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**(2018) 08 CHH CK 0286**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 185 Of 2004

Sumitra

APPELLANT

Vs

Shiv Kumar

RESPONDENT

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**Date of Decision:** Aug. 27, 2018

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13(1)(i), 25, 28

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Juhi Pandey

**Final Decision:** Allowed

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### **Judgement**

Ram Prasanna Sharma, J

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.

Â (iv) A decree be drawn up accordingly.