

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.653 of 2014
and
M.P.No.1 of 2014**

K.Prakash

.. Petitioner

Vs.

Indira Priyadharshini

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.41 of 2010 in HMOP.No.141 of 2009, dated 20.12.2013, on the file of the learned IInd Additional Subordinate Court, Villupuram.

For Petitioner : Mr.P.Anbazhagan

For Respondent : Mr.J.Antony Jesus

ORDER

The revision petitioner herein is as petitioner has filed the above petition in H.M.O.P.No.141 of 2009 seeking to dissolve the marriage solemnized between the petitioner and the respondent on medical grounds.

2.The case of the revision petitioner in nutshell as follows:

The marriage between the revision petitioner and the respondent was solemnized on 24.09.2004 according to Hindu Rites and Customs. It is the case of the revision petitioner that from the very day of his marriage, his matrimonial life remained a question and troublesome because of medical problems of the respondent that she suffered perpetual menstrual problem lasting for months together. More so, the respondent further by avoiding the petitioner has managed to stay in her parental home in view of her medical problem for majority of days in a month.

3.It is also his case that out of sexual contact with the respondent, he suffered an infection after intercourse and on consultation with doctor he was advised to do a surgery immediately. That apart, according to the revision petitioner has deserted him and therefore he has filed the above petition under section 13(i) & 13(ia) of Hindu Marriage Act 1955 out of the mental cruelty risen due to the alleged acts of respondent.

4.In the said petition, the revision petitioner filed a petition

under Section 12 of Family Courts Act, 1964 seeking for a direction, directing the respondent for medical examination before expertise Gynecologist in Chennai to establish her medical problems.

5.The Learned trial judge dismissed the revision petitioner's application holding that the revision petitioner has not made out a prima facie case against the respondent/wife. The said order is under challenge in this civil revision petition.

6.I heard Mr.P.Anbazhagan, learned counsel for the petitioner and Mr.J.Antony Jesus, learned counsel for the respondent and perused the entire materials available on record.

7.Hearing upon rival submissions and on perusal of the records, it is seen that the revision petitioner to substantiate his case has marked documents Exs-P1 to P12 reflecting the medical treatment given to the respondent prior to her marriage.

8.It is further relevant to note here that the revision petitioner has also examined the doctor as PW2 who treated the respondent.

9. On perusal of the counter filed by the respondent to the above interlocutory application, I am not able to find any document or contention put forth by the respondent rebutting the contention of the revision petitioner whereas, her case revolves around dowry harassment.

10. The Learned counsel appearing for the respondent has relied upon a decision of Hon'ble Punjab and Haryana High Court made in the matter of Nirmal Singh versus Reeta, reported in CDJ 2015 PHC 481 wherein the Hon'ble Punjab and Haryana High Court has held that it is not possible for a husband to make out a case for examination of the wife to assess whether she is suffering from hepatitis B or not.

11. On perusal of the decision as well as on appraisal of the facts involved in the case, I am of the considered opinion that the facts discussed in the case cited by the learned counsel for respondent and the respondent's case differs much.

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12. It is needless to say that the revision petitioner has put forth documents and evidence to show that the respondent suffered medical problems even prior to her marriage. It is also his specific case that

suppressing the above medical problem he was made to marry the respondent and out of same he was put to unexplainable hardship.

13. Therefore, in the interest of justice, I am of the considered opinion that the respondent is liable to be subjected for medical examination.

14. In this aspect it is useful to refer to the decision of the Honorable Apex Court made in the matter of Sharada vs Dharampal reported in 2003 4 SCC 493, wherein the Honorable Apex Court has held that the Matrimonial Courts has the power to order a person to undergo medical tests and passing of such an order by the Court would not be in violation of the right to personal liberty under Article 21 of Indian Constitution. Thus the learned trial judge's view that the revision petitioner has not made a prima facie case is acceptable one and so it is liable to be set aside.

15. In the result:

(a) the civil revision petition is allowed by setting aside the order passed in I.A.No.41 of 2010 in HMOP.No.141 of 2009, dated 20.12.2013, on the file of the learned II Additional Subordinate Judge,

Villupuram;

(b) the learned II Additional Subordinate Judge, Villupuram, is hereby directed to pass suitable orders, directing the respondent/wife Mrs.Indira @ Priyadarshini subject herself for medical examination before the expertised Gynecologist in Chennai to establish her medical problems and get the report within a period of one month from the date of receipt of a copy of this order;

(c) on receipt of the report from the said expertised Gynecologist, the learned II Additional Subordinate Judge, Villupuram, is hereby directed to dispose of the HMOP.No.141 of 2009, within a period of three months thereafter. No costs. Consequently,connected miscellaneous petition is closed.

17.03.2017

vs

Note:Issue order copy on 18.02.2019

Index:Yes

Internet:Yes

सत्यमेव जयते

To

The IInd Additional Subordinate Court,
Villupuram.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.653 of 2014
and
M.P.No.1 of 2014

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