

In the High Court of Punjab and Haryana at Chandigarh

CR-7995 of 2016(O&M)

Date of Decision: August 30th, 2017

Rishi Nagpal

---Petitioner

vs.

Anshu Nagpal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Berjeshwar Singh Jaswal, Advocate
for the petitioner

Mr. Gurcharan Dass, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 2.11.2016 passed by the Additional District Judge, Ludhiana whereby application of the petitioner to grant an opportunity to appear before the Medical Board at PGI Chandigarh for PIPE test of the applicant-respondent has been dismissed.

A brief backdrop of the case is that marriage of the parties was performed in November 2012. The respondent-wife has filed a petition for annulment of marriage under Section 12(1)(a) of the Hindu Marriage Act,

1955 (in short “the Act”) and in the alternative, for grant of divorce on the ground of cruelty under Section 13 of the Act and the same is pending at Ludhiana since November 2014. The respondent-wife filed an application that the petitioner-husband may be directed to undergo PIPE test as he is stated to be impotent. After having heard counsel for the parties at length, vide order dated 20.5.2015, the petitioner was directed to appear before the Medical Board, PGI Chandigarh with a direction to the Board to examine him after due identification and forward its report under sealed cover to the Court on or before the next date of hearing i.e. 6.7.2015. On the said date (6.7.2015), the petitioner filed an application for adjournment to enable him to file a revision against order dated 20.5.2015 but the same was dismissed by the trial court on 6.7.2015 and the petitioner was directed to appear before the Medical Board on 10.7.2015 at 3-00 p.m. It was also held by the Court that if the petitioner (respondent therein) does not appear before the Medical Board on the date fixed, adverse inference will be drawn against him at appropriate stage and the case was adjourned to 21.7.2015 for awaiting report.

On 21.7.2015, another application was filed by the petitioner for adjournment and extension of time for his medical examination by the doctors at PGI Chandigarh. The respondent-wife contested claim of the petitioner and brought to notice of the Court that the petitioner has concealed the factum of disposal of Civil Revision No. 4416 of 2015 by the Punjab and Haryana High Court, Chandigarh (hereinafter to be referred to as “the High Court”) on 20.7.2015. After having heard counsel for the parties in the light of their respective submissions, the trial court allowed

the application and the petitioner was permitted to appear before the Medical Board, PGI Chandigarh on 21.8.2015 at 3-00 p.m. with the observation that adverse inference would be drawn against him at an appropriate stage in case he fails to appear before the Medical Board. The petitioner again did not appear before the Medical Board on the date fixed by the trial court. He filed Civil Revision No. 3150 of 2016 to challenge orders dated 20.5.2015 and 3.8.2015 passed by the trial court with a prayer to set aside those orders in the interest of justice. However, in para 14 of the petition, it is averred that the petitioner is still ready and willing to undergo PIPE test and other allied tests to prove that he is not impotent. The petition was disposed of by this Court vide order dated 5.5.2016 and a relevant extract from the order reads as follows:-

“Realizing the fact that order dated 20.5.2015 has already been challenged in this Court vide CR No. 4416 of 2015 decided on 20.7.2015, learned counsel for the petitioner submits that an application for extension of time was filed. There was a direction that in case he will not appear before the Medical Board, an adverse inference will be drawn against him. There was a FIR registered against the petitioner.

He further submits that he is willing to appear before the Medical Board, in case time is granted.

In view of the aforementioned facts, petitioner is granted time to move appropriate application for extension of time before the trial court to appear before the Medical Board.

The civil revision stands disposed of.”

Later, the petitioner filed the instant application (undated) to

grant an opportunity to appear before the Medical Board at PGI Chandigarh by extending time as per order dated 5.5.2016 passed in CR No. 3150 of 2016. The respondent-wife filed response to the application and after having heard counsel for the parties, the trial court dismissed application of the petitioner.

Counsel for the petitioner would urge that the trial court vide order dated 3.8.2015 directed the petitioner to appear before the Medical Board at PGI Chandigarh on 21.8.2015 for undergoing PIPE test and other medical examinations. The respondent-wife at the time of disposal of his application for extension of time vide order dated 3.8.2015 did not disclose that she has lodged FIR No. 84 dated 21.7.2015 under Sections 406, 498-A, 420 and 120-B of the Indian Penal Code against the petitioner and his family members. The petitioner filed an application for grant of bail in anticipation of arrest before the Court of Sessions at Ludhiana on 12.8.2015 but the same was dismissed by the Additional Sessions Judge, Ludhiana on 14.8.2015. Subsequent thereto, the petitioner filed CRM-M- 27626 of 2015 for grant of anticipatory bail before the High Court which was listed for the first time on August 19, 2015 and was ordered to be listed again on 21.8.2015. It is further submitted that notice of motion was issued for 27.8.2015 but arrest of the petitioner was not stayed. Arrest of the petitioner was stayed for the first time on 7.9.2015. It is argued with vehemence that as the petitioner had a serious apprehension of his being taken in custody on 21.8.2015, the date fixed for his medical examination by the trial court, failure of the petitioner to appear before the Medical Board on that date is neither intentional nor mala fide, thus, should not be allowed to cause a

serious prejudice to the petitioner by drawing an adverse inference against him qua allegations of impotency levelled by his wife. It is further argued that in case the petitioner is not permitted to appear before the Medical Board at PGI, Chandigarh in pursuance of order dated 20.5.2015, it would be of serious consequence for the petitioner by denying him an opportunity to prove that he is competent to have conjugal intercourse and is not impotent for the purpose of present lis but also for his future life. It is prayed that the petitioner may be allowed one opportunity to appear before the Board for necessary medical examination as per the terms and conditions ascertained by this Court.

Counsel representing the respondent has supported the impugned order with the submissions that the trial court has rightly refused to allow indulgence to the petitioner who remained hoodwinking the court proceedings and failed to appear before the Medical Board on several dates fixed by the trial court for the purpose. It is further argued that the petitioner while filing application dated 21.7.2015 for extension of time intentionally concealed the factum that Civil Revision preferred by him against order dated 20.5.2015 has been dismissed by the High court. It is argued that counsel representing the petitioner before this Court in CR No. 4416 of 2015 decided on 20.7.2015 made a statement to withdraw the petition with liberty to the Court to draw a strong inference against the petitioner under law in view of observation of Hon'ble the Apex Court in **Sharda vs. Dharmpal, AIR 2003, Supreme Court 3450(1)**. According to counsel, conduct of the petitioner reflected in order dated 20.7.2015 passed by the High Court is more than sufficient to conclude that the petitioner was

never ready to appear before the Medical Board but he had been filing repeated applications before the trial Court to buy time with an ulterior motive to achieve.

I have heard counsel for the parties, perused the paper book, records of the trial court and CR No. 3150 of 2016.

The application filed by the respondent-wife for direction to the petitioner to undergo PIPE test and other medical examinations was decided on 20.5.2015. The petitioner failed to appear before the Medical Board at PGI Chandigarh on three dates including the date fixed by way of extension of time. The last extension was given by the trial court vide order dated 3.8.2015 whereby the petitioner was directed to appear before the Medical Board on 21.8.2015.

Perusal of the reply to the application for extension of time and so also the order dated 3.8.2015 passed by the trial court would make it evident that there is no reference to registration of FIR dated 21.7.2015 by the respondent against the petitioner. It is a matter of record that the petitioner filed application for bail in anticipation of arrest in the aforesaid FIR on 12.8.2015 before the Court of Sessions but the same was dismissed by the Additional Sessions Judge, Ludhiana vide order dated 14.8.2015 (Annexure P-13). Without loss of time, the petitioner filed CRM-M- 27626 of 2015 before the High Court seeking bail in anticipation of arrest and in the said petition, arrest of the petitioner was stayed on 7.9.2015 meaning thereby that on 21.8.2015, the date fixed by the trial court for medical examination of the petitioner, he did not have protection against his arrest in the aforesaid FIR lodged by the respondent-wife. As the petitioner had

serious apprehension of his arrest in the FIR lodged by the respondent-wife, it is difficult to accept that he failed to appear before the Medical Board without any tangible and justifiable reason. Under the circumstances, failure of the petitioner to appear before the Medical Board on 21.8.2015 cannot be adversely commented.

The petition for grant of bail in anticipation of arrest filed before the High Court was finally decided on 18.3.2016. Thereafter, the petitioner filed CR No. 3150 of 2016 dated 29.4.2016 that came to be decided by this Court on 5.5.2016 leaving the petitioner at liberty to move an appropriate application before the trial court for extension of time to appear before the Medical Board. Subsequent thereto, the present application was filed by the petitioner but the same did not find favour with the trial court. In view of the above, omission on the part of petitioner to appear before the Medical Board on 21.8.2015 cannot be allowed to stand in his way for appearance before the Medical Board. I would hasten to add that in case the petitioner is not permitted to appear before the Medical Board, it would be of serious consequence for him not only for the purpose of present lis but also for the times to come. In case an adverse inference is drawn against the petitioner due to his failure to appear before the Medical Board and eventually he is held to be suffering from impotency, he may not be able to enjoy conjugal bliss for the rest of his life in case a decree of divorce is passed in favour of the respondent.

To be fair to the respondent, counsel has tried to derive some mileage from the statement made by counsel for the petitioner before the High Court court in CR-4416 of 2015. A relevant extract from the said

order reads as follows:-

“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 liberty to the trial court to draw an adverse inference against the petitioner in case he refuses to appear before the Medical Board.”

No doubt, counsel for the petitioner withdrew the petition with liberty to the Court to draw inference against the petitioner under law in the light of **Sharda's case (supra)** but while disposing of petition, this Court left the trial court at liberty to draw an adverse inference against the petitioner in case he refuses to appear before the Medical Board meaning thereby that right of the petitioner to appear before the Medical Board was never closed.

The respondent-wife has sought to raise a plea that the petitioner had been delaying his medical examination on one pretext or the other as he had been buying time to take medical advice/medical treatment to gain strength temporarily to prove his potency to perform sexual intercourse. The allegations raised by the respondent-wife in this regard do not get substantiated from any specific pleadings much less documentary evidence. Under the circumstances, plea of the respondent-wife that the

petitioner is taking some medical treatment/medical advice for gaining strength are based on assumptions and presumptions, thus, can not form the basis to deny the relief.

For the foregoing reasons, the petition is allowed, impugned order is set aside and the petitioner is directed to appear before the Medical Board at PGI, Chandigarh on 18.9.2017. The petitioner shall be liable to pay costs of Rs. 50,000/- to the respondent-wife for unnecessary harassment caused by filing repeated applications and petitions by the petitioner despite claim of the respondent wife for medical examination of the husband has been allowed throughout. Nothing stated hereinbefore shall cause prejudice to either of the parties in the pending trial.

(Rekha Mittal)
Judge

August 30th, 2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No