

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 279 of 2018****Judgement reserved on 29.11.2018****Judgment delivered on 15.01.2019**

Tarun Kumar Bafna, S/o Shri Chhagan Lal Bafna, aged about 27 years, R/o Ganjline, Tarun Trading Compay Rajnandgaon, Ward No. 26, Tahsil and District Rajnandgaon (C.G.)

**----Petitioner****Versus**

Smt. Chandni @ Jivika, aged about 26 years, W/o Shri Tarun Kumar Bafna, D/o Shri Nilamchand Sanchrti, Caste Jain, presently residing at Nagri, Tahsil Nagri, District Dhamtari (C.G.)

**---- Respondent**


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| For Petitioner | : Mr. Aditya Bhardwaj, Advocate. |
| For Respondent | : Mr. T.K. Jha, Advocate.        |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment (C.A.V.)**

1. In a divorce petition filed by respondent/wife under Section 13 of the Hindu Marriage Act, 1955 (henceforth "Act, 1955") on the ground of cruelty, the petitioner/husband had filed an application under Section 45 of the Evidence Act read with Section 151 of the Civil Procedure Code for medical examination of both the parties for examining their potency, which has been rejected by the impugned order.
2. Learned counsel for the petitioner would submit that the impugned order is bad and unsustainable in law, which is liable to be set aside.
3. Per contra, counsel for the respondent would support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival

submissions made hereinabove and went through the record with utmost circumspection.

5. In a civil suit filed by respondent/plaintiff under Section 13 of the Act, 1955 merely on the ground of cruelty, petitioner/defendant filed an application under Section 45 of the Evidence Act read with Section 151 of the Code of Civil Procedure to get both the parties medically examined as the respondent/wife has proclaimed everywhere that he is impotent and she has questioned his man-hood. The said application has been rejected by the learned Family Court on the ground that application has been filed on the ground of cruelty and no such ground has been raised based on alleged impotency by respondent/plaintiff, which has been questioned to be perverse and not in accordance with law.

6. Since the civil suit is basically filed for divorce on the ground of cruelty enumerated under Section 13 of the Act, 1955 and the petitioner has not filed any counter claim seeking divorce on the ground of impotency and the respondent has also not raised any ground that her husband is impotent, the trial Court has rightly concluded that no evidence can be collected through the court at the instance of the parties to the suit. This discretion exercised by the Family Court while rejecting the application filed by the petitioner is strictly in accordance with law, in which, I do not find any illegality or perversity warranting interference under Article 227 of the Constitution of India.

7. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-



