

CR-4416-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-4416-2015 (O&M).
Decided on: July 20, 2015.**

Rishi Nagpal

..... Petitioner(s)

Versus

Anshu Nagpal

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Rahul Rathore, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL)

In a petition filed for divorce by respondent- wife against the petitioner for annulment of marriage on the ground of impotency and in the alternative on the basis of cruelty, vide impugned order dated 26.5.2015, a direction has been issued to the petitioner to appear before Medical Board for examination for his potency and impotency by a PIPE test.

Counsel for the petitioner has, inter alia, argued that the petitioner cannot be compelled to undergo the said test. Counsel for the petitioner relies upon **Sharda Vs. Dharmpal, AIR 2003, Supreme Court 3450 (1)**, in support of his contention that right of privacy and personal liberty under Article 21 of the Constitution of India would be violated in case the petitioner is compelled to undergo any such test.

Relevant portion of the judgment cited by the counsel for the petitioner is reproduced as under: -

“80. 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 a 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 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 render the very grounds on which divorce is permissible nugatory. Therefore, when there is no right to privacy specifically 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.

81. 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.

82. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subjected to the supervisory jurisdiction of the High Court in terms of Section 115 of the Code of Civil Procedure and/or [Article 227](#) of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong prima facie case before passing such an order.

83. If despite an order passed by the Court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference would be made out. [Section 114](#) of the Indian Evidence Act also enables a Court to draw an adverse inference if the party does not produce the relevant evidences in his power and possession.

84. So viewed, the implicit power of a court to direct

medical examination of a party to a matrimonial litigation in a case of this nature cannot be held to be violative of one's right of privacy.

85. To sum up, our conclusions are

1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under [Article 21](#) of the Indian Constitution

3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him.

86. Subject to the observations made hereinbefore we are of the opinion that the High Court cannot be said to have committed a jurisdictional error in passing the impugned judgment. This appeal is, therefore, dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.”

Counsel for the petitioner submits that in view of the observations of Hon'ble the Apex Court in Sharda's case (supra), he may be permitted to withdraw the present petition with liberty to the Court to draw a strong inference against the petitioner under law.

This petition is disposed of as withdrawn in view of the observations of Hon'ble the Apex Court reproduced above with

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liberty to the trial Court to draw any adverse inference against the petitioner in case he refuses to appear before the Medical Board.

July 20, 2015.
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(M.M.S. BEDI)
JUDGE