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IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE M.I.ARUN

AND

THE HON'BLE MRS JUSTICE USHARANI

MISCELLANEOUS FIRST APPEAL NO. 102914 OF 2022

(FC)

BETWEEN:

[redacted]

...APPELLANT

(BY SRI. C.S. SHETTAR AND KAVYA C, ADVOCATE)

AND:

[redacted]

...RESPONDENT

(NOTICE IS SERVED TO RESPONDENT)

THIS MFA IS FILED U/S.19(1) OF THE FAMILY COURTS ACT 1984, PRAYING TO ADMIT THE APPEAL AND CALL FOR THE RECORDS OF THE TRIAL COURT AND ALLOW THE APPEAL REVERSING THE JUDGMENT AND DECREE PASSED IN M.C.NO.101/2018 DATED 21.06.2019 PASSED BY THE LEARNED I ADDITIONAL PRINCIPAL JUDGE FAMILY COURT AT GADAG AND THEREBY PASS THE DECREE DISSOLVING THE MARRIAGE BETWEEN THE APPELLANT AND RESPONDENT DATED 17.02.2012 AND GRANT SUCH OTHER RELIEFS AND ORDER, DEEMED FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

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THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 29.10.2026 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN
AND
HON'BLE MRS JUSTICE USHARANI

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE USHARANI)

Aggrieved by the judgment and decree in M.C.No.101/2018 dated 21.06.2019 passed by I Additional Principal Judge, Family Court, Gadag (hereinafter referred to as 'Family Court'), the appellant-husband has preferred this Appeal seeking to set aside the same.

2. The facts of the case, as averred in the petition, are that the marriage of the appellant and the respondent was performed on 17.02.2012 as per customs and traditions prevailing under the Hindu law. Thereafter, they have started leading their matrimonial life at the house of appellant at Hombal village, Gadag Taluk. A few months after the marriage, the respondent-wife started expressing her unwillingness to continue residing in the joint family. She also frequently criticized the appellant for his inability to secure a stable and definite source of income and, in an insensitive manner, stated

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that she had married him only due to the pressure exerted by her parents. The respondent's reluctance to join appellant's company, her prolonged absence from the matrimonial home and visits to Gadag, became a matter of concern to the appellant. On 22.05.2018, after respondent was caught red-handedly with one [redacted] at the house o[redacted] [redacted] [redacted]natched mangalsutra of the respondent and escaped on a motorcycle. Thereafter, when the respondent was handed over to Gadag Rural Police, she disclosed that she was having illicit relationship with [redacted] and out of the said relationship, she had conceived. Hence, Crime No.181/2018 has been registered against [redacted] and [redacted] It is further averred that the respondent was a quarrelsome lady and has failed to discharge her marital obligations, thereby caused mental and physical torture to the appellant. Hence, the appellant filed petition seeking divorce under "*Section 13(1)(1)(a) of the Hindu Marriage Act, 1955"* (hereinafter referred to as 'the Act' for short).

3. Though provision i.e., Section 13(1)(1)(a) of the Act, has been wrongly referred in the petition, same is reproduced as it is, wherever required.

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4. Respondent-wife has filed objection before the Family Court admitting the relationship between the parties, but has denied the allegations made against her and has contended that it is the appellant and his family members who have subjected her to cruelty and drew her out of the matrimonial home. At the time of her 'Simanta', they have demanded more gold and cash. Further, they have also forced her to transfer a house allotted to her under the 'Women Scheme' by executing Relinquishment Deed. When she has refused for the same, they have filed this petition.

5. The Family Court, after considering evidence of PWs.1 to 3 and documents Exs.P1 to P15 produced by the appellant and also the evidence led by the respondent/RW1, by relying upon judgments in the cases of ***Arunkumar Agarwal Vs. Radha Arun and another***[1] and ***Chennigaiah Vs. Smt. Lakkamma @ Laxmamma***[2] held that, since adulterer is not arrayed as a party to the proceedings, petition is not maintainable. Further, it held that the appellant has failed to prove the allegations levelled against the respondent and consequently dismissed the petition.

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[1] ILR 2004 KAR 808
[2] MFA No.10187/2011

6. In spite of service of notice to the respondent in this appeal, she has remained absent.

7. Heard the learned counsel for the appellant-husband and perused the materials on record.

8. The point that arises for consideration is as follows:

> *(i) Whether the impugned order in M.C.101/2018 passed by Family Court, Gadag warrants interference?*

9. There is no dispute with regard to the marital relationship existing between the appellant and respondent. It is important to note here that M.C.No.101/2018 has been filed under *"Section 13(1)(1)(a)"* of the Act (as noted supra, the appellant has wrongly mentioned the provision in the petition), seeking dissolution of marriage on the ground of cruelty, but pleadings attract the grounds of adultery as well as cruelty. Therefore, the family court had raised following points for consideration:

> *i. Whether the petitioner has made out grounds to dissolve the marriage of the petitioner with the respondent as prayed for?*

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ii. What order?

10. In order to answer the above points, the Family Court has discussed the allegations of adultery as well as cruelty urged for dissolution of marriage by the appellant and proceeded to pass the following:

"ORDER

> *The Petition filed by the petitioner U/s 13(1)(ia) of the Hindu Marriage Act 1955 is hereby dismissed with costs.*
>
> *Draw decree accordingly."*

11. In view of the above, we deem it appropriate to discuss both the grounds of adultery as well as cruelty. As noted *supra,* Family Court has relied upon judgments in the cases of ***Arunkumar Agarwal and Chennigaiah*** *(referred supra)* and held that since adulterer is not arrayed as a party to the proceedings, petition is not maintainable.

12. It is relevant to note here that in ***Arunkumar Agarwal,*** the Hon'ble Division Bench held that, where Court has to decide whether the respondent had voluntary sexual intercourse with another, the Court would be in a better position to effectively adjudicate the *lis* between the parties if

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adulterer is arrayed as a respondent. Further, the Court held that adulterer will be a proper party to the proceedings under Section 13(1)(i) of the Hindu Marriage Act and will not be a necessary party. The principles enunciated in the above judgment was reiterated by the Division bench of this Court in the case of ***N. Vijaykumar Vs. Latha @ Sangeetha***[3], wherein it was held that alleged adulterer is a proper party for the purpose of effective and complete adjudication of issues in controversy between the parties.

After adverting to the principles enshrined above, we hold in this case that when issue is with regard to adulterous relationship alleged by one party against another, the Trial Court erred in holding that the petition is not maintainable on account of non-arraignment of adulterer as a party to the proceedings.

13. With regard to the allegation that, on 22.05.2018, the respondent was found to be in illicit relationship with one [redacted] at the house of Mustafasaba Kalakeri, FIR 181/2018 has been registered in Gadag Rural Police Station against adulterer and the owner of the house, alleging offences

[3] MFA 200801/2021 (Kalburgi bench)

punishable under Section 392, 497, 114 and 34 of Indian Penal Code. It was alleged in the said complaint that when appellant's aunt and her son Mallappa Balanagouda Patil informed the appellant that, they have red-handedly caught respondent and [redacted], he rushed to the spot and was devastated to find them in partially dressed state. [redacted] extricated himself and before speeding away on a motorcycle snatched mangalya chain from the neck of the respondent. Pursuant to this, respondent was produced before Gadag Rural Police where she has admitted developing illicit relationship with [redacted].

14. The above allegations in the complaint as well as the evidence of the PW1 transpires that the appellant has not witnessed the incident and based on the information given by his aunt and her son, he became aware of the same. However, on the contrary during his cross examination, the appellant deposed that he found respondent and [redacted] in the custody of his aunt and her son and they were naked. It is necessary to note here that, before the Family Court, the appellant (PW1) had deposed that he had lodged the complaint immediately after the alleged incident, whereas PW2-aunt of the appellant deposed that she had lodged the complaint. In fact, the complaint was lodged by PW1, that too after expiry of

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six days. Pertinently, the above mentioned aunt of the appellant and her son (PW2 and PW3) who were said to be the eye witnesses to the alleged incident, are related to the appellant. If at all respondent was caught red-handedly, non-filing of complaint on the very same day makes the occurrence of the alleged incident improbable and the same has been rightly observed by the Family Court.

15. The contention of the appellant was that after the alleged incident, the respondent was produced before Gadag Rural Police Station and that the respondent has admitted her guilt. Thereafter, she was sent to Betageri rehabilitation centre for women, where she remained for three days. Thereafter, fifteen elders of the village met her and spoke to her. But she has denied admitting guilt and has admitted in her evidence that she was at rehabilitation centre for three days. Further, she has also stated that her mother took her to their village from rehabilitation centre. From the above facts and admission regarding remaining in rehabilitation centre, we opine that there is dispute between appellant and respondent, which is at best a natural wear and tear in their marital life but it does not prove that respondent is in an adulterous relationship.

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16. Moreover, the appellant and his learned counsel has not produced any details pertaining to the pendency or disposal of the criminal proceedings in C.C.No.737/2018 arising out of FIR No. 181/2018 of Gadag Rural Police Station. Upon verifying the case status on e-courts, it is found that C.C.No.737/2018 on the file of II-Additional Civil Judge and JMFC-II, Gadag has been disposed of, by acquitting [redacted] and Mustafasaba Kalakeri.

17. Available materials show that, at the time of registering afore-mentioned criminal case, the respondent was pregnant. However, the appellant has denied organizing baby shower for the respondent. According to the respondent, there was a demand for gold and money from the family members of the appellant on the day when baby shower was organized. Further, it was alleged that they have also demanded transfer of the house which stood in her name. But, the respondent has not produced any evidence in support of her contention.

18. Further, appellant has contended that the respondent has conceived from the illicit relationship. In this regard, during the course of the cross examination, it was put to RW1 that whether she is ready to have DNA test, for which

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she has answered that the child is born to the appellant and she is not ready to undergo DNA test. Considering the above facts, the Trial court has rightly relied upon the case of *V. **Anandappa Vs. V. Shivaraju and another***[4] and discussed that there is presumption in favor of respondent regarding the legitimacy of the child born during the continuation of valid marriage. It is for the appellant to prove non-access to dispel the presumption arising under Section 112 of Indian Evidence Act, 1872.

19. As already discussed *supra*, appellant has also alleged cruelty but has not produced supportive evidence. Though respondent/RW1 was cross examined at length on this point, nothing much was elicited in support of the case of the appellant. In view of the above discussion, point for consideration is answered in the negative. Hence, the following:

ORDER

(i) The appeal is ***dismissed***.

(ii) Consequently, the judgment dated 21.06.2019 in M.C.No.101/2018 passed by

[4] (2011) 4 Kant LJ 73; 2010 SCC Online Kar 5076.

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Ist Additional Principal Family Court, Gadag, is confirmed.

(iii) No order as to costs.

(iv) Registry is directed to remit back the trial court records forthwith.

Sd/-
(M.I.ARUN)
JUDGE

Sd/-
(USHARANI)
JUDGE

YAN
CT:CNB