago under Hindu customs and rituals. Thereafter they started living together in the house situated at Gram Pipliyapal, Tahsil Sarangpur. Respondent gave birth to a male child viz. Rahul on 04.07.1996. She filed an application under section 125 Cr.P.C seeking maintenance for

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herself as well as her child which was dismissed on 27.12.2002 for her but maintenance was allowed to the child at the rate of Rs.1500/- per month.

4) Appellant filed an application under section 10 of the Guardian and Wards Act before the District Judge, Shajapur and vide order dated 17.11.2003 the application was allowed and the custody of child Rahul was given to him.

5) Appellant filed an application under section 13(1)(1)(1a) of the Hindu Marriage Act alleging that the respondent is residing with one Jaswant Pal in adultery. She assaulted his mother for which an FIR was lodged against her, therefore, he is entitled to divorce on the ground of adultery and cruelty.

6) Respondent filed a written statement disputing the aforesaid facts and allegations. According to her, the appellant was interested in the second marriage, therefore, he deserted her. She is still willing to reside with him as wife and to perform the marital obligations.

7) On the basis of the pleadings, the learned Additional District Judge has framed 3 issues for adjudication which are as under:

१. क्या अनावेदक ने विवाह के अनुष्ठापन के बाद जसवंत पाल के साथ स्वीच्छया मैथुन किया।
२. क्या अनावेदक ने आवेदक के साथ कुरता का व्यवहार किया।

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३. सहायता एवं व्यय।

8) In support of the application, the appellant examined himself as PW/1, Amar Singh as PW/2, Premsingh as PW/3, Kasturibai (mother) as PW/4, Ramchandra as PW/5 and in the defence respondent examined herself as DW/1, Jaswantsingh as DW/2 & Ajabsingh as DW/3. After evaluating the evidence that came on record, vide impugned Judgment & Decree the learned Additional District Judge has held that the appellant has failed to prove the allegation of adultery as well as cruelty, therefore, he is not entitled to dissolution of marriage, hence this first appeal before this Court.

We have perused the record of the learned Trial Court and we are of the opinion that there is no substance and the First Appeal is liable to be dismissed due to the following reasons .

9) So far as the allegation of adultery is concerned, according to the appellant the respondent is residing with Jaswant Singh as his wife and he saw her going to the house of Jaswant Singh 5 months ago. He has also examined other witnesses i.e. PW/2, PW/3 and PW/4 to establish that they also saw the respondent along with Jaswant Singh on several occasions. It settled the law that mere roaming along with any male other than the husband does not constitute a presumption of adultery against the wife. There must be direct evidence to

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establish that she was seen in a compromising position or adultery with other than her husband then only the charge of adultery can be said to have been established. Merely meeting or roaming with a person other than the husband does not constitute adultery, therefore, the trial Court has rightly held that the allegation of cruelty has not been established.

10) The appellant has also challenged the findings on the ground that learned trial Court has denied the maintenance under section 125 Cr.P.C doubting the character of the respondent. It is settled law that the findings recorded while deciding the application under section 125 Cr.P.C do not constitute *res judicata*. The proceedings under section 125 Cr.P.C are summary proceedings where the allegation and counter allegation are not liable to be established beyond reasonable doubt and only desertion or inability to maintain are liable to be examined, therefore, the trial Court has rightly rejected the aforesaid application and we also do not find any substance in that ground raised by the appellant.

11) So far the cruelty in respect of registration of criminal case concerned, that was filed by the mother of the appellant against respondent Shaitanbai in which she has been given the benefit of the Probation of Offenders Act, therefore, that does not constitute cruelty against the appellant, hence we do not find

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any ground to interference in the impugned judgment.
Accordingly, the appeal is dismissed.

The record be sent back to the concerned court.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

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