

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.1062 of 2015**

Smt. Shilpa Kochhal, W/o. Vikash Kochhal, aged about 29 years,
R/o. Harna Bandha Road, Shikshak Nagar, Durg, Tahsil and
District Durg (CG)

---- Petitioner

Versus

Vikash Kochhal, S/o. Shri Khemchand Kochhal, aged about 35
years, R/o. Ward No.14, Jain Mohalla, Wara Seoni, District
Balaghat (MP)

---- Respondent

Shri HB Agrawal, Sr. Advocate with Smt. Meera Jaiswal, counsel
for the petitioner.

Shri Avinash Chand Sahu, counsel for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****24.02.2016.**

Heard.

2. Facts in brief for disposal of the instant petition is that Case No.185A/13 (Vikas Kochhal vs. Smt. Shilpa Kochhal) under Section 13 of the Hindu Marriage Act, 1955 is pending before the Second Additional Principal Judge, Family Court Durg. Vide order dated 31.10.2015, in an application 15.5.15 filed on behalf of the petitioner under Order 16 Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code'), the Court below after hearing the said interim application whereby and whereunder the petitioner/non-applicant prayed for issuance of summon to the doctors of the Government Hospital, Wara Seoni dismissed so far as it relates to call for the doctors of Government Hospitals of Wara Seoni and Balghat along with record. Against the said order

the petitioner has filed the instant writ petition and prayed that the Court below accepted all the documents filed by the petitioner then they ought to have ordered to produce the evidence by calling the government servants as witness or in the alternative asked the witness to appear with all the documents relating to admission and discharge of petitioner as court witness. Rejection of the said prayer, the petitioner become remedy less, hence, it is prayed that the petitioner may be allowed to examine the government servants by asking to bring all the documents in relation to admission and discharge register of the petitioner in Civil Hospital Wara Seoni and District Hospital Balaghat along with documents or in alternative call the government servants to bring those documents as court witnesses in the interest of justice.

3. On behalf of the respondents, the petition was opposed orally.

4. Heard learned counsel for the parties and perused the record of the case.

5. It is submitted on behalf of the petitioner that it is undisputed that the petitioner/non applicant was admitted at Government Hospital, Wara Seoni on 16.5.2011. She has a right to prove all the documents as the office of the Civil Surgeon/Chief Hospital Superintendent informed vide memo No.1874 dated 17.8.2015 that the petitioner admitted for treatment in the District Hospital in the medical ward on 16.5.2011 at 8.45 pm. The

original file was taken by Police Station Wara Seoni on 02.9.2011. On the other hand, it is informed by the Office of the Superintendent Police Balghat vide communication dated 11.01.2016 (Annexure-B) that police have taken only the discharge ticket and the same is already provided to the petitioner and she may communicate with the District Hospital Balaghat for other documents. It is submitted that both the informations are contrary and as the petitioner has right to prove all the documents, prayer as in the instant petition may be allowed and the relief as prayed may be granted.

6. Per contra, learned counsel for the respondent opposed the petition and submitted that the seizure memo is the document which exhibits the seizure of any documents. Copy of the said seizure memo is not filed on behalf of the petitioner before the Court below to demonstrate the documents which were actually seized. Further submitted that the appeal filed on behalf of the petitioner before the First Appellate authority/ Joint Director Health Services, is pending meaning thereby the appeal preferred on behalf of the petitioner asking for the relevant documents is under disposal of the said first appeal. It is further submitted that as per the appreciation in the impugned order dated 31.10.315 the Court observed that in the said criminal case nothing mentioned regarding assault or any external injury in the discharge ticket dated 15.5.11 and 16.5.11 thereby the trial Court held that there is no any necessity to call for the public servants i.e. the doctors of the Government Hospital Balgahat along with relevant documents.

It is further submitted that the parties may prove their documents and pleadings under the provisions of law. Upon consideration of the facts that in the charge sheet filed by the police before in criminal Court under Section 498A of the IPC against the present respondent and others wherein the discharge ticket pertaining to the Government Hospital Waraseoni and District Hospital Balaghat and the statement of Dr. Ravindra is enclosed and there is no any confirmation regarding marpeet on the said medical document. Upon considering the entire facts, the Court below dismissed the application under Order 16 Rule 1 of the CPC which is neither improper nor illegal. Hence, there is no any interference required for the said order. Hence, the petition may be dismissed.

7. On perusal of the entire material and the impugned order dated 31.10.15 it appears that the said copy of the seizure memo was not filed before the Court below. With this it cannot be said that what documents actually seized by Wara seoni police and also as the first appeal is pending before the Joint Director, Health Services Jabalpur, the matter is subjudice. If at all the stand of the civil surgeon/Chief Hospital Superintendent Balaghat is correct for the sake of the memo though no admitted that the original file is taken by the Station House Office Wara Seoni on 02.9.11 why the said office of the civil surgeon/Chief Hospital Superintend have not provided any such receipt regarding documents of the entire file in relation with the petition and also there is no fact

whether the petitioner ever applied for the copy of the said receipt. In absence of existence of any such receipt it will be hard to believe that medical authorities even without obtaining any formal receipt handed over the file. On the other hand, the Court below duly appreciated the facts regarding the discharge ticket and on detailed appreciation the Court held that in the copy of the both the discharge tickets and in the statement of Dr. Ravindra there is no any confirmation regarding marpeet and there is no any mentioning of the facts regarding marpeet or external injury in the discharge tickets dated 15.5.11 & 16.5.11. With this, the trial Court held that there is no any necessity to call those public servants from Balaghat (MP).

8. On due consideration of the above facts, in absence of any seizure memo, first appeal under the Right to Information Act, pending before the Joint Director, Health Services, Jabalpur (MP) no facts regarding assault and marpeet duly appreciated by the trial Court, even not mentioning any facts regarding assault or marpeet both in the discharge tickets, in the considered view of this Court, the trial Court has not committed any illegality or impropriety while rejecting the prayer of the petitioner to call the Government doctors by issuance of summons.

9. On due consideration, the petitioner has failed to make out any case. The instant petition is without any substance. Consequently, the petition is dismissed at the motion stage itself. Needless to mention that any appreciation of facts in the present

order shall not come in the way for the disposal of the matter in hand before Court below and the same may be disposed of purely on its merits.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**

Bini