



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 1/4/2015

C O R A M

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD (MD) Nos.1559 and 1560 of 2014

T.Arunachalam ... Petitioner/Petitioner/Respondent
(In both CRP's)

Vs

Srividya ... Respondent/Respondent/Petitioner
(In both CRP's)

Prayer in C.R.P.NPD (MD) No.1559 of 2014: Petition filed under Article 227 of the Constitution of India to set aside the order and decree in I.A.No.16 of 2014 in H.M.O.P.No.172 of 2012 dated 29/4/2014 on the file of the Principal Subordinate Judge, Tiruchirapalli.

Prayer in C.R.P.NPD (MD) No.1560 of 2014: Petition filed under Article 227 of the Constitution of India to set aside the order and decree in I.A.No.465 of 2013 in H.M.O.P.No.172 of 2012 dated 29/4/2014 on the file of the Principal Subordinate Judge, Tiruchirapalli.

For petitioner ... Mr.C.T.Perumal

For respondent ... Mr.R.Velmurugan

C O M M O N O R D E R

In H.M.O.P.No.172 of 2012 filed by the wife under Section 13 (1) (i) (a) of the Hindu Marriage Act, the husband had filed I.A.No.16 of 2014 praying to refer the respondent/wife before the Medical Board for examination for the purpose of proving that the marriage was consummated. The said application was dismissed by the Principal Subordinate Judge, Tiruchirapalli. Aggrieved by the same, the above Civil Revisions have been filed.

2. The learned counsel for the petitioner submitted that O.P for dissolution of the marriage itself has been filed by the wife only on the ground of non-consummation of marriage owing to the impotency of the husband and the resultant cruelty. As the main allegation of the wife was that she was deprived of the conjugal bliss owing to the physical condition of the petitioner, the above application had to be filed.

3. The learned counsel for the petitioner also submitted that the petitioner/husband is also willing to subject himself to the medical examination. As the order passed by the learned Subordinate Judge, Tiruchirapalli is a non-speaking order, he prayed for setting aside the same and for allowing the application to subject the respondent to medical examination.

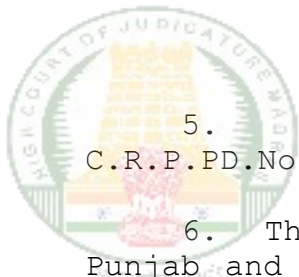


4. In support of his contention, the learned counsel also placed reliance on SHARDA Vs. DHARMPAL {2003 (2) CTC - 760} in which the three member Bench of the Supreme Court has held in paragraph Nos.71 and 72 as follows:-

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"71. The matter may be considered from another angle. In all such matrimonial cases where divorce is sought, say on the ground of impotency, schizophrenia... etc.. normally without there being medical examination, it would be difficult to arrive at conclusion as to whether the allegation made by his spouse against the other spouse seeking divorce on such a ground, is correct or not. In order to substantiate such allegation the petitioner would always insist on medical examination. If respondent avoids such medical examination on the ground that it violates his/her right to privacy or for a matter of right to personal liberty as enshrined under Article 21 of the Constitution of India, then it may in most of such cases become impossible to arrive at a conclusion. It may reader the very grounds on which divorce is permissible nugatory. Therefore, when there is no right to privacy specially conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash. In matters of aforesaid nature where the legislature has conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent. Thus the Court has to reconcile these competing interests by balancing the interests involved.

72. If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest. The Court passes an appropriate order, the question of such action being violative of Article 21 of the Constitution of India would not arise. The Court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected.



5. The very same decision was followed by this Court in C.R.P.PD.No.3858 of 2008 (K.P.PADMAVATHY Vs. N.VARADARAJAN).

6. This Court had followed the Division Bench judgment in AIR 1994 Punjab and Haryana (MANJIT KAUR Vs. SURINDER SINGH) and held as follows in paragraph Nos.11 and 12.

"11. Having regard to the circumstances, I am of the considered opinion that both the spouses ought to be medically examined by an higher medical institution so as to remove the clouds in their minds and all others who are connected to the proceedings.

12. In such view of the matter, it is inevitable to refer both the parties to the higher medical institution in the State i.e., Madras Medical College Hospital at Chennai. The Dean of the Madras Medical College Hospital shall constitute a team of qualified doctors to test the potency of the respondent/husband and another team to medically examine the petitioner/wife as regards her virginity. The Dean after completion of such examinations shall get the report from the team and forward the same directly to the Principal Sub-Judge, Gobichettipalayam by name for further proceedings in H.M.O.P.No.43 of 2007.

7. It is stated by the respondent/wife of the petitioner in the counter filed in support of H.M.O.P.No.172 of 2012, which is enclosed in typed set, at page No.12, as follows:-

"The petitioner/respondent is incapable of impregnating the respondent/petitioner."

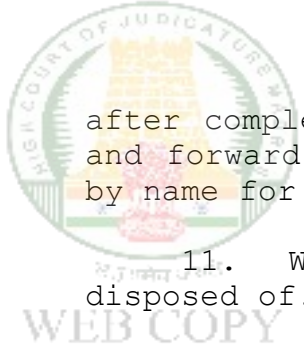
8. The learned counsel appearing for the respondent also relied on the following decisions in support of his contention.

(i). T.RANGASWAMI Vs. T.ARAVINDAMMAL {AIR 1957 MADRAS 243 (V 44 C 79 April) (1)}

(ii). AIR 1966 ALLAHABAD 150 (Vol.53,C.41) (1) {JAGDISH LAL Vs. SMT.SHYAMA MADAN AND OTHERS}

9. The above decisions can be made applicable to this case only when the medical/clinical examination of both the spouses are done. Without medical examination of both the parties, in such kind of allegations made in the original petition, the Court cannot arrive at a conclusion.

10. In such circumstances, as directed in the above decision, this Court also is inclined to refer both the parties to the The Dean of the Madras Medical College Hospital, who shall constitute a team of qualified doctors to test the potency of the respondent/husband and another team to medically examine the petitioner/wife as regards her virginity. The Dean



after completion of such examinations shall get the report from the team and forward the same directly to the Principal Sub-Judge, Tiruchirapalli by name for further proceedings in H.M.O.P.No.172 of 2012.

11. With the above directions, these Civil Revision Petitions are disposed of. No costs.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Tiruchirapalli.

2. The Dean, Madras Medical College and
Government General Hospital,
EVR Periyar Salai, Park Town, Chennai-600 003.

+1cc to MR.R.VELMURUGAN, ADVOCATE IN SR : 16635

+2ccs to MR.C.T.PERUMAL, ADVOCATE IN SR : 16363 & 16364

Mvs

SM : 17.04.2015 : 4p/6c

Common order made in
C.R.P.PD (MD) Nos.1559 and 1560 of 2014
1/4/2015